

PROTECTION OF HUMAN RIGHTS UNDER INTERNATIONAL LAW A CRITICAL STUDY

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Abstract

The purpose of this important research is to investigate the complex field of human rights protection within the context of international law. It sets out to conduct an exhaustive investigation of the complex environment that exists at the intersection of international legal instruments and the protection of basic human rights. The purpose of this research is to investigate the strengths and limits of international procedures in the context of human rights protection. This is accomplished by conducting a thorough examination of important treaties, conventions, and the jurisprudence of international tribunals. Additionally, it examines the ever-changing standards and difficulties that are encountered in this field, offering insight on the dynamic character of international human rights legislation along the way. Furthermore, it explores the role that state actors, non-governmental organisations, and other stakeholders play in creating the agenda for human rights on a worldwide scale. Through a critical analysis of the accomplishments and limitations of international law in this context, the purpose of this research is to make a contribution to the continuing discussion about the efficacy and relevance of human rights protection on a worldwide scale.

keywords : Human Rights, International Law, Protection, International Legal Instruments, Treaties and Conventions

Introduction

Through the execution of a variety of laws, the state is able to preserve the framework of social order. Without these rules, it would be impossible to have a social life that is properly organised. “A number of philosophers who subscribe to the social contract theory are of the opinion that the purpose of the establishment of a state is to uphold and safeguard the rights of people. As far as Aristotle is concerned, the state originated from the fundamental requirements of life and continues to exist for the purpose of ensuring a desirable life. According to Professor Laski, the recognition of a state is based on the rights that it upholds. In a similar vein, Locke was of the opinion that the goal of state lies in the elimination of the impediments that stand in the way of an individual's growth. It is thus acknowledged that the existence of the state is associated with the safeguarding of the rights and freedoms of individuals, which is the primary objective of the state.

Human Rights

Human Rights Watch is an organisation that is committed to safeguarding the human rights of individuals all over the globe. For the purpose of preventing discrimination, upholding political freedom, protecting people from brutal behaviour during times of conflict, and bringing those responsible to justice, we stand in solidarity with victims and human rights campaigners. We

conduct investigations, bring to light abuses of human rights, and hold those responsible accountable. Those in positions of authority, including governments, are being challenged to put a stop to abusive behaviours and to follow international human rights legislation. For the purpose of gaining support for the cause of human rights for everyone, we solicit the public and the world community. Human Rights Watch is a non-governmental organisation that operates independently and receives financial assistance from private people and foundations all around the globe”. There is no government funding, either directly or indirectly, that it receives. Make a contribution right now or peruse HRW's financial disclosures before you do so.

Human Rights in India

There is no other democracy that is more populous than India. When it comes to being a democratic nation, one of the primary goals is to ensure that the fundamental rights of the people are always protected. “A significant amount of thought and effort has been devoted by the government of India to the recognition and preservation of human rights. These rights of the people are acknowledged by the Constitution of India, which also demonstrates a profound concern for protecting them.

Civil rights, political rights, economic rights, social rights, and cultural rights are all included in the Universal Declaration of Human Rights. The majority of the several human rights that are outlined in the Universal Declaration of Human Rights are guaranteed by the Constitution. Part III of the Constitution of the United States of America includes civil and political rights, whereas Part IV of the Constitution includes economic, social, and cultural rights. The provisions of the Constitution must be reflected in each and every legislation in order for them to be effective.

Within the preamble of the Constitution of India, the philosophy and aim of the document are inscribed. One of the objectives of the Constitution is to defend the dignity of a person. The right to equality, the right to freedom, the right against exploitation, the right to freedom of religion, cultural and educational rights, and the right to constitutional remedies are some of the fundamental rights that are guaranteed to individuals by Part III of the Constitution. These rights are essential for the development of an individual's personality and are essential for the fulfilment of this objective. To ensure that every person is able to fully exercise their human rights, it is the responsibility of both the federal government and the state governments to provide the necessary circumstances. The Constitution, by means of the Directive Principles of State Policy, which are entrenched in Part IV of the Constitution, establishes the obligations that the government must fulfil in order to work for the welfare of the people and to defend the human rights of the people.

The Protection of Human Rights Act, 1993

An Act that explicitly deals with the preservation of human rights was enacted in 1993 and given the name The Protection of Human Rights Act. This act was enacted because there was a need to defend human rights concerns on both the national and international levels. The

purpose of the Act is to facilitate the establishment of an organisational framework for the protection of human rights. The Act establishes Human Rights Commissions at both the national and state levels in each state, and it also establishes Human Rights Courts at the district level with the purpose of providing a more comprehensive protection of human rights and issues related to them. The rights related to life, liberty, equality, and dignity of the person guaranteed by the Constitution or enshrined in the International Covenants and enforceable by courts in India, is the definition of human rights that can be found in Section 2(d) of the Act. Having said that, the aforementioned definition restricts the extent to which the National Human Rights Commission may carry out its duties. Both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights were ratified by India. Both of these covenants include provisions about civil and political rights. In light of the fact that international covenants cannot be justified in front of the courts, it is imperative that the nation enact laws that are in accordance with the conventions that have been established". Consequently, the rights that are protected by the Constitution are in accordance with the International Conventions that have been established.

State Human Rights Commission

In accordance with the provisions of Section 21 (1) of the Act, the state government is granted the authority to establish commissions at the district level. "Together with the chairman, there are four other members that make up the Commission. The National Human Rights Commission provides the State Commission with the authority to carry out responsibilities that are comparable to those that have been delegated to the State Commission. When it comes to problems that are linked to any of the items that are mentioned in List II and III of the Seventh Schedule of the Constitution, the State Commission is exclusively charged with conducting investigations concerning abuses of human rights. It has been decided that the State Human Rights Commission does not have the authority to conduct research on international human rights treaties and other international instruments. Regarding the mechanism for the redress of human rights grievances in Union Territories, the Minister of Human Affairs had taken the position that the best way to proceed may be through the extension of the jurisdiction of the State Commissions of neighbouring States into the adjoining Union Territories, as has been done in regard to High Courts. This is similar to what has been done in regard to High Courts.

Role of NGOs

In addition to the government, there are non-governmental organisations that are also considered to be significant contributors to the preservation of human rights. The role that non-governmental organisations (NGOs) play in society is really extraordinary. It is the responsibility of these groups to fill in the gaps in service provided by the government and to assist in the protection of various rights. Non-governmental organisations (NGOs) are organisations that are not for profit and may range from local groups to worldwide organisations with branches located all over the globe. The non-governmental organisation

(NGO) is an autonomous organisation that is administered by a collection of private persons. The NGO derives its power from the people who provide volunteer support to the issues that it advocates for. Organizations that are not-for-profit (NGOs) educate and empower individuals in order to promote awareness among them about their rights.

When it comes to the process of protecting human rights, non-governmental organisations (NGOs) play a crucial role in the planning, monitoring, and assessment stages. It is stated by B.R.P. Bhasker that in the field of human rights, the role of non-governmental organisations (NGOs) is particularly important because the government or their agencies frequently become violators of the very rights they are committed to protect and promote. This is because large sections of the population are illiterate and lack adequate information, which makes it simple for those who violate human rights to act without fear of repercussions”. In light of this, education of human rights becomes more important, and non-governmental organisations (NGOs) are principally responsible for carrying out this duty.

Critical Evaluation

The Constitution of India has provisions that ensure the preservation of human rights; nevertheless, in order to ensure that these rights are effectively implemented, the Constitution must be amended. “The Protection of Human Rights Act, 1993 was passed by the government of India. This act stipulates the establishment of the National Human Rights Commission, the State Human Rights Commission in a number of states, and the Human Rights Courts at the district level. Additionally, the Indian judiciary is working to protect the human rights of the people of India and to provide a speedy remedy to those who have been violated in violation of their human rights. In spite of the efforts that have been made by the government, the goals that have been pursued as of yet have not been accomplished for the following reasons:

- i. Despite the fact that the Constitution of India has enumerated a variety of rights, there are a significant number of individuals who are not even aware of these rights that are guaranteed by the Constitution. This is because of the vulnerable conditions they are in and the efforts they make on a daily basis to survive. These are the individuals who are, for the most part, victims of violations of human rights; nonetheless, they are unable to consider going to court because they are more concerned with ensuring that they get their daily income than they are with safeguarding their fundamental human rights..
- ii. Despite the fact that the Constitution enshrined duties of the state under Part IV, which are known as Directive Principles of State Policy, to enact laws and to work for the welfare of the people of India in various spheres, these directive principles are not enforceable in the courts, and it is impossible to approach the courts if the government does not enforce these principles.
- iii. When it comes to its operations, the Human Rights Commission is required to operate in a wholly autonomous manner. On the other hand, there is no mechanism for the Commission to maintain its independence. The reality of the matter is that the Act contains provisions that call

attention to the fact that the Commission is dependent on the government. These provisions are described in the following manner:-

- a) In accordance with Section 11 of the Act, the Commission is reliant on the government for the provision of its human resources in order to carry out its tasks.
- b) A company's finances are sometimes referred to as the organization's blood. As a result of the provision in Section 32 of the Act that states, the Central Government must give to the Commission by means of grants such amounts of money as it may see proper, the commission is reliant on the central government for its financial resources.”

Conclusion

International Humanitarian Law is a subfield of International Positive Law that is founded on customary practise and international treaties. “Its primary goals are to restrict the techniques and means of combat and to provide protection for those who have been victims of armed wars. It is the responsibility of sovereign states to pursue war crimes, which are defined as serious violations of its norms. Individuals who commit these crimes may be held personally liable for their own actions. However, in the event that a state does not desire to prosecute or is unable to do so, the offences may be prosecuted by international criminal tribunals that have been established either by treaty or by a resolution of the United Nations Security Council that is legally enforceable. The present condition of the law at the beginning of the twenty-first century is reflected in this concise summary of the political and legal crisis the world is now experiencing. On the other hand, it does not depict the labour that was done in a single day or the results of a particular endeavour. On the contrary, it is the result of the growing awareness among the international community, in light of the atrocities of war and the indescribable suffering that has been inflicted on humanity throughout the ages, that there must be limits to violence, and that those limits must be established by the law, and those responsible responsible must be punished in order to discourage future perpetrators from exceeding them. It was therefore established as a principle of international law that the responsibility not only of states but fundamentally of individuals was established. This principle allows for the prosecution of grave violations of international humanitarian law by international tribunals that have been established for the purpose of handling such cases.

According to the study that was published in December 2004 by the High Level Panel on Threats, Challenges, and Change that was appointed by the Secretary-General, the primary concern of the founders of the United Nations was not human security but rather state security. Simply reading the Charter of the United Nations is all that is required to have an understanding of the subordinate place that human rights had at the time that it was created. The mention was made at the very end of a long clause, despite the fact that it was stated as one of the goals of the organisation. However, rather than a central institution, the primary responsibility for human rights was delegated to a specialised commission. In addition, the protection of human rights is accompanied by the assurance that nothing contained in the present Charter shall

authorise the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State". This is one of the classic ambiguities that can be found in international law.

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