LIBERALIZATION OF INTERNATIONAL HUMAN RIGHTS LAW: AN APPRAISAL OF ENFORCEMENT MECHANISMS

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ABSTRACT

In the wake of Arab Spring, subsequent regime changes and humanitarian interventions, the first quarter of 21st century also witnessed yet another phenomenal paradigm shift. The International Human Rights Law regime has, over the years, emerged as a new arena of ideological contestation – resembling a modern day 'cold war' between the 'liberal' and 'conservative'/ 'conformist' democracies. The United Nations' Human Rights Bodies which are supposed to, primarily, play a monitory role in persuading the states parties for the compliance of obligations, emanating from the subject treaties, are quite active in universalization of liberal human rights standards. This paper attempts to lay down a critical legal analysis of the mandate and jurisdiction of (UN) charter and treaty based bodies. This analysis also measures as to what an extent these institutions adhere to, and remain, the framework of the fundamental and cardinal principles of International Law and UN Charter itself. The analysis intends to substantiate as to whether the human rights bodies are under a dominant influence of the liberal democracies and only accelerating the universalization of liberal values. Moreover, the study at hand also evaluates as to whether the ongoing Universalist approach is proving to be counter-productive particularly as regards the global south.

Key Words: Liberal Democracies – International Human Rights Law – Universalism – Relativism.

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INTRODUCTION

The English word 'right' (riht in old English) is of Germanic origin (reht) which translates the Latin term 'ius' that means the judgment ensuring appropriate distribution of goods among the disputants.[1] 'Ius', was commonly used for referring to justice and law, in Latin. The Roman law did not presuppose the existence of 'ius naturale' for every human being but the individuals (citizens) could claim iura (rights) under the law.[2] The idea of 'natural law' and thus the 'natural rights', according to Anthony Pagden, was introduced later in the times of emperor Justinian in the 6th century AD. One may, therefore, trace the ancient origins of human rights in the concepts like 'natural rights', 'jus naturale' and the fundamental rights.

While acknowledging that fact that the seeds of modern human rights got nurtured through the ages wherein they marched from civilization to civilization, the secular historians, generally, find the genesis of their codification in early thirteenth century's Britain when King John declared the "Magna Charta". The Cyrus Cylinder, which dates back to 6th century BC, is marked as the one oldest relic evident upon the ancient existing of such ideas. The Last Sermon, containing a declaration of some fundamental rights and duties, was addressed by the Prophet of Islam (peace be upon him) in 632 AD. This was the era when, by all measures, the sovereign State of Medina was established and his declaration would definitely have the effect of law, yet, the western historian generally ignore such a substantial contribution in the codification of human rights.[3] The other glittering milestones, which are often taken into account, are the British Bill of Rights 1689, the French Declaration of the Rights of Men and Citizens 1789 and the US Bill of Rights which was inserted in the US Constitution in 1791.

From the 'Constitutionalization' to 'Internationalization' the law of

[1] Quoted in [Pagden, Anthony. "Human Rights, Natural Rights, and Europe's Imperial Legacy." Political Theory 31, no. 2 (2003): 171-99. Accessed October 10, 2025. http://www.jstor.org/stable/3595699.] from the Michel Villey's Philosophie du droit (Paris 1882) . See also: https://www.merriam-webster.com/dictionary/right

[2] Ibid.

[3] See for example Articles, 1(3), 13, 55(c), 62(2), 76(c) and 68 of the UN Charter 1945.

human rights did not take ages and it was only in when the United Nations (UN) Charter became the bedrock to formulize a comprehensive program for their international recognition, promotion and protection. Truly a precursor in this regard, UN declared 'to achieve the universal respect for fundamental human rights' as one of the purposes of its very foundation. Moreover, the Charter provided a comprehensive mechanism for the international recognition, promotion and protection of human rights. With the adoption of the Universal Declaration of Human Rights (UDHR) by UN General Assembly in 1948 and its subsequent incorporation/conversion into the binding Covenants and the later Conventions, the human rights have been shaped as International Human Rights Law (IHRL).

The IHRL may recognizably be defined as an inter-states bond aiming to ensure compliance with the standards, formulated under the auspices of the United Nations (UN), for the international protection of some of the individual liberties and interests.

The IHRL regime generally comprises UN Human Rights Bodies (HR Bodies) e.g., the Charter and the Treaty Bodies including, Office of High Commissioner for Human Rights, Human Rights Council and the Committees. HR Bodies pursue an overall monitoring and the enforcement of human rights among the state parties.

States are invited to consensually become parties to the human rights treaties and comply with the obligations incorporated therein. The states parties are further required to report back the status of their compliance with the treaty obligations to the treaty bodies. The bodies, under the relevant treaties, are mandated to receive the state parties' reports and to figure out the areas of non-compliance. Their 'concluding observations', with regards to the areas of non-compliance, are communicated to the state parties for appropriate/requisite actions/measures. In addition, subject to acceptance of the state parties, the bodies are also empowered to receive communications and individuals' complaints with regards to the violations of the treaty obligations by the state parties. This is how the HR Bodies pursue the optimal enforcement of the human rights standards as incorporated in the treaties. While charged and dealing with the enforcement of the human rights standards, the bodies have, over the years and particularly since the establishment of UN Office of the High

Commissioner for Human Rights in the wake of Vienna Declaration and Program of Action 1993, have geared up while exercising their wide range of mandate with regards to deciding the matters including but not limited to the status of the ratification of a state party, it's Declarations, Understating, Objections and more importantly the Reservations.

Upon the assumption of such an active and vital mandate and a vigorous exercise of its jurisdiction, the IHRL regime is exposed to a new wave of criticism as is seen, by the critics, at times, inconsistent with the principles of UN Charter at one hand and challenging the very basis of International law on the other. For instance, in 1994, the Human Rights Committee (HRC) while adopting a General Comment on a related matter ignored the principles incorporated in the Vienna Conventions on the Law of Treaties 1969 and maintained, for itself, the authority to determine and declare as to whether a state party's Reservation is compatible with the purpose and object of the treaty.[4] Subsequently, the Committee held that it has the legitimate mandate to decide the validity of the Reservations.[5] Declaring the subject Reservations, therefore, as invalid the committee required from the states to comply with the treaty obligations regardless of their Reservations and Understandings.[6]

Quite recently, in November 2017, while conducting Universal Periodic Review (UPR), the Human Rights Council (HRC) recommended the Islamic Republic of Pakistan, inter alia, to decriminalize consensual sex in its jurisdiction. Additionally, the government of Pakistan was asked to enact laws for the protection of the rights of the Lesbians, Gays, Bisexuals and Transgenders (LGBT).[7] It's worth noting that the representatives of the government of Pakistan did not object the recommendations but "noted". It is, therefore, the human rights bodies are being observed as if they are actively moving towards establishing

[4] General Comment No. 24, para 18. Adopted at the Fifty-second Session of the Human Rights Committee, on 4 November 1994 (CCPR/C/21/Rev.1/Add.6)

[5] See for instance; Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant: Comments of the Human Rights Committee, 53d Seas., 1413th mtg. 14, at 4, U.N. Doc. CCPRICI79/Add.50 (1995)

[6] See for example. Goodman, Ryan. "Human Rights Treaties, Invalid Reservations, and State Consent." The American Journal of International Law 96, no. 3 (2002): 531-60. Accessed October 22, 2025.

[7] See Para N – 152.89 of the List of Recommendations adopted by Human Rights Council in its third Universal Periodic Review of Pakistan held in November 2017.

the universal writ of UN human rights. Such an active pursuit, as undertaken by the UN Bodies for the very uniform enforcement of the content and form of human rights across the world, has been received by the critics very differently in the different theoretical frameworks.

It is a fact that the human rights project which was launched by the UN under the guarantees 'of equal respect for the nations' is finial ending up with hegemonic slogan of 'naming and shaming'. Such recent developments are confirming the apprehensions of scholars like Oona Hathaway who pointed out, 'sovereignty' will be the ultimate cost of 'commitment' to international human rights law.[8] The classical model of the 'Law of Nations' which is reinforced in the In UN Charter, made it appoint that a sovereign state has an exclusive territorial authority and the noninterference of external actors in its domestic affairs. International human rights law, on the contrary, puts limits on the states as to how they may treat their citizens and also legalizes the interventions of international community in domestic affairs.[9]

Pondering upon the 'human rights movement' from a perspective of international power politics one may build a thesis that these so called 'international human rights standards' are so designed that they will face an obvious resistance in certain societies, say for instance, the conservative/non-liberal democracies including the Muslim states. The divergent attitude of later states which may even, be within the framework of international legal norms - in the form of conditional consents to the subject Instruments with reservations – is usually measured as violations and sometimes as the gross violations. The monitoring and enforcement bodies once determine and establish such non-conformist enforcement of these standards as the 'systematic violations' it overlays the track for calling 'the Responsibility to Protect' which comes into action in the name of' 'humanitarian intervention' in the target societies. Studies do suggest that such mechanisms have had legitimized the use of force by powerful states in Iraq, Somalia, Libya and Syria etc., in the recent past whereas many others are waiting to face

[8] Hathaway, Oona A. "The cost of commitment." Stanford Law Review (2003): 1821-1862.

[9] See for instance article 2 (1), (7) of the UN Charter, 1945.

their fate in the time to come.[10]

A line of argument from this perspective may hold the ongoing universalization more as counterproductive. The UN Security Council's resolution 1674 of 2006 has, in fact, endorsed the use of force in pursuit of so called 'Responsibility to Protect'. It is indeed interesting, if not alarming, to note that the statistics, as reflected from UN human rights system, depict the past colonizers as more compliant, of the so called international human rights standards, than the states which remained their previous colonies.

The western champions of human rights, generally, figure out inter alia, the Islamic law, the eastern cultures and more precisely the 'non-liberal and non-secular democracies' as the hurdles in the way of universalization of human rights.

The cross-cultural validity of UN human rights standards is, therefore, a question mark since the very dawn of this regime. The very rationale, objecting the draft of UDHR as if it had ignored the more ancient and time-tested civilizations while choosing only the western norms,[11] is yet echoing and challenging the entire program. The recent wave of universalization is only going to ascertain such fears that the underlying aim of this movement was to "proclaim the superiority of one civilization over others", as said Huntington.[12]

Finally, the whole debate congregates around the point of putting whole emphasis on the 'form' instead of 'substance'. In other words problem arises with regards to the question of 'how' not of 'what'. Human rights being indeed a common concern of human being are reverent to every human society, however, peoples, of different cultures and religions, perceive and approach them differently.

Liberal Democracies and Budding Influence of Liberal Values on IHRL

[10] See for example: Ratner, SR, Abrams, JS and Bischoff, JL 2009. Accountability for Human Rights Atrocities in International Law: Beyond the Nuremberg Legacy. 3rd edn. Oxford: Oxford University Press.

[11] See for example the objection raised by the Saudi Arabian delegate on article 16 (free marriage) and article 18 (freedom of religion) of the draft of UDHR 1948.

[12] Huntington, Samuel. "The clash of civilizations revisited." New Perspectives Quarterly 30, no. 4 (2013): 46-54.

Before indulging in an enquiry to figure out the role of liberal democracies in shaping the impugned jurisprudence of human rights bodies, it seems appropriate to first adopt a viable description and applicable criterion to consider as to what are the liberal democracies? According to Donnely, "it's a very specific kind of government in which morally and politically prior rights of citizens and the requirement of the rule of law limit the range of democratic decision making."[13] This term 'liberal democracies' is now more commonly used for majority of the Western countries and the United States wherein the 'Liberalism' is a central part of their socio-political system. However, more precisely, in the popular literature pertaining to human rights law, it refers to a group of European states such as Netherland, Belgium and a block of five Nordic states e.g. Denmark, Finland, Iceland, Norway and Sweden.[14]
As indicated in some of the other studies,[15] this group of states has, over the years, started systematically reviewing, objecting and pursuing the invalidation of the Reservations of the states being governed under the systems which are not liberal but practicing sort of 'conformist democracies'.

The liberal scholars have, generally, emphasized on the 'liberal democracy' as a pre-requisite for the smooth application of international human rights law.[16]

Scholarly Divide on Internationalization of Human Rights Law and Politics

Anthony Pagden, in his work Human Rights, Natural Rights and Europe's Imperial Legacy,[17] while tracing the genius of modern human rights, argues, the very idea has certainly emerged from the concept of 'natural rights', however, their modern manifestation is indeed shaded

[13] Ibid.
[14] Ibid.
[15] Ibid.
[16] Ibid.
[17] Pagden, Anthony. "Human Rights, Natural Rights, and Europe's Imperial Legacy." Political Theory 31, no. 2 (2003): 171-99. Accessed October 10, 2025. http://www.jstor.org/stable/3595699.

with Universalist stance that was, arguably, used for the legitimization of expansionist/imperialist designs. He supports his presumption while referring to the history of the making of UNO and the subsequent role its organs while treating the small and powerful member states with regards to their commitments with UN human rights treaties. Anthony's presumptions and apprehensions can be confirmed by taking into account the functioning of the human rights bodies in the post-cold-war period. Michael Ignatieff, who remained at Harvard as director of Carr Centre of Human Rights Policy and is currently serving as the president at Central European University, has envisaged the human rights enforcement movement as an emerging challenge to nationhood and states' sovereignty.[18] He asserts, an active pursuit to protect individual rights on the cost of indigenous cultural and religious values has the tendency of weakening the State from within itself. And there is no denial of the fact that the State is the primary subject of international law. He criticizes the activists whose rhetoric often elevates the status of these rights up to a universal religion or moral absolutism.

Samuel Moyn, in his famous work, The Last Utopia: Human Rights in History, sees the 'UN human rights' as one the universalisms launched in the pursuit of respective Utopias in human history and finds them no different from their equivalents.[19] According to him, the history of universalisms may be traced back in the very notion of 'humanity' coined by Stoics which influenced the great Greek philosophers for centuries. Moyn envisages the the emergence of human rights as incidental or perhaps accidental or merely a counter product of the Hitler's tyrannical order. Human rights, he asserts, have a relatively longer conceptual history but as a 'collection of movements' it is quite a recent enterprise of the greater powers of the world. He sees human

[18] IGNATIEFF, MICHAEL, K. ANTHONY APPIAH, DAVID A. HOLLINGER, THOMAS W. LAQUEUR, and DIANE F. ORENTLICHER. Human Rights as Politics and Idolatry:. Edited by GUTMANN AMY. PRINCETON; OXFORD: Princeton University Press, 2001. Accessed October 17, 2025. doi:10.2307/j.ctt7s610. Book review by Deacon, Roger. "Human Rights as Imperialism." Theoria: A Journal of Social and Political Theory, no. 102 (2003): 126-38. Accessed October 16, 2025. www.jstor.org/stable/41791394.

[19] Moyn, Samuel. The Last Utopia: Human Rights in History. Cambridge, Massachusetts; London, England: Harvard University Press, 2010. Accessed October 14, 2025. http://www.jstor.org/stable/j.ctvjk2vkf.

rights, in their post 1970s era, more as a political movement which has a 'supranational' agenda. Human rights have thus surpassed, according to him, from 'lightening the candles to naming and shaming'.

Samuel's critics like Gray Bass, John Witte and others regard him the orthodox revisionist and challenge his assumptions suffering from ignorance if not from the fallacy about the historical and philosophical foundations of modern human rights.[20] Such an academic discourse highlights the deep divide between the pro and anti-universalism.

Emmanuelle Jouannet, in his well cited work, Universalism and Imperialism: The True-False Paradox of International Law,[21] takes this debate to another level. He evaluates an essential and recurrent issue in 'international human right law' that is the relationship between 'universalism' of its some of the principles and the opportunity of their becoming a tool in the hands of 'imperialists'. Over the years the international law had been used as a bearer of such a paradox that is at one hand constitutive (as long as it ensures sovereign equality) but on the other self-negating (when it goes to override the states' sovereignty).

Paul Gready, in his book, The Politics of Human Rights,[22] while taking into consideration the various factors shaping the relationship between 'international human rights' and global politics, has argued that the former is now striving hard for universalizing the 'liberal democracy' as a pre-requisite for its smooth and uniform enforcement. More or less the same assertions are also made by Regilm Salvador in his well celebrated work, The Global Politics of Human Rights: From Human Rights to Human Dignity.[23] Hafner-Burton in his article titled, "Trading Human Rights: How Preferential Trade Agreements Influence Government Repression, has assessed the preferential treatments and favoritism of European Union, G8 and other groups for using trade to promote their version of 'liberal democracies' for human rights.[24] Moreover, scholars

[20] Witte, John. "The Long History of Human Rights: Review of Samuel Moyn, Christian Human Rights." Books and Culture 22, no. 2 (2016): 22-24.
[21] Ibid.
[22] Paul Gready, The Politics of Human Rights Third World Quarterly, Vol.24, No. 4 (Aug., 2003) pp. 745-757
[23] International Political Science Review 212 (2018)
[24] Hafner-Burton, Emilie M. "Trading Human Rights: How Preferential Trade Agreements Influence Government Repression." International Organization 59, no. 3

like R. Higgins has apprehended and offered a range of arguments to conclude the development of international law itself by the political organs of the United Nations.[25]

And if we have glance on the scholarship across the Europe and have the view of, for instance, South Asian authors, they apprehend the matter on another scale. Amartya Sen, a prolific Indian writer, who is frequently published and cited on the issue of economic inequality and its impact on the rights, examines, in a very well cited work of him, the western claims with regards to the earlier origins of the 'democratic and political liberties' in ancient Europe. He concludes, the ideas such as, the personal liberty and equality were non-existent in the ancient world and Europe was no exception in this regard. He strongly disproves the claim that individual liberties are generally compromised in the Asian civilization and culture and it is therefore that the Asian values could not contribute in the formulation of international or the so called universal standards of human rights. On the contrary, he argues by citing the teachings of Buddhism and Islam which provide more for the observance of 'tolerance' and 'equality' which are asserted, by the European authors, as the fetus and genesis of individual liberties. He refers to the political practices and tradition as founded by the King Asoka and Emperor Akbar were far earlier and time tested.[26]

Having reviewed the cross cultural dimensions of the issue from the perspectives of European, American and Asian authors it would appropriate if a reference, at this stage, is made to a religious stance. Islamic Law, which, since fourteen centuries, had remained a substantial part of the lives of Muslims but also influenced its contemporary legal traditions, is often portrayed, by the westerns, as foe of international human rights. Mashood A Baderin, a well published author and Professor of Islamic Law at the School of Oriental and African Studies has examined the relationship between Islamic Law and Human Rights in a number of journal articles and books. In his book International Human

(2005): 593-629. Accessed October 14, 2025. http://www.jstor.org/stable/3877810.

[25] R. Higgins, The Development of International Law Through the Political Organ of the United Nations, Oxford, 1963.

[26] Sen, Amartya. "Human rights and Asian values." New Republic 217, no. 2-3 (1997): 33-40.

Rights and Islamic Law, he analyses the matter at length. He asserts, it is now almost more than a half of the century that the debate on the relationship of Islam with the UN human rights has gone through the phases. The advocates of 'computability' have had gone, indeed, one mile ahead yet the human rights bodies are demanding for 'do more'. The Muslim states' practices and responses towards the treaty obligations is an empirical evidence which flats the claims of cross-cultural validity of the so called universality of human rights. The scholarship criticizing Islamic relativism in human rights can be classified into three groups. The modernist from within Muslim tradition, the orientalists who do not disregard Islam but aspire reformation in Islamic Law to minimize the gaps between Muslim and Western human rights and the skeptics who challenge the Islamic law and ethics in totality.[27] Guyora Binder also digs out the same sort of paradox of relativism and imperialism across the cultural and civilizational diversity.[28] The ignorance or exclusion of any input from so many other smaller states of the world in the formulization of UDHR is also substantiated by Susan Waltz in his article, Universalizing Human Rights: The Role of Small States in the Construction of the Universal Declaration of Human Rights.[29]

Having analyzed the literature focusing the context, content and the enforcement framework of human rights, we now try to figure out the most principal point of the debate which needs to be worked upon. According to many, if not most, the core area which is capable of dismantling whole value system of the international human rights program is the treatment of RUDs, namely the Reservations, Understandings and Declarations.

The foremost aspect of this problem lies in the jurisprudence of relationship of international law (and IHRL) with the domestic law.

[27] Baderin, Mashood A. International human rights and Islamic law. OUP Oxford, 2003.

[28] Guyora Binder, Cultural Relativism and Cultural Imperialism in International Human Rights Law :Buffalo Human Rights Review, Vol.5 pp. 211-221 (199). Also available at https:llssrn.com/abstract+1933950

[29] Susan Waltz, Universalizing Human Rights: The Role of Small States in the Construction of the Universal Declaration of Human Rights, Human Rights Quarterly Vol.23, No. 1 (Feb., 2001), pp.44 – 72. Also available at https://www.jstor.org/stable/4489323

Pierre-Hugues Verdier, and Mila Versteeg in "International Law in National Legal Systems: An Empirical Investigation[30] see and measure the theoretical foundation and the evolution made in the state practice from the traditional 'monist – dualist' classification. Finds overlapping shades of convergence between both in purview of mere post and pre legislative approvals for incorporation of international treaties into the domestic laws. Moreover, the self and non-self-executing treaties require different approaches, beyond the scope of this traditional classification, for incorporating the subject international obligations into domestic laws. States generally have the practice of accommodating their differences with treaty obligations by reserving the subject treaty provisions. Swaine, Edward T. in his article, Reserving[31] has drawn a comprehensive map of the history of Reservations in International Law and analyses the up-to-date jurisprudence and the significance of the matter with special reference to international human rights law. Taking the debate further, Eric Neumayer, in his article, Qualified Ratifications: Explaining Reservations to International Human Rights treaties,[32] provides an in-depth analysis as to whether the 'reservations' on the human rights treaties, indeed, account for the diversity or prove to be lethal for international human rights regime. The author, keeping in view the states practices of the 'liberal democracies', further argues for and against the role of reservations on core HR treaties. This study focuses only on the empirical data and does engage itself in the core legal questions such as who has the legal authority to hold a specific reservation as invalid and on what grounds. Around the same line argument, on may find more conforming views in the works of Mccall-Smith, Kasey L. Serving Reservations[33] and of Donders, Cultural Pluralism in International

[30] Pierre-Hugues Verdier, and Mila Versteeg. "International Law in National Legal Systems: An Empirical Investigation." The American Journal of International Law 109, no. 3 (2015): 514-33

[31] Swaine, Edward T. "Reserving." Yale J. Int'l L. 31 (2006): 307.

[32] T Eric Neumayer, Qualified Ratifications: Explaining Reservations to International Human Rights Treaties, the Journal of Legal Studies, Vol. 36, No. 2 (June 2007), pp. 397-429 (33 pages)

[33] Mccall-Smith, Kasey L. "SEVERING RESERVATIONS." The International and Comparative Law Quarterly 63, no. 3 (2014): 599-634. Accessed October, 2025. www.jstor.org/stable/43301624.8

Human Rights Law: The Role of Reservations.[34]

The Critical Role of Human Rights Bodies and Enforcement Mechanisms

As discussed and analyzed in the preceding section, the most critical element in the current things of scheme is the assumption of a most active (if not ultra vires) jurisdiction, on the part human rights bodies, in order to ensure compliance with subject treaty obligations. The legal mandate ascribed by the treaties creating such bodies hardly empowers them to embark on the status of Reservations, Understandings and Declarations (RUDs) submitted by the states parties, rather the later, under the general principles of International Law,[35] may limit their jurisdiction. The findings of aforementioned critical legal analysis also transpire a penumbra of illegitimate measures wherein these bodies declare certain reservations as invalid and require from the concerned states to withdraw the same. Eventually, the states are reported by human rights watchdogs as systematic violators. It ultimately strikes at the heart of the most fundamental principle of 'quod omnes' and 'pacta sunt servanda'. Interestingly, the treaty bodies hold the state's consent intact and declare their reservations as invalid.[36] Precisely there are three possible positions on the matter e,g.,

a. 'the state remains bound to the treaty except for the provisions to which reservation related.'

b. 'the invalidity of the reservation nullifies the instrument of ratification as a whole and thus a state is no longer party to the treaty.'

c. 'an invalid reservation can be severed from the instrument of ratification such that the state remains bound to the treaty including the provision(s) to which the reservation related.'

It, therefore, became imperative as to who shall have the legal authority

[34] Donders, Y. (2013). Cultural Pluralism in International Human Rights Law: The Role of Reservations.(Amsterdam Law School Legal Studies Research Paper; No. 2013-16). Amsterdam: Amsterdam Center for International Law, University of Amsterdam.

[35] See generally, the Vienna Convention on the Law of Treaties, 1969.

[36] Ryan Goodman, Human Rights Treaties, Invalid Reservations and State Consent The American Journal of International Law, Vol. 96, No. 3 (Jul., 2002), pp. 531-560 (30 pages)

to determine the compatibility test. Human Rights Committee assumed this mandate for itself while adopting General Comment No. 24 in 1994.[37] Consequently, the committee subscribes to the severability doctrine i.e. rendering the reservation invalid and holding the state party bound by the treaty with no benefit to the reservation.

This position is highly criticized, on the touch stone of the principle of 'State's Consent' by the proponents of anti-severability doctrine. State's consent is an evidence of its sovereignty which is the very foundation of International Law. Secondly, the applicable framework on the matter i.e. Vienna Convention on the Law of treaties though provides criterion for the validity of reservation does not expressly mentions the mandate to be exercised beyond the consent of states parties to the concerned instrument.

Areas of Conflict and Tension

While existing scheme of UN human rights defines a comprehensive package of possible natural human rights it is also exposed to a challenge pertaining to a sound formulation of corresponding standards and subsequent obligations for a fuller recognition and protection of the same.The substantial standards so defined in UDHR enjoy a general recognition across the regions of various cultural diversities. The subsequent forms and corresponding obligations however attract a lot criticism from the diverse socio-legal traditions. As a legend tells us 'devil lies in the details' holds truth when applied to the interpretation of human rights bodies while ensuring the implementation of such obligations in the liberal and non-liberal democracies.

The relationship between 'the freedom of religion' and the 'freedom of expression', the 'gender equality extending to the expression – same rights – for supposes in matrimonial affairs, 'right to life when extends to unborn child in context of unwanted pregnancy and LGBTI+ rights are among the core areas of tension and conflict, particularly in liberal and non-liberal societies and states.

[37] General Comment No. 24, para 18. Adopted at the Fifty-second Session of the Human Rights Committee, on 4 November 1994 (CCPR/C/21/Rev.1/Add.6)

Undermining the role and significance of Reservations, Understandings and Declarations in international human rights law by the human rights bodies has also made the situation from bad to worse. The resulting jurisprudence, therefore, disregards the diversity of Civil, Common and Islamic law in this regards. One may, therefore, attempt find a theorize-able pattern in Reservations, Understandings and Declarations submitted by the particular state parties on the specific areas of international human rights. For instance, the role of Nordic States (the liberal democracies) with regards to RUDs regime is conspicuously evident that they consistently object on reservations of non-liberal and conformist states. The international enforcement of human rights by the HR Bodies while ignoring the principle of sovereign equality has gone, beyond the scope of Charter, to an extent of 'naming and shaming'.[38]

Such tendencies leave the observers to ponder upon the questions as to whether the universalism is putting the journey of human rights on a fast track to make them a 'Humanism' a new religion.[39] What conclusions may be drawn while comparing the UN human rights with few other leading 'universalisms'? Seeing the human rights universalism among the other historical approaches aiming to achieve a universalistic or cosmopolitan faith.

Conclusion and Theoretical Framework for a Way Forward

Samuel P. Huntington in his famous work,[40] The Clash of Civilizations and the Remaking of World Order, concludes: the "clashes of the civilizations are the greatest threat to world peace, and an international order based on civilizations is the surest safeguard against world war." The hypothesis of the study at hand is based on the finding of Huntington as the 'relative enforcement of international human rights, based on the principle of sovereign equality is the only 'surest safeguard' against the greater conflict and 'world war'. The civilizational clash between the liberal and conservative democracies is apparently struggling with each

[38] See Article 2(1) and 78. United Nations Charter 1945

[39] See for instance. Harari, Yuval Noah. Sapiens: A brief history of humankind. Random House, 2014.

[40] Miller, J.B., 1998. Samuel P. Huntington, The Clash of Civilizations and the Remaking of World Order. Journal of Comparative Economics, 26(4), pp.833-835.

other with regard to the content and enforcement of human right. In pursuit of the so called universal enforcement, the UN Bodies, at times, go beyond the basic framework of International Law and the UN charter. This is not only alarming but also posing real threats to existing world order which was based on the principle of sovereign equality, as incorporated in the preamble of the charter. Within this theoretical framework the proposed research aims to comprehensively compile and provide legal arguments to revisit and reassure the pluralism (based on sovereign equality) in Internal Human Rights Law.

It is proposed that the jurisprudence of UN Human Rights Bodies needs to be reassessed from the comparative purview of the 'legal positivism' and 'natural law theories' and their relevance in human rights and international law. In his well celebrated work 'Taking Rights Seriously', Ronald Dworkin argues the 'Ruling Theory of Law' i.e. the legal positivism and utilitarianism, is contrary to the classical liberal tradition of 'individual human rights'.[41] UN human rights bodies need to adhere to the legal pluralism in order to conform/validate the classical 'theory of natural rights' as propounded by John Locke and further expounded by Dworkin.

As suggested Dworkin, the legal positivism, at times, fails not only in the true formulation of law but also becomes deficient in achieving its purpose, the universalization of UN human rights standards is posing serious challenges to the very basis of international law such as 'states' sovereignty' and 'consent'. While taking into consideration the jurisdiction and practices of the UN human rights bodies, as employed for the international enforcement of the so coined and designed human rights, this research will challenge the predominant theory of 'universalism' in a manner in which Dworkin challenged the then 'ruling theory of rules'. As exposed, by Dworkin, the skepticism, rigidity and gaps in the formalism of 'rules' this study will point out the problems in the formalism of human rights which, at times, become incompatible with the fundamental principles of international law, itself. Finally it may also be suggested that human rights bodies must retreat towards the 'substance' of natural rights instead of universalizing the 'forms' just like

[41] Dworkin, R. M. 2013. Taking Rights Seriously. London.: Bloomsbury.

Dworkin emphasized and asserted the retreat towards the ‘principles’ instead of failing the cause of justice by remaining stuck to the ‘rules’.