

THE RIGHT TO FORM A FAMILY BETWEEN BINDING INTERNATIONAL TEXTS AND LOCAL CULTURAL CONTEXTS: A CRITICAL ANALYTICAL STUDY

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Received : 16/07/2025 ; Accepted : 21/12/2025

Abstract:

The right to form a family is a fundamental human right that has undergone significant transformations in recent decades, driven by shifting social, economic, and cultural contexts. Despite its recognition as a universal human right, the concept of family and the right to form one remain culturally relative, influenced by diverse traditions, values, and beliefs. This research explores the complex interplay between the universality of human rights and the relativity of cultural contexts, with a focus on the right to form a family.

The study analyzes the global legal framework governing the right to form a family, including international treaties and conventions that affirm the importance of family as the basic unit of society. It also examines the impact of cultural diversity, globalization, and Western cultural imperialism on the exercise of this right, highlighting the tensions between universality and relativity.

The research reveals that the concept of family is multifaceted, encompassing diverse forms, structures, and relationships, and that the right to form a family is shaped by a complex array of factors, including cultural norms, traditions, and values. It argues that the universality of human rights must be balanced with the recognition of cultural relativity, to ensure that the right to form a family is exercised in a manner that respects the diversity of human experiences and contexts

Keywords : Marriage. Human rights. Universality. Relativism. Cultures.

Introduction :

Despite the privateness of family matters, there has been vigorous legislative intervention at both international and national levels, especially following a shift toward equality and human rights among family members. Whereas family relations were once grounded in concepts of complementarity and justice within families, influenced by religious rules and local customs, they have now become based on contractual and pragmatic principles among parties who are equal in rights and duties across all dimensions since family relations encompass a blend of financial and moral interests.

There has been a lot of lawmaking regarding the family, which is seen as "the basic unit of society," "the core of the state," or "the natural foundation of human relationships. " Laws related to family issues have gone through several changes intended to preserve family unity during conflicts between tradition and modernity, between local and national regulations, public order needs, and the necessity for family privacy. Laws that control family relationships are naturally difficult because they involve people's most personal beliefs.

Nevertheless, international law's involvement in family relations has elicited varied reactions, as family matters rank among the most private concerns. Some contend that legislative intervention should be minimal because the family serves as a sanctuary for individuals' private lives.

An analysis of the corpus of global human rights agreements shows that no treaty is completely focused on the family, due to the diversity of family forms and the connection of family

systems to the unique characteristics and cultural traditions of various cultures. This complexity makes it harder to unify family issues under one global agreement, especially since family matters involve individuals' deepest beliefs. However, several treaties do cover family-related rights, such as the rights to marriage, custody, adoption, the financial situation of spouses, and additional family rights.

The right to form a family varies across societies in accordance with each country's cultural particularities, its distinct cultural milieu, and the body of laws enacted by the state. Methods of founding a family that are acceptable in one nation may constitute offenses in another. Some countries recognize only a legitimate marriage between a man and a woman as a basis for establishing a family, while others emphasize cohabitation as the foundation for family formation, irrespective of the spouses' gender or the nature of their relationship. Furthermore, certain countries deem cohabitation, artificial insemination, and surrogacy to be legitimate means of forming a family that carries corresponding rights and obligations.

This research raises two central questions: How does the concept of the right to found a family as a human right, and to what extent is it balanced with the purposes of personal and social privacy? This balance requires a critical reading that combines the global rights framework, relativisme currents, and the nature of legal policies that regulate marriage and establish its social and cultural frameworks.

1/ The terminological ambiguity associated with the right to form a family

There is no clear and exact definition of the family, as its idea changes with different functions and roles. The ideas about family are many, including a biological view (blood relations), a social view (social roles and functions), along with religious and economic views. The lack of a complete and clear legal definition of family in laws has led to challenges in defining the legal idea of family, since the idea is always changing. The word family appears in international and national documents, civil and criminal, without a definition. Legal documents often contain a list of shared rights and responsibilities among family members.

1/1/ The Diversity of family patterns

Family structures are diverse and multifaceted, capable of classification according to multiple variables. They can be categorized by form and size into nuclear and extended families. They are further distinguished by authority, including maternal, paternal, and democratic leadership. Additionally, they can be classified by the nature of relationships as antagonistic or interactive families, along with a range of criteria and foundations that may be employed to identify family patterns.ⁱ

The extended or multiple family was common in ancient societies and consists of a group of families that are united and share ownership, typically led by the grandfather, father, or eldest son. It is a group of families living together due to their kinship and lineage ties. As for the nuclear family, it is the most typical and is centered on four functions: "reproductive, sexual, economic, and educational." The nuclear family is limited to two generations, while the third generation emerges when a new dual family is formed, where a person is linked to two families: the first is the family of orientation where they were raised, and the second is the family of procreation created through marriage.ⁱⁱ

The nuclear, conjugal, or simple family is viewed as a worldwide phenomenon due to the ease of interactions within it compared to the extended family. It forms the basic unit from which other family structures arise. Furthermore, the nuclear family is more democratic than its extended counterpart because the husband is not limited by his family's restrictions, which makes the bond between husband and wife much stronger than that in the extended family.ⁱⁱⁱ

There is also the legitimate family is built on a valid marriage that meets all requirements and foundations, which makes the connection between the spouses valid so that the children are the legitimate offspring of this marriage, thus making the connection among all family members

legitimate. However, marriage is not always seen as the only way to create a family, especially given laws that broaden the meaning of the marital bond, which do not require any form of union between the woman and the man. This is often called the natural family to avoid the negative meaning of the term illegitimate family.

One of the key shifts in the family and its formation is that marriage is no longer the basis of the family, but rather the marital relationship in its wide meaning based on the bond of two individuals linked by mutual affection. With the progress of ideas of equality between men and women, and "the acknowledgment of sexuality as an important part of married life and dialogue as a key method of communication," spouses have become more open, freer, and more ambiguous.^{iv}

The category of "single-parent families" is not intuitive, and definitions depend on different criteria: legal, demographic, economic, or subjective. The legal criterion defines the family through marriage. Unmarried couples, a situation long common in some parts of the world or rapidly growing in others, are now considered single-parent families, and the demographic criterion considers families with a single breadwinner in the absence of a spouse. There is a difference between families with two legal breadwinners—where there is no legal partner or cohabiting partner—and actual single-parent families—where one parent is absent for a long period and the other plays the role of head of the household with the children. The economic criterion relies on a single provider for the family, while the personal criterion considers families that declare themselves as single parents, but it heavily depends on cultural contexts.^v

The increase in unmarried couples, the rise of individualism, and the change in public morals in Western countries, such as the decriminalization of homosexuality and adultery, have forced legislators to adapt to social realities, most Western legislations recognize cohabitation, the social solidarity contract, and marriage as methods of forming families within the framework of affirming individuals' personal freedoms and granting them the freedom to choose the most suitable method for them. Marriage, cohabitation, and the social solidarity contract (PACS) all fall under the term "conjugal union," which is a unique term that conceals deep legal differences between the three concepts.^{vi}

1/2/ The Plurality of human rights concepts

There is no universal definition of the concept of human rights, but there are many different definitions that may differ in their content to the extent of sometimes contradicting each other, due to the fact that the concept is rooted in the cultural, religious and historical fabric of different nations throughout history, there is no fixed, final and ultimate concept, and any different concept is dependent on the historical background, cultural formation, ideological framework, and spatial context, and is also dependent on the philosophical issues, as it is a part of a specific historical and social environment and a specific intellect.^{vii}

There is a divergence in views regarding the applications of human rights, considering that the universality of the "initial recognition" of rights clashes with the difficulty of the practical implementation of those "recognized" rights amid different perceptions of the concepts of rights and humanity, which has made the term human rights a title for different, if not contradictory, contents. Human rights mean different things to different people, and what is considered a right by some is considered a crime by others.

Although all cultures and civilizations contain the idea of human rights, the vision of those rights differs from one society to another, which has contributed to the emergence of a set of philosophical and conceptual problems that sweep the international discourse on human rights. This has made the task of issuing global texts that encompass all cultures, despite their differences, very difficult. The philosophical reference plays an important role in the existing tension between rights as a societal moral value and rights as a binding global standard.

A deep dive in global charters reveals that they have not taken the time to define human rights to prevent ideological differences on one side, and with the goal of getting the most signatures and ratifications on the other. Thus, they restricted themselves to listing the rights without exploring conceptual matters, particularly since human rights is a concept that is always evolving due to the effects of the social, economic, and political context. This has allowed scholars to contribute to the definition of human rights.

Human rights are primarily directed towards the human being and their person or towards a specific category of people. These rights are guaranteed simply by virtue of the addressee being a man or a woman, whether under a particular law or within a group, minority, or specific category. Human rights are acquired by the human being because of their humanity, independently of international instruments which are considered to reveal human rights rather than create them, especially when it comes to rights related to the fundamental pillars of human dignity.^{viii}

Talking about how human rights are universal in a divided world with different beliefs and interests raises many questions, as it is a concept that is not agreed upon by everyone. However, the terrible events of World War II, which showed that the Germans' loyalty to their Nazi beliefs threw the whole world into a tragic war that took thousands of lives, caused the international community to consider universality as a practical way to protect and maintain human dignity. The first indications of this global direction were the creation of the United Nations, which prioritized making the concept of universal human rights a global focus, either by establishing legal measures that ensure "all human rights for all" or by creating a group of international bodies and institutions to observe actual adherence to human rights.

Human rights have become a global matter after being, in the last century, a national issue limited to the perception of revolutionaries or a few reformist thinkers. The focus on human rights has produced a vast library of charters, agreements, and declarations that have formed a "global ethical code," which has diminished the sovereignty of rulers and states in its effect.^{ix}

1/3/ The Dialectic of Universality and Relativism in Human Rights

The clash between the ideas of universality and relativity becomes more crucial in the area of human rights, due to the strong disputes and mutual blame that accompany it. The discussion about whether human rights are universal or culturally specific is a worldwide conversation, not limited to a certain region or faith. Many scholars, supporters, and critics of the idea of human rights have shared various points related to their cultural and religious perspectives. Some push for the absolute universality of human rights, while others champion the uniqueness of human rights in a relative sense rooted in different cultures. In the middle of these two views, a movement arises that aims to bring them together.^x

Supporters of the universality of human rights believe that they cannot be subject to any exceptions, and that particularities should not be taken into account regardless of their nature. Human rights are the same everywhere and at all times, considering that the human being is one regardless of the context in which they live. Universalists consider cultural relativism to be merely a false pretext used by some cultures to justify their harmful practices against human rights.^{xi}

Cultural relativism views culture as the sole source of human rights; it rejects the universality of human rights and emphasizes the multiplicity of human rights concepts according to different cultures. Each society has beliefs, standards, and values within which it constructs its conception of human rights. Relativists see the "alleged" universality of human rights as a form of Western cultural imperialism embodying a Western-centric tendency reminiscent of the colonial meanings of these countries.^{xii}

No matter how close cultures are and intersect in many areas, humans realize that although the principles of human rights are universal as concepts, they are not so in practice, due to their rejection by many societies because of their differing affiliations, cultures, and beliefs in many of their aspects.^{xiii}

A middle approach tries to reconcile the two previous approaches by adopting a method of blending and consistency between universality and relativity, so that the universal proposition is accepted on one hand without rejecting the relative proposition on the other. This is achieved through mutual influence relationships resulting from equal rational dialogue among the various parties.^{xiv}

Among them is "Jack Donnelly," who asserts that human rights are relatively universal, meaning they are universal and relative at the same time: universal because they address all humans regardless of who they are, and relative because their application must take place within a specific cultural and social framework. He sets "relative universality" as a middle approach between two extreme positions: "radical universality," which sees that particularities have no relation whatsoever to human rights, and "radical relativity," which sees culture as the sole source of human rights.^{xv}

As for "Jonathan Cohen," he believes that the way to universality is to adopt a pluralistic concept of human rights designed within the framework of common guiding principles applied with the exercise of a "national margin of appreciation" that recognizes the right of different cultures to differ without exceeding the "threshold of consensus." Relativity is allowed provided it does not affect the essence of rights derived from the original dignity of the human being.^{xvi}

2/ The Global Legal Recognition of the Right to Form a Family Amid Cultural Differences

The right to create a family is an important and complicated connection between global human rights standards and the cultural and religious specifics of communities. While international documents confirm the right to marry and create a family as a fundamental right, communities demand to follow their specific traditions and values. International documents view the family as the essential part of society and ensure its protection based on universal principles. Modern international documents strive to support various family types, including non-traditional ones, to protect the rights of all their members.

2/1/ The Legal consecration of the Right to Form a Family

Prominent treaties addressing family include the Universal Declaration of Human Rights (notably Articles 12 and 16), the Convention on Consent to Marriage, Minimum Age for Marriage, and Registration of Marriages (encompassing all its provisions), the International Covenant on Civil and Political Rights of 1966 (Articles 23 and 24), the International Covenant on Economic, Social and Cultural Rights of 1966 (Articles 10 and 11), the Convention on the Elimination of All Forms of Discrimination Against Women of 1979 (Article 16), the Convention on the Rights of the Child of 1989 (the Preamble and Article 16), the World Conference on Women document of 1985, the Vienna Declaration on Human Rights of 1993, among other instruments that cannot be exhaustively reviewed here.

The Universal Declaration of Human Rights of 1948, which stated in Article 16: "Men and women of full age, without any limitation due to race, nationality, or religion, have the right to marry and to found a family..." The Declaration considered in paragraph three of Article 16 that the family is the natural and fundamental unit of society and has the right to enjoy protection by society and the state. This clearly indicates that protection is among the tasks of society itself in defending the family, which is its primary component, and its fate is determined by its soundness or corruption.

The international covenants on civil and political rights of 1966 confirmed the right to form a family, as Article 23 of the first covenant contained texts with the same meaning as indicated in the Universal Declaration above. As for the covenant on economic and social rights, it included the same meaning in different terms, stating: "The family, as the natural collective unit in the commitment of society, must be granted the greatest possible protection and assistance, especially for the formation of this family and throughout its development with the responsibility of commitment and upbringing of the children it supports."^{xvii}

Article 17 of the International Covenant on Civil and Political Rights also addressed the necessity of prohibiting arbitrary or unlawful interference in family affairs, and Article 24 of the Covenant focused on protecting the rights of the child as a minor and a member of the family.

Article 10 of the International Covenant on Economic and Social and Cultural Rights recognizes the family as the fundamental unit of society, demanding protection, assistance, and free consent in marriage. It mandates special protection for mothers before/after childbirth (including paid leave) and protection for children from economic exploitation, hazardous work, and discrimination.

Article 16 of the Convention on the Elimination of All Forms of Discrimination Against Women : “States shall ensure that women have equal rights with men in relation to marriage and as parents, as well as in respect of other aspects of family life

The European Convention on Human Rights of 1950 emphasized the right to form a family in its Article 12, which states that (men and women of marriageable age have the right to marry and found a family according to the national laws governing the exercise of this right).

The American convention of human Rights and Duties 1969, , included Article 17, which stipulated that (everyone has the right to found a family, the basic unit of society, and to receive protection for it).

Article 18 of the African Charter on Human and Peoples' Rights (Banjul Charter) states that the family is the natural unit and the basis of society, and obliges the State to protect and care for it, as well as to guarantee the rights of women and children, to provide special protection to the elderly and the disabled, and to eliminate discrimination.

Article 33 of the Arab Charter on Human Rights (as amended 2004) stipulates the obligation of states to protect and strengthen the bonds of the family, to prohibit violence within it, especially against women and children, while ensuring the care of motherhood, children, the elderly and persons with disabilities, and to take measures to ensure the best interests of the child.

The Rome Statute of 1998, which established the International Criminal Court, considered in Article 8 that the prevention of procreation, "forced sterilization," constitutes a war crime as it affects the right to found a family.^{xviii}

2/2/ The impact of cultural diversity on my right to form a family

Cultural diversity or pluralism can be defined as a set of characteristics that distinguish each individual from others or each group from others, considering a range of primary and secondary dimensions that affect individuals' identities, such as: gender, race, mental and physical abilities, and sexual orientation. The secondary dimensions include educational background, geographical location, religion, language, and scientific and organizational experiences.^{xix}

Human rights cannot be viewed from an abstract philosophical perspective; rather, they must be considered within the framework of the society in which a person lives. If human rights are universal, this does not, on the other hand, mean ignoring the particularity of human nature, which stems from the specific political, economic, and social conditions of each society.^{xx}

The specificity is the distinction from others and the possession of subjective features that differ from them. On a value level, it means self-awareness and its existential reality, recognizing its uniqueness and its temporal and spatial boundaries, its ethical mission, and the related political, economic, and social implications. Thus, it is a blend of an emotional and rational stance. Privacy, in its essence, is a distinctly universal concept that moves away from locality, as each group has its own vision of its particularity^{xxi}.

The cultural specificity profoundly and fundamentally affects the right to form a family, as cultural norms and traditions shape the core values governing marriage and family relationships, and define social roles within them. Culture also influences the status of women, men, and children within the family, as social traditions determine their roles in the family and marriage, which may impact how they exercise their right to form a family.

Universality is the commonality of cultural particularities, thereby eliminating centralism and the dominance of one civilizational or national particularity over another by achieving a balance between universality and particularity. It is a call for harmony among different cultures on an equal footing. A distinction must be made between particularity as the politicization of cultural affiliation to violate human rights and particularity that contributes to shaping universality and giving it realism within the framework of the diversity of cultures.^{xxii}

2/3/ The Impact of Globalization on the Right to Form a Family

In the area of law as in the area of culture, globalization assumes new aspects, recognizing that law and culture are vital in public life. Economic and political globalization, along with the growing dependence between countries, have helped to impose aspects of cultural globalization meant to prepare people to participate in globalization processes, which see cultural diversity and attachment to specific traits as barriers. Thus, it is essential to align ideas and mindsets to ease the process of global legal integration and remove national laws as signs of the authority of the national legislator, which might block the "free" movement of money, goods, and people.

Cultural globalization is associated with the concept of cultural unification or standardization of the world, as stated by the expressions used by the UNESCO Global Committee for the Preparation of the Cultural Policies for Development Conference, which met in Stockholm in 1998. The committee viewed cultural standardization as being facilitated by the use of the global communications revolution and network, along with its economic framework represented by the network for conveying information, goods, and moving capital, regarding cultural standardization as a reflection of the economic progress of globalization.^{xxiii}

Cultural globalization aims to establish a "global culture" while maintaining some local cultures, as long as they coexist with "global" values and culture. Nevertheless, it dismisses the culture of the nation and state, as well as culture based on religion and heritage, implying the cultural breakdown of the world to restructure it in a manner that aligns with global market interests and their values.^{xxiv}

Global culture emerges as a result of the processes of cultural integration and disassembly that take place at a transnational and societal level. Mark Featherston argues that it is incorrect to see global culture as diminishing national sovereignty, and that the binary thinking that attempts to comprehend culture through the terms of similarity and difference, integration and disassembly, unification and diversity—terms that are absolute in nature—should be rejected, as global culture is founded on the principles of diversity, plurality, and cultural richness.^{xxv}

This is accomplished through Western philosophical ideas, applying the aims of the Western reference framework to different nations based on the idea that they represent a common humanity, showing the best that human thought can accomplish, even if they are not a perfect standard for Western society but rather an actual experience and a model it aims to spread to all nations globally through the control over the ideas and values of human rights standards. This is done by enforcing the ideas of human rights according to Western criteria, resulting in a selective approach to rights and uneven protection of them.^{xxvi}

The presence of various and different ideas about rights compared to the Western idea shows the need for great care in forcibly connecting liberalism and human rights, especially when done in a "dogmatic" and broad way. The automatic connection between Western liberal ideas and human rights is baseless because human rights are not a fixed, rigid idea, but instead a changing idea influenced by inputs from different sources. It is unjust for the West to claim it—proudly—as its own success and to challenge others due to Western actions that go against that idea in any case. The global human rights system was the product of global efforts enriched by nations with different sources and beliefs, which sometimes clash with the principles of Western centrality that seeks to force a singular idea of human rights as a general reference on various nations around the world.^{xxvii}

CONCLUSION

The right to create a family is an idea that is always changing; it is connected to social, economic, and cultural settings, and is shaped by various global and civilizational forces. The idea that human rights are universal, or at least the desire for their universality, has been around and persists. However, figuring out and defining that universality has been harder because the concept of human rights being universal varies by time, location, and background. This has resulted in a large amount of writing discussing the relationship between universality and relativity, increasing debates between advocates of universality and supporters of the relativity of human rights.

The universality of human rights will not progress beyond its theoretical basis unless it considers the different characteristics that define the aspects of human rights, to reach an inclusive idea shaped by various inputs to effectively apply it in different regions of the world. Both ideas are valid, as long as there is no excessive reliance on particularity to avoid "absolute relativity," and no excessive reliance on universality to avoid "stereotyping" and "cultural imperialism. "

National action in the field of human rights is considered complementary to universality, as the enforcement of global human rights standards domestically relies on the role of the state in integrating these standards at the national level so that individuals can assert the guaranteed rights against them, especially since domestic law rules play a vital role in the functioning of the global legal mechanism, making universality a national reality dependent on the will of the three authorities within each state.

That Western view on the right to form a family is based on the individual-focused idea that separates the person from society, restricting the state's role to satisfying the person's "selfish needs" through cultural globalization, which is seen as the most harmful kind of globalization because it impacts the value systems of people, which set societies apart. This creates opportunities for other types of globalization by standardizing thoughts, taking away mentalities, and removing distinctiveness and individuality to make political, economic, and legal globalization easier. It is beneficial for the United States of America and those involved in globalization to embrace the value and cultural system that supports economic and political globalization efforts.

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