

The Effectiveness of International Human Rights Enforcement Mechanism: The Way Forward

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Abstract : All human beings are born free and equal in dignity and rights and possess certain human rights and privileges which are inherent, indivisible, inalienable and universal. To uphold human dignity and respect, an effective human rights mechanism is thus a must for the implementation of human rights all over the world. Against this backdrop, the article argues that the international human rights enforcement machineries are half-hearted effort on the part of the international community. The current practice of international human rights enforcement mechanism is plagued with different problems such as non-bindingness, biasness, cultural relativism, non-justifiability and non-acceptability. The article also argues that the existing United Nations Human Rights system which is the only multilateral global body invested with the legal and moral authority to command universal respect to enforce human rights is merely promotional in nature. And at the end, the article provides some practical suggestions to overcome the existing shortcomings in the implementation process of international human rights enforcement system.

Key-Words: *Human Rights, Effectiveness, Enforcement Mechanism, Weakness, International Community, Charter, Treaty, etc.*

Introduction

The existence of human rights is not dependent upon the recognition of any state or other supranational authority; rather, it is based upon human existence. The idea that human beings are inherently entitled to certain fundamental rights and freedoms has its roots in human history. However, the systematic development of international human rights took place after Second World War through the establishment of United Nations (UN). Thus, the UN Charter proclaims, among other things, to protect and promote the respect for human rights and fundamental freedoms for all without any discrimination.

The UN Charter also entitles UN with the legal authority to incorporate International Bill of Rights (Universal Declaration of Human Rights (UDHR), International Covenant on Civil & Political Rights (ICCPR) and International Covenant on Economic Social & Cultural Rights ((ICESCR) collectively called International Bill of Rights) [1]and numerous other human rights treaties and

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instruments to promote, protect and enforce human rights. Accordingly, most of the member states have signed and ratified the international Bill of Rights along with various human rights treaties and conventions with full commitment to enforce those rights in their domestic jurisdictions. Indeed, the international human rights regime has come a long way since WWII but still mass violations of human rights occur in different parts of the world; for example, mass violations of human rights occurred in Rwanda where 800000 people were killed in 1994, The Democratic Republic of Congo (DRC) where 2 million people have been killed in its continuing civil war; in Sudan where 400000 people were killed in its civil war between the South and the North [2]. This leads any conscious human being to wonder whether the International Human Rights enforcement regime (with a plethora of treaties and HR institutions) is effective enough to stop gross violation of human rights. In one of his addresses, Kofi Annan, a former General Secretary of UN stated, "If humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to Rwanda, to a Srebrenica-to gross and systematic violations of human rights that offend every precept of our common humanity?"[3]

Objectives of the study:The broad objectives of this study is to identify the reasons for lower level of enforcement rate against allegation of human rights violations and to identify the reasons for the lower level compliance of the provisions of the International Human Rights treaties and conventions by various actors at both national and international levels. However, the more specific objectives of the study are:

- To assess the effectiveness of implementation mechanism of different international human rights enforcement authority for ensuring human rights
- To determine the power of International Human Rights Enforcement mechanisms for persuading nation states to respect human rights norms and practices.
- To suggest some policy recommendations for initiating further reforms in the arena of effective human rights enforcement mechanism system.

Methodology:The present article is based on qualitative method. Secondary data relevant to this study's objectives is collected from various documents such as books, journal articles, and international documents including conventions, treaties and from past events. Then the data has been analysed in the context of present conditions to reflect upon and provide concrete suggestions for future purpose.

Conceptualising Human Rights

Human Rights refer to a wide range of inherent and inalienable rights which all individuals have irrespective of their race, colour, language, birth or other status. They do not differ with geography or history, culture or ideology, political or

economic system, or stage of social development. Human rights are distinct from other rights in two aspects; firstly, human rights cannot be transferred, acquired or disposed of by any act as such they inhere universally in all human beings by virtue of their humanity alone – regardless of their race ethnic origin, religion, gender, political, affiliation, wealth or poverty, occupation, talent and personal preferences and secondly, their primarily correlative duties rest on public authorities of states and not on individual.

Classification of Human Rights

The more recent classification of human rights deals with three distinct categories of human rights which are:

First Generation Human Rights

First-generation human rights deal essentially with liberty and participation in political life. They are fundamentally civil and political in nature and serve to protect the individual from excesses of the state. First-generation rights include, among other things, freedom of speech, the right to a fair trial, freedom of religion and voting rights.

Articles 3 to 21 the UDHR and the International Covenant on Civil and Political Rights are the examples of first generation of human rights.

Second Generation Human Rights

Second-generation human rights are related to equality and being to be recognized by governments after World War II. They are fundamentally social, economic, and cultural in nature. They ensure different members of the citizenry equal condition and treatment. Second-generation human rights would include a right to be employed, rights to housing and health care, as well as social security and unemployment benefits.

Articles 22 to 27 the UDHR and the International Covenant on Economic, Social, and Cultural Rights are the examples of second-generation human rights.

Third Generation Human Rights

Third-generation human rights are those rights that go beyond the mere civil and social as expressed in many progressive documents of international law including the 1972 Stockholm Declaration of the United Nations Conference on the Human Environment, the 1992 Rio Declaration on Environment and Development, and other pieces of generally aspiration such as “soft law. For example, right to development, right to self determination, etc., form part of the third-generation human rights [4]

Existing Human Rights Enforcement Mechanism:

The existing international human rights agencies are global or regional in character. The UN is the only multilateral organization in the international arena in which almost all the nation states are members. The declaration of human rights which is neither a treaty nor a convention but merely a proclamation sets a common standard of achievement for all peoples and nations. As the UDHR is a

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declaration, it lacks binding force. The principles of the declaration of human rights which lacked binding force were transformed into legally binding norms through the covenants. Accordingly, the ICCPR recognises civil and political rights whereas the Covenant on Economic, Social and Cultural Rights (ICESCR) recognises social, economic and cultural rights.

The human rights machinery of the UN consists of two track machineries: charter based bodies and treaty based bodies but these bodies are largely promotional in character. Charter-based bodies are those whose creation are directly mandated by the UN Charter to all UN member states such as the General Assembly and the Human Rights Council or which have been authorized by one of those bodies, such as The Commission on Human Rights as well as the Sub-Commission on the Promotion and Protection of Human Rights, and the Commission on the Status of Women. This also includes the office of High commissioner on human rights and procedure undertaken by his/her office such as 1503 or 1235 procedure. Through these two set procedures, the commission appoints working groups to explore the areas of consistent pattern of gross violations of human rights within the states as well as throughout the world and simultaneously to take the initiative against such violation for promotion and protection of human rights.

Treaty-based bodies are established to supervise compliance with a particular human rights treaty which are applicable to those states which are party to the particular treaty such as the Human Rights Committee formed under the ICCPR and other committees formed under different conventions such as Convention on Elimination of Discrimination against Women (CEDAW), Genocide Convention, Convention on Racial Discrimination, Convention on Children (CRC), Torture Convention (CAT). These committees are intended to monitor compliance by states and individuals with the obligation of those nations which have ratified those treaties.

Regional intergovernmental organizations have created human rights instruments treaties and monitoring mechanisms for their particular regions. These regional human rights systems function parallel to the UN international human rights system.

The current regional rights systems include:

The European System

The council of Europe has adopted several human rights instruments including the European Convention for the protection of Human Rights and Fundamental Freedoms (ECHR). This convention has elaborate implementation procedures and creates a Commission and Court of Human Rights for monitoring purposes. European Court of Human Rights was established under The European Convention on Human Right (ECHR) in 1950 and is considered to be the single most important human right adjudicatory body. The court entertains inter-state applications such as private petition by any citizen on human rights violations

The Inter-American System

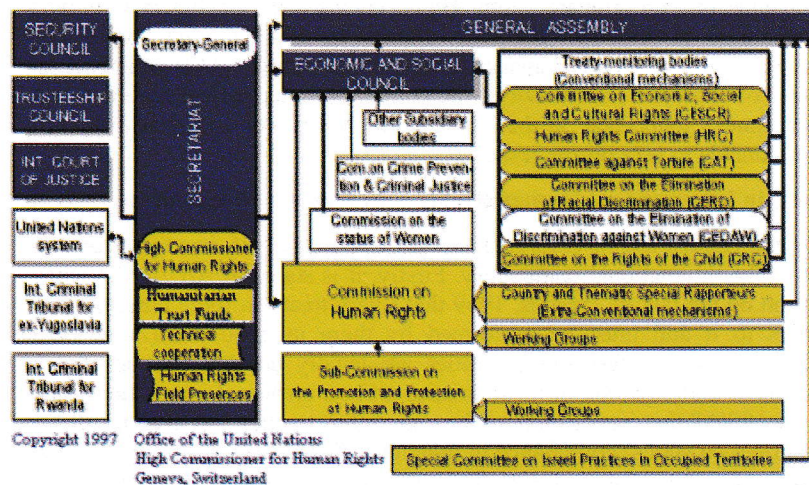
The Organization of American States,(OAS) is composed of the governments of Latin America, the Caribbean, and North America adopted the American Convention on Human Rights. The monitoring bodies are the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights. Inter-American Court of Human Rights has jurisdiction which is legally binding only on the state parties who are its members.

The African System

The African regional human rights system was created by the Organization of African Unity (OAU)'s adoption of the African Charter on Human and People's Rights in 1981. The African Charter created the African Commission on Human and People's Rights which is the monitoring body for the African state parties.

The regional human rights bodies such as European Court of Human Rights and Inter-American Court of Human Rights are quite effective and large number of cases are brought every year before these courts by the member states and by individuals against their own governments. These courts often give decisions in favour of individual citizens against their own governments but the people of the member states can seek remedies under these mechanisms.[5]

Figure-1: Human Rights Enforcement Mechanism under United Nations



Source: Bilder, R. B.(1978), *The status of International human rights law: an overview*, Philadelphia.

Enforcement of Human Rights under Bangladesh perspective

The establishment of National Human Rights Commission for the promotion and protection of human rights could have served as an effective mechanism to address gross and systematic human rights violations. It works like a human rights

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watch dog. The commission investigate any allegation of human rights violation by its own motion or by the application of any citizen. It can monitor the overall human rights situation all over the country.

However, the defect in the National Human Rights Commission (NHRC) starts from the very beginning of its establishment. The constituent Act of the NHRC itself limits its scope to deal only with the fundamental rights of the part III of the constitution. Therefore, the commission has no power to deal with various human rights not designated as the fundamental rights in our constitution. This limiting jurisdiction directly conflicts with the state obligation under international instruments concerning human rights and it reflects the state's reluctance to ensure human rights in its true essence in Bangladesh. This provision goes against the spirit of Right to Information Act. The most important drawback of the NHRC is that it cannot act *suo moto* and ensure punitive measures in a case where it finds any violation of human rights. This can come forward only in cases referred to this body by the court or by the person only.

In 2011, Limon, a sixteen year old youth, was shot in the left thigh by a member of the elite government force, Rapid Action Battalion (RAB) while grazing cows in a field near his home. Later, allegedly a false arms case had been lodged against this unfortunate youth. After huge public uproar, the NHRC took the matter into cognizance and conducted an inquiry. On the basis of the inquiry report, the commission put pressure upon the Government to withdraw the case lodged against this unfortunate youth. However, the state machineries showed sheer reluctance to withdraw the case. Moreover, while the mother of this unfortunate youth lodged a criminal case against the accused RAB personnel on the ground of extra judicial measures, the police submitted a final report stating RAB personnel's innocence. In that context, the NHRC was found helpless and was found unable to take proper resource.

Weakness in International Human Rights Enforcement Mechanism

International Human Rights enforcement machineries are half-hearted efforts on the part of the international community. Firstly, it is stated in Art 26 of Vienna Convention on the Law of Treaties, 1969 that Every treaty in force binding upon the parties to it and must be performed by them in good faith (*Pacta sunt servanda*) [6]. Though international treaties are legally binding contracts upon ratifying states and violation of those treaties attracts breach of international law but it was found that ratification of human rights treaties has had no direct positive effect on states' compliance in practice and they argued that ratification of treaties may even have a significantly negative effect corresponding to increasing repression. They claimed that global human rights treaties provide weak institutional mechanisms to enforce human rights norms but offers strong incentives to ratify the treaties. For instance, in ICESCR the ESC rights are not legally enforceable. When a right is justifiable, its justification is decided by a court of justice and/or by legal principle. Many courts are reluctant to make rulings on ESC rights because they believe that these rights relate to issues of social policy which best fall within the power and competency of politicians and

policy makers. As a result of this judicial reluctance, ESC rights have often been categorized as non-justifiable.

Secondly, According to Art 2(7) & Chapter VII of UN Charter, UN Security Council is the only legitimate international organ capable of authorizing military sanction against any state accused of gross violations of human rights but this organ is largely ineffective due to geopolitical rivalry among big powers. For examples, the UN Security Council almost did nothing when ethnic cleansing of Chechen people took place in Russia under the leadership President Vlamidir Putin and genocide took place in the Bangladesh Liberation War in 1971

Thirdly, One of the intense debates in the human rights movements involves the universal and relative character related to the absolute or contingent character of the rights declared. Universalists claim that international human rights must be the same everywhere. On the other hand, the relativists claim the universalisation of human rights succeeds in destroying the diversity of cultures, thereby creating a homogenised world. There is still divergent opinions regarding HR norm setting between developed and developing countries such as 'cultural relativism'[7] or 'Asian values' which weakens the effectiveness of international HR enforcement regime.

Fourthly, criticisms are also raised by different quarters regarding selective application of human rights norms by western powers in different parts of the world. Besides, double standards practiced by western states at home and abroad, priority of implementation in different generation of human rights, duplicity of human rights organizations in international and regional levels and lack of power of the UN General Assembly makes the International Human Rights enforcement mechanism weak.

Fifthly, The International Criminal Court (ICC) is a permanent tribunal established in 2002 and has jurisdiction over following types of crimes: genocide, crimes against humanity, war crimes and crimes of aggression. The court has mandatory jurisdiction over its member states. The ICC cannot enforce human rights because of its non universal character, ineffective representation and non-acceptability from all other member states. The ICC and other ad hoc criminal tribunals still lack wider legitimacy in international arena to mark any impact in International human rights enforcement.

Enforcement of International Human Rights

International Human rights obligations can be enforced at three levels. They are (1) within the national system of the state; (2) by other states in course of bilateral or multilateral relations and (3) by international organizations.[8]

Ideally, an effective system of International human rights enforcement mechanism rests primarily with states because of positivist application of law, doctrine of Westphalian sovereignty and doctrine of non-violability of state territorial integrity but it is often found that the state (government) itself become the worst violator of human rights.[9] Westphalia sovereignty is the concept of nation-states Sovereignty based on two things: territoriality and the absence of a role for external agents in domestic structures. Doctrine of non-violability of

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state territorial integrity may be defined as where all members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state. The individual action of any state lacks legitimacy

In theory (inter-state application), a state violating its international human rights obligations will be called to account by other states but in practice states are generally reluctant to antagonize friendly nations by criticizing their human rights violations and those violations are only raised by states when this is done by their enemies or unpopular political regimes [10]

The doctrine of 'humanitarian intervention "or the notion of 'universal jurisdiction" is hardly accepted as international enforcement mechanisms because of past misuse. For example, in case of positive aspects, North Atlantic Treaty Organization (NATO)'s intervention in Kosovo in 1999, Vietnam's intervention in Cambodia in 1978, Tanzania's intervention in Uganda in 1977 and in case of negative aspects, US invasion of Grenada in 1983, US intervention in Panama in 1990. Humanitarian intervention is coercive action by one or more states involving the use of armed force in another state without the consent of its authorities, and with the purpose of preventing widespread suffering or death among the inhabitants.[11] Amnesty International defines universal jurisdiction as a circumstance when certain crimes pose so serious a threat to the international community as a whole, that states have a logical and moral duty to prosecute an individual responsible for it, no place should be a safe haven for those who have committed genocide, crimes against humanity, extrajudicial executions, war crimes, torture and forced disappearances[12]. Hence, the international agencies are the most viable instruments to enforce human rights norms and obligations globally.

Recommendations

The institutional mechanism of different international treaties to enforce human rights should be strengthened to make the national leaders accountable for their actions contrary to human rights norms. For this, a universal organ with all the teeth is needed to prevent the mass violation of human rights. To that end, the international community should work for upgrading the status of international organizations and enhance their power to implement human rights.

Secondly, the UN is the only multilateral body which has the legal and moral authority to command universal respect to enforce human rights because if the UN does not act then, this vacuum will be filled by individual states and the credibility of UN would also be damaged. So, the proper course of action would be to reform the UN Security council as a preventive mechanism, enhancing the power of UN General Assembly & other organs.

Thirdly, increasing the effectiveness of ICC could work as a bulwark against the mass violation of human rights. As a curative mechanism, ICC could be transformed into a universal organ through persuasion of all states to accept its jurisdiction.

Fourthly, acceptance of universal of human rights norms like incorporation of the Geneva Conventions in domestic legislations can enhance the compliance rate of the human rights norms and can deter state and non-state actors to take detrimental measures.

Concluding Remarks

All human beings are born free and equal in dignity and rights and possess certain human rights and privileges which are inherent, indivisible, inalienable and universal. Thus, to uphold human dignity and respect, effective human rights mechanism is a must for implementation of human rights all over the world. Hence, the article argues that there is no other alternative but to strengthen the international human rights enforcement machineries. However, the research finds that current practice of International Human Rights enforcement mechanism is plagued with different problems such as non-bindingness, biasness, cultural relativism, non-justifiability and non-acceptability. The article also argues that the existing UN Human Rights system which is the only multilateral global body and which has the legal and moral authority to command universal respect to enforce human rights is merely promotional in nature. The research then tried to identify the weaknesses in the international human rights implementation machineries and at the end provide some pragmatic suggestions to overcome the existing shortcomings in the implementation process of international human rights enforcement system.

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