

Podcast Series 1 - Engaging with Human Rights Scepticism

Episode 2 - In small places close to home Nandini Ramanujam and Jerald Joseph

Hi, this is To the Righthouse, a new podcast series by the Global Campus of Human Rights. From scepticism to hope, from utopia to empathy, we discuss human rights, riding waves but also signaling where the light is. This podcast was recorded in Venice, Italy, on the island of Lido at the Global Campus headquarters.

George Ulrich (GU) - Hello and, once again, welcome to the Global Campus series on engaging with human rights scepticism. Our focus today will be on culture and religion-based scepticism. To explore this important topic, I'm joined by two exceptionally well-qualified human rights experts. Mr. Jerald Joseph is the Commissioner of the Human Rights Commission in Malaysia since 2016 and currently serves as Vice Chairperson of the Commission. He has been active for more than 30 years as a human rights defender and trainer, both at national and international level. Mr. Jerald also holds a master's degree in human rights from Mahidol University, which is one of the Global Campus participating universities. Professor Nandini Ramanujam, is Co-director and Director of programmes of the Centre for Human Rights and Legal Pluralism at McGill University, Faculty of Law in Montreal, Canada. Her research interests include, among many other topics, law and development, economic justice and the role of civil society and media in the promotion of the rule of law. She has also extensive experience in working with human rights in the ex-Soviet political space, and elsewhere around the world. I'm George Ulrich, Academic Director of the Global Campus of Human Rights and host of the present podcast series.

To introduce today's topic, value-based scepticism is undoubtedly the most prevalent and familiar form of human rights scepticism. It's characterised by critical assessment of human rights from the perspective of culture and/or religion. This can be stated with reference to specific human rights standards that are seen to collide with accepted cultural norms or it can target the very idea of universal human rights as an authoritative global value. Often, such critiques are linked with the perception that human rights express Western individualistic values that are being imposed on the rest of the world in an unwelcome fashion. In theoretical terms, such sceptical perspectives tend to be linked with a theory of cultural relativism. These are issues that have been extensively discussed by human rights scholars and advocates, but they're, by no means, definitively settled. Confronting cultural and religious scepticism is part and parcel of human rights work on the ground, as well as in high diplomatic circles. They require innovative and constructive responses. My question to you both is: how do issues of this nature come up in your own work, whether it's in education or as work with the Human Rights Commission? And how would you address them? Maybe I could ask you, Nandini, to take the lead.

Nandini Ramanujam (NR) - Thank you very much, George and I look forward to this conversation. So I'll start by paraphrasing one of the greatest points Amartya Sen has made: 'not only there are differences on the subject of freedoms and rights that actually exist between different societies that is often exaggerated but also there's typically little note taken of substantial variations within each local culture. So, we tend to exaggerate differences between societies, but there is an immense





plurality on values and contestations around these values within cultures. No culture is a monolith. And through these contestations is what social and cultural norms are matched and they are being matched. Having said that, I will come to the question of the universal human rights framework, which in my view is under scrutiny. And it is under scrutiny from top down, by demagogues and populists and politicians, but it is under scrutiny and is being challenged by 5.1 billion people. And that is the number that comes from the World Justice Project Report about people who lack access to justice; that is a staggering number. And the human rights project, the universal project, has somehow failed a vast swathe of humanity. The report organises these 5.1 billion around three categories, but 4.1 billion people live outside the protection of law and they do not enjoy rights, *de jure* guarantees of rights at all. And in my view and in my work, the way I look at this, I don't think these billions of people are challenging the human rights paradigm based on clash of cultures or (I don't think that) it is the Western value which is being challenged. It is that it has not included them in the advancement of rights; their goal for dignity and justice is not being answered by this universal paradigm. So, I'll ask Jerald whether he agrees with me and what he thinks. What is his perspective from Malaysia and other parts of the world?

Jerald Joseph (JJ) - Thank you, Nandini, and good to be here with George for this conversation. When I look at this topic and I think the word 'universal' sounds so beautiful but we always get attacked in our human rights work for being part of this universal human rights framework. It is a little bit illogical for something that is supposed to go across the planet to be seen as negative. Then you realise this is thrown in with, and this is a Malaysian experience: just yesterday, a Minister made a statement saying 'Human Rights Commissioner we will support and work with you, but don't forget that universal human rights must come in tandem with a Malaysian mould'. So, you're wondering: 'what is this that he is speaking about?' Then I realise that whenever they use the term 'Western values' and try to dismantle these so-called universal human rights values and I'll explain later why I say 'so-called' - it's because the framework of human rights actually resides in equalising power of those 5.1 billions Nandini spoke about, exactly giving power to people to say: 'I have that equal worth of dignity, that equal worth of rights like you on the top and what about me?'. So, this 'what about me?' guestion looks great on paper and is actually the correct framework for anyone to say 'I'm as human as you (are)'; but it disrupts the power at the top because the political office-holders would then say: 'the more people have rights, the more they know about rights, the more they will demand to share in that power base'. That's why we always get attacked for promoting or protecting human rights, because it's actually getting into that space where they feel, politicians or political-power holders feel 'now I cannot have a free run because even the poorest of the poor, the smallest village community will have a say, and they will feel unhappy with me because now they have a clear understanding that they have that equal claim to rights as I am'. That's why, in my experience, when I've been invited to run some training with grassroot communities such as the slum community in Nairobi or the indigenous people in Malaysia, caste-based communities or the discriminated caste-based Dalits in India, I never start my human rights training with 'what are universal human rights?'. I start the conversation by asking 'what do you think you have and you don't have?'. Then that conversation inevitably leads to them saying 'I have a right to equality, I have a right to this land, I have the right to housing'.

Then you realise that these rights have been universalized not by the UN but by people on the ground. That's why I got more and more convinced that the universal human rights framework is the people on the ground's framework to understand them being kept up as human beings with





dignity. So, Nandini, I'm very much in line with what you said but I think the power base is disrupted by those on top because of human rights.

(NR) - I think no matter where you work on the ground and wherever I work, no matter where people live, they want to live a life of dignity, they want to seek justice, and they want to live with freedom. And freedom is manifested differently in different societies. This is where I think my work in law and development has brought me a great deal of insight: just like universal human rights, law and development has swung from one extreme to the other, from absolute universalism one-size will fit all - to radical relativism, that each society has its own norms and own customs, and therefore human rights will look very differently. I think these extremes are not terribly helpful. I think there is an immense lesson to be learned by middle level generalisation and how to operationalize the realisation of the human rights project and, as you rightly say, that is people-centred. I think we've spent decades focused on the state, and state alone. This is not to say that the state has to be ignored, but I think empowering individuals, empowering individual agency - and that is where a lot of work is happening and I have a few examples to share during our chat - and that is, I think, revolutionising the way the human rights paradigm is shifting. As you say, people are demanding what's owed to them and I think the most important work is to reinforce individual agency and enhance people's freedom, so they can demand the rights they are owed.

(JJ) - Yes, I think the word 'individual agency' is absolutely right because when I speak to a person, I don't speak to a person, I don't speak to the person on behalf of his or her community, or his or her history or his or her human bond. The individual agency actually is not disconnected from that place I live. It's not saying that the place I live determines my individual agency, but my individual agency actually knows where I live. So it's not a disconnect, and usually when this word 'individual agency' is used, they automatically say 'you see, you're not an Asian or an African, we Asians love our community". I say 'of course I love my community. But that does not mean my community has forgotten that I am a human person, a child is born into a family, a child is born in a poor house with no water, no rights, and that child needs to go to school'. But I speak about it as 'my community'. So, I think Nandini is spot on to bring that point back to the floor; the conversation of individual agency actually, is (about) individuals living in the reality of where they come from. There's no disconnect because I'm not going to be the fighter, 'I don't care with you', but I think I'm going to fight along with other individuals and this is my collective community.

(GU) - This is very interesting to hear both of you and I see a lot of consensus emerging in the discussion, which is nice, even if you come from slightly different points of view. If I hear you correctly, I think what you're both saying in various ways is that the idea of culture and cultural differences can be overstated, you know, that at least it is not maybe the most useful starting point. The idea of cultural particularities can be instrumentalized by people in power to sort of disqualify human rights. They can also, in some ways, be exaggerated in the sense that in reality, as you say, cultural norms are contested in reality, they're fluid and dynamic, they undergo development and also adapt to people's current life situations. And I think, Nandini, what you started by reminding us is that there's a profound problem of exclusion and disillusionment with being disempowered, excluded. Jerald, I think that's exactly where your ideas come in: human rights work on the ground, as you do in your Commission, needs to start with empowering individuals and communities, in a certain sense from the bottom up, both to demand political change and economic change, but also to be empowered to define one's own concepts of freedom and realise human dignity. That doesn't





have to fit one particular mould as long as there's a conformity with certain very basic and very fundamental standards. Is that a reasonable way to, to summarise so far?

(NR) - Absolutely, yes.

(JJ) - Yes.

(GU) - And could I maybe try then to throw a little bit of a wrench into the wheel so to say and ask: how do we then deal with some of the real and remaining value clashes? So, we have an international human rights law concept of harmful traditional practices, where there are certain practices that are culturally accepted, or at least enjoy a fairly widespread acceptance and that, nevertheless, are deemed to be completely incompatible with minimal human rights protection. How do you address such conflicts?

(JJ) - The first part is the constructive manner of discussion with people coming from different points of their life or being taught or educated about the notions of human rights - and I said taught and educated, because I think there's so much political propaganda against universalizing human rights - and giving back that individual agency to the person to decide what's best for them or the community. But we still need to find a way to sit down and have that conversation. In my work in the Human Rights Commission we meet different government agencies, from law enforcement, police, immigration, prison, to drug detention and a mix of people. And one thing I find sometimes a little bit funny is that you can give the best presentation on human rights, no matter what right you want to talk about. Then, if you ask if anyone has a question, a hand will inevitably go up and ask you: 'is human rights giving LGBT people the right to marry? That's not Malaysian'. So, then you realise that you just spoke about 45 minutes (about) 'freedom from torture or other content' but in their mind, it's been framed that 'rights' means 'it will take away something that we feel is good for us'. In this instance, they have been taught that sexual identity and different sexual orientation is a no-no, because the majority in the society is not in favour. So in their mind, that's a harmful practice for society. So the conversation starts. And of course, you can easily tell them 'Come on, man, you have rights, they have rights'. But that's not the conversation. I have to flip it to ask 'People are different. I mean, you and I were not born like that. Our sexual orientation may be different. But if (it is) someone in your midst, (someone) I know, or you know or (somebody) you've seen, you've met, what do we do? Do we throw them out the window? Do we throw them in jail? We can't do that, they're human beings'. And all religions, all cultures, appeal to our compassion, to respect them. No torture, no violence, no discrimination. So the conversation moves from a human rights lens to a compassionate lens but yet reiterates the rights language. And then there is a little bit more nods and understanding because they're realising that 'okay, there is that conversation between rights, compassion and respect for individuals who are different from you and me'. So I said, 'I'm not asking you. I'm not promoting the LGBT in the Malaysian context. But I'm telling you how do you respond to people who are different from us'. And then you get the nods, and then I can go on to my next question about whatever content I was doing. I'm just flipping it, George, because they feel some of the rights are harmful to a larger society. And you flip it back to say that, large or small, individuals are different, we cannot decide at a certain point of time. Thanks.

(NR) - Yes. So, you know, the Convention on the Elimination of All Forms of Discrimination Against Women, CEDAW, is one of the human rights conventions which has most reservations from state





parties and state parties claiming that certain articles do not correspond or align with their cultural and religious norms. So there is a higher level political conversation about clash of values. But I would still retain the claim that I think we have to flip this question from the point of view of people and I'm going to talk about women. So, no matter where women live, I think, again going back to Sen, the focus, the fundamental question is :'what do they want to be, and what do they want to do?' It's about function, valuing what they want to do in their context and who they want to be. Do they have freedom to make strategic decisions about their life? And when it comes to child marriage, when it comes to other so called harmful practices, I think it is women's agency which needs to be enhanced. And globally speaking, no matter where we are talking, I think there is tremendously good work going on, led by women's civil society, so on intimate partner violence, could (it) be gender-based violence, economic empowerment of women, child marriage, female genital mutilation, I think women's civil society is leading norm nudging trend. And once again, this clash of value is always positioned as somehow culture is primitive and comes in clash with modernised ideas or progressive ideas. Culture moves, it's a dynamic institution. It's a slow moving institution, when compared to political and legal institutions but it moves, it interacts with other technological changes, it interacts with the digital revolution in the world. And so there is that aspect.

To answer your question, George, I think one must go back to what Sally Engel Merry talked about as translation and vernacularisation of human rights. So, top down some abstract ideas, being sort of transposed or transplanted on diverse communities, obviously doesn't work. But there are go-between, there are people who are able to translate these ideas; and they are civil society activists, they're advocates, they are women's organisations. And it's very interesting Sally gives two examples of two NGOs working in Baroda in the same city in Gujarat, one is an NGO with more resources and English-speaking staff. And the other is an NGO which is less well-resourced and much more connected to the local community. They both are championing women's rights, but they're doing it differently and they are focusing on different aspects of women's rights. So the one which is very local, is looking at gender-based violence and working with communities marginalised and economically disempowered women, while the more urban approach is looking at the rights of LGBTQI and working with women and championing their rights. So I think conflating a culture as one value is not helpful, even in the most traditional communities. In fact, I was saying that middle class, educated women may want exactly the same thing, whether they are living in Nairobi, Cairo, New Delhi, or in Kuala Lumpur. But within these countries, women who are in rural contexts with lower educational and economic outcomes, have these different aspirations and different possibilities. So culture as such as a monolith and something which is backwards, is, I think, not a helpful way to frame this value conflict conversation. So, I don't buy into this east-west value conflict, you know, from Huntington to anyone else. I think it's very simplistic.

(GU) - It's very well taken, Nandini and Jerald, and I think one of the points I hear you now agreeing on very clearly, in addition to expanding and elaborating the importance of empowerment, and in view also of the idea of expanding capabilities, as you're talking about Nandini, clearly, which is for me too a guiding philosophical idea that comes from Amartya Sen and obviously also from Martha Nussbaum, who's very much elaborated this in a feminist perspective. But I think also Jerald, what you were talking about, which is the slow transformation of accepted norms and the sort of negotiating the internal contestation and then negotiating of conflicting perspectives and ideas of what's acceptable and what is not, you know, and I think in these transformational





processes, I think the meeting between top down and bottom up approaches, so to say, is essential, because it can't be all done from the bottom, and it can't all be done by norms that are decreed from above, it has to be. Sometimes I think, you know, cultural leaders or opinion leaders who really make groundbreaking efforts, we're commemorating Archbishop Tutu in these weeks, who also took a lead in expanding the space of freedom in the South African context, for example, also by assimilating the conception of equality with regard to racial equality and perception of equality with regard to various gender identities, and I think to make those links as a spiritual leader and opinion leader is essential also in facilitating these cultural transformations. Does it make sense?

(JJ) - Yes, it does. If I may add, George, on what Nandini said, even looking at how the conversation with the communities (goes): yes, you're right, I totally agree, it must start from the ground, I think, and very nicely said about translation and vernacularisation. But also, we want leaders to grow, to challenge the power at the top, because these two work hand in hand. And I'm remembering practices of (when) I was doing a training, I think, it was in Ghana, it was all regional training, and they were all 'human rights' people. But then suddenly, we came to this conversation on gender and a gentleman of very senior age said that it was okay for women to have a role at home and the men to do this. He spoke not out of spite, but just he took it as normal. And there is of course, a big uproar with the human rights streaming. But then he was looking around very perplexed. And then I realised that internalisation in a private sphere has not really happened, despite us holding the human rights flag, even in the simplest way of sharing burdens at home.

Then I remember in Malaysia we are struggling with the fact that early child marriages can still be allowed through some special dispensation from the Islamic religious authority because of a special department there and then those children lose out on that opportunity for full development, for education. And I call that 'harmful cultural practices' and we are working to try (to eliminate it) and the government is, everyone is agreeing that every woman should have that opportunity. The workforce in Malaysia is more than 50% of women, the top leadership in corporate, I think it's gone up to 35%. So the climb is high. But I also remember the caste-based discrimination in India, I think that, and let me give an example of an organisation: the violent practices of allowing the child to sit at the back row, and missing out on the school education system and violence when you try to partake in economic activity, because of the separation according to caste. So I think that for me it is direct, you can get enough examples of harmful cultural practices that directly keep a whole 250 million people, because of their caste identity, out of that equality line. And I think this is shocking. We are in this super modern world that can come up with a vaccine in less than a year. But yet, there's no vaccine to equalise rights for all.

(NR) - Absolutely Jerald. There is a very fine work by someone called Gérard Roland, which is about interaction between fast and slow moving institutions in a society and what kind of changes it produces. Culture is a slow moving institution but embedded norms of culture, it has its primacy that trumps over anything else, you may have formal guarantee of equality, constitution guarantee and yet, as you say, that India is an example that 70 some years later after its constitution, embedded inequalities continue. And the definition of institution in this is: institutions are humanly devised constraints to structure human interaction. So, an informal institution such as culture, and family, must talk, must speak to the formal, laws and statutes. And that's how things start to change. But if there is a divorced reality between the two, then things do not change at the speed





they ought to change. And that you see in many postcolonial contexts, where there's a big gap between cultural institutions and formal institutions, but that just to say that is a sort of more theoretical explanation. But in reality, I think empowerment-based strategies, since 2005, when the Commission on Legal Empowerment of the Poor came and came up with (something) new: I think, the orthodoxy of only focusing on the states sort of shifted and people-centred strategies to empower people started and there have been some fantastic examples (of success). And maybe I'll let George ask us another question. Maybe I'll bring my example.

(GU) - I wanted to make one or two observations and one observation, which I find very interesting, and it might be in fact, one that can also be my final comment, is that I see our debate shifting between clashes between fixed and static cultural norms to becoming a much more pragmatic issue, you know, an issue of in fact, working with human rights in local context in a meaningful way, which is the local relevance of human rights challenge. And that is very much also what the next podcast in fact, will examine. And so there's a good connection here. I would like to nevertheless pick up on another point that both of you have made which is in various moments, how the issue of both universality, cultural differences and so on is very often politicised and sometimes even functions as a red flag in certain discussions. And we are living at a time of a certain backlash against the international human rights agenda, where I think these red flags where the very human rights framework acts as a red flag, and there's a counter movement that's being launched against it. And I think the bottom-up approach, as you're very much advocating, as I take as hugely relevant, is one way of answering those challenges, but I think there also has to be an intellectual direct confrontation somehow with the high level detractors of the of the global human rights agenda, what do you say to that?

(NR) - I think it is a very important question. And the human rights project is sort of seven decades and plus old, the modern, universal human rights project. And I think the world was a different place, the power balance when the project was conceived was skewed, so to say, in the world. And then from bipolar world we have come to a multipolar world, it's a very, I would say, a critical moment, I think when we say critical juncture in history, so the fall of Berlin Wall gave us an opportunity to sort of, you know, expand freedoms. But there is a slide back, as we can see, backsliding is happening in the post Berlin Wall world: Poland, Hungary, Russia are prominent examples of that. But even after that, now, this is a world with some contentious powers sort of trying to gain control, ideological control. And I think for the international community it's an important moment to bring everyone - liberal, not so liberal, illiberal - on the table, and look at the universal human rights project, and maybe it needs rejigging. So, I do think that not addressing issues of fundamental dignity, which will squarely come to economic rights issues: people living in precarity, people living in extreme deprivation in the 21st century; pandemic has suddenly laid bare the deprivation and inequities in the global context. So I think the issues of core dignity ought to be addressed fast and very fast. And although the SDG promises that by 2030 we would have eradicated extreme poverty and would have achieved those 400 odd goals (targets), it is not realistic. So I think if we want to say rejuvenate the universal human rights project, the issues of core dignity and core deprivation ought to be addressed, they have to be prioritised. Theoretically, we can say rights are indivisible, integral, they all need to be realised at the same time, but I would argue that certain core needs ought to be addressed across the board, in order for people to have faith in the project, that yes, rights are for all, dignity belongs to us, and justice is inclusive.





(JJ) - I think I agree with you that we need both, if we want the right framework to exist in our society the bottom-up is a non option. But the demand for leadership at the top, the intellectual leadership, the political leadership, I think, is the most difficult part. I find it very easy to have conversations on the ground because people tell you about human rights more than you tell them. But when at the top, the political leaders shy away, because human rights have been politicised as a power tool, when it is useful and when it is best for them. So it's the calculation of staying in power and winning words. And I'm talking here in Malaysia and some countries around here. The most difficult issues, demands for equality, no to child marriage, everybody agrees with you, intellectually, quietly, but they will not say that, because that may not get them the support they need. Speaking about 'how do we incentivize human rights as a political mileage?', I think I'm still asking that question. I would have thought that the smartest of people would have used that to say: 'Come on, this is for all, let's get equality, no racism', but obviously it's the converse. It's about: 'this is for the majority, this is religion, let's support (it) and we will get more votes'. And then I realise: that fear can translate as growing anti human rights sentiments. I'll give an example: just in 2018, after the big change of government in Malaysia after six years, a new fresh government came in, the losing parties organised themselves for an anti-ICERD rally. ICERD the International Convention on Eliminating Racial Discrimination in Malaysia has not been ratified. So, there was discussion on ratifying it and this group organised 50,000 people on the streets to have an anti-ICERD rally and they told the people who came: 'this is dangerous for the centrality of Islam in a majority Islamic country, you may lose the power of the royalty', all with a myth. But the common person had never heard of ICERD was mounting this, but politicians are on the stage. So this was used as a negative to counter human rights, which was, I think, a disservice but to their benefit, they wanted to win more votes of the Malay majority.

Also, the reality is our present COVID difficult situation, the pandemic has also forced 'rights conversation': 'to be vaccinated and not to be vaccinated, what's the rights framework'? 'Do people (should) be locked up? Not allowed to be getting jobs'; so that is a very public conversation for the first time by the Health Minister in the government (that has never happened before). I think framing this is not an easy answer. But I think that conversation itself is making the top, the political leadership have a conversation on the ground. And also another example is Malaysia, as I was telling others today, that you voted for change through the proper procedures of election, but midway through, Members of Parliament hop and change the whole meaning and weight of the vote, and the government collapses. So suddenly, the conversation on anti-hopping law, that politicians cannot hop because they need to respect that right to vote of the voter. So conversation starts coming in a positive light and politicians now start speaking. I'm saying this because I think there is a way to incentivize our political leadership that human rights actually is winnable for votes and for the people because people want more rights than less rights.

(NR) - I just wanted to say that since we have this conversation about culture and Western and non-Western culture and is there a clash? And as I was thinking about this conversation, I thought of Ubuntu, the African philosophy of the humanities interconnected. And that rooted concept of Ubuntu informs the work of the South African Constitutional Court, which interprets one of the most progressive constitutions, and many of their judgments on socio-economic rights beautifully integrate Ubuntu and universal human rights principles. So often, we don't hear about this close connection to traditional philosophies and universal principles. And in fact, the universal human rights project was ultimately informed by struggles from below from all over the world. So often, we





try to particularly politicise the debates and when human rights are weaponized for the advancement of political agendas, populist political agenda, the focus is on somehow divisive and highlighting differences. But I think that there is more in common among human societies. And I think that needs to be explored. And I think, therefore, the project to ensure that each individual lives with dignity, and there we have failed, I think collectively here, and so I am equally responsible. And in my small way, (how) I try to address that issue is like how to advance that agenda as quickly as possible.

(JJ) - As this final word, George and Nandini, I think a part of this conversation of Western culture actually is a disservice to the Asian or African political leaders. Because there is a notion that there are no rights embedded in our local communities. And that's totally false. Because when I go to the ground and meet people, they teach you more about rights, and you don't need to actually bring the UDHR for some conversations. I think the success of those documents are good writing skills and good English skills and putting on paper what was already on the ground. So I would always find it a bit insulting if any of my own political leaders is trying to say that Western rights are more or not troubles, then I will ask them 'but aren't you saying that we have a better set of values and the so called if you're trying to assert Western rights', so I think even on those grounds, they lose the argument if you puncture holes in the so called notions and point out that actually it is really a political ploy, rather than a serious conversation on bringing rights for all. Thank you, George and thanks Nandini.

(GU) - I thank you, Gerald and Nandini, as well, I think it's very interesting to me how the discussion has moved from the initial question of clashes between fixed cultural perceptions, to a much more dynamic exploration of both capacity of human rights in pragmatic terms and empowering people to facilitate change from the bottom up, but also to address issues of national, local and global inequality. What's interesting to me is both listening to you, but also to anticipate that these are in fact, two of the main themes in our coming episodes of this podcast series. And so there's a very beautiful connection, I think, between what you've set the stage I think, for a further examination of some of these issues, and I really thank you for that as well.

