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RESEARCH PAPER

Shattering the Stalemate: Overcoming Structural Barriers to Upholding International Human Rights Law

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ABSTRACT

The United Nations-sponsored International Human Rights Law not only provides the normative structure of the much-celebrated human rights norms but also the means and tools to realize those rights. However, the implementation and enforcement of international human rights law are hindered by various lacunae within international law generally and, in particular, within the UN Treaty Enforcement System. Moreover, ideological rifts, particularly within the Islamic States, regarding the concept and nature of human rights have also impeded the enforcement of International Human Rights Law in its entirety. By adopting the mixed method approach based on qualitative and comparative design, the research concludes that human rights treaties have weak institutional mechanisms and procedures of enforcement, because of which they are not able to contribute with impact; therefore, the international community needs to revisit the whole system to remove these structural barriers and to make these available to all human beings in reality.

KEYWORDS UN, Treaty Bodies, Lacunas, Enforcement, Barriers, IHRL

Introduction

The Human Rights Enforcement system of the United Nations consists of both the Charter based enforcement system which include *inter-alia* Universal Periodic Reviews and the appointment of Special Rapporteurs to assess and respond to the Human Rights violations across the globe and the Treaty based enforcement system which includes *inter-alia* Periodic Reports, State to State complaints and Individual Complaint Mechanism or Right to Petition/Communication to the respective Human Rights Committees for the implementation of the normative structure available in different UN sponsored Human Rights Treaties. Despite the availability of this magnificent normative and procedural structure on the protection of Human Rights the real situation is bleak due to certain very significant internal as well as external issues inside the enforcement framework of the UN. For instance, Human Rights Committees made with the mandate to oversee and observe the implementation of the respective conventions or treaties in the national jurisdiction of the signatory states are left powerless to take any concrete action to stop or cease the violations of treaty provisions. These are *Committees* and not *Courts* and their *Views* are not *Judgements* which could be enforceable *per se* into the domestic jurisdictions of the sovereign states. Moreover, the position of the Islamic world as may be seen in the reservations of several human rights treaties has also created an impediment for the full realization of the human rights norms available under those treaties. The paper underhand is an endeavour to understand and highlight the reasons due to which the implementation and enforcement of UN based human rights law is hindered and not workable to its full potential and suggests that the

international community needs to revisit the whole system to remove these structural barriers and to make these available to all human beings in reality.

Literature Review

The academic community seems to be in agreement that even though International Human Rights Law has evolved into an elaborate and coherent normative framework after the formation of the United Nations, enforcement is still limited. According to Horowitz and Schnabel (2004), although the human rights conventions post-1945 have established certain standards, the system is plagued by ineffective enforcement structures leading to a continuous implementation deficit. It becomes evident through their study that in spite of the legitimacy of conventions like the UDHR, ICCPR, and ICESCR, the international community lacks effective means to ensure conformity (Horowitz & Schnabel, 2004). One of the important areas of literature focuses on the deficiencies in the existing system. According to David (2009), the nature of human rights committees as quasi judicial boards, as well as the fact that they only make "views" and not judgments that have legal force, means that they cannot guarantee compliance. This idea is corroborated by the definition of the term court in the Black's Law Dictionary that suggests that it refers to a judicial forum that has the right to settle disputes (Garner, 2004), unlike treaty committees. Some literature has also noted the optionality of the Individual Complaint procedure under treaties such as ICCPR. A related issue in the existing literature is the importance of consent and sovereignty in determining the implementation of human rights treaties. According to Charvet & Kaczynska Nay (2008), the flexibility associated with international law makes it possible for states to choose what treaties to ratify, make reservations, and denounce protocols, thus limiting the applicability of basic human rights standards. Tandon & Kapoor (2010) provide an explanation of the role of dualist legal systems, where treaties cannot become part of national law without parliamentary enactment. For example, Pakistan is a country with a dualist legal system. Lastly, there is much literature about ideology and politics that cause the enforcement gap, especially in Third World and Muslim-majority countries. According to Rehman and Breau (2007), a number of Muslim-majority states believe that the application of human rights norms which are inherently secular contradicts the constitution based on Sharia, thus creating difficulties for them in fulfilling their treaty commitments. Moreover, Hamid (2011) claims that ideological differences between Islam and Western law makes it difficult for Islamic countries to completely align with their treaty obligations. Also, the mistrust that prevails in Third World countries regarding geopolitical bias in UN enforcement procedures leads to further difficulty in accepting intrusive inspections (Horowitz & Schnabel, 2004).

Material and Methods

The current research is based on a qualitative research approach, which will involve extensive scrutiny of the international human rights conventions, the enforcement process within the United Nations, as well as the analysis of scholarly works aimed at understanding the structural and ideological obstacles preventing the proper functioning of the International Human Rights Law. In particular, the research will critically analyze UN treaty-based and charter-based enforcement methods including the individual communication mechanism, the nature of states' reports, and the non-judicial nature of human rights committees, using the available normative framework and scholarly literature as a basis for assessment (Yaseen, et. al., 2019). It uses the comparative approach to examine the relationship between monism and dualism constitutional regimes, particularly within Pakistan, with regard to the impact that

domestic legal systems have on the implementation of international human rights obligations within the country. The research also adopts a critical discourse analysis approach towards the examination of issues surrounding state sovereignty, reservation practice, and the ideological perspectives of Third World and Muslim countries concerning the human rights enforcement system.

Limitations of IHRL with Respect to its Enforcement

International law works with the free will of the states. Free Consent theory postulates this thing very clearly that a state becomes bound by an international rule or regulation only if it has given its consent to be bound by it. To put it simple, consent of the state forms the basis of their responsibilities and obligations under International Human Rights Law, otherwise there is no international policing which could coercively compel a state to follow any international custom or principle even with respect to human rights. *Jus Cogens* (Grundnorm) being the only exception and International Human Rights definitions are far from being recognized as *Jus Cogens* because of visible difference of opinion upon it (Rehman & Breau, 2007).

Human rights treaties being part of International law in general also suffer from this shortcoming and it is up to the states to consider them binding over them or not (Horowitz & Schnabel, 2004). Theory of *Auto-Limitation* also supplements this contention that it is state which can limit itself as to commitment with any International obligation. Due to this shortcoming even the United Nations General Assembly (UNGA) has made Human Rights and their certain enforcement procedures such as Individual Communication *optional* thereby leaving it free for the states to decide to assume obligations under it or not and states often refuse to assume upon them any international obligations with respect to their *subjects*. The quandary of the matter is that even the most basic instruments of IHRL i.e. ICCPR (1966) and ICESCR (1966), which are understood as legally binding, provides the states with opportunity to reserve or denounce the treaty provisions as and when they wish. The same can be read in Article 12 of the 1st Optional Protocol to the ICCPR (1966). Article 20 of the Optional Protocol to the ICESCR (2008), repeats the same thing. The soft nature of these so called *legally binding instruments* has made it highly impossible to secure implementation and enforcement of the rights enshrined and incorporated in them.

Moreover, the greatest lacuna of IHRL is that it lacks an executive authority to enforce its decisions. The glaring example of this are the Committees formed under the ICCPR (1966), CEDAW (1979), etc.

Enforcement Problems with the United Nations Human Rights System

Weaknesses of Human Rights Committees

There are nine core UN based human rights instruments. These incorporate different procedures for the implementation of their provisions but the optional nature with respect to their compliance create a paradoxical situation. It is like we have the necessary *substantive law* but lack the *procedure* to activate it. It is as if an act has been defined as crime without availability of any binding or effective mechanism to register a first information report or complaint before relevant authorities. As, the human rights treaty bodies which are charged with the responsibility to ensure the compliance of treaty provisions are helpless if *states* do not accept their jurisdiction and authority in that regard. Even if states accept the jurisdiction or authority of a committee to receive

communications from the citizens of a particular country which has allowed them to do so; its decision's and comments are of persuasive or aspirational value and are not binding upon the states to carry them out in letter and spirit.

It appears that other UN based treaty procedures are equally ineffective in securing compliance in this regard. For instance, Article 40 of ICCPR (1966) speaks of a procedure where the states are required to submit reports to the Human Rights Committee established under the Covenant about the "measures they have adopted to give effect to the rights recognized" under the Covenant and "the progress made in the enjoyment of those rights". On receiving those reports the Committee studies them and then pass such general comments, as it may consider appropriate thereon. But the Covenant is silent as to the scope and authority of those General Comments which it shall give or the nature, significance, and status of the same i.e., whether they shall be binding on the state or not. These loopholes in the Covenant make it very difficult for the process to work effectively and efficaciously.

Committees are not 'Courts'

Human rights committees are not courts because as per Article 5(4) of the OP to ICCPR (1966); these are called as "*Panel of Experts*" rather than "*Judges*" and their so-called decisions are called as "*Opinions or Views*" not "*judgment*" which of course, are aspirational therefore it's a very basic problem in the way of enforcement or obtaining compliance from the states.(David, 2009) In addition, the process of filing the grievance is not designated as "petition" rather as "communication" (Optional Protocol to the ICCPR, 1966). Probably the makers of the OP thought the word "communication" to be less harsh and more gentle than the word "petition" by the sovereign states. This shows quite clearly how soft the status of IHRL is in terms of enforcement.

It is pertinent to note that none of the committees are able to enforce or to compel a state to carry out its recommendations or opinions. The committees also lack the power to impose sanctions, in case of non-compliance on the part of states (Charvet & Kaczynska-Nay, 2008, p. 237). Probably limitations on the powers of the Committees are intended to attract the states to become parties to the treaties but the limited powers of committees become a serious issue when it comes to implementation and enforcement of provisions of the treaty.

Nationalization of Human Rights Norms

Another problem or impediment in the way of IHRL enforcement is the *nationalization of international human rights instruments*. This basically relates with the concept as to whether international law directly applies to a state or it must go through certain domestic procedures such as adoption and making of draft statutes (*necessary domestic legislations*) to incorporate it into domestic legal system.

Before the modern development of international law, it was considered that this law only regulated the relationship among states whereas the municipal law or the law of the state regulated the relationship of individuals with their state and individuals inter se since the present international law not only regulates and manages the relationships of states, but it also takes into consideration the affairs, interests, advantages, and disadvantages of *individuals* i.e., international law has expanded to the level where it now considers '*individuals*' as its '*subjects*' and as such extends its applicability to them as well.

This discussion therefore has culminated in various theories depicting state practices regarding the applicability of International Law into the domestic jurisdiction of a state.

Monism and Dualism

Monists believe that municipal or domestic law and international law are basically two facets of the same phenomenon meaning thereby that both the types of law are not separate rather they are unified. In a state which believes in monism, international law needs not be made part of domestic law through necessary legislation (Cilia, 2022).

Once a state becomes party to a treaty, that treaty becomes enforceable immediately. There is no need to get ratification of the sovereign body of a country in respect of a treaty if the country is monist. Ratification automatically makes the treaty part of domestic law. The citizens of the monist state may invoke the provisions of that treaty before the domestic courts and the judges become empowered to take into consideration that treaty and as such give their judgments accordingly. It goes on so much so that a judge in a monist state may declare a national law null and void if the same goes against an international treaty to which his/her state is a party.

In Germany, international law (any treaty to which Germany is a party) has the same status as the national law. To view this from human rights perspective, it's very beneficial because if any country is monist and also is a party to a human rights treaty, any aggrieved person may go before a municipal court by invoking this law. However, this changes when a country believes in dualism and shows inclination towards this theory in their customary practices.

As it happens most of the countries of the world are *dualist* including Pakistan and they must nationalize the international commitments under any treaty to give it effect in the domestic sphere. Had Pakistan been a monist country, human rights treaties and their relevant enforcement mechanisms would have activated as soon as Pakistan became the party.

If we link Article 97 of the Constitution of Islamic Republic of Pakistan which comes under the head "Extent of executive authority of Federation" with Clause 32 of the Fourth Schedule to the Constitution, things get clear as to the authority which has the powers to legislate or make commitments regarding International Treaties and Conventions.

Therefore, Pakistan like many other countries of the world is a dualist state because an International Treaty or Convention does not automatically start applying on its territories unless the same has been translated as such by the Parliament of Pakistan. That is why, whenever Pakistan becomes party to an international instrument, it has to get it ratified through Parliament to give effect to the provisions of the treaty and the procedures of implementation or enforcement given under it. This also corresponds with "Specific Adoption Theory" which says that International Human Rights law cannot be directly enforced in the field of state/municipal law and to get it enforced, it is indispensable to make its specific adoption. To put it simple International law only applies in any country if that country adopts it through proper channel (Asghar, et l., 2026; Tandon & Kapoor, 2010).

Now, the situation is as already discussed that International Law generally and International Human Rights Law being part of International Law particularly gives

significant importance to state consent. Since the states, when they become party to any treaty, undertake certain responsibilities and obligations including to implement the provisions of the treaties and pledge to carry out certain measures such as making of necessary legislation in national parliaments or law-making bodies to give effect to those rights. An issue, however, may arise if states (dualist) withhold its consent or after signing a treaty withdraws from it or do not *nationalize* or *legislate* domestically.

State Sovereignty as an Impediment to Enforcement

Sovereignty as is normally understood, is the authority of a governing body to govern without any sort of interference from outside or external pressure or to the exclusion of all external elements. In common words a state is deemed to be sovereign when it regulates and is not regulated in its internal affairs. To look at IHRL from this perspective, we realise that it is purposely designed to limit state sovereignty. International legal system of human rights questions and put limitations on states' practices with respect to human rights, it gives preference to individuals rather than states, and it believes that states are meant to make sure the protection and enforcement of human rights for its subjects. It gives individuals rights and grounds to claim those rights, privileges, and fair treatment against their own state. It thereby qualifies the absolute jurisdiction of states over their subjects, it makes states answerable before international bodies specifically established for these purposes.

This accountability goes against the absolute sovereignty principle of states. States usually do not want any assistance or dictation in their internal matters. States do not wish to be made answerable before a panel of international jurists working under any human rights committee. States do not allow easily for checks and questions over whatever they do with reference to their subjects. States insist that human rights of the individuals, minorities or indigenous people should not be of a matter of concern to international legal system. All this is claimed by the states in the name of *sovereignty*.

Highly paradoxical nature of International Human Rights Law appears to have no place to stand against it rather the consent-based theory of obligations proves to be a stalemate because states would only be bound when they wish to and even after expressing this wish, they are free to raise objections, put reservations and declarations where they feel insecure about the so-called sovereignty being violated. Therefore, the principle of *state sovereignty* has proven so far, the biggest obstacle to the implementation and enforcement of IHRL.

Misgivings, Scepticisms and Concerns of Third World States

Third world states have their own ideals and perceptions about human rights. They consider the procedure and enforcement mechanisms *a tool and method to intervene* in the affairs of these socio-economically backward countries. There are lot of misgivings about it. Third world countries do not want to be part of any international scrutiny as they think there are various other things which should be worked upon on priority basis (Horowitz & Schnabel, 2004). For instance, poor economic and social conditions of most of the third world countries do not permit them to go for this change. Poverty, hunger, and development are their core concerns and right of access to international justice through IHRL and its enforcement procedures seem fancy to them; hence fall low on their list of priorities.

Most of the governments of third world countries have been under the suzerainty of First world countries, many of them still have dictators and monarchs who pay no heed to these principles enshrined in the covenants. It's very hard to expect positive signals from even the democratic governments of third world countries let alone those in which there is autocracy or where the decision-making powers rest with monarchs or dynasties. Therefore, underdeveloped or developing countries of the third world would never accept enforcement procedures blindly as they have their own reservations and fears (Wu, 2023).

There are accusations and distrust over the UN itself of taking sides with the powerful blocks of the world, taking actions against weaker states while ignoring violations by the powerful states. Its inability or reluctance to positively intervene where human rights conditions are actually being violated for instance; failure of the UN in protecting Palestinians against the Israeli Genocide or the Muslims living under Indian Illegally Occupied Jammu and Kashmir (Shah et al., 2025).

This quagmire is unacceptable to many and are a big impediment for the developing or under-developed states generally and Muslim states particularly to adhere to the lofty principles these instruments offer which ultimately affect the United Nations Human Rights Enforcement mechanisms.

Reservations; an Obstacle to Human Rights Enforcement

The notion of reservations and declarations under IHRL has been another difficulty. It is pertinent to highlight a frequently adhered to practice of the states that they so often reserve those provisions of the human rights instruments which they find hard to act upon. Once they reserve them, the provisions cease to be applicable to the states and they go scot-free from any liability whatsoever which they might have assumed, had they not reserved those provisions (Hill, 2016).

Human Rights Committee formed under ICCPR (1966), in its General Comment no. 24 discussed in great detail the issues relating to reservations or the declarations made by the State parties upon ratification or accession to the principal Covenants or their Optional Protocols (Human Rights Committee, 1994). This is so because once a state reserved any provision or a set of provisions of a treaty, it means that the state does not accept any responsibility or obligations whatsoever to the extent of those provisions and hence the body established to monitor the compliance of the treaty or superintend its effectiveness feels handicapped as to questioning the *reserving state* about the commitments which were there in those provisions the state has reserved, thereby creating a difficult situation.

Unfortunately, the reasons exist with the very nature of the IHRL which itself provides States to make reservations or even to denounce it after they have ratified it.

Ideological Rifts

While most of the European, American, and other Western States have consistent and uniform practices regarding UN based human rights due to their ideological conformity with the principles and interests enshrined in these instruments, Muslim states have shown and practiced varying trends.

Most of the Muslim states existing in 1948 voted for the adoption of the UDHR (1948). They have also signed and ratified other human rights instruments albeit with

declarations and reservations thereby curbing or limiting their full applicability and enforcement within their respective jurisdictions. These general and specific reservations are not in accordance with the prevalent practice of IHRL and are inconsistent according to the law of reservations. Hence, hampering in the way of full realization of the goals mentioned in those instruments (Sawad, 2011).

The course of action taken by Muslim States is *deeply inspired by the religious ideology they adhere to*. It is not uncommon to see abundant references to religion and divine sources as guiding tools for their national and international affairs in the constitutions of these states. The concept of sovereignty, the nature of state, the form of government, the sources of the law making as referred to in their constitutions all contribute to the impediment for the actualization of IHRL in these states.

The adoption of the Universal Islamic Declaration of Human Rights (1981) and the Cairo Declaration of Human Rights in Islam (1990) are testimony to the fact that the nature and meaning of human rights are quite different in the Islamic World and as they are perceived in the Western Secular world. The effects can be seen to be imprinted on the constitutions as well as common laws, be they civil, criminal, or administrative. Kingdom of Saudi Arabia (KSA), for instance, is not party to many of the Human Rights treaties including ICCPR and ICESCR. It had abstained from voting for the adoption of the UDHR back in 1948 and the reason was its being inconsistent with Shariah. Saudi Arabia's ambassador stated that the Declaration (UDHR) has Wests cultural underpinnings and was "at variance with patterns of Eastern states" cultures. Moreover, the provisions of UDHR are clearly at odds with Shariah (Kelsay, 1988). The Saudi ambassador had particularly raised objection to Article 18 (right to freedom of thought, conscience and religion including *right to change his religion or belief*) stated that Quran prevents a believer to change his religion (Laponce, 1962) and that the right as incorporated in the UDHR would be offensive to Muslims and inviting to missionary activities in the Arabian Peninsula (Voinea, 2020) Other Islamic states like Lebanon and Pakistan did not agree with that and signed the Declaration (and other conventions), nonetheless the available record of treaty adherence on the UN databases indicate that these states have also put reservations on account of being inconsistent with the national constitutions (United Nations Treaty Collection, n.d.).

This is so because the essence and the core of both the systems are inherently opposed to one another and cannot co-exist (Rehman & Breau, 2007). One system believes in the superiority of reason and intellect to the exclusion of revelation whereas the other system totally subjects reason and intellect to the divine will (Hamid, 2011). One believes that the sovereignty lies with the people and people alone whereas the other vests the sovereignty not only in any state but the entire universe with Allah. An Islamic state in this sense can never be sovereign. It cannot do away with laws as it wishes without taking into consideration the divine law. Hence, it cannot enforce and implement the UN based International Human Rights Law in its entirety.

Conclusion

It appears that even though the development of IHRL as a discipline has been able to come up with a comprehensive and impressive set of norms, the mechanism through which enforcement takes place is rather fragmented due to inherent structural problems within the UN system. This is especially true for the UN treaty bodies whose ability to function is restricted by their non-judicial character, optional procedures, and

inability to provide any form of enforceable ruling. Furthermore, their views can be totally disregarded by the states involved because of their advisory character.

Also, of equal importance are the extraneous elements, emanating from different political and ideological backgrounds, within which these states find themselves. Dualist legal regimes, for instance, in the case of Pakistan, need legislative measures in order to ensure that the obligations undertaken at an international level become rights at the national level. Developing countries tend to approach IHRL with mistrust because of their perceived nature of being selective and partial rather than purely legal procedures.

In conclusion, the enforcement gap is more than just a matter of practical shortcomings; it is an inherent problem that arises due to the voluntariness of international law, the political complexities of the issue of sovereignty, and the diversity of ideologies in the international community. Solutions to such deficiencies would involve a re-evaluation of approaches towards enforcement, state efforts towards the incorporation of human rights principles, and international efforts towards the promotion of the credibility of international human rights agencies in addition to maintaining tone of respect for national or divine ideologies a device akin to ECtHR's margin of appreciation.

Recommendations

The establishment of an effective and strengthened international human rights regime requires reforms at various levels to address the inherent weaknesses present in the system. Firstly, one of the primary areas for reform would involve increasing the scope and power of UN treaty bodies, such that their soft *views* or *recommendations* be translated into *decisions* or *directions*. Secondly, it is perhaps unrealistic to transform committees into fully-fledged courts, small steps towards improving the effectiveness of these mechanisms, including follow-up, regular review, and increased visibility of state responses, would have a significant impact. Thirdly, it would also be vital to motivate states to adopt Optional Protocols, especially those that allow Individual Complaint Procedures. This continues to be one of the most powerful instruments for ensuring accountability.

Fourthly, it is also important to ensure the incorporation of international human rights standards into the domestic legal order, particularly for countries with a dualist legal system. Countries should have implementing laws in place, improve the capacity of judges regarding international human rights law, and form national human rights commissions that will investigate and monitor human rights practices. This will guarantee that international treaties result in accessible redress mechanisms for victims within the domestic jurisdiction. In cases where the state does not have enough financial or technical capabilities to incorporate these measures, international cooperation may provide a solution through specialized UN programs.

Finally, taking into consideration the political and ideological considerations of Third World countries and Muslim-majority states is necessary in order to enhance trust in the international human rights system. The dialogue between these states and United Nations entities should go beyond mere talk and delve into an appreciation of sociocultural realities, clearing up misunderstandings, and finding common ground where international human rights principles can be reconciled with domestic law and religion. Equally important, reservations that run contrary to the object and purpose of human rights conventions must be reconsidered, narrowed down, and withdrawn.

Moreover, eliminating double standards in human rights politics on the world stage, by treating all countries equally and scrutinizing their human rights records regardless of their power, would help boost the credibility of the UN mechanisms of enforcement and promote adherence to the provisions of the human rights conventions.

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