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TRANSPIRING CHALLENGES IN EFFICACIOUS ENFORCEMENT OF HUMAN RIGHTS

BY AANCHAL CHOUDHARY¹

ABSTRACT

Human rights are the fundamental, inalienable and inherent rights and freedoms which every human being is entitled to by birth. And globally, human rights violations are colossally rampant. The cardinal predicament with human rights law is that it is despairingly vague and ambiguous that is to say, they are not properly defined under the instrument they are enshrined in. Universality of human rights is another preposition that should be looked into as degree of enjoyment of these rights differs from country to country or even from one community to another. Through this research paper relating to contemporary and emerging human rights issues, the author aims to help understand the dynamics of certain issues and its possible evolution and implications, as well as provide policy recommendations thereon.

INTRODUCTION

“Human rights are not a coherent system but represent conflicting expectations” -Matthias Koenig

Human rights are the fundamental, inalienable and inherent rights and freedoms which every human being is entitled to by birth. Human rights are the rights “held by all the human beings, irrespective of any rights or duties that individuals may or may not have as citizens, members of family, workers, or parts of any public or private organization or association. They are universal rights.”² These are the rights held by all human beings equally and unconditionally³.

While the modern conception of human rights evolved during the 18th century with enforcement of the French Declaration on the Rights of Man and Citizen in year 1789, and the US Constitution and Bill of Rights in 1791, it was only after World War II when UN Charter was signed with reaffirmance of faith in fundamental human rights as one of its main objectives. In line of which, 10th December, 1948 embarked the journey of recognition and institutionalization of International Human rights with the adoption of the Universal Declaration of Human Rights by the UN general assembly. But it was only after 1976, when The International Covenant on Civil and Political Rights and the International Covenant on

¹ Student at University Five Year Law College, Rajasthan.

² JACK DONNELLY, INTERNATIONAL HUMAN RIGHTS: A REGIME ANALYSIS 18 (1986).

³ JOEL FEINBERG, SOCIAL PHILOSOPHY 85 (1973).

Economic, Social and Cultural Rights finally took effect that human rights gained significance in international relations. The International Bill of Human Rights consists of the Universal Declaration of Human Rights (UDHR), The International Covenant on Civil and Political Rights and The International Covenant on Economic, Social, and Cultural Rights. The Universal Declaration on Human Rights has encouraged an affluent body of legally binding International human rights treaties. The six major human rights treaties have been ratified by more than 150 countries, however many of them remain unreceptive to human rights.

But the question here is, are they really being enjoyed by every human being in the world? The availability or enjoyment of a right by a person immensely depends upon its enforceability. Therefore, if these human rights are not enforceable in the court of law then it won't be any wrong to say that their very existence would become merely theoretical and thereby they would be subjected to inevitable abuse by those in power.

Universality of human rights is another preposition that should be looked into as degree of enjoyment of these rights differs from country to country or even from one community to another.

Although it can't be negated that the world stands in a better position when it comes to recognition of basic human rights than it was in before 1966 which is evitable from recent developments in abolishment of capital punishment, disability rights, equality rights, equality for sexual minorities. It has been more than 50 years now that international human rights were recognized but it is unable to achieve its objectives. The fact that they are a part of international law does not imply that they can be forced upon the states.

THE IMPACT OF INTERNATIONAL HUMAN RIGHTS LAW

International human rights law provides people with invaluable protections against the power of the state.⁴The actual impact of International Human rights law can be understood by studying both direct as well as indirect impacts of such rights.” The UN Declaration on Human rights in 1948 was a public, and indeed a global proclamation of a common standard of achievement for all peoples and nations it is the mine from which other conventions as well as national constitutions protecting these rights have been and are being quarried.”⁵

⁴Eric Posner, The case against human rights, The Guardian (March 20, 2019, 2:42 PM) <https://www.theguardian.com/news/2014/dec/04/-sp-case-against-human-rights>.

⁵ J.E.S. FAWCET, THE LAW OF NATIONS 156 (1968).

A. Indirect impact

The indirect impact of International Human Rights involves reinforcement the universality of human rights by international recognition of such rights under Universal Declaration of Human Rights in year 1948, legitimization of claims of rights⁶, creation of increased expectations of compliance, it also signals the perceived will of the international community⁷ and it also encourages domestic judicial enforcement as well as enforcement by international courts or agencies.

B. Direct impact

The direct impact of Human Rights can be seen by the measures taken up by various countries for recognition as well as enforcement of human rights in the form of legal rights in their respective countries. While studying the direct impact of such International Human Rights, the regional Human rights regime cannot be ignored. The regional variance Europe and America on one hand and Asia and Arab countries on the other hand moderately mirror the degree of the cultural embedding of human rights norms across different regions. The institutionalization of Human rights is also highly affected by model of state formation, colonization, legal and judicial history, democratization, socio- economic development of the country also shape the scope and depth of regional institutionalization.

Unquestionably the direct impact has been greatest in *Europe*, where in 1950 the member states of the Council of Europe adopted the European Convention on Human Rights which established a Commission and a Court to monitor state compliance.

In America, an American Declaration on the Rights and Duties of Man was adopted by the Organization of American States (OAS) which was created in 1948. But then, it was not until 1978 with the entry into force of the American Convention on Human Rights that an institutional structure composed of a Commission and a Court was created.⁸

The *Asia-Pacific and the Middle East* is still lacking behind in terms of institutionalization of human rights. However, in recent decades, the member states of the Association of Southeast Asian Nations (ASEAN) has since the early 1990s considered the establishment of a regional

⁶M. FRANCK, THOMAS, FAIRNESS IN INTERNATIONAL LAW AND INSTITUTIONS (1998).

⁷ ANDREW MORAVCSIK, THE ORIGINS OF HUMAN RIGHTS REGIMES: DEMOCRATIC DELEGATION IN POSTWAR EUROPE, (2000).

⁸ Cecilia Medina, *The Inter-American Commission of Human Rights and the Inter-American Court of Human Rights: Reflections on a Joint Venture*, 12(4) HUMAN RIGHTS QUARTERLY, 439–64 (1990).

human rights mechanism⁹ In 1994, the Arab League adopted the Arab Charter of Human Rights which entered into force in 2008.

India was a signatory to the Universal Declaration of Human Rights, 1948. In light of which the Indian constitution which was adopted by the Constituent Assembly on Dec 26, 1949, which came into force on Jan 26, 1950 was greatly influenced by the Universal Declaration of Human Rights, 1948. The provisions of Part III and Part IV which provides for Fundamental Rights and Directive Principles of State Policy respectively are highly influenced by the Universal Declaration of Human Rights. The interpretative value of the Universal Declaration of Human rights has also been recognized by the Supreme Court of India.¹⁰ India has also established a National Commission of Human rights for the redressal of grievances of human rights violation under Protection of Human rights Act, 1993.

AMBIGUITY OF INTERNATIONAL HUMAN RIGHTS AND THEIR VIOLATIONS IN YEAR 2017-2018 AROUND THE GLOBE

The cardinal predicament with human rights law is that it is despairingly vague and ambiguous that is to say, they are not properly defined under the instrument they are enshrined in.

For example, numerous countries allude to right to security to justify their callous enforcement methods against crime and there are some Islamic countries which suppress women's right and justify it in light of their right to religious freedom. There are numerous instances of such deliberate human rights violations some of which can be stated as below:

A. Starvation and unemployment in Venezuela and Yemen

Citizens of *Venezuela* are struggling to deal with widespread food shortages, the collapse of its traditional currency and hyperinflation which the International Monetary Fund (IMF) has forecast to hit 13,000 percent in 2018. Wherein, almost 75 percent of Venezuelans are reportedly suffering from weight loss and unemployment.

Three years of a major armed conflict in *Yemen*, as well as a blockade imposed by a Saudi-led coalition, had "shattered" access for people's basic needs, including food and water. The United

⁹ Thio, Li-ann, *Implementing Human Rights in ASEAN Countries: "Promises to keep and miles to go before I sleep"*, 2(1) YALE HUMAN RIGHTS AND DEVELOPMENT LAW JOURNAL, 1-15 (1999). <https://digitalcommons.law.yale.edu/yhrdlj/vol2/iss1/1>.

¹⁰ Kishore Chand v. State of H.P., 1991 (1) SCJ 68,76.

Nations (UN) described the ongoing conflict in Yemen as "the worst man-made humanitarian crisis of our time."

It has been alleged that *Turkey's* ongoing state of emergency had created an environment in which the state actively carried out human rights violations.

B. Russia

Where at the forefront of country's presidential elections hundreds of peaceful protestors were arrested by the government and were subjected to arbitrary detention and intimidation.

C. Myanmar

In 2017, the United Nations portrayed a security operation in Myanmar which beleaguered Rohingya Muslims as a "textbook example of ethnic cleansing."¹¹

D. Syria

The "catastrophic war" in Syria is another example of blatant human rights violation.

E. European Union and Australia

The adoption of "outright callous" approach towards the global refugee crisis by European Union and Australia is another instance of human rights violation.

***F. China's Campaign of Repression Against Xinjiang's Muslims*¹²**

In 2018, Human Rights Watch and others reported a rise in this oppression wherein the government detained 1 million people in political re-education camps, with evidence of their torture and mistreatment.

G. Saudi Arabia

Yemen has evidenced many unlawful Saudi-led coalition attacks in violation of international humanitarian law, including apparent war crimes, killing thousands of civilians.¹³ However,

¹¹ *UN human rights chief points to 'textbook example of ethnic cleansing' in Myanmar*, UN News (Mar 22, 2019, 5:15 PM), <https://news.un.org/en/story/2017/09/564622-un-human-rights-chief-points-textbook-example-ethnic-cleansing-myanmar>.

¹² *Eradicating Ideological Viruses: China's Campaign of Repression Against Xinjiang's Muslims*, Human Rights Watch (Mar 20, 2019, 3:13 PM), <https://www.hrw.org/report/2018/09/09/eradicating-ideological-viruses/chinas-campaign-repression-against-xinjiangs>.

¹³ *Yemen: Coalition Bus Bombing Apparent War Crime*, Human Rights Watch (Mar 21, 2019, 4:16 PM) <https://www.hrw.org/news/2018/09/02/yemen-coalition-bus-bombing-apparent-war-crime>.

still countries like USA, UK, France and Australia sell weapons and military equipments to the Saudi Government that may well supply to its Yemen campaign.

H. Gaza probe uncovered 'reasonable grounds' Israeli forces committed international human rights violations

An independent UN report into the protests along Gaza's border fence involving Israeli security forces which resulted in the shooting deaths of around more than 180 Palestinians concluded that there are "reasonable grounds" to believe Israel violated international humanitarian law.¹⁴ There exists "no justification" for Israeli forces to use live rounds, as reported by a press release issued by the UN Commission of Inquiry into the 2018 Gaza protests.¹⁵

I. Children off Nauru

Escalating political demands forced the Australian government to remove children who had been transferred there in 2013 and 2014, although many were removed from Nauru only after legal proceedings were initiated. Only ten refugee children remain on the island, down from 119 children in August.¹⁶

J. India¹⁷

Where the whole world is witnessing human rights violations, India is not far flung from this catastrophe. Numerous fateful incidences have been encountered by this country as well. Child rights violations such as the deadly outcome resulting from state corruption and neglect where over 60 children died in a public hospital when a private supplier cut off the oxygen supply after government officials failed to pay long-pending dues. In May 2017, a student was killed by paramilitary forces inside a government school in Anantnag district during a violent protest. Country has also witnessed gross violation of women's rights where the Supreme Court ruled that sex with a girl younger than 18 was unlawful, regardless of whether she is married or not, saying the exception for married girls was arbitrary and discriminatory.

¹⁴ https://www.ohchr.org/Documents/HRBodies/HRCouncil/CoIOPT/A_HRC_40_74.pdf.

¹⁵ *Gaza probe finds 'reasonable grounds' Israeli forces committed international human rights violations*, UN News, (Mar 21, 2019, 5:12 PM) <https://news.un.org/en/story/2019/02/1033742>.

¹⁶ *Morrison slams Shorten on border control, says only 10 kids are left on Nauru*, ABC News (Mar 15, 2019, 11:32 AM) <https://www.abc.net.au/news/2018-12-06/morrison-slams-shorten-on-border-control/10589114>.

¹⁷ *World Report 2018: Rights Trends in India*, Human Rights Watch (Mar 21, 2019, 4:22 PM) <https://www.hrw.org/world-report/2018/country-chapters/india>.

Vigilante violence including around 38 attacks in year 2017, by extremist Hindu groups affiliated with the ruling BJP against minority communities, especially Muslims, continued in the midst of rumours that they sold, bought, or killed cows for beef. Not only this, around 39 people allegedly died from being trapped in toxic sewage lines, revealing how the inhuman practice of “manual scavenging” is still prevalent.

Murder of publisher and editor, Gauri Lankesh, arrest of 15 Muslims on charges of sedition for allegedly celebrating Pakistan’s victory over India in a cricket match, regardless of the Supreme Court directions that the allegations of sedition must engage actual violence or incitement to violence or punishing of editors by Karnataka state assembly for articles that allegedly defamed two of its members implies violation of freedom of expression.

The above mentioned violations, which are also reported by Human Rights Watch and Amnesty International makes it clear that human rights violation are highly prevalent and also show the lack of impact of International human rights law.

THE PROBLEM OF ALLOCATING LAW ENFORCEMENT AUTHORITY IN THE INTERNATIONAL SYSTEM

The customary human rights archetype in the international legal discourse was established on a relationship of dependence and trust on behalf of individuals towards States as the primary subjects of international law.¹⁸ The binding force of a treaty is generally based upon principle of ‘Respect for Law’. By signing and ratifying international treaties relating to human rights the States assume certain obligations under international human rights law to fulfil its responsibilities as enshrined in such treaty by taking domestic measures and making its legislation compatible with their obligations under such treaty¹⁹. And non-compliance to such treaties would hinder the International relations as well as reputation of such country by exposing it to world criticism .But it may not expose such country to some serious repercussions for non-observance of human rights law within its territory.

The two fundamental piers essential for public order are: the existence of proper law and the machinery for enforcing it and in Interstate sphere, order can only be maintained if there is existence of a well-defined and well codified International Law and effective agency to enforce

¹⁸ Reflected in the fact that States ‘possess the totality of international rights and duties recognized by international law’. See International Court of Justice, *Reparations for Injuries Suffered in the Service of the United Nations*, Advisory Opinion of April 11, 1949, icj Reports 1949, 174, para. 180.

¹⁹ *The Foundation of International Human Rights Law*, United Nations(Mar 19,2019, 11:50 PM) <http://www.un.org/en/sections/universal-declaration/foundation-international-human-rights-law/index.html>

it.²⁰ The states being sovereign and possessing their individual law enforcing mechanisms makes it difficult to establish a central binding International law enforcement system. Undeniably, the presence of an enforcement mechanism is a pre requisite for the purpose of observance of any law. It provides sanction to the legal norms. Forsooth, the reciprocity of International law is imperative for them to have a binding force. Article 94 of the United Nations Charter empowers the Security Council to execute the judgments passed by the World Court in case one party fails to implement it and the other party brings the matter before the Security Council. Although, the establishment of United Nations Security Council has been proved to be an enforcement authority to some extent, yet the existence of veto power to the permanent members, regional arrangements, right of self defense to the states weaken its authority to a large extent.

CONCLUSION

The study of three significant areas of International Human rights law, that is, the impact of International Human rights law, the chronicle of continuous exemplification of infringement of such rights and the enforcement mechanism with regard to such rights culminates into a Parthian shot that the existing International human rights law has yet not ranked up to the echelon of the accomplishment scale that it marked for itself at the time of its enactment. It is apparent that human rights violations are colossally rampant. This demonstrates the deficiency in means for effective implementation of International human rights law. Even though it has resulted into observance of human rights law at certain levels but only at a very slow pace as the period of 50 years cannot be regarded as a small efflux of time. Although the budding accord on the fundamentals of the binding force of international law and the expansion of state responsibility for fulfilling its international obligation with respect to protection of human rights is a sign of transformation of the international legal system. Human rights inhabits a significant part in the Charter of United Nations which includes not only the preamble of the Charter but also provisions such as Article 1 of the charter that sets out the purpose of United Nations, Article 55 and 56 which binds the states to observe Human Rights, Article 13(2), Article 62-63, Article 68 and Article 76(c). It can be observed that this Charter only imposes a moral duty upon its members to observe and respect such rights and not a legal imposition. However, enforcement action can be taken by the Security Council as an exception to Article 2(7) of this Charter where violation of human rights even if falling under domestic jurisdiction

²⁰ Nagendra Singh, "International Court of Justice- Watchman of the World peace and order" Special Number of 'yojana' (18 October 1970), p.87.

of states causes a threat to International peace and security. But for the purpose of exercising higher binding force over the states the state sovereignty has to be condensed to such level where they can be subjected to extensive International Law enforcement authority. Certain steps as to mutual reinforcement process, expansion of the enforcement power of the United Nations Security Council's, principle of reciprocity, etc. will incontestably prove to be productive ones in this direction.

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