



## GENDER, ALTERITY AND HUMAN RIGHTS: FREEDOM IN A FISHBOWL (BOOK REVIEW)

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Ratna Kapur's book, *Gender, Alterity and Human Rights: Freedom in a Fishbowl*, is a much needed, well timed, radical critique of the current human rights praxis. While Kapur does acknowledge the value of liberal rights, she argues that they "cannot give us what we do want – that is, freedom".<sup>1</sup> It makes an impassioned case for looking both beyond and away from human rights as a means to achieving human freedom. Kapur's book is an invitation for human rights critics and practitioners to imagine other possibilities of freedom, to explore other ways of 'being' free, and ultimately to escape the liberal 'fishbowl' of human rights. Locating itself "in the aftermath of the critique of human rights", the book sets an ambitious yet critical task for itself, i.e, what next? Or, what else, if not human rights?

The book is foregrounded in a feminist critique of the philosophy, practice, and politics of human rights today. Human rights rests on the belief that *only* its genuine pursuit will ensure human freedom. The hegemony lies in the assertion that *first*, the only legitimate understanding of freedom, and the only one which is worthy of pursuit, is a liberal freedom. Within this paradigm, freedom is conceived as a progressive, external pursuit carried out by a thinking, individual subject. *Second*, this understanding alone *is*, and *can*, be universally desirable – human rights as something "we cannot not want". And *third*, that the only means of realising this freedom is by a relentless accumulation of 'rights' by an individual, against state and society. Kapur argues that critical scholarship of human rights is stuck within this metaphorical 'fishbowl' of human rights, and is either reluctant to look outside it, or unable to find viable alternatives to the same.

Due to the human rights lens being fixed firmly inside this fishbowl, Kapur argues that all other non-liberal, non-western understanding, philosophies, and imaginations of human freedom are viewed with suspicion, and thus marginalised. By viewing anything 'cultural' as inherently traditional, primitive, and

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<sup>1</sup> RATNA KAPUR, GENDER, ALTERITY AND HUMAN RIGHTS: FREEDOM IN A FISHBOWL 10 (2018).

therefore as an affront to the liberal idea of freedom, human rights, similar to colonialism, constantly propagates categories of the enlightened 'us' and the primitive 'other'. Human rights, instead of being a project of freedom, becomes a vehicle of global, imperialist, hegemony of "Empire Lite". However, instead of being a plea to abandon human rights, the book argues that engagement with it is absolutely critical, not because it will give us freedom, but rather because it is part of governance that often leads to unfreedoms.

The book makes its argument in broadly two parts: *first*, by developing a systematic critique of the current human rights praxis by looking at LGBT advocacy, sexual violence, and the 'veil' cases in France. Each of these cases that the book explores highlights a different yet related critique of the human rights regime; and *second*, by delving into other philosophies of freedom, specifically Mahayana Buddhism, Shi'ism, and *Advaita*, she directs our attention to other possible epistememes outside of the liberal fishbowl that could enable freedom.

Although applicable universally, human rights is based on its own logics of inclusion and exclusion – "of who counts as human and who does not; who is more or less human; who is non-human or inconceivable as human".<sup>2</sup> Kapur analyses how human rights creates a binary narrative of the helpless victim on the one hand, who is unable or unwillingly to embrace freedom, and the enlightened and empowered, rights pursuing subject on the other. The most compelling example of this, she argues, are cases of Muslim women wearing the veil, and how veiled women are almost always seen as victims of their culture and religion. This victimhood is constructed within the liberal imagination of gender equality, which sees the free and liberated woman as necessarily unveiled, individualistic, and sexual. For women who choose to wear the veil, their choices are often disregarded as false consciousness or illegitimate. Human rights, therefore, Kapur contends, is more about rescuing Muslim women from Muslim men, rather than pursuing the freedom of Muslim women as *they* see it. She is quick to remind us of its similarity to colonialism that relied on tropes such as the 'natives' treatment of their women' to justify colonial interventions.

What the human rights discourse has enabled is a discourse of the enlightened and liberated West, pitted against a regressive non-western culture – its 'other'. Within the present social atmosphere of growing Islamophobia, the veil, which earlier stood for the vulnerability and victimhood of Muslim women, has now increasingly come to symbolise the Muslim threat, and the act of unveiling has consequently come to symbolise the neutralisation of that threat. Similarly, in Cologne, where hundreds of women were sexually assaulted during New Year's Eve, Kapur demonstrates how, although only 3 of the 58 men charged were immigrants, it triggered an anti-immigrant response and rhetoric

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<sup>2</sup> Kapur, *supra* note 1, at 60-61.

– where the ‘outsiders’ posed a threat to the values and freedoms of white women.

The book uses the 2012 Delhi gang rape case to throw light onto how rape within the ‘violence against women’ framework was captured as the state’s failure to provide security for its women. In doing so, the protection of human rights fits squarely into a governance regime, where the state is strengthened in order to ensure women’s safety. Kapur shows how the human rights discourse on gender equality and sexual violence has enabled the control and monitoring of women’s bodies, which has led to more unfreedoms while validating a hegemonic imperialist regime of governance.

Kapur’s critique holds significance for a number of human rights concerns. While she alludes to human rights facilitating neoliberalism and a construction of state within it, the book does not spend too much time elaborating on this argument. It is, nonetheless, an extremely useful critique of Corporate Social Responsibility (‘CSR’) and ‘business and human rights’ (‘BnHR’),<sup>3</sup> – as discourses that posit to use human rights as a check on neoliberal globalisation, but in reality enable the same. CSR regarding labour monitoring in global supply chains has grown in leaps and bounds since its emergence 1990s. International brands no longer deny responsibility towards workers in their supply chains as they did a few decades ago, but rather show themselves to be proactive in their human rights compliance. Today, corporations are integral to the human rights discourse and the setting of its agenda. At first flush, these developments might seem to indicate corporate enlightenment. However, a closer look reveals that human rights does more to sustain neoliberal globalisation than check it. There are many parallels to be drawn between CSR and the critique that Kapur presents in her book.

## I. LABOUR AND HUMAN RIGHTS

As cross-border trade and commerce increased manifold under neoliberalism, so did the global reach of economic actors – especially corporations. However, corresponding changes in the international legal regime to regulate these transnational entities and monitor their adverse impacts were woefully inadequate. Civil society groups increasingly began demanding a global regulatory system to monitor corporations, punish erring ones, and compensating their victims. After initially resisting and dismissing such demands,

<sup>3</sup> CSR and BnHR, while closely related, should not be conflated. CSR emerged as a purely voluntary undertaking by companies, “over and above” what was required of them, and with the exclusion of State. The BnHR movement, on the other hand, called for making corporations accountable to human rights standards as a minimum expectation. It involved the State within its discourse, and sought to impose a minimum standard of corporate conduct – that of non-violation of human rights. However, the UNGPs in making human rights as a universal minimum, have integrated these strands to a fair degree; A. Ramasastry, *Corporate Social Responsibility Versus Business and Human Rights: Bridging the Gap Between Responsibility and Accountability*, 14(2) JOURNAL OF HUMAN RIGHTS 237-259.

corporations later responded to these demands by making public commitments and starting initiatives to monitor labour conditions within their supply chains. Broadly known as CSR, these commitments and obligations were entirely voluntary, unenforceable, and led by companies. Over the years, the CSR regime has seen various mechanisms such as multi-stakeholder initiatives ('MSIs'), audits, and certifications emerge. Typically, these are created by western multinationals or transnational advocacy networks ('TANS') that monitor working conditions in factories located in manufacturing countries like India, China, Turkey, Bangladesh, etc., that manufacture their commodities. Eventually, human rights standards began to be incorporated within these CSR instruments as a common minimum standard. With the adoption of the UN Guiding Principles on Business and Human Rights, 2011 ('UNGPs'), which highlight a 'responsibility to respect' human rights on businesses, those human rights included in the Universal Declaration of Human Rights ('UDHR'), International Covenant on Civil and Political Rights ('ICCPR'), International Covenant on Economic, Social and Cultural Rights ('ICESCR') and Core Labour Standards ('CLS'), became universally applicable standards for supply chain governance. What is interesting to note is the widespread endorsement of the UNGPs by corporations and international economic institutions the world over, making it the gold standard of human rights obligations on businesses.

While BnHR has generated some positive outcomes, such as the increased monitoring of factory floors and reduction in instances of child labour, it is incapable of ensuring greater freedoms for workers. An in-depth critique of CSR and BnHR is not intended here. However, what is sought to be noted is that many of the critiques that Kapur highlights in her book apply to BnHR. Instead of correcting the excesses of globalisation, human rights are part of the neoliberal global governance regime.

The logic of CSR is moulded within the logic of the market. Corporate gurus often make a 'business case' for it. In other words, CSR is argued as 'good business' that will sustain the long-term profitability of businesses – by building a popular public profile and boosting company image, mitigating risks such as consumer boycotts, and helping companies handle adverse public scrutiny better.<sup>4</sup> The market logic of CSR has permeated to all levels of the supply chain, and increasingly even states. Social compliance has turned into a marketable commodity. Suppliers advertise their social compliance record to enhance their commercial standing amongst buyers.

Considering that CSR is a discourse driven by big multinationals and international civil society organisations, this is inevitable – they drive the intellectual discourse, set the agenda, create implementation mechanisms, and manage

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<sup>4</sup> D. VOGEL, *THE MARKET FOR VIRTUE: THE POTENTIAL AND LIMITS OF CORPORATE SOCIAL RESPONSIBILITY* (2005).

these initiatives.<sup>5</sup> Therefore, governance of global production through human rights is viewed with suspicion by domestic capital, states, and trade unions. For instance, the issue of ‘social clauses’ in trade agreements provoked the accusation of being protectionist and imperialist against developing countries by local actors. It is not western companies and NGOs, argued local (read ‘nationalist’) employers and governments, but ‘they’ who can best take care of ‘their’ workers.<sup>6</sup>

This criticism is usually sought to be bolstered by drawing parallels between BnHR and labour welfare during colonialism. For instance, in countries like India, most factory and labour legislations were enacted during colonialism, and were imitations of legislations prevailing in England.<sup>7</sup> By showing to promote labour welfare the colonial regime sought to legitimise colonial capitalism as a source of good. However, factory legislations were also used to equalise the labour cost by standardising working conditions between mills in India and Manchester, thereby neutralising India’s comparative advantage in low labour cost.<sup>8</sup> Local trade unions and some national leaders like Dadabhai Naoroji rejected these as protectionist. Therefore, governance of global commodity production through human rights is seen similarly today by local actors as a project of “Empire Lite”.

BnHR reinforces the neoliberal faith in markets and its construction of states – that markets are self-regulating; that only self-regulation is effective, democratic, desirable and sustainable; and that the only duty of states is to facilitate the smooth functioning of markets. Governing markets through human rights is an exercise in realising the ideal liberal market as the only true guarantor of freedom. The UNGPs are premised on this understanding that economic development and rule of law, promoted by globalisation, is “the best guarantor for the entire spectrum of human rights: from civil and political, to economic, social, and cultural rights”.<sup>9</sup> Therefore, devising instruments of corporate and public governance is argued as the core challenge of globalisation in order to address its adverse impacts and sustain it as a positive force.<sup>10</sup>

<sup>5</sup> H. Arthur, *Corporate Self-Regulation: Political Economy, State Regulation and Reflexive Labour Law*, in *REGULATING LABOUR IN THE WAKE OF GLOBALISATION: NEW CHALLENGES, NEW INSTITUTIONS* 19-36 (eds. B. Bercusson, and C. Estlund, 2008).

<sup>6</sup> A. Nigam, *Radical Politics in the Times of Globalization: Notes on the recent Indian Experience*, in *DEMOCRATIC GOVERNANCE IN INDIA: CHALLENGES OF POVERTY, DEVELOPMENT, AND IDENTITY* 153-178 (ed. N.G. Jayal, and S. Pai, 2001).

<sup>7</sup> R. Mitchell *et al.*, *The Evolution of Labour Law in India: An Overview and Commentary on Regulatory Objectives and Development*, 1(2) *ASIAN JOURNAL OF LAW AND SOCIETY* 413, 414-420 (2014).

<sup>8</sup> A. AMJAD, *LABOUR LEGISLATION & TRADE UNIONS IN INDIA & PAKISTAN* (2001).

<sup>9</sup> United Nations Commission on Human Rights, Interim Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, 7 (February 22, 2006) E/CN.4/2006/97, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G06/110/27/PDF/G0611027.pdf?OpenElement> last visited on 16 January 2019.

<sup>10</sup> *Id.*, 6-7.

The actors in this narrative are the ones that Kapur portrays in her book—the worker victim, the abusive local supplier, and the enlightened TANs or CSR savvy corporations. The workers in this discourse, like the veiled Muslim women in France, are the victims who needs rescuing – not from capitalism or the market, but from agents who do not allow their ‘free’ participation in it. The BnHR discourse does not imagine freedom, especially for the worker, as being outside capitalism, but only through it. It seeks to create an environment that enables the active participation of all people in the labour market. Its top-down structure deprives workers of the agency to define the meaning of their liberation, and create mechanisms that best secure it.

If the worker is the victim, the site of violation is the factory floor, and the perpetrator is usually the local supplier within the CSR narrative who has to be monitored, educated, and sometimes punished. It is, therefore, focused on monitoring workplaces, primarily factories, where the monitoring is done by international buyers – brands like Apple, Adidas, Nike, Nestle, etc. – and the monitored is the local manufacturer. Drawing a parallel to Kapur’s argument regarding the veil and gender equality, what CSR effectively does is save the local worker from the local supplier, who, far-removed from human rights, exploits workers in a bid to extract the most profits. The supplier represents the ‘local’ – as part of an unorganised, impoverished, and unskilled economic system – and not as an integral part of the ‘global’ capitalist commodity production and consumption. Ignoring the integrated nature and interdependence of different suppliers within a supply chain, BnHR and CSR mechanisms make global capital monitor indigenous capital in order to protect local workers – as if they can and they will.<sup>11</sup>

Therefore, within the CSR paradigm, the enlightened human rights subject is the ‘corporate citizen’ who is either voluntary accepts human rights responsibilities, or is shamed into doing so by TANs. Most of the prevalent CSR mechanisms are created, funded, and managed (partly or substantially) by big consumer brands – the same entities that create global supply chains to reduce cost and profit from a global environment of exploitation. Exploitative supply chains are profitable supply chains – for *all* businesses in the production hierarchy. Fixing human rights responsibilities on big corporations may improve certain corporate practices. However, it has also made global capital as the custodian of human rights of third world workers. The triumph of CSR reinforces the belief that the neoliberal market is enlightened, can self-regulate, and that only such self-regulation is effective and sustainable in the long run. It does so by projecting regulatory possibilities as limited to either state-led mechanisms or private voluntary ones. The only ‘choice’ that is presented to workers is who is a better provider of human rights – states or markets? Given

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<sup>11</sup> D. Chang, and M. Wong, *After the Consumer Movement: Toward A New International Labour Activism in the Global Garment Industry*, 38(1 & 2) LABOUR, CAPITAL & SOCIETY 126, 142-144 (2005).

that states are already discarded as failed projects under neoliberalism, markets remain the only legitimate site of regulation.

Talking of workers' liberation and well-being within a human rights paradigm has allowed exploitation to be conceptualised at the level of the firm without taking into account the global economic laws and institutions that create conditions that allow and incentivise unfreedoms at work. Human rights is weaved *into* the logic of neoliberalism, and it has been largely ineffective to make any systemic improvements in workers' lives or bring them closer to freedom.

## II. LOOKING OUTSIDE THE FISHBOWL

The human rights critique offered by Kapur is compelling and radical. Its significance goes beyond just human rights, and extends to other regimes of liberal rights. For instance, constitutional fundamental rights are also expressions of liberal rights and many of the book's critiques of human rights apply to constitutional law as well. The recent controversy surrounding women's entry into Sabrimala following the Supreme Court's decision holding the ban on women's entry into the shrine as unconstitutional, is a case in point. Without getting into an elaboration of the case or the controversies surrounding it, it suffices to say that Kapur's critique and analysis provides an essential framework within which to view the debate –the narratives of victimhood, empowerment and freedom, women's entry to the temple as a clash between western liberalism and cultural protectionism, and the pursuit of gender equality through constitutional rights secured by the state. Kapur's work enables more than just criticism or support of the judgment. It explains and critiques the modes of operation of liberal rights, the fault lines it draws, and the inclusions and exclusions it creates.

While most critical scholars look within the human rights system for solutions and seek alternate possibilities within this 'fishbowl', Kapur not only challenges the foundational philosophy of human rights, but also valiantly takes on the onerous task of looking at other non-liberal non-western epistemes of freedom. In the second part of the book, she analyses Sedgwick's exploration of Mahayana Buddhism and Foucault's concept of 'political spirituality' in the context of Shi'ism as instances of previous excursions into other philosophical traditions of freedom. In her last chapter on 'Freedom from the Fishbowl', Kapur turns to *Advaita* as a philosophy of non-dualism that could offer possibilities of realising freedom and happiness. In making this argument, Kapur dismantles not only the narrow liberal conception of 'cultural relativism', but also the regressive strands within the 'cultural relativist' school.

Such explorations, while never perfect and still nascent, are indeed critical as they offer a different way of thinking about some of the 'sticky' issues of human rights. For instance, the question of 'individual versus collective' rights

can never be satisfactorily resolved in favour of all actors within the liberal paradigm. This is because, within it, the individual is constructed as a finite individual in a unilateral pursuit to be freedom against an 'external' society. *Advaita*, on other hand, rejects this duality and provides a different episteme of 'being' – as a continuum of knowledge and consciousness.

While an epistemological engagement with liberalism and human rights is essential to develop a radical critique (and in this respect Kapur's book is compelling and important), it does not shed light on how these philosophical traditions would challenge and check the current governance regime. Similarly, while Kapur does show that there are other legitimate articulations of liberation which cannot be dismissed as either status-quo-ist or regressive, what remains unclear is the method of 'finding' these 'right' alternative epistemologies and philosophical traditions – an exercise that is inherently normative and contentious.

Does the process of looking for these non-liberal alternative necessarily have to be grounded in an alternative historical realm, be it religion, culture, or philosophy? Is there a possibility of imagining and creating new models of freedom and well-being unhindered by the past?

Perversions and divisions are known to creep into the purest of ideas with their practice overtime. How do we deal with alternative registers of inclusion and exclusion that these 'other' traditions might create – either in their (pure or perverted version of) philosophy and/or practice?

If freedom is to be found within (where 'within', i.e., 'I' is not in opposition to the 'outside' as *Advaita* argues), then is it possible or perhaps even desirable to embark on meta-narratives of 'freedom', 'justice', 'equality', and the like, and meta projects such as human rights, international law, humanitarian law?

And more pressingly, how do we start moving on from this impasse that Kapur argues human rights is currently in and how do we deal with similar liberal rights regimes like constitutional rights? Can we engage with them in any way other than as a governance project?

None of these questions are meant as a justification for staying within the 'fishbowl'. Rather, these are the hard questions that demand answers if we need to move beyond the 'fishbowl'. While Kapur's book as a critique of human rights is highly valuable, her arguments on alternatives appear esoteric at this stage. She does prod her readers into engaging with the philosophical and epistemological basis of human rights, but a collective journey outside the fishbowl still seems fairly distant.