THE IMPACT OF THE UDHR IN THE US AND BEYOND

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The Universal Declaration of Human Rights (UDHR) has made a significant impact all over the world in the last seventy-five years in two main ways. First, it gave birth to many legally enforceable human rights instruments, such as the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), and regional human rights instruments, such as the European Convention on Human Rights (ECHR) and American Convention on Human Rights (ACHR). It also inspired the practice of constitutional incorporation of human rights in many countries. Therefore, a whole range of enforceable human rights instruments is indebted to the UDHR. Secondly, the UDHR provides a normative framework that helps us to evaluate the scope and nature of the protection of human rights in different countries. Such evaluation can be institutional, like the Universal Periodic Review, an assessment of the human rights situations of different countries as carried out by the UNHRC. It can also be non-institutional, where any researcher can consider the UDHR as a normative framework to evaluate the nature and scope of different human rights in any country. In this essay, I show how the UDHR can be used as a normative framework to evaluate the scope of human rights, in particular, the right to freedom of expression, in the US. Moreover, I will discuss how the push for rights around the world is connected to the push for better access to rights in my community, i.e., Bangladesh.

Some scholars believe that the UDHR, or the human rights discourse in general, never had any real impact in the US.¹ Others, however, disagree with this view and argue that the spirit of UDHR, i.e., equality, equal dignity, and non-discrimination, played a significant role in shaping up the US jurisprudence on anti-racial discrimination.² I believe that both views are partially correct. While it is true that some rights, such as the right to a standard of living, food, and medical care etc., as recognized

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in the UDHR, have never been taken seriously in the US, it is also important to recognize that some other UDHR rights have strong normative force in the US. One such right is freedom of expression.

Now I will show how the US approach to freedom of expression can be evaluated through the normative framework of the UDHR. Freedom of expression was recognized in the First Amendment to the US Constitution. The jurisprudence developed thereafter followed a wide approach by imposing minimal restrictions on expressions. The current US jurisprudence, as developed in the Brandenburg case, permits all kinds of expressions except when they promote imminent lawless actions.3 In Brandenburg, the Supreme Court held a KKK leader’s vengeful statement against African Americans and Jews as constitutional because it was not an incitement to imminent lawless actions. This view is compatible with Article 19 of the UDHR, which provides no explicit restrictions on freedom of expression.

This wide approach to freedom of expression can be contrasted with the moderate approach as adopted by the ICCPR and the ECHR. These documents allow expressions as long as they do not constitute “hate speech”, speeches that promote racial hatred and discrimination. The justification of the regulation of hate speech is grounded on the protection of equal dignity, in particular the dignity of the vulnerable and minority groups.4 The KKK leader’s statement in Brandenburg perhaps would be restricted under the moderate approach for violating the dignity of the African Americans and Jews. Although human dignity is a core value of the UDHR, neither the UDHR nor the US jurisprudence ever recognized it for restricting expressions. Thus, the US Supreme Court largely continued to follow the wide approach.

However, recently Texas legislators passed a law restricting Critical Race Theory, an academic theory that explains systematic racism, from the school syllabus and libraries.5 Notably, restriction in academic

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4 Jeremy Waldron, The Harm in Hate Speech (HUP 2014).
freedom in the US has a legacy in the *Scopes* trial where a schoolteacher was held guilty for teaching evolution in the classroom. One may argue that in the US context, restrictions are mostly being imposed to protect (conservative) values as opposed to human dignity. This is contradictory with the wide approach that the US followed throughout centuries. Notably, it goes against the spirit of the UDHR as well. While one cannot enforce the UDHR, the deviation from the wide approach can, of course, be criticized. In this way, the UDHR functions as a yardstick for the protection of freedom of expression.

In the same way, the scope of freedom of expression in Bangladesh can be evaluated in terms of the UDHR. Bangladesh is one of the countries that constitutionally adopted freedom of expression and signed the UDHR afterward. However, it made no effort to make the constitutional provision, which adopts a narrow approach to freedom of expression, compatible with the UDHR. Rather it enacted laws that have been criticized for restricting the scope even more. For example, the Digital Security Act 2018 is controversial for imposing excessive restrictions on expressions and speeches. One may argue that adopting a narrow approach to freedom of expression while signing the UDHR makes the commitment to the UDHR only farcical. However, I argue that it is still a normative framework that enables human rights activists and pressure groups to criticize the deviations from the accepted standards of protection of freedom of expression. Perhaps the UDHR, in its seventy-five years of journey, did not play a strong role in protecting rights; however, it certainly provided a normative framework to criticize the violations of rights all over the world.

Overall, the impact of the UDHR is not that it made the world a perfectly happy place. The world is still imperfect with violations of human rights. However, after the adoption of the UDHR, we have a useful tool to analyze the nuances of its imperfection. The world with the UDHR is certainly better equipped than the world without the UDHR.