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Restraint and Limits of the International Human Rights Regime: A response to the proponents of International Law

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ABSTRACT

The United Nations holds the responsibility "to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained".² Human rights and International law are knit together since the Geneva convention, the deep intervention of both the disciplines earlier led to the adoption of the UDHR. This article reviews the limitations that have been significantly affecting human rights influence in International law. Subsequently, the article responds to three important international lawyers that have expressed well articulated arguments on the issues associated with the human rights regime. The author will conclude this paper by establishing problems associated with the Euro-American history of international law and the exclusion of third world states.

Keywords- Human Rights, International Law, UDHR.

I. INTRODUCTION

Human-rights are elementary rights that are not granted by any state but belong to all of us solely because we are humans. Since the establishing of the United Nations, human rights resemble an isolated world unto itself: A framework with its own norms and foundations, a separate universe of human rights experts are still a long way from establishing a concrete relationship with individual problems. To the extent that the media focuses on human rights questions and issues, their attention is fundamentally on the international arena/relations. Adding to this is the interaction of human rights with the international law. This would not give any justification concern if the accentuation were simply on human rights as a task to be accomplished. What saturates international relations is, notwithstanding, human rights as an instrument to elevate and express one's own credibility while sabotaging that of different states. Here is when international law steps in and this linkage is talked about in this review essay.

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² (United Nations, *Preamble* 1945)

II. WHY TO LINK HUMAN RIGHTS WITH INTERNATIONAL LAW?

(A) Background

They lay the foundation of freedom, peace, and justice in the world. Human rights exist in different forms in different countries with countries codifying their own set of rudimentary rights however, a set of universally acclaimed fundamental codified rights came into existence around 1948 entitled “Universal Declaration of Human Rights” enshrining a hope for a better world and making dignity, justice and equality possible for everyone everywhere. Everyone is entitled to human rights without any discrimination. The UDHR is a part of international bill of human rights which also consists of international pact on economic, social and cultural rights, and the international pact on civil and political rights. For centuries there was no international human rights regime and the inception of international bill advanced the fundamental freedoms and thus the universal declaration of human rights is generally accepted as the crust of international law for human rights (the UDHR inspires human rights treaties and declarations).

(B) Current Importance

Every modern politico-legal system is bound to be contradictory, human rights arrangement is also contested and its universality challenged despite the indisputable progress it made. Many emphasize on the flaws that inhibit the realization of document goals. There have been several debates in time and again made against or for the formulation of universal declaration of human rights. This review essay looks at three interpretations of modern human-rights keeping in mind the cooperative relationship between international law and human rights.

The human rights movement has been a constant source of achievement in influencing policies of international and domestic relations. Different contentions all throughout the international arena are currently expressed through legal ways and through various rights and principles by the human rights movement. The human rights interaction with the international law is by far the most important event for international law and human rights both. Both the fields are likely to benefit from the dependance on each other as human rights could become more efficient with the support of international law and with legal actions for any violations. On the other hand international laws will henceforth be acting under the international courts and would certainly be considered under the same. It is important to keep in mind that a mere declaration does not grant legitimacy, language and vocabulary are responsible to fulfil the space (the acceptance of laws is thus based on this statement). Human rights , today form a vital area of human life , they have become essential for one’s subsistence and growth in society and the

acceptability of international laws through legal channels ensures the attainment of these global aspirations.

III. RESPONSE TO THE PROPONENTS OF INTERNATIONAL LAW

Shaw's paper³ has been a source of examination of the intricacies of the relationship that exists between international law and war. Apart from academic lawyers of international relations the book is also a depiction for the broader audience which includes the general public primarily. The introduction of international law into the military domain which likewise utilizes the tongue of human rights has been a source of another area that can help in operating the "politics of war". Relating war to this notion of law can justify legitimacy for conflicts by the use of force being accounted for. International law is additionally established in a structure that focuses on explicit types of political life and the monetary life as well. Moreover, researches have highlighted the manners by which the international law goes about as a key feature for domain. These points of view have prompted an upsetting of international law and keeping that in mind we'll go on to investigate human rights as a universal ideology and how has it constrained international law within itself. In terms of the similarity between the two we see that on the one hand when there's various interpretations for human rights on the other there are different rights when looking at international law across national boundaries.

The human rights arrangement is not without its flaws and contradictions there are numerous barriers that come this way including irrelevant claims. The major criticism of human rights within international legal system is that its formulation paves way for imperial behaviour and powerful states actively rely on the arrangement to promote their interests. "The idea that human rights can be hegemonic can strike its core believers as nothing less than a sacrilege"⁴. The self-image of a human rights is that of a post imperial discourse. "In this self-image the human rights effectively superseded the old international law of colonialism."⁵ The universalists present human rights system as an arrangement opposed to the celebrations of plurality.

Firstly, moving towards the first piece that is referred to here in this article by none other than Malcom Shaw. His findings are a two-way interpretation of rights to resolve the argument that while human rights play a key role in maintaining peace and security globally, it is equally

³ (Malcom Shaw, *International Law* - Cambridge University Press 2017)

⁴ (Rajagopal, B. *Counter-Hegemonic International Law: Rethinking Human Rights and Development as a Third World Strategy*. (2006))

⁵ (Rajagopal, B. *Counter-Hegemonic International Law: Rethinking Human Rights and Development as a Third World Strategy*. (2006))

important to reveal its basic tenets as to what constitutes the essence of these “rights”. Shaw has committed a whole segment to human liberties system in his contribution to international law. Shaw underlines on the idea that moral nobility is established through human rights and these are not just legal documents.

In his two-fold interpretation Shaw states that one school proclaims rights as mere guiding instructions for a state with respect to individual behaviour while the other school states that these rights are fundamental and cannot be violated in any case. He emphasizes that human rights represent societal interpretations of moral values. It is much more efficient to comprehend basic liberties from a state-based structure to ensure that they are accurately carried out on the grounds that international society is an idealistic vision which doesn't have a sensible understanding as various social orders are implanted with various customs. However, it must be kept in mind that states do not deviate from the basic structure of human rights and reject its basic tenets as it would endanger the lives of the citizens and would deprive them of their basic universal rights.

The UDHR was the consequence of involvement of the subsequent world war to forestall barbarities like those of that contention to happen once more. The inclusiveness of these rights is the foundation of international human rights law. This is a start to the outline of freedom that must be entitled to everyone. This game plan of common freedoms began as an endeavor to save human existence however today it has been scattered into various fields of life. Everything traces its roots in the past and so does this transformational analysis of human rights. Some attribute this to western outlook and recognize the cold war between socialism and capitalism as the real transforming force. There have been several debates symbolizing different cultural, religious and political values and the idea that all these can be represented by a unique declaration and dictate the lives of people inhabiting this earth, one must not forget that a combination of these rights is imperative so as to lead a good life. A section of intellectuals has come closer to this above-mentioned interpretation and constitute the TWAIL⁶, “The third world approaches to international law”. TWAIL

encompasses scholars and petitioners who are concerned with issues related to the third world. TWAIL Scholars have challenged the existing international legal system. They argue that the dominant manifestation of the human rights arrangement does not cater to the demands of the people of the third world. TWAIL has grown into critical scholarly network that focuses on the

⁶ (Chimni, 2007)

hegemonic tendencies which are linked to European colonisation. They outwardly reject the notion of universal nature of human rights.

Shaw has successfully been able to represent the essence of the dialogues happening between different schools of thoughts. His approach to human rights can be considered a balanced one as he has managed to amalgamate the different advocacies on human rights and prepare an explanatory tone. David Kennedy assertion⁷ on human rights resembles that of Shaw in some manner. He, alike Shaw observes the transformation of human rights as a system from one that is on horizon to a powerful regime that of dictates the state behaviour in international arena. Kennedy emphasizes that human rights arrangement focuses on imprudent pragmatism however he has presented a greater deal of augmentation as compared to Malcom Shaw. Many organisations around the world dedicate their expertise and support to protecting human rights and ending human rights abuses. They are managed and coordinated by many different organizations but the human rights regime has also taken over the agendas of variety of agencies in the international setup.

IV. HUMAN RIGHTS REGIME

(A) Weapon of War

Contending the fact that international law has started to play a key role in the act of war may it be in the actual act or the institutional setting, Kennedy argues that the combination of international law and human rights has started acting as a "weapon" of war itself. International law in a way combined with human rights allows a particular kind of act of war however, reprimands some acts of war as uncouth. This relationship between law and human rights with act of war also brings in a factor of international law acting on inappropriate state behaviour. David Kennedy's argument and his stance as a proponent and a backer of Human Rights and as a lawful researcher, as per Charlesworth⁸ (2002), is the justification of his trust over Human Rights and the legal systems. This idea led Kennedy to witness the global set of international laws as bound to change and alteration. The process through which the author wishes to introduce this reform is through disregarding the dangers of idolatry and pragmatism in humanist agenda.

(B) Military Interference

The human rights regime has penetrated the military domain. A discussion of human rights in

⁷ Kennedy, David W., "The International Human-Rights Regime: Still Part of the Problem?" 2012)

⁸ (Charlesworth, Hilary, Author! Author!: A Response to David Kennedy 2002)

the context of armed forces raises certain political, legal and humanitarian issues giving rise to certain debates. Certain issues are considered to be justified while others barbaric. Kennedy has focused on the view that human rights system stands as unitary structure in the international system. The views of Kennedy on human rights system is contested by Hillary Charlesworth who claims that the human rights arrangement is a multi-plural system governed by laws carrying various interpretations.

V. CONCLUSION

Human rights has the tendency to unravel the divide amongst barbaric and civilised states through the definition of “civilized”. International law in collaboration with human rights has utilised this opportunity to account for the politics of war by defining admissible warfare prioritising Euro-American interests. International politics today is still dominated by the arguments of civilised and uncivilised narratives because the notion of human rights came from the Euro-American historical experience. There has been a tendency to see human rights as something encouraged by west in the post-colonial world. Therefore there’s a debated risk of not recognising practice and politics of human rights that does not fit the Euro- American template. While there has been progress as far as a more prominent level of acknowledgment of Global South interests are concerned, there has been scant regard towards making human rights and international law truly liberated. The potential to work towards resolving and providing justice to third world people is yet to be taken into account.

VI. REFERENCE

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