Philosophy & Sociology of Human Rights Protection

Student name:

Student ID:

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Introduction:

Human rights are considered as all those norms that help in protecting the people from different areas such as political, social abuses and legal areas. Human rights philosophy is responsible for addressing the main question that related with how the existence, nature, content, justification and universality is being targeted and how it focuses on the legal status of them. In the field of philosophy there are number of scholars and philosophers that provided a great contribution to the field with their philosophies and their ideas.

Cultural Relativism:

Cultural relativism is known as the ability that is to understand the culture on its own terms without making any kinds of judgments that are present in any other culture. The main goal that is present is to promote all the understanding of the cultural practices that are not a part of own culture. Cultural relativism further leads with the view and is fixed on the idea that none of the culture is superior and they are on the same level on the basis of their cultural norms, values, morality, politics and law[1]. There is one concept that shows that all the cultural norms and the values derive the meaning by having a very special social context. This philosophy says that there is not any one absolute standard for any good or evil, rather every kind of decision and judgment is on the basis of what is right and what is wrong that is selected and different in every society. For example in some societies, they have different ideas for the evil and in other societies they believe the same ideas to be good for them[2]. The entire concept of the cultural relativism means that any kind of opinion on the ethics is subjected and has the perspective that

[1] Berry, John W. "6. Radical cultural relativism and the concept of intelligence." In *Mental tests and cultural adaptation*, pp. 75-88. De Gruyter Mouton, 2018.
[2] Johansson Dahre, Ulf. "Searching for a middle ground: anthropologists and the debate on the universalism and the cultural relativism of human rights." *The International Journal of Human Rights* 21, no. 5 (2017): 611-628.

each person has their own particular culture and there isn't any one right or wrong ethical system in the field. The holistic understanding of the cultural relativism includes that there are some cultural practices that are quite unfamiliar with the other culture such as eating insects and genital cutting etc[3].

Criticism of cultural relativism:

There are number of criticisms that emerged under the field of the cultural relativism. The case law of Peter L. POODRY, David C. Peters, Susan LaFromboise, John A. Redeye, and Stonehorse Lone Goeman, Petitioners-Appellants, v. TONAWANDA BAND OF SENECA INDIANS; Bernard Parker, a/k/a Ganogehdaho; Kervin Jonathan, a/k/a Skongataigo; Emerson Webster, a/k/a Gauhnahgoi; Darren Jimerson, a/k/a Sohjeahnohous; Harley Gordon, a/k/a Gah-En-Keh; James Logan; and Darwin Hill, Respondents-Appellees, shows that there were problems and claims made on the basis of cultural relativism[4]. The petitioners are known as the members that belonged to the members of Tonawanda Band of Seneca Indians that is recognized federally as one of the Indian tribe. These members put up the claim that on 24th January, there were certain tribal officials that convicted these people for treason and then they further sentenced them to permanent banishment from the membership. Their banishment that they received shows the sentence that these people are to leave now and they must not return, their names are being removed from the Tribal rolls, the Indian names that they have is being taken and their lands will also be taken from them[5]. The respondent adopted the area of cultural relativism that claims that treason is considered as crime when it comes under US laws, but

[3] Fung, Chang Nam. "A polysystemist's response to prescriptive cultural relativism and postcolonialism." *Across Languages and Cultures* 18, no. 1 (2017): 133-154.
[4] Lynch, William T. "Between kin selection and cultural relativism: Cultural evolution and the origin of inequality." *Perspectives on Science* 27, no. 2 (2019): 278-315.
[5] Chang, Nam Fung. "Voices from the periphery: Further reflections on relativism in translation studies." *Perspectives* 26, no. 4 (2018): 463-477.

under the tribal law it is treated as a civil matter and as for banishment it is treated as very harsh punishment under the law of US but the Chief Justice showcased it as the fate that is universally decried through all the civilized people. Providing a tribe with the permission to avoid the federal court jurisdiction comes under the incantation of principles that comes under the cultural relativism. Case was closed by explaining that just like American people are not being told to leave or not settle in the land of Tonawanda, in the similar manner the people of Tonawanda cannot be told to leave or banish from America. The case explained that banishment of the non members of Indian nation should not be considered as the restraint of liberty[6].

This case shows that how the cultural relativism shows major problems in the case laws and due to that many people from the public faced the consequences.

Feminist theory:

The feminist theory is the theory that is entirely focused and interested within the societal attitudes and the societal values that women of the society need because they are not being treated as humans. It includes all those roles of women that are present in the society where women face problems and have multiple ongoing battles that they have to face daily. The feminist philosophy says that there is pervasive influence within the patriarchy and as for the masculinity that is present there are legal structures that demonstrate effects within the material conditions that women of the society have to face on daily basis[7]. Feminist theory have proved to be quite beneficial for the women and for the entire society as it provided the female with a number of rights that they need to have from the start. In the recent literature, the idea of the feminist theory has changed a lot, now the focus of the theory is not to gain the basis rights that

[6] Gutmann, Amy. "Relativism, deconstruction, and the curriculum." In *Campus Wars*, pp. 57-68. Routledge, 2021.
[7] Sharma, Malika. "Applying feminist theory to medical education." *The Lancet* 393, no. 10171 (2019): 570-578.

women needs to have but to gain superiority over the male of the society. They believe that male hold the power in the society and it needs to be changed[8].

Criticism of feminist theory:

In the past the criticisms used to be quite different, they were focused on not giving female the very basic right of their own body and their own decisions, but now the criticism are quite different and they show how the theory is turning into a major problem and concern for all. The main criticism that is present under the feminist theory is related with the idea of the radical feminism and model of sexuality.

Radical Feminism:

The entire concept of the radical feminism started from the feminist theory where the main idea that is presented is that the law and rules are quite patriarchal and as for the laws they possess masculine aspects and they are more prominent in the fields of beneficiary and in authorship. This is the opposite of the system that aids the women where they are given help just to protect or gain the basic rights that are legal for them. There is a difference present between the ideas of radical feminism and liberal feminism. Here the idea of liberal feminism was the initial and the first wave of feminism where purpose was to get the opportunity, legal rights and equality among both the sexes[9]. This idea was to reject all kinds of the discrimination and the areas where women are being oppressed. The first wave of feminism was determined on the point that all the people should be judged on their merit and should not be treated or categorized on the basis of the group they belong to. As for the radical feminism and contemporary feminist theory, the focus is on the point of view of women that were present in all areas, where there are liberal

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[8] Jennings, Ann L. "Not the Economy: Feminist Theory, Institutional Change, and the State." In *The Stratified State*, pp. 117-148. Routledge, 2019.
[9] Trier-Bieniek, Adrienne, ed. *Feminist theory and pop culture*. Brill, 2020.

feminist views. Their purpose is to discredit the entire rule of law as that is wrong and is against the women of the society. They believe that when there would be no rule of law then there is no need for any kind of safety against discrimination. There are further groups within the idea of contemporary and radical feminism where they show different purpose. Most of these sub groups have stopped fighting for the rights and equality rather they are more focused to get the gender superiority so that women will be dominant over men.

According to Karl Marx, there is inherent oppression that is placed by the bourgeoisie and is present in proletariat. Katherine McKinnon was known as one of the famous radical feminist, who emphasized on the idea that as there is male oriented legality where female are being treated differently, in the similar manner there should be female oriented society so that men can see how they treat women. Her other claim was that the entire rule of law need to be renamed as the rule of men as all these rules only show the male power and has such rules that provide them with more power as compared to women therefore any person who follow and accept these rules believes on the male dominance[10].

Based on the idea of Marx, capitalism is known as the economic system where the responsibility for imposing of the values and supremacy is in the hands of the bourgeois, and they promote the sexual division of the labor and workforce. This is the reason why the latest and radical feminist theory has changed to be entirely against men of the society. He further explained that culture needs to be on the basis of those ideas that are present within the first wave of feminism and also possess the kinds of rights that they used to fight for. The critiques of the radical feminism believe that at this time there are still major issues and problems present such as rape, sexual

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[10] Federici, Silvia. "Marx and feminism." *TripleC: Communication, Capitalism & Critique. Open Access Journal for a Global Sustainable Information Society* 16, no. 2 (2018): 468-475.

violence, objectifying women and domestic violence but for women their concerns have shifted and they are unable to categorize what is right and wrong[11].

Model of Sexuality:

The model of sexuality is based on how women are being objectified and how they are treated as an object for sexuality. There were some feminists that were against the beauty industry and the kind of myths and stereotypes present in media such as censored material. These women face considerable personal ridicule just because of these materials that are present in the media. These feminists were against the idea of the pornography where they believe that there is quite violent pornography where it showed that how men are being portrayed as dominant.

American bookseltters v. Hudnut, 1985, this case shows that any person or the American booksellers association that are responsible for distributing and reading the pornographic books and films are called as the plaintiffs, they further challenged Indianapolis that any seller or any maker that forms up the pornographic material is liable to any person who gets hurt or injured through any that person who has either seen or read the pornography. As for the plaintiffs they claimed that ordinance possess unconstitutional limitation and it is also considered as the right of people to see what they want, to have a freedom of speech and to have the freedom of expression. In the district court, this idea was accepted that people do have the freedom of speech. The law that was present was that government and state needs to have the power where they can restrict any of the scenes that they find obscene, which can be any kind of speech or any kind of act. This case was emerged when plaintiffs provided the explanation that pornography is something that discriminates women because women are the one who are objectified whether it is in the form of words or in the form of any pictures. This ordinance was made up of different

[11] Nicholson, Linda. *2. Feminism and Marx: Integrating Kinship with the Economic*. Cornell University Press, 2018.

examples and includes three major prohibitions that are trafficking of the people in pornography, coercing people so that they work in this industry and forcing pornography on any person[12].

On the basis of the above mentioned prohibitions, any person who might get injured or harm from the individual who has seen porn, then the person who got hurt possess the right to claim against the maker and seller of that porn. There is feminist message that is related to the subordination where there are opposing female who constantly get criticized due to the immoral sex. According to these feminists, pornography does include negative effect and it also has negative experience because in pornography, women are showcased as inferior and the male character is showcased dominant and has the power over that women.

The criticism emphasized on the idea that some women claim that pornography is quite pleasurable therefore it must be used for liberation and should also be educating. These women further believe that in case pornography is banned then the idea will be that the very basic and natural needs of the human beings are showcased as demeaning and immoral activity. These feminists further explained that problem is not with how the entire industry of pornography works rather it is focused on how women are subjected and objectified in the pictures and videos. The only way where they would not be against pornography would be if both the genders will be treated equally in them and here isn't any kind of dominancy over one gender.

Rape cases:

Rape is something that is becoming common with the passage of time but there is a major difference between how women are treated when they are raped and how is treated when they are

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[12] *American Booksellers Ass'n, Inc. v. Hudnut*, 771 F.2d 323 (7th Cir. 1985).

raped. Entire conditions and the court hearing are also very different in both the cases. Following are two cases where the individuals were raped and the claim was made in the court.

In the first case that is of People v. Harris, 2002. The crime that occurred in the case was that victim was 26 year old women. She was coming back home from her night shift from a restaurant and in mid of that she stopped at a park to eat. At that place she started interaction with a male named Harris who approached her. After getting negative vibes she started to rebuff and get hostile and vituperative against him but he was present. After some time he dragged her to the area where there was baseball field and then tried to rape her. According to the statement that she provides, Harris dragged her towards the baseball field and then he tried to rape her without her consent with a condom. The medical report of the girl presents that she had scratches on her arms that shows that she was raped because consent sex would not have any kind of scratches. As for the defendant, he stated that the entire scene was consensual and recently they had sex four days before and this was the second time. Also the sex was quite rough as the girl had scratches on her vagina that shows the sign of unconsented sex. In this case the alleged person that was Harris was sentenced jail for 6 years[13].

In different case, that was for United States v. Juvenile male, 2012, in this case the juvenile male was 13 and he started to abuse 10 year old boy. This abuse was regular and it went for almost two years till the time when the juvenile was of 15 years and as for victim he was 12 years. Once the child was conducted he accepted easily that he was involved and engaged in sexually harassing and abusing another child, if he was older that is above 18 then he would have been

[13] *People v. Harris*, 886 N.E.2d 947, 228 Ill. 2d 222, 319 Ill. Dec. 823 (2008).

sentenced for more years in the jail. This case was treated lightly because both the people that is defendant and victim both were quite young and they were male[14].

Then there is another case that is between Hermesmann V. Seyer, 1993. In this case Hermesmann was known as the babysitter that is for Seyer. Hermesmann was a 16 year old girl who was babysitting the child that is Seyer who was 12 years old. At the time when she got 17 and Seyer was 13, she was pregnant by Seyer and then she also gave birth to a daughter in the next year. In this case, Hermesmann was alleged with the criminal charges where she was accused for having sexual intercourse with a child who is not 18 yet and comes under the age of sixteen. The main law shows that the child who is under 16 is naïve and it is not possible for them to make a decision for intercourse or give consent. As under the civil law, it shows that Seyer did give consent to her for sex and not for once did he complain to his parents or anyone about the scenario or any sexual assault. In this case, the focus that the court emphasized upon was on the point that child had the interest and there are not any sexual crimes or charges against the minors[15].

People v. Barnes, 1986 were considered to be another that shows the indifferences between the male and female when it comes to rape and sexual abuse. In the case, Marsha was a neighbor of Barnes and they lived side by side for a long time but she had only visited him once only to get marijuana. After that Barnes once called her at home and there they celebrated occasion and then drank wine together. After having drinks, Barnes forced himself on Marsha and started hugging her and as soon as she started to leave he started to increase his voice and showed his psychotic behavior. All the doors of the house were closed and she had no idea how to open it, in order to

[14] *US v. Juvenile Male*, 564 U.S. 932, 131 S. Ct. 2860, 180 L. Ed. 2d 811 (2011).
[15] *State Ex Rel. Hermesmann v. Seyer*, 847 P.2d 1273, 252 Kan. 646 (1993).

leave the house easily and without any harm she started to play along and while doing so they had sexual intercourse. Marsha thought that if she didn't play along or do something then she will again have to see his psychotic behavior and can also get injured by him. The claim that was made by Marsha was that she went through trauma afterwards and the only reason that she played along was to ensure that she doesn't get harm, also his psychotic behavior showed the signs that if she wouldn't have agreed, he would have raped her therefore she played along to save her from the major problems. The conclusion of the case was that the jury was in favor of Marsha and Barnes was sentenced for three years of jail[16].

One case that comes under the statutory rape case was where there was a violation of the RSA 632-A: 2 XI. In this case the defendant was charged for having sexual relations with a girl who was under the age of thirteen. The defendant in the case was found to be masturbating, she was found to be doing multiple actions that comes under the sexual abuse such as undressing young boys and then exposing them, she also used to play with them by touching their different body parts at the time when she was babysitting. She was found having sex with her father and also with her grandfather and currently she was living with a male who is neither her boyfriend nor her husband in a room. The entire situation and case shows that the atmosphere where she lived in or grew up in was quite different and was entirely engrossed in multiple sexual activities. This is one major reason why she feels insecure and suffers from the psychiatric trauma that she faced from her early childhood years. The testimony of the case concludes that the entire atmosphere in which the girl grew up in was quite abnormal and it is admissible and relevant with the entire problem that is being presented.

[16] *People v. Barnes*, 33 A.D.3d 811, 826 N.Y.S.2d 283 (App. Div. 2006).

Post-colonial:

Post colonialism is known as the term where the focus is on the historical period and state of affairs that helps in representing the aftermath and highlights the western colonialism. This area helps in concurring the history and project the reclaim by rethinking about the people, history and different kinds of imperialism that people suffered from[17].

There are several law cases present that show the areas of post colonial times and the problems that occurred at that time and afterwards. The case of Marbury v. Madison was the legal case that was of February 24 in the year 1803. At that time the Supreme Court declared congress unconstitutional where they established one doctrine of judicial review. In the opinion of the court, John Marshall was treated as the foundation of constitutional law of US. The background was that before Thomas Jefferson became the president, there was a lame duck federalist congress that was made with 16 circuit judgeships that was present within the judiciary act of 1801 and also in the organic act where Adam processed by filling the federalists and by control the judiciary to frustrate legislative agenda both for republican part and Jefferson.

The facts of the case include the idea that Thomas Jefferson was responsible for defeating Adams in the presidential election that happened in 1800. Jefferson got hold of the office after 4 March, 1801, before getting the hold the judiciary and Adams passed an act that was titled as act of 1801 that results in the formation of new courts where they added the judges, provide and the president was also given more control over the appointment of the judges. This act was only passed just to frustrate Thomas Jefferson as he was the successor. After passing this law, he appointed 16 judges for circuit and 42 justices that were for peace. All of these people who were

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[17] Porr, Martin, and Jacqueline M. Matthews. "Post-colonialism, human origins and the paradox of modernity." *antiquity* 91, no. 358 (2017): 1058-1068.

provided with the seats were approved by Senate, but they would not be valid till the time their commissions were being given to them through secretary of state[18].

Among the justice of peace one was Willaim Marbury who was the peace minister in Colombia. He was selected and approved but his commission was not being delivered to him. For this reason, Marbury petitioned James Madison to deliver the documents and he petitioned Supreme Court so that they compel with James. The main idea and concern that emerged from this problem was to evaluate if the plaintiffs have the right to gain any kind of commission or not. The next one is if they have the power then can they sue for their commissions within the court or not. The third element is to analyze if the Supreme Court possess the authority where they deliver their commissions.

The conclusion that emerged in this case was that the court found that Madison refuses to sent or to deliver any commission and considered it to be illegal and also he did not order Madison for the handover of commission of Marbury through mandamus. Rather the court showed the provision that is related to the Judiciary Act of 1789 that enables Marbury and gives him power to bring the claim directly to the Supreme Court as it is unconstitutional. As this idea extended the Court's original jurisdiction therefore the article 3 of section 2 was established at that time.

The conclusion further showed that Marshall expands the writ of mandamus as it is a proper way that seeks the remedy, but the problem that emerged was that court is not responsible for issuing it. The judiciary act 1789 showed there is conflict with constitution as the congress doesn't have the power where they can modify any of the constitution with the focus on regular legislation due

[18] *Marbury v. Madison*, 5 U.S. 137, 2 L. Ed. 60, 2 L. Ed. 2d 60 (1803).

to the reason that there is supremacy clause that is present in the constitution and it is placed before laws.

Imperialism and colonialism is something that is a very major part of the history and it still has major impacts on the countries that were colonized. There are different places, areas and stories that still make people think about the history and how things used to be back then. The entire idea of colonialism is to get partial or full control over any country by occupying it and keeping all the settlers in it and also by exploiting the place in terms of economic conditions. The only reason it to get the control in order to get the economic gain. When the country used to colonize a country or a place, the very first thing that they used to do was to impose their own culture, language and religion on them by forcing them to adopt it. This is also one of the main reasons why English is considered as the global language because Britishers used to form up different colonies and they used to impose English language on them, as a result now English is being spoken by the people of almost all the countries. Due to the colonialism, it shows that how inequality, segregation, discrimination of entire nations was quite common in those times. This give a rise to the idea that at that time there used to be various civil wars just because humans do not have the very basic right of their lives and they used to get killed just by asking for them.

The case of brown V. Board of education of Topeka is known as the landmark that is present in 1954 within the Supreme Court case where all the justices that are present are being rules unanimously due to the racial segregation of children that were present in the schools that were public as they were unconstitutional. This case is considered as one of the cornerstone present in the movement of the civil rights, this helped in establishing and forming precedent that is shows that education and all the other services that are present can never be equal to all, rather they are

separate but quite equal to each other. They believe that the equality is providing the education and services no equally to all the people[19].

In the year 1986, Supreme Court was ruling in the Plessy V. Ferguson that presents the idea that all the racially segregated facilities were legal at one point, these are legal for as long as facilities that are for black people with white and the equality among them. The entire ruling of the constitution was being sanctioned due to the laws that barred all of the Afro Americans and they were told that they cannot share the same school, any public facility or bus that the whites use. This was called as the Jim Crow Laws that were followed by all the people. This provided the idea of separate but equal law that was present and was being followed for almost six decades. Then in the year 1950 there was the National association that was for the advancement of colored people, this shows the working was quite hard and it challenges the segregation laws that were present within all the public schools[20]. They further had multiple lawsuits that were filed on the basis of the plaintiffs that were present in the states such as Virginia, Delaware and South Carolina. In one case the inequality that was present was presented, where a plaintiff who was known as Oliver Brown, filed class-action suit that he did against the director of board that is of Topeka, Kansas in the year 1951. The case was filed when the plaintiff's daughter, Linda Brown was being denied the permission to enter in the premises of the Topeka's all while elementary school. In the case file, Brown made the claim that the schools that were for the black children are not equal to the schools of the whites, therefore there is violation of the law that states equal protection clause for all the people. He further claims that none of the state can deny any individual who works within the jurisdiction that they need to have equal protection of the laws. This entire case started even before the district court of Kansas, that agree that the kind of

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[19] *Brown v. Board of Education of Topeka*, 98 F. Supp. 797 (D. Kan. 1951).
[20] *Plessy v. Ferguson*, 163 U.S. 537, 16 S. Ct. 1138, 41 L. Ed. 256 (1896).

segregation present in the public schools possess a detrimental effect that is for all those children who are colored. This further contributes and adds in a sense of inferiority that upheld the idea of how the law states that separate is equal.

As for the case of Brown V. Board of education Verdict, there were also four different previous cases that all were related to the segregation in the schools. All these other cases emerged before the year 1952. As a result the court collectively combined them in one single case and it was being processed under the name of Brown V. Board.

In this case, first all the judges were divided as they all had their own different opinions on the ruling and functioning of the public schools and the segregation present in them. Among these judges, Fred M. Vinson who was the Chief Justice shares his opinion that Plessy verdict need to stand and it should not be avoided. But at the time that was before the case of Brown V. Board of Education, Vinson was dead and his post was being replaced by the governor of California.

Once he was elected and the case was presented to him, the scenario changed. As the new governor was a success in the field of engineering. The decision and the statement that he shared was that he accepted that the law and rule of separate but equal holds no place in the law system. He confirms that indeed the schools are segregated and they are quite unequal. Therefore new equal protection laws were guaranteed by the end of the amendment 14th[21].

Conclusion:

The conclusion shows that most of the cases that were formed in the law system used to be quite flexible due to which at this time there is not any problem or inhumane decision. These cases that

[21] *Brown v. Board of Education*, 349 U.S. 294, 75 S. Ct. 753, 99 L. Ed. 1083 (1955).

were presented above are also considered as one of the sole reason why the law system has been changed and how the people used to get the very basic rights of their life.

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