

Beyond Universalism or Culturalism: A Case Study of Claiming Human Rights in Afghanistan

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Abstract

This paper explores the multifaceted humanitarian and human rights crises in Afghanistan following the Taliban's takeover. This event marked the establishment of a gender apartheid regime dedicated to the mass deprivation of women's rights, using culture and religion as primary excuses. The study reveals that the Taliban's edicts and directives impose gender segregation, systematically preventing women from participating in public life and usurping their decision-making power in both political and social spheres. Women who resisted these draconian policies through protests have been abducted and tortured by the Taliban, who justify their actions with religious and cultural arguments, accusing the protestors of defending Western values. These policies perpetuate the denial of women's human rights and enforce the superiority of male-dominated regimes. This paper examines the human rights claims made by Afghan women since mid-2021, demonstrating that their claims transcend cultural relativist justifications and do not merely appeal to the common moral foundation of universalists. Instead, women's human rights claims represent an appeal to the transformative potential of human rights.

Keywords: human rights, women's rights, cultural relativism, universalism, Taliban, Afghanistan

Introduction

During the Islamic Republic of Afghanistan, women fought hard for their rights and gained certain freedoms. Women's rights have been the main victims of the Taliban's aggressive gender apartheid policy during both their first and second regimes. This essay argues that appealing to universalism and, more importantly, cultural relativism oversimplifies the complexities of the challenges women face in Afghanistan. Arguments based on cultural relativism have propagated in favor of Taliban policies, with some using these arguments to persuade the Taliban to accept their proposals. Such viewpoints overlook the role of

power, which uses various justifications to assert an authoritarian, misogynistic regime. The essay proceeds as follows. Part I provides an account of universalist and relativist human rights. Part II outlines recent views on human rights as a praxis of egalitarian freedom. Part III explains the grassroots activism of women in Afghanistan since 2021. Part IV argues that the activists transcend both universalist and relativist propositions, advocating for equality and freedom for all.

Universalism and Cultural Relativism

A major discourse in international human rights law focuses on the dynamics between

universalism and cultural relativism. Universalists believe in the inherent entitlement to human rights simply because one is human, regardless of time or place (Good, 2010). The universality of human rights traces its roots to John Locke's idea of natural rights—a common moral intuition that forms the basis for human rights. The Universal Declaration of Human Rights (UDHR) has contemporarily prescribed this universality. Scholars like Louis Henkin have been staunch advocates of human rights universality, believing in the global acceptance and recognition of human rights (Henkin, 1989). Henkin proclaims the acceptance of human rights universality by all societies and religions (p. 14). Despite the presumption that globalization would aid in the universal acceptance of human rights, the issue of cultural relativism opposing universalism remains an unresolved discourse.

On the other end of the spectrum, cultural relativists like John Rawls deny the universality or transboundary standards of human rights, asserting that their meaning varies across cultures. Relativists believe that while a substantive body of human rights can exist, its meaning varies across cultures. They accuse universalism of lacking inclusivity because an infringement of human rights in one place and time might be considered a cultural belief elsewhere (Mounties, 1996). Proponents of relativism have labeled the UDHR as a “Western imperialist document” incompatible with values upheld in Eastern countries (Stango, 2014). However, the premises used to justify cultural relativism are self-contradictory, relying on a universal claim to condemn the universality of rights (Zechenter, 1997). The propensity toward cultural relativism permits the abuse of the rights of individuals and marginalized groups. For some scholars like Michael Ignatieff, relativism stems from political struggle. Ignatieff argues that cultural relativists aim to maintain their power through tradition, religion, and other authoritarian sources against human rights advocates. They are neither traitors to local culture nor advocates of Western values but seek to attain rights denied by oppressive governments. Consequently, the cultural relativist approach provides a forum for oppressive

regimes to make excuses. As Karl Popper argued, relativist philosophy “opens the way to evil things, such as propaganda of lies inciting men to hatred... and relativism is a betrayal of humanity” (Popova, 2022).

Therefore, tension exists between the uniformity of rights not subject to cultural modification and the modification of human rights on cultural grounds. Many have proposed frameworks for reconciling these opposing viewpoints in international human rights law or proposed a middle ground. Adamantia Pollis and Peter Schwab acknowledge the lack of consensus and the clash between Western and non-Western countries in the human rights doctrine. They argue that while certain contending legal rules may need global consensus, one cannot dismiss the premises of inherent entitlement to human rights by individuals (Bull, 1979). They insist on rethinking and reexamining human rights conceptions in the West to propose an inclusive scheme (Bull, 1979, p. 158).

Some pragmatists and postmodernists propose alternative approaches. For example, Richard Rorty dismisses the universality and objective perspective of human rights, deeming it unnecessary to seek the correlation of practices within a community with those outside; no justification is required for advocating our agenda (Blumenson, 2020). According to Rorty, morality should be considered a summary of our practices, not a justification for them, and truth as a “compliment” paid to beliefs one accepts (p. 7). On the other hand, scholars like Federico Lenzerini and Jack Donnelly advocate for moderate cultural relativism, accepting some level of deviation to avoid cultural hegemony (Fraser, 2015). Lenzerini advocates for the culturalization of rights to the extent that it does not violate core principles of universality, considering it an advanced move toward a globalized social contract (p. 1110). His proposal can jeopardize the status quo of marginalized groups like women, which the international community has little consensus over. Another plausible middle ground in the debate between universalism and cultural relativism is

the proposal by Michael Goodhart, which the following section will discuss.

Human Rights from the Lens of Social Movements

In recent decades, scholars have studied human rights law from the perspective of social movements and political negotiations between individuals and institutions. Observing and assessing human rights discourse at the local level reveals that individuals, through political discourses, appeal to human rights. These societal negotiations use human rights law as a tool to demand equality and freedom for all. In other words, the emancipatory rationale of human rights is used in these negotiations as a last-resort approach against oppressive regimes. Studying the transformative nature of these discourses reveals the constructive nature of the human rights regime at the local level.

Michael Goodhart is one of the prominent scholars who renounced both the universalist and cultural relativist approaches to human rights. Goodhart observes that both universalists and anti-universalists believe in the moral truth of human rights, but they diverge on the universal attribute of this moral truth.

Goodhart disagrees with universalists over the existence of fundamental universal moral truth as the basis for human rights. The current body of international human rights law establishes human dignity as a crucial foundation for human rights, asserting that human rights are derived from the inherent dignity of humans (Goodhart, 2018). This way of thinking obscures and sidelines the practical social complexities of human dignity and human rights. If there is one moral truth, the tension and pushback against the universality of human rights should have declined over the past few centuries. Thus, to discern the theoretical and practical gap, one should examine the nature of human rights itself, which is not a linear path toward a universal moral truth but is rather interwoven with the complex, contesting interplay of values, interests, and power dynamics on a global scale (Goodhart, 2013).

Goodhart also opposes cultural relativism, arguing that believing certain cultures entitle people to certain rights opens the door to inferiority and subordination. “Once the door is open to one form of natural inferiority or subordination, it proves impossible, theoretically, to close it to others” (Goodhart, 2013, p. 12). Goodhart also opposes the cultural relativist argument branding human rights as a Western ideology. Claiming human rights as a Western idea, representing Western culture, values, and philosophies, sidelines the current reality of Western societies where race, gender equality, and many other contesting issues are debated. Such a perspective overlooks the struggles of people to attain their rights in the West (Goodhart, 2013, p. 38). Finally, Goodhart contends that examining resistance to human rights, irrespective of geographical context in Western or Eastern societies, ultimately underscores the influence of those in power who are reluctant to curtail their power.

Goodhart tries to extricate from the current stream of contestation and contention by reconceptualizing dignity to establish human rights as a praxis of egalitarian freedom. Understanding human dignity as the foundation of human rights is metaphysical and does not resonate with the dominant role of social complexities and power in shaping human rights and dignity (p. 2). Accepting human rights as a moral claim prevents us from having an inclusive understanding of human rights, which explains the global appeals to human rights or the misuse of human rights for oppressive objectives (p. 32). For Goodhart, human rights confront arbitrary power with an emancipatory ideology and are not an appeal or claim for truth. Goodhart posits that historically, social struggles over centuries pinpoint the contestation over the meaning of rights and dignity because non-inclusive and unequal worldviews exist (p. 12). Historical movements against “patriarchy, slavery, aristocracy, and traditional religious authority” challenged social arrangements by arguing for their rights and rights claims (p. 10). These struggles do not aim to establish a fixed universal dignity

and rights; rather, they represent an open-ended struggle (Goodhart, 2013, p. 9).

Goodhart (2013) referred to these movements as praxis: “the (real) social and political activity of rights-claiming by groups and individuals, including the thinking that orients it and the practices through which it is advanced” (p. 10). Goodhart conceptualizes “human rights as a praxis of egalitarian freedom” (Goodhart, 2013). The emancipatory praxis contestation strives to shape a new understanding of dignity and rights and disrupt the existing conception of dignity by oppressive systems. Accordingly, Goodhart opposes scholars like Donnelly who believe in the progressive realization of rights universality over time (p. 2). Human rights have a destructive nature for oppressive social norms, cultures, and social arrangements, while simultaneously constructing new meanings for human rights. Regardless of the right being claimed, it will be a call for freedom and equality for all. Even if human rights become formalized within institutions, they are prone to infringement by those in power. The formation and construction of meaning take place when people interact and engage in the process of rights-claiming. Therefore, the sense of dignity is realized through this interaction, which emanates a sense of self-worth, not through the political realization of human rights (Goodhart, 2013, p. 20).

Human Rights in Afghanistan: Grassroots Activism of Women in Afghanistan

Since the Taliban seized power, more than 100 orders and directives have been issued by the Ministry for the Propagation of Virtue and Prevention of Vice (Ministry of Vice and Virtue), depriving women of their fundamental rights to movement, work, and education (Ahmadi, 2022). For example, women in Afghanistan are currently not allowed to attend high school or university, travel more than 72 km without a male companion, access healthcare without a male companion, work in public or private sectors, play sports, go to the park, or wear colorful clothes. The institutionalization of these orders has escalated gender-based violence against women, as there is

no mechanism to protect women and survivors of violence. These restrictions have dismantled two decades of hard-won women's rights, transforming the situation into a slow-motion death for women (Amnesty, 2022). Many have argued that institutionalized and systematic subjugation and persecution of women by those in power amounts to gender apartheid (Bennoune, 2022).

Women have regularly resisted the Taliban's gender apartheid policies across Afghanistan, including in Kabul, Faizabad, Herat, Mazar-i-Sharif, and many other provinces. Women who protested in defiance of discriminatory orders have faced severe arbitrary measures such as abduction, arrest, torture, forced disappearance, detention, extrajudicial detention and torture of their family members, and extrajudicial killing. The women's protests began with the slogan "work, bread, and freedom," demanding their political, social, and economic rights. These protests, organized and led by women, started steadily, sporadically, and spontaneously, aiming to challenge the Taliban's draconian policies and laws. The protests emerged from the frustration of common people deeply affected by human and women's rights violations, devoid of any external or international community support (Sadr, 2022). Through their protests, they have questioned the legitimacy of the government, although their protests have been brutally disrupted by Taliban reprisals. These reprisals have taken various forms, from harassment and threats to peaceful protests to shooting in the air, abduction, detention, and extrajudicial killings. For example, one protester reported that during a protest with eight others in front of a school, the Taliban deployed 300 forces and threatened them to leave the area (p. 70). Early in the Taliban's return, women's rights activists were shot in northern Afghanistan (Nader, 2021). In September 2023, Zhulia Parsi, one of the leaders of the protesting groups, was arrested with her child from her home in Kabul. Since then, Parsi has been detained and tortured. Recently, it was reported that Parsi was transferred to the hospital due to poor physical and mental condition resulting from brutal torture (United, 2023). Many more women remain detained in prisons. All Taliban

policies and reprisals against women constitute the crime of gender persecution under crimes against humanity, currently being prosecuted by the International Criminal Court (ICC) prosecutor (United, 2023).

Despite their challenges over the past two years, women have found creative ways to claim their rights. While the Taliban have brutally cracked down on peaceful protests, women have used private spaces like their homes to resist the Taliban's brutal regime. They have raised awareness and conveyed their message to the world through social media. Another method used by protesters has been to take advantage of "social events with cultural resonance to articulate their claims" (United, 2023, p. 36).

Women's Rights as a Battlefield in Afghanistan

After 27 months of protests by women in Afghanistan, the international community has largely turned a blind eye to their demands. Despite the lack of attention, the women have continued their activism and agency. As one human rights defender stated, "None of this is new, neither the Taliban's discriminatory approach nor the world that sees us only as victims and obscures our agency. What is new is our women's organic and grassroots resistance" (Mehran, 2023).

At the international level, while almost all countries in the international community believe in the universality of human rights, none have done more than pay lip service; they have neither listened to the true representatives of women inside Afghanistan nor allowed them to speak in forums. For example, at the December 11, 2023, Doha forum, former Minister of Education Rangina Hamidi was invited. Hamidi not only advocated for negotiating with the Taliban, as was done before the fall of Kabul but also proposed using madrasahs—religious schools—in place of the formal education system to counter the current ban (Kumar, 2023). Her proclamations are paradoxical and sideline the efforts of women over the past 27 months. Aysha Khuram, moderator of the same panel, criticized that none of the girls impacted by the Taliban's decrees were invited, indicating

a lack of true representation of affected women (Khuram, 2023). On December 10, 2023, women in Takhar, a northern province of Afghanistan, criticized the international community for failing to hold the Taliban accountable for their systematic crimes against women (News, 2023).

Although the international community has leverage over the Taliban, it has failed to take necessary steps to protect human rights, particularly women's rights. The report released by the Secretary-General in November 2023 undermines the violations of women's rights and overlooks the cluster of discriminatory decrees passed by the Taliban regarding work, education, and many other socio-political and economic aspects of women's lives (Organization, 2023, p. 10). Moreover, the language used in the report discounts the increased number of forced and early child marriages, as survey findings indicate (Organization, 2023).

Regardless of the international community's actions, the women in Afghanistan have relentlessly resisted and fought for their rights. Despite the restrictions and risks imposed by the Taliban, women resist because they have nothing to lose. As one protester said, "A life without dignity means nothing, and they do not have anything to lose" (Mehran, 2023). This is how women in Afghanistan define dignity: the freedom to live as they wish. All the points raised so far lead to the question: if human rights are inherent, why does dual treatment exist? If human rights are inherent to the dignity of an individual, why are the voices of certain women being neglected?

This brings us back to Goodhart's assertion that believing in rights having a universal meaning of dignity obscures the social complexities of how interests and power interplay. The recent report by the Secretary-General indicates that the world still believes in the narrative that the "Taliban have changed" and will eventually comply with international laws. Therefore, the international community focuses on the fact that they have made peace with the Taliban but neglects that peace without transitional justice is meaningless. Accordingly, women's protests, amidst the negligence of the international community,

establish that dignity is not the common moral foundation of human rights. Rather, it is the complexities of societies that define what dignity means to certain groups. Women's claims for their rights against the oppression of the Taliban do not need to appeal to the common foundation of dignity being inherent to human rights. The mere claim for their rights appeals to equal freedom for all.

Women are not passively receiving predefined rights; they are actively constructing and defining their rights. Their endeavors are not confined to the quest for adhering to a one-size-fits-all universal claim. Instead, their rights claims arise from their experiences, aspirations, and needs to change the imposed narrative.

Women's Protest: Defying the Cultural Relativist Narrative

The women's movement in Afghanistan demands freedom and liberation from Taliban oppression. These protests challenge the narrative that Afghanistan's culture is inherently more susceptible to gender discrimination and apartheid. Women's protests and resistance defy the cultural relativistic justifications for the ongoing apartheid policies imposed by the Taliban and their sympathizers.

Both the Taliban and their supporters have used cultural justifications to rationalize or relax standards for discriminatory and gender apartheid policies. Several leaders and ministers of the Taliban regime have justified the ban on women's education by claiming it contradicts "Afghan and Islamic values" (BBC, 2022; Reuters, 2022). However, they have not provided further clarification on how it conflicts with these values. Some Taliban leaders have blatantly claimed that "Education is not compulsory, but obedience to the Amir is compulsory" (Rubin, 2022). The Taliban, as a fundamentalist and ethno-nationalist group, refer to their rural tribal customs and radical interpretation of Islam as generalized values for all people of Afghanistan. Taliban sympathizers have also used culture as an excuse to justify discriminatory laws. For instance, Pakistan's Permanent Representative to the United Nations, Munir Akram, stated in a UN meeting in February

2023 that the Taliban's restrictions on women's rights are rooted in Pashtun culture.

However, women have challenged and defied such justifications. Any edict passed by the Taliban to ban women's rights has been followed by a series of demonstrations. For example, when the Taliban mandated a dress code for women in public, many protested in the streets and started the campaign "#DoNotTouchMyClothes" on social media (Kambhampaty, 2021). Another women's rights activist argued that the Taliban wants to impose their fundamentalist interpretation, which is not the reality of Afghanistan. This claim and many other nonviolent resistances by women demonstrate that Afghan culture is not inherently prone to discriminatory and oppressive laws that view women as second-class citizens. In essence, this defiance is embedded in the refusal to accept a monolithic cultural narrative. Through each act of resistance, women affirm their agency and claim their rights, exposing the fallacy in the Taliban's assertions and the illegitimacy of their edicts.

Elizabeth Mayer, while studying the first Taliban regime (1996–2001), observed the Taliban's attempts to politicize or depoliticize any policy relevant to women. Mayer (2023) noted the role of politics in denying and obscuring the realization of the Taliban's gender apartheid policies and laws justified by culture and religion. Mayer argues that "Governmental policies reflecting the local political contexts determine the laws, even when politicians insist that they are adhering to Islamic requirements." These policies and laws are widely criticized by Islamic intellectuals and Muslim women (Mayer, 2022, p. 257). Since women are a minority group holding power in a world where power determines human rights, women's rights have always been undermined.

The Transformative Nature of Human Rights

The wave of demonstrations and resistance over the past 27 months has persisted despite Taliban oppression. Women's resistance and demonstrations have been significant in preventing the violations from becoming invisible through habituation and showcasing them as daily practices by the Taliban. As Goodhart argued, through the

praxis of egalitarian freedom, rights are not only claimed and constructed but also the cultural relativist and arbitrary norms of the oppressive regime are dismantled. Similarly, through their praxis, Afghan women have been capable of defining what constitutes their rights. For example, Metra Mehran discusses what the right to vote means for a woman in a northern province like Badakhshan. For Mehran, the right to vote was not simply exercising the right but a “conscious choice to ensure her concerns were heard” (Mehran, 2023, p. 49). Other women protesting have said they do not want their daughters to remain illiterate and unable to attend school because of Taliban-imposed decrees. Through these conversations, interactions, protests, and demonstrations, rights are better defined and constructed.

Conclusion

The universalist and cultural relativist philosophies fail to capture the on-ground realities and complexities surrounding the human rights discourse in Afghanistan. The resilience and activism of women in the face of the oppressive Taliban regime transcend simplistic dichotomies of universalism versus cultural relativism. Instead, they underscore the transformative potential inherent in human rights movements, the role of power, and the social complexities involved in the process of constructing rights. The ongoing resistance serves as a testament to the power of collective action and the enduring quest for equality and freedom for all.

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