International Relations and Foreign Policy Committee | ILSA Chapter |
School of Law, CHRIST (Deemed to be University)

CAUSA ET CONSILIUM

IRFPC Newsletter

Issue- I

August 2024

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August 2024

Message From The Dean

Now more than ever, the old debate livens up, whether international law has reached a vanishing point in its aspiration to be called law. The world, more since the 7th of October 2023, has been in an inextricable vortex of war and consequent deprivation of dignified existence to thousands. Despite the stark coverage of the war in all its gore the solution seems elusive. Two judgements, one from the International Court of Justice and the other from the International Criminal Court, have not yet driven a sense of urgency to bring an end to the specter of inhumanity.

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Despite the shrill public opinion to stop the war, resounding from across major universities and anti-war rallies, the war machinery is still on full throttle exploiting and challenging every confounding provision in humanitarian law. The prime target of attacks have been civilians, schools, hospitals and supermarkets. In this sordid context, the initiative from the international relations committee of the School of Law, Christ University, to lend its voice to issues on international law assumes significance. I am sure that the present issue wouldunleash the angst and considered views of the students who aspire to a larger role in shaping a better world and a more convincing international law.

Dr.Jaydevan S Nair.
Dean
School of Law
CHRIST(Deemed to be University)

Message From The Associate Dean and HOD

I'm happy to know that the International Relations and Foreign Policy Committee has put together the first edition of this year's August Round-up Newsletter: Causa et Consilium. The Newsletter is a testament to IRFPC's goal to foster active understanding of intricacies of International Law and Foreign Affairs. I commend the Committee's success in organizing multiple Guest Lectures and hosting reading circles. The IRFPC's efforts to come up with useful events for the students of School of Law, CHRIST (Deemed to be University) and continuing to providing a space to expand students' interest in International Law is noteworthy. I extend my warm wishes to the IRFPC and wish them best regards for the future editions of the Newsletter

-Dr. Sapna S. A
Associate Dean and Head of Department
School of Law
CHRIST(Deemed to be University)

August 2024

Message From Faculty Coordinators

Ms. Shainy Pancrasius
Professor
School of Law
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The IRFPC Newsletter: Causa et Consilium showcases students efforts to comprehend and articulate their perspectives, supported by rigorous research on the legal ramifications of global events. This newsletter represents a significant step toward IRFPC's ongoing mission to promote discussions and research in the fields of International Law and International Relations.

Dr. Vidya Ann Jacob
Professor
School of Law
CHRIST (Deemed to be University)

Causa et Consilium, Newsletter aims at providing a platform for scholarly works, engaging discussions and opinions on contemporary dilemmas in international affairs. We strive to make this e-newsletter captivating and education for those interested in International Relations and Foreign Policy matters. The International Relations Foreign Policy Committee is comprised of enthusiastic and dedicated student members who have worked tirelessly to make this Newsletter enriching for the readers.

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August 2024

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SNIPPETS

1) LOST AT SEA- REGULATION OF FISH STOCK & BIODIVERSITY THROUGH UN HIGH SEA TREATY

Dive into the groundbreaking UN High Seas Treaty—our oceans' equivalent of the Paris Agreement—set to combat overfishing, protect marine biodiversity, and ensure the sustainable future of the vast, unregulated international waters for generations to come.

2) AN INTRODUCTION TO LIABILITY FOR NUCLEAR DAMAGE

Delve into the complex world of nuclear energy: international laws, India's unique liability stance, and how global crises and breakthroughs are reshaping atomic policies and clean energy dreams. Discover what's next for our nuclear-powered future!

3) NOZIK & ROWLS: A CONTEMPORARY ANALYSIS IN THE CONTEXT OF INTERNATIONAL LAW

Dive into the philosophical showdown of the century! Explore how Robert Nozick and John Rawls revolutionized justice, individual rights, and state roles, leaving an indelible mark on societal norms, international law, and human rights in this riveting analysis.

4) FROM RELIGIOUS TO A POLITICAL SYMBOL: HIJAB, IRAN & A POLITICS OF RELIGIOUS FUNDAMENTALISM

Mahsa Amini's tragic death has ignited a powerful movement in Iran, with women boldly defying oppressive hijab laws. This fierce stand against tyranny symbolizes a global fight for gender equality, challenging authoritarian regimes and patriarchal systems worldwide.

5) RIVERS AS BOUNDARY INSTRUMENTS IN PUBLIC INTERNATIONAL LAW

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SNIPPETS

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8) THE ROLE OF UNCRPD IN DEVELOPING THE INTERNATIONAL FRAMEWORK TO PROTECT THE RIGHTS OF PERSONS WITH DISABILITIES

Explore how the UNCRPD played a crucial part in ensuring that people with all types of disabilities were included and even incorporated into domestic laws by ratifying the Convention.

9) SPACE LAW: EXAMINING THE LEGAL CHALLENGES POSED BY INTERNATIONAL SPACE ACTIVITIES

Delve into the Outer Space Treaty which declares outer space is free for exploration and use by all nations and prohibits national appropriation. But lacks detailed regulations for commercial activities, necessitating additional agreements to address emerging legal challenges.

10) CLIMATE JUSTICE: THE RECOGNITION OF ECOCIDE AS A CRIME AGAINST HUMANITY

Ecocide, meaning "killing one's home," refers to large-scale environmental destruction. Highlighted during the Vietnam War and formally named by Olof Palme in 1972, Polly Higgins championed its recognition as an international crime, seeking accountability for environmental devastation.

LOST AT SEA – REGULATION of FISH STOCK AND BIODIVERSITY THROUGH UN HIGH SEAS TREATY

— Preetham V
Third year student, School of Law, CHRIST (Deemed to be) University

INTRODUCTION

The high seas, also known as international waters, refer to those parts of the ocean that do not fall under the jurisdiction of any particular country. They are located beyond the exclusive economic zones (EEZ) of coastal nations, which typically extend 200 nautical miles from their shores. The high seas make up about two-thirds of the world's oceans and cover vast areas that are collectively owned by all nations. Fishing on the high seas is a significant activity that has both economic and environmental implications but also challenges related to overfishing, where the fishing effort exceeds the ability of fish stocks to replenish themselves. Due to the vastness of the high seas and the difficulty in monitoring fishing activities, illegal, unreported, and unregulated (IUU) fishing has become a significant concern. It involves fishing vessels operating without proper licenses, misreporting catches, or engaging in destructive practices which lead to the depletion of fish populations, disrupt the balance of marine ecosystems threaten marine biodiversity. But these issues continue to exist in spite of the practice of fishing on the high seas being subject to regulations and agreements set by international bodies and treaties like the United Nations Convention on the Law of the Sea (UNCLOS) and the UN Fish Stocks Agreement.

UN HIGH SEAS TREATY

Hence it was much awaited with anticipation for the UN states to adopt the UN High Seas Treaty, or the "BBNJ" (biodiversity beyond national jurisdiction) had widely been called as being to the oceans equivalent of what the Paris Agreement is to climate change. But it is crucial to acknowledge to hoops this treaty had to go through since a committee was created in 2015, and after 5 failed attempts at negotiations and multiple revisions and omissions to the draft Treaty through the play of soft power diplomacy and numerous countries raising objections to clauses which could affect their personal interests. And this legally binding solution was finally adopted on 19 June 2023 by the Intergovernmental Conference on Marine Biodiversity of Areas Beyond National Jurisdiction.

Challenges in terms of sustainability and responsible resource management and the failure of international cooperation and adherence to established regulations also make this Treaty important for considering the long-term viability of marine resources and the preservation of the high seas' biodiversity.

But it was disappointing to note that Article 10 of BBNJ exclude fishing and fishing-related activities from its scope of Application after a few member states called for this exclusion during negotiations. Hence there is an inherent conflict with the scope of this Treaty to protect biodiversity but does not bother to check on the fish population as a part of that biodiversity.

Marine Protected Areas

Part III of the UN High Seas Treaty deals with

Area bases management tools such as Marine Protected Areas, which is defined by Article 1 (9) as 'a geographically defined marine area that is designated and managed to achieve specific long-term biological diversity conservation objectives and may allow, where appropriate, sustainable use provided it is consistent with the conservation objectives'.

This means that while the Treaty does not actively regulate the already exploitative fishing practices as noted above, it does suggest measures for protection biodiversity that may assist those local fish populations to benefit through protected areas, promotes capacity building among regional fisheries management organizations(even if these are just on paper without any further framework and lacks a legal mandate to put these into action).

Significance

In addition to utilizing international and regional organizations to safeguard the high seas, specific regulatory measures like Marine Protected Areas (MPAs) contribute to the mosaic of ocean protection. MPAs are defined zones in the ocean where access and activities are restricted within their boundaries. By limiting fishing and boating, MPAs serve as a means to safeguard marine species, ecosystems, and even historical and cultural sites. These protected areas are typically designated to encompass critical habitats essential for replenishing fish populations and supporting the functioning of ecosystems. Notably, in 2015, all 193 member States of the United Nations reaffirmed their commitment to conserve at least 10 percent of coastal and marine areas by 2020, adopting this target from the Convention on Biological Diversity as part of the U.N.'s 2030 Agenda for Sustainable Development.

While MPAs present a potent mechanism for safeguarding the high seas, they come with certain difficulties, such as determining the responsible authority for their implementation, what restrictions should be applied to those locations, and the best way to work with stakeholders. Due to the extensive requirements that entities must fulfill, it is not surprising that as of 2008, there were only 5,000 MPAs worldwide, covering a mere 5.9% of national waters and protecting a mere 0.5% of the high seas

Conclusion

The UN Treaty of the High Seas represents a significant step towards safeguarding the health and sustainability of the world's oceans. By addressing the gaps in current international law and promoting comprehensive regulations, the treaty can contribute to conserving marine biodiversity, promoting responsible resource management, and mitigating the impacts of climate change. However, its successful implementation relies on a collective commitment from all nations to put aside individual interests in favor of preserving this global commons resources for future generations. Only through international collaboration, innovation, and long-term planning can we secure a sustainable future for the high seas and the life it sustains. Moreover, the adoption of the treaty marks a significant milestone in the global effort to protect marine biodiversity and promote sustainable use of the high seas. It is expected to provide a comprehensive framework for managing and conserving marine resources, addressing the challenges of overfishing and IUU fishing, and ensuring the health and resilience of ocean ecosystems for future generations.

AN INTRODUCTION TO LIABILITY FOR NUCLEAR DAMAGE

— Sonakshi Gopi
Fourth year student, School of Law, CHRIST (Deemed to be) University

1.Introduction

The use of nuclear energy has been a polarising topic given its dual capacity of potential employment for civilian purposes and military weapons programs. However, the twin threat of climate change and the energy crisis and insecurity exacerbated by the ongoing Russo-Ukrainian conflict juxtaposed with the breakthrough in nuclear fusion at Lawrence Livermore in 2022 has nations reconsidering their atomic policies. Given the considerable risk of operating reactors in the backdrop of the catastrophic turn of events in Fukushima and Chernobyl and the possibility of harnessing boundless clean energy, it renders answering the question of liability in the event of nuclear damage a crucial legal matter. This article seeks to provide an overview of the existing international legal framework and a brief overview of India's civil liability for nuclear damage.

2. Introduction to International Nuclear Law

As defined in the IAEA's Handbook on Nuclear Law, nuclear law refers to "The body of special legal norms created to regulate the conduct of legal or natural persons engaged in activities related to fissionable materials, ionising radiation and exposure to natural sources of radiation." This body of law is governed by a set of principles and conventions, accompanied by legislation at the national level.

Regarding the question of liability, the international liability regime consisting of specific principles and conventions along with the corresponding national laws that become applicable in the event of a nuclear accident at an installation, comprising the following:

- Conventions:
  - Vienna Convention on Civil Liability for Nuclear Damage
  - Joint Protocol Relating to the Application of the Vienna Convention and the Paris Convention
  - Convention on Supplementary Compensation for Nuclear Damage
- Principles:
  - Strict liability Legal channelling of liability onto the operator
  - Exonerations from liability
  - Limitation of liability in amount
  - Limitation of liability in time
  - Congruence of liability and coverage
  - Equal treatment

The regime through its conventions also includes principles to specifically address matters of transboundary damage, cross-border compensation claims and other damage caused by radiation.

3.Conventions and principles decoded

3.1.Conventions

3.1.1.The Vienna Convention on Civil Liability for Nuclear Damage

Signed on 21 May 1963, it has 44 parties and came into effect on 12 November 1977. It was amended by the 1997 protocol, which came into effect on 4 October 2003. It is open to all States. This

convention on civil liability seeks to establish a compensatory regime through a set of minimum standards of financial protection to be provided by the Contracting Parties in the event of damage arising from nuclear accidents at national installations. The regime itself is governed by a set of general principles including:

- Exclusive liability incurred by the operator of an installation
- Strict liability imposed on the operator - victims have no burden of proof to show culpability of the operator
- Obligation of the operator to obtain insurance
- Equal treatment ensured to all victims, irrespective of nationality or citizenship/residence status
- Competence of courts in the territory of the Contracting Party in whose jurisdiction the accident occurred and outside the territory of the Contracting Parties in the event of an accident during the course of transboundary transportation of nuclear material for peaceful purposes

Along with the Convention, the Optional Protocol for the Compulsory Settlement of Disputes was adopted in 1963. Any nation state may choose to be bound by the protocol, even if they are not Contracting Parties to the Vienna Convention. The International Court of Justice's interpretation and application of the Convention serve as the foundation for the dispute resolution process. The parties also have the choice of arbitration or conciliation.

The extent of financial protection was expanded in 1997 with the introduction of a protocol to amend the Vienna Convention, which raised both the operator of an installation's financial culpability and the maximum amount of compensatory damages a victim might seek. Even though they were not Contracting Parties to the original convention, all nation states may agree to be bound by the by the protocol.

For nations which have consented to be bound by both the convention and the amending protocol, these instruments will be collectively read as a single text.

3.1.2. Joint Protocol Relating to the Application of the Vienna Convention and the Paris Convention

While regimes for civil liability for nuclear damage laid down in the Vienna and Paris Conventions are largely similar, there was an absence of a uniform third party liability framework. The lack of treaty relations between the two sets of Contracting Parties creates a limitation on victims to seek compensation only within the territories of the respective Contracting Parties to that convention, among other obstacles such as determining operator liability.

The Joint Protocol seeks to forge treaty relations between the two sets of Contracting Parties, which allows Parties to enjoy benefits of both Conventions. It also lays down that in the event of a nuclear accident, only one of the Conventions will be applicable, based on which operator liability and scope of compensation will be decided, therefore so long as the victim hails from a Paris or Vienna Convention or Joint Protocol State, will be eligible for claims for damages.

3.1.3.Convention on Supplementary Compensation for Nuclear Damage

The Convention on Supplementary Compensation for Nuclear Damage (CSC) sought to create an international standard regime for the compensation of victims of civilian nuclear accidents by setting a floor national compensatory amount payable. It seeks to supplement the financial liability rules laid down in national laws. It provides that a State must ensure the availability of 300 million SDRs ["Special Drawing Rights"], the unit of account defined by the International Monetary Fund. The Convention sets parameters on the financial liability of nuclear operators, stipulates time limits for possible legal action, requires that nuclear operators maintain insurance or other instruments of financial security,

and provides for jurisdiction and applicable law in the event of a nuclear incident.

4. Principles

4.1.Exclusive liability

This principle refers to the attribution of liability solely to the operator of an installation in the event of an accident and is the individual against whom claims for damages can be brought. It ensures that suppliers, builders and other parties are immune from liability and the legal remedies are available only against the operator.

4.2.Strict liability

Strict liability absolves the victim of the burden of establishing culpability. Whether or not fault or negligence can be proved, the operator is responsible in the event of an accident. Due to the intricacy of nuclear research, this makes the legal procedure simpler by removing any impediments that might be present, particularly those related to the burden of evidence. Strict liability, to put it simply, means that the cause of an accident need not be shown.

4.3.Mandatory financial coverage

Mandatory financial coverage assures that funds will be made available by the operator or their insurers to pay for losses by requiring the operator to maintain insurance coverage. National laws, which frequently rely on responsibilities under international treaties, determine the minimal level of protection that is necessary. The extent of this obligatory protection has grown over time, largely to account for inflation and partially to let nuclear operators shoulder greater responsibility.

4.4.Exclusive jurisdiction

Exclusive jurisdiction indicates that the only courts with jurisdiction over damage claims are those in the nation where the accident occurs. This has two impacts. First, it prevents "jurisdiction shopping," in which claimants seek national laws and courts more receptive to their claims. This gives nuclear operators some assurance and protection. Second, it places the appropriate court close to the site of the harm, allowing victims to file claims without having to go far. Even when the accident is related to transportation and the pertinent company is based far away, this, paired with exclusive liability, ensures that relevant courts are reachable.

4.5.Equal treatment

One of the leading principles of the nuclear liability conventions is the non-discrimination principle: the conventions and the national laws under them must be applied without discrimination based on nationality, domicile, or residence. This ensures that victims in States other than the accident State are treated the same way as victims in the accident State

4.6.Limitation of liability

This principle of limitation protects nuclear operators, sparking controversy. Suppose the operator can demonstrate, for instance, that the nuclear incident was directly caused by hostilities, a civil war, an insurrection or that it was caused entirely or in part by the victim's willful misconduct or gross carelessness. In that case, the operator will be released from liability. However, in the event of force majeure [Act of God], the operator cannot escape liability. The risks of an accident are effectively socialised by lowering the amount that operators would have to pay. When the damage reaches a particular threshold, liability shifts from the individual operator to the State, a group of cooperating nuclear operators, or even both. This restriction acknowledges the advantages of atomic energy and the implicit acceptance of the risks a State accepts by approving the construction and operation of a power plant, similar to other significant infrastructure.

5. Liability for damage occurring during transportation and for other radiation damage

With respect to damage during transportation, in the absence of a contract between the supplier and operator stating otherwise, liability will be imposed on the operator sending or receiving the nuclear material. Even if the storage occurs at a nuclear plant owned by a third operator, the storage of radioactive material incidental to transport has no bearing on the transport liability.

On the matter of liability for other radiation damage, other liability rules should be used in situations when radioisotopes or X-rays are used during medical treatment. The patient will often only consent to such medical therapy after being informed of and consenting to potential hazards. Even reduced strict liability is not appropriate in that situation. Basic tort laws, which follow the idea of fault-based liability, should be used. States should ensure that financial mechanisms are prepared for such liabilities before adopting unique regimes of liability for radiation damage brought on by radioisotopes and X-rays

6. Where India does stand

The domestic legislation regarding financial liability in a nuclear accident is The Civil Liability for Nuclear Damage Act, 2010. It provides for absolute liability being imposed on operators, with a conditional right of recourse against suppliers. This is where it deviated from the CSC which only attributes liability to operators, while suppliers are not considered in the liability equation. This has also spooked foreign entities and nations and even domestic companies that had previously considered entering into civilian nuclear power projects with India or the Central Government. However, it should be borne in mind that the provision for supplier's liability was brought in the context of the compensatory chaos following the Bhopal Gas Tragedy. The operator's liability is presently fixed at Rs 500 crores, exceeding which the Union Government will be liable for up to 300 million Special Drawing Rights and a 10 year time limit to claim compensation by victims of nuclear damage has been fixed. The liability limit is significantly lower than those of several international counterparts such as Canada. Additionally, the Act mandates that the operator obtain insurance, for the purpose of which a domestically run insurance pool was set up.

The major concern from the international community with the Indian law is the backdoor for third party liability in the form of an operator's optional right of recourse against a supplier in the event of a fault on the supplier's end which directly or indirectly resulted in the nuclear accident. This right can be exercised subject to the discretion and approval of an Indian court, which has been satisfied of the supplier's fault. This vaguely worded and ambiguous provision under Section 17(b) of the Act has dismayed both domestic and foreign entities from investing in civilian nuclear energy projects in India due to concerns of their culpability. While the operator's liability has been limited in terms of amount and time, the supplier's liability is undefined and thereby unlimited.

The government's stance on this right of recourse available to the operator is that it may be optionally, but not mandatorily exercised. This raised eyebrows since as a signatory to the CSC, India deviated from the universal liability regime set by the Convention which solely channelled financial and compensatory liability to operators of nuclear power plants and installations.

Given the country's ambitions to be powered by clean energy, with a large reliance on nuclear energy, a review of the 2010 Act and the policy of supplier's liability in order to invite private players into the renewable energy sector may be favourable.

Nozick and Rawls: A Contemporary Analysis in the Context of International Law

— Deon Dylan Fernandes
Fourth year student, School of Law, CHRIST (Deemed to be) University

Introduction

Robert Nozick and John Rawls are two philosophers whose theories have significantly influenced the understanding and interpretation of justice in legal systems. Nozick's libertarianism and Rawls' theory of justice as fairness provide contrasting perspectives on the role of the state, individual rights, and distributive justice. Robert Nozick in his acclaimed work, 'Anarchy, State and Utopia' (1974), contended John Rawls' distribution principle to be erroneous by discrediting his famous book,'A Theory of Justice' (1971), with the conception of the entitlement theory. Rawls' theory establishes a broad understanding of the idea of "Justice as Fairness" which lays down a theoretical concept of social justice in a democratic setting.

Rawls' Theory of Justice as Fairness

Rawls sets the Original Position of equality which in turn provides for two fundamental theories of justice:

(a) "Individual citizens are entitled to an equal right for the most extensive scheme of basic liberties;

(b) "Social and economic inequalities are to be arranged so they are both:

i. Reasonably expected to be to every individual's advantage; and

ii. Attached to positions and offices open to all".

The theories of justice coupled with the theme of distributive justice wherein the sharing of goods and freedoms is a matter of concern to society forms the basis for Rawls' arguments. Furthermore, he states that it is reasonable to treat individuals unequally if it entails a benefit for others at large. The welfare, development and benefit of society is paramount to the existence of society. The taxes imposed on the citizens by the state to look after the welfare of the citizens itself thus finds valid grounds in Rawls' books (Rawls, 1971).

Nozick's Critique and the Minimal State

Nozick criticises Rawls' theories by envisioning the creation of the 'Minimal State'. He opposes the involvement of a state and the theories of distributive justice. According to Nozick, the only relevant state that can exist is the minimum state which does not infringe on any individual's rights as the only functions that the state is permitted to perform is to protect the individual against force, theft and the enforcement of contracts. He lays down two mandates for the functions of a minimalist state: (i) an appropriate monopoly of force in a given territory; and (ii) the provision of protection by the state within its geographical boundaries. In order to combat the argument of the inability to maintain law and order in such a state, Nozick developed the theory of 'mutual protection associations' which are arrangements formed by a small group of individuals to defend and enforce the rights of one another on the basis of constant vigilance (Nozick, 1974).

Entitlement Theory and Individual Rights

In addition to this, Nozick put forth his 'Entitlement Theory' in opposition to Rawls' theories which states that there exist three forms of acquisition of any form of property:

1. Justice in acquisition: An individual who acquires property which was not owned by anyone

previously is entitled to that property. The initial act of acquisition grants unlimited rights on the owner with regard to possession, use and disposition.

2. Justice in transfer: An individual who has been transferred property by another individual who owned the property previously is entitled to the property transferred on the grounds that the transfer is just.

3. Justice in rectification: Any past grievances that have occurred as a result of the first two principles can be rectified by appropriate means under the third principle. The rectification principle entitles an aggrieved individual to trace the injustice caused to them and rectify it by any means available.

Nozick asserts that individuals are born with fundamental rights that cannot be taken away from them. This is further elaborated as he states that individuals not only possess the right to their own body or actions but also the self-ownership of property. He further contradicts Rawls' theory by stating that the right of an individual on the property that they have acquired is absolute even if it entailed possession in an unequal setting (The rich having possession of property while the poor do not). Thus, any interference with the property such as imposing tax on the property itself would infringe the rights of an individual. Nozick contends that the distribution system as proposed by Rawls would thus infer a collective ownership of people's property and actions by other people thus going against individualism.

Critique of Rawls and Nozick in the Contemporary Context

In a further critique of Rawls, Nozick argues that Rawls uses a group in the Original Position instead of viewing it from the standpoint of actual individuals. The distribution theory thus caters to the needs of the lower or underprivileged strata of society and disregards the gain that is possessed by people who have come across it with sheer talent and merit thus causing inequality.

Rawls' theories are based on social welfare while Nozick's relies upon the assumption of individual capacity and intellect. While both theories are strong political opinions, they have a plethora of flaws which fail to take into account a variety of factors that may influence the theories in the contemporary world. Rawls' theories of justice which disregard equality in totality, fails in having to account for the accumulation of resources by the well-to-do strata of society and how they can strip the underprivileged section of their rights, property and basic opportunities. On the other hand, Nozick's theories are purely individual-centric and fail to consider the needs of the society at large. Furthermore, Nozick revolves his theory around the benefit of individuals in the singular sense rather than envisioning individuals as a collective unit and thus, the theory ceases to be practical in nature. Nozick also does not elucidate upon how such a 'Minimalist State' can be created in the first place and instead resorts to utopian generalisations and claims as a substitute which renders his theory incapable of explaining the formation of an individualist capitalistic minimalist state.

International Law and the Influence of Nozick and Rawls

It is pertinent to note that under International Law, these theories have not been analysed in detail. However, the principles that are derived from these philosophies are embedded in legislations and precedents around the world. The Universal Declaration of Human Rights (UDHR, 1948), which aims to protect individual rights and promote social justice, can be seen as a reflection of both Nozick's libertarian theory and Rawls' theory of justice as fairness. Furthermore, these theories are also used as frameworks for legal analysis and interpretation. For example, in the case of "Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons" by the International Court of Justice, the court's

deliberation on the balance between state security and human rights reflects the tension between Nozick's libertarian theory and Rawls' theory of justice as fairness (ICJ, 1996). In addition to this, the International Court of Justice's "Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory" (ICJ, 2004) reflects Rawls' principle of equal basic liberties. The ICJ held that the construction of the wall and its associated regime impeded the liberty of the residents of the Occupied Palestinian Territory, which is contrary to applicable international humanitarian law and human rights law.

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"Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons" by the International Court of Justice, the court's deliberation on the balance between state security and human rights reflects the tension between Nozick's libertarian theory and Rawls' theory of justice as fairness (ICJ, 1996). In addition to this, the International Court of Justice's "Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory" (ICJ, 2004) reflects Rawls' principle of equal basic liberties. The ICJ held that the construction of the wall and its associated regime impeded the liberty of the residents of the Occupied Palestinian Territory, which is contrary to applicable international humanitarian law and human rights law.Their struggle is more than just removing their hijabs; it is a symbolic reflection of their quest for self-determination and empowerment in a society that frequently limits their agency and opportunities. Their resistance serves as an example to those who believe that genuine social change can only be accomplished when women are allowed the opportunity to determine their own destinies and make life-altering decisions.

Global Call for Gender Equality

The tragic death of Amini, a courageous campaigner, has sparked a fierce protest among Iranian women and drawn international attention to the issue. It highlights the hijab's transformative potential as a focal point of resistance to authoritarian political structures that mix religion and politics. The conflict in Iran is a microcosm of a larger global struggle in which women are always fighting restrictive conventions and structures that impede their advancement and equal participation in society. The campaign launched by Amini's untimely death reflects the unwavering determination of individuals who want a better, more free future for all. It is a powerful reminder that progress is not always linear and that real change often comes at a high cost. As the movement gains traction, it sends a clear message to authoritarian institutions and patriarchal systems around the world that the fight for gender equality and equity is not going away. The fight for women's rights is not limited to Iran; it resonates with people all around the world who want to build societies that value gender equality and human rights. Rawls' theory has had a significant influence on human rights laws, international humanitarian laws, and international economic policies (Pogge, 2002). For instance, the UDHR and the International Covenant on Economic, Social, and Cultural Rights (ICESCR, 1966) reflect Rawlsian principles of social and economic equality. Nozick's libertarian theory, however, has had a more limited impact on international law, but it has influenced discussions around sovereignty, non-intervention, and property rights. Additionally, in the principles of the United Nations Charter of 1945, which emphasizes respect for the sovereignty and territorial integrity of states. It can then be said that these philosophical theories may not be too prevalent in the application of law, but it surely finds its place in the interpretation of Law.

FROM RELIGIOUS TO A POLITICAL SYMBOL: HIJAB, IRAN AND THE POLITICS OF RELIGIOUS FUNDAMENTALISM

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The death of Mahsa Amini, a 22-year-old Iranian woman, has sparked a fierce wave of protests and opposition to Iran's draconian rules on hijab. Amini's terrible death, which was highlighted by claims of serious head injuries sustained during her arrest, has generated indignation across the country. Iranian women have come to the streets, not only to grieve Amini's early death, but also to use her tale as a rallying cry against Islamic fundamentalism's strangling hold, which imposes stringent dress standards and behaviours. In Iran, the hijab, a religious garment typically associated with modesty, has evolved into a powerful political symbol. Amini's situation is not an unusual event; it reflects the hardship of other Iranian women who have long been subjected to severe hijab restrictions, motivating them to take courageous steps against these repressive policies. The act of publicly burning hijabs is a powerful visual protest against the decline of personal autonomy and choice. As women stubbornly stand on burning police cars, it is clear that the battle has evolved beyond simple dress codes, into a bigger movement that is attacking the entire core of Iran's political structure. Amini's heartbreaking narrative weaves together with other terrible accounts of gender-based violence and institutional injustice. Sahar Khodayari, whose self-immolation stunned the world, and Amini herself are heartbreaking illustrations of the extent to which Iranian women are driven by a mix of religious conservatism and state power. These women's stories reverberate throughout the world, bringing attention to the sad reality that people living under the shadow of religious fanaticism experience.

Women's Rights Amid Religious Conservatism Protests in response to Amini's killing raise serious concerns about the possibility of a bigger anti-government movement. The protests expose a chasm between the ruling establishment and a segment of the public that longs for change. With each protestor who burns a headscarf or stands up to persecution, the possibility of a seismic transformation in Iranian politics becomes more evident. The international community has taken note, with officials such as Robert Malley, the United States' special ambassador to Iran, decrying violence against women and calling for stronger safeguards. This movement, however, goes beyond dress and gestures of resistance. It emphasises a basic battle against the historical link between religion and politics that has hindered women's rights. The larger consequences extend well beyond Iran's borders, acting as a cautionary tale about the dangers of religious fanaticism infiltrating the fabric of governance. The comparisons to other countries, such as Bangladesh and Pakistan, demonstrate the critical importance of protecting women's agency and preventing reactionary views from infiltrating sectors of education and public life.

<u>Defying Hijab Laws for Freedom</u>

The bravery and perseverance of Iranian women who risk their lives to oppose arbitrary norms, especially the imposition of hijabs, demonstrate the great importance of their movement. Defying obligatory hijab legislation is more than just a statement of personal preference; it is a fight for personal freedom, equality, and autonomy. By

questioning the legality of hijab enforcement, these brave women are also challenging the larger patriarchal systems that perpetuate gender imbalance. Their struggle is more than just removing their hijabs; it is a symbolic reflection of their quest for self-determination and empowerment in a society that frequently limits their agency and opportunities. Their resistance serves as an example to those who believe that genuine social change can only be accomplished when women are allowed the opportunity to determine their own destinies and make life-altering decisions.

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RIVERS AS BOUNDARY INSTRUMENTS IN PUBLIC INTERNATIONAL LAW

- Subbaiah Muthanna
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Introduction

Public international law is a complex web of regulations and agreements that govern the interactions between sovereign states. Within this framework, the classification of rivers as boundaries holds historical, legal, and practical significance. For centuries, rivers have been considered natural features that demarcate territorial limits between nations.

History

The concept of rivers as boundaries can be traced back to ancient civilizations, where water bodies played a pivotal role in delineating territories. During the Age of Discovery, the Treaty of Tordesillas in 1494 exemplified the strategic importance of rivers in dividing the New World between Spain and Portugal. This treaty used the line of demarcation and the course of rivers to establish territorial claims. Similarly, the Peace of Westphalia in 1648 marked a turning point in modern international law by introducing the principle of uti possidetis juris. This principle recognized existing boundaries and further solidified the role of rivers as international borders.

Due to their inherent linearity, perceived impassibility, and the fact that they physically incise and divide the landscape, rivers have long been used as natural and supposedly egalitarian territorial delimiters between nations. Ancient empires, from the Romans to the Neo-Assyrians, used rivers as important landmarks in their written cartographies and conceptions of space, as well as physical representations of the extent of their powers. Indigenous populations often used rivers as divisions between tribes. In 18th century France, political leaders advanced the concept of 'limites naturales' ('natural frontiers'), the notion that rivers represent natural and just linear abstractions of frontier zones, in turn rationalizing France's territorial expansion. Indeed, French policy amply used rivers to delimit territory, and other Western European colonial powers followed suit. Similarly, both watershed divides and river channels proper were used extensively to define territory throughout the expansionist history of the conterminous United States, as mapped cartographically by Smith (2020). Many of these borders still persist today and contemporary powers across the globe continue to commonly use rivers as borders when territorial lines are redrawn.

River Classification

The classification of rivers as boundaries rests on several key principles of international law. The principle of territorial sovereignty asserts that states have exclusive jurisdiction over the territory within their borders, including rivers that flow through their territory. Additionally, the principle of the natural boundary recognizes geographical features, such as rivers, as inherent markers that separate nations. This principle acknowledges that natural boundaries are not subject to the whims of political decisions but rather are grounded in the geography of the land. Equity is another fundamental principle that contributes to the classification of rivers as international boundaries. It emphasises the fair and equitable distribution of transboundary resources, including watercourses that often coincide with rivers.

This principle is crucial in ensuring that shared rivers are managed in a way that benefits all riparian states, preventing unilateral actions that could harm downstream neighbours. Such a classification is additionally supported by a robust legal framework. Bilateral and multilateral treaties play a pivotal role in establishing specific boundaries along rivers. These agreements delineate borders using various methods, including the river's main channel, thalweg (the deepest part of the river channel), or the middle line principle. The utilisation of these methods depends on the specific context of the river and the interests of the states involved. There have been several instances in history where sudden changes in the course of a river (known as avulsio) have also caused changes in boundary, leading to several conflicts and disputes. As per international law now when sudden changes occur, the boundary line remains the same and when slight or imperceptible changes occur or slowly, the boundary line can indeed be shifted as per the net difference in territory.

Boundary Function

The function of a river, i.e., the manner in which a river is used should be the determining factor in deciding which type of boundary will be applied in concreto. The function itself will in practice be influenced by the natural properties of the river. Only if the function of the river is seriously considered in fixing the boundary line will the boundary be in accordance with the real interests of the border States. The interests of the riparian States should be the guiding principle in the fixing of boundaries in general, particularly so with regard to rivers. Therefore, it is important to realise the ways of establishing riparian boundaries, and how these are changing the territorial sovereignty of states. International conventions also contribute to the legal framework surrounding rivers as boundaries. The United Nations Convention on the Law of the Non-Navigational Uses of International Watercourses (1997) provides guidance on the use, management, and protection of transboundary watercourses. While this convention does not create binding rules on the classification of rivers as boundaries, it establishes principles for cooperation, equitable use, and environmental protection in shared river basins

Contemporary Examples

Numerous contemporary examples underscore the classification of rivers as boundaries in public international law. The Rio Grande, serving as a boundary between the United States and Mexico, is governed by the 1944 Water Treaty. This treaty allocates the river's water resources between the two countries, highlighting the necessity of international agreements for effective river management.

The Mekong River exemplifies the complexity of managing shared river basins. Flowing through China, Myanmar, Laos, Thailand, Cambodia, and Vietnam, the Mekong's waters sustain millions of people. The Mekong River Commission was established to facilitate cooperation among these countries, emphasising the significance of collaborative efforts to ensure sustainable resource use and prevent conflicts. The Nile River, with its complex legal regime, exemplifies the intricate challenges associated with transboundary rivers. The Nile Basin countries have navigated historical agreements and negotiations to allocate the river's waters, with the 2010 Nile Cooperative Framework Agreement aiming to create a more equitable distribution of the Nile's resources.

Conclusion

Rivers have been integral to human civilization since time immemorial, serving as natural boundaries that shape political and social landscapes. In public international law, the classification of rivers as boundaries is understood by the existing historical practices, legal principles, and contemporary agreements. These rivers embody the complexities of shared resources and territorial sovereignty, highlighting the need for cooperation, equity, and diplomacy among nations. As our world faces growing challenges related to water scarcity and environmental sustainability, the significance of rivers as boundaries remains a crucial aspect of international relations, showcasing the ongoing relevance of these natural features in a modern legal context.

ARTIFICAL INTELLIGENCE AND LEGAL PERSONHOOD IN INTERNATIONAL LAW

-Aditi Prabhu

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Introduction

Our business, social, and private lives are all impacted by Artificial intelligence to the level we deal with in our day-to-day lives. We must deal with the effects of these systems' growing autonomy as they become more intelligent, that is, by giving them legal personhood. One must also consider the legal ramifications of granting personhood rights to artificial intelligence or emulated human entities as we approach technological advancements, that define and revolutionize our understanding of intelligence, cognition, and personhood, particularly when speaking of mind uploads and artificial intelligence.

This article aims to portray the status of Artificial intelligence, including Artificial General Intelligence and Artificial Superintelligence, from an International Law standpoint.

Definition of AI

It is essential to understand in depth what Artificial intelligence is to dive into the concept of legal personhood of AI.

The World Intellectual Property Organisation, in its 2020 paper, defines Artificial intelligence (AI) as "a discipline of computer science that is aimed at developing machines and systems that can carry out tasks considered to require human intelligence, with limited or no human intervention." There are two components of AI- deep learning and machine learning.

Further, AI is of two types- Narrow AI and General AI. Narrow AI can be defined as common computers that can perform ordinary tasks without being expressly trained, as in the case of the virtual assistants Siri, Alexa, and so on. General AI (also known as Artificial General Intelligence, abbreviated AGI) refers to machines with the same intellectual capabilities as humans to perceive, learn, and carry out tasks. In a 2013 study, researchers found that Artificial General Intelligence would achieve perfection by 2075, naming it "superintelligence" (also known as ASI or Artificial superintelligence), which is said to have intellect capabilities far superior to those of humans AI has a lot of positive impacts on society and is well known for making strenuous and time-consuming tasks simpler for humans, for example, being employed in the medical field to carry out complex operations and surgeries. Another positive impact of this technology is its potential to solve significant global issues, such as achieving the United Nations' 2030 Sustainable Development Goals. However, it also has a lot of negative impacts on society; for example, AI used in 'facial recognition' is a pure violation of a person's privacy as this data is stored and later used without that individual's knowledge and consent. There are still many aspects of Artificial intelligence that currently have no adequate statute to address these challenges. Thus, it is crucial that the law must define and draw boundaries to regulate it.

AI and Legal Personhood

Legal personhood is generally directly or indirectly associated with human beings, such as corporations, states, and international organisations. One of the essential elements of personhood is " the intellectual autonomy of the entity." An entity is said to have a high level of autonomy if it possesses general consciousness, which it can evolve and enhance based on its critical reflection and assessment of external factors. On the other hand, an entity is considered to have a lower level of autonomy if it

can exhibit such consciousness in a limited domain or can self-evolve and self-adapt to external forces, thus making decisions "on its own," it has a lower level of autonomy. Even in the latter case, such an entity will possess some necessary autonomy from its original programming.

However, matters are even more complicated because when AI develops into possible personhood, it will probably not behave differently than the human intellect. "Ultimately, robots' autonomy raises the question of their nature in the light of the existing legal categories—of whether they should be regarded as natural persons, legal persons, animals or objects—or whether a new category should be created, with its specific features and implications as regards the attribution of rights and duties."

The defining factors of human personhood will be largely adjusted for AI entities, and legal concepts such as morality, ownership, profitability and viability will have a different meaning. One of the central debates revolves around the characteristics and ownership of intellectual property, which revolves around whether non-human entities, such as AI, can be granted licenses for intellectual property by courts. However, the debate is still unresolved, but the legal theory has justified in favour of the contrary position. The obvious solution to such a problem is to admit that, on the one hand, an AI entity may have made a discovery on its own, and, on the other hand, the legal notion of patents cannot be applied to entities for that the ambition of human profit has no bearing. The solution, then, is not to grant some person (or persons) rights from a patent that they do not deserve—at the expense of everyone else—but rather to have no patent.

In the co-existence of "intelligent" entities, the imbalance between the levels of intelligence and potential inconsistency in fundamental concepts could challenge the coherence of social, political and legal systems. Eventually, AGI and ASI will require the attribution of some extent and some legal personhood, bearing rights and obligations

Global Commons and the "International Law Supremacy" Principle in Artificial Intelligence

AI's present and future implications, in particular AGI and ASI, are one of the main reasons the international law supremacy principle needs to be invoked through an international treaty, as they may lead to the creation of new categories of actual personhood and raise the possibility of legal personhood.

The first reason is its significance on humankind, which exceeds the sphere of national interests and legal systems. Secondly, the emergence of a different type of legal personhood by merging AI and cyberspace could lead to the breach of legal personhood and sovereignty, thus requiring regulation by another legal system. An international treaty is proposed to regulate existing AI technology leading to AGI and ASI, as well as the latter two types of AI.

Furthermore, there may be a breach in the relationship between legal personhood (in the sense of rights and obligations) and sovereignty - which may arise due to the merging of AI and cyberspace due to the emergence of a new type of personhood in the sense of autonomous intellect. This merging of AI and cyberspace could potentially result in it not being attached to physical space and, therefore, the states, leading to these entities possessing actual personhood being out of reach of the legal authority of states and thus needing to be regulated by international law through a treaty.

Lastly, there is a need for legal characterisation of the different levels of AI development from the standpoint of legal commons and the principle of "res communis". Firstly, because AI is perceived as either an innovative technology or the culmination of numerous technological developments,

ultimately as "res" (or a “thing”), due to which AI has been only a privilege of the private technological sector- with little to no public regulation. Secondly, there is a need to comprehend the emerging intellect personhood and different types of legal personhood emerging due to the developed AGI and ASI technologies to prevent unfair treatment towards humans. In between these two “ends”, there is an intermediate phase of the development of the AI technology towards AGI and ASI and, therefore, towards intellect and legal personhood - passing the stage of only being “res”, yet not fully attaining personhood. This intermediate phase is already producing new creations

However, matters are even more complicated because when AI develops into possible personhood, it will probably not behave differently than the human intellect. “Ultimately, robots' autonomy raises the question of their nature in the light of the existing legal categories —of whether they should be regarded as natural persons, legal persons, animals or objects—or whether a new category should be created, with its specific features and implications as regards the attribution of rights and duties.”

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It is proposed that the aforementioned "intermediate phase" be governed by the international community based on "global commons" in regards to the gradually becoming more autonomous AI entities and their creations, shifting the legal characterisation from res to "res communis" and then to "legal personhood". The following is suggested for mainly two reasons. First, attribution of humans or corporations to a creation that is not connected to the initial programming provides them with unfair advantages and extent of control- for example, Patents. Second, AI should not remain unregulated in the hands of private technological sectors- as their only motive is their greed for profits.

The characterisation of AI from the perspective of the global commons is further proposed as a regulatory framework, which establishes control "for the benefit of all nations" - as AI is a matter that transcends borders. More specifically, although AI does not fall under the definition of space, the "common heritage of mankind" (CHM) doctrine's approach to global commons can help further to explain the viability of such a regulatory framework.

The five defining characteristics of the CHM global commons scheme are as follows: they are not owned by anyone and are to be managed by the international community as a whole; they are objects of "universal popular interests;" everyone should share in the economic benefit from them; people must use them for peaceful purposes; and everyone should have access to the research on them. The principle of Global commons is not very different from the fundamental concept of 'res'; thus, it can be adapted into governing AI in their intermediate phase based on their ontology.

The entire notion of fairness would be contradicted by private or state ownership—by one or more—in terms of violating such entities' increasing autonomy and fairness amongst society and within the international community. Furthermore, relying on state or private egotistic goals to advance technological advancement with such potential repercussions could be pretty dangerous. Based on these presumptions, it is proposed that the CHM and the global commons regulatory frameworks be extended to a separate legal concept, which, due to its unique characteristics, must incorporate aspects from normative frameworks in other domains.

ABORTION LAWS AROUND THE WORLD: A COMPARITIVE ANALYSIS

-Anant Baid

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"To force a woman to carry a pregnancy that they don't want is just absurd in the contemporary world"

-Baroness Helena Kennedy KC

Director, IBA's Human Rights Institute

Introduction

The US is rolling back its 5 decades-long protection for abortion. This change has not only affected the nation but also all countries globally. The landmark judgment of Roe v. Wade has been overturned for more than 6 months now, but the impact of this decision is still visible in many parts of the world. This was made in the case of Dobbs v. Jackson Women's Health Organisation which reversed the protection given in the Roe v. Wade judgment. This decision has not only made us question the authority of individuals in deciding their personal matters but also questioned the guarantee of basic human rights available.

Ramifications of Roe v. Wade

The reversal of the ruling of Roe v. Wade saw confusion among 22 states whether to guarantee or restrict abortion. This led to predictions of the states which might criminalise abortion. According to statistics around 33 million women of childbearing age reside there. There is a mix of abortion laws in the US. Few have outrightly banned abortion while the rest have exceptions with respect to time period, rape cases, survival chances in case of threat to life cases. Few states took steps to bring the effect of the Dobbs judgement. In order to do so they organized anti-abortion campaigns. . For instance, South Carolina removed all basic information on abortion procedures from the internet while Louisiana attempted (with no success) to prosecute people with murder charges if they had an abortion.

Missouri tried to ban traveling to other states for the procedure.

The most shocking instance for anti-abortion activists was when there was a rejection by 59% of the voters for the ballot which proposed to establish a ban on abortion in Kansas. But voters in all five other states chose to protect abortion, this also included Kentucky. Post this, abortion became explicitly protected in Vermont, California, and Michigan through constitutional provisions. In Montana, a bill that could criminalize doctors for providing abortion aid was defeated. This clearly shows that a person's right to abortion is defined more by geography as compared to their personal will. Every state has different governing authorities and different ethics. So post this judgment laws relating to crucial aspects like abortion will also be based on the geography and ideology of the nation or state.

Post the judgment, organisations used mailing as the source for providing medication to aborting mothers. Abortion through medication increased rapidly after the clinics closed their doors. However, the real problem was that the users were scared that their abusive partners would find out and this increased because of a lack of medical supervision and doctor's prescriptions. This brought in another problem of safety hazards with respect to delay in taking medication. This abortion ban resulted in cancellation of the licenses of several doctors rendering them jobless.

When abortion was outlawed, alternatives were developed. This included clinics on boats that sailed

in international waters and recreational vans that were fully outfitted with exam rooms and labs to enable more accessible abortions.

Impact Felt Elsewhere?

In the last three decades, almost 59 countries have changed or expanded their abortion laws whereas 11 countries have restricted the same. The repercussions of the recent overturning of the 50 years of legal protection was not only faced in states of the USA but also in many other countries.

Globally there is a mix of abortion rights provided, this means that few countries give individuals the authority to decide while others don't. One of the takeaways from the current ruling is that states are perfectly competitive to restrict access to abortion rights and have legal retrogression. This is currently done in the entirety of the United States of America, where states are given individual authority to decide upon the abortion rights of their geographical area.

Taking a look into a few other nations' abortion rights, we can understand that Kenya developed a ten-year reproductive health policy that made it mandatory to obtain parental authorization by youngsters before using contraceptives.This was done post the Dobbs judgement. Logos government had issued a separate guideline for safe and efficient pregnancy termination. There was visible formation of anti-abortion groups resulting in the spread of the belief that it is feasible to redress an abortion law. Abortion in Poland is permitted only in cases of rape, incest or mother's life being under threat. In December 2020 Argentina amended its laws by allowing termination of pregnancy till 14 weeks. Access to abortion in Brazil is very limited and is narrowed down to rape cases or severe illness of the mother, which might result in death. Abortion was decriminalised in New Zealand around 2020. The earlier Soviet Union was the first to mark abortion as legal globally in 1920. But why is society going backwards instead of moving ahead? Can we retrogress laws decided decades ago? What power does state or government hold in regressing any law and till what extent can it be done? These are just a few of the questions which come to mind with respect to abortion laws. But what is more important here is to notice that if anything this decision has put forth a precedent of regressing laws which actually takes away the growth of a progressive society.

Amidst this regression there were some positive aspects which came forward. Few of them being Thailand increasing the gestational term for abortion from 12 weeks to 20 weeks. Argentina, Mexico, Columbia, South Korea, and South Australia partially or fully decriminalized abortion. India also sees a positive take on entire abortion issues.

Indian Scenario

India has a completely autonomous statute to deal with abortion. The same is called the Medical Termination of Pregnancy Act 1971. This act allows termination of pregnancy for as long as 20 weeks and beyond that period is only allowed when there exists a threat to mother's health from the pregnancy. This act also considers minors and their guardian's consent while deciding a case. According to science, a fetus can develop interests only after the third trimester and hence the gestation period under the mentioned Act is 24 weeks. There is extensive effort from the judiciary to interpret abortion laws along with constitutional provisions. In the case of *X v. State (NCT of Delhi)* court interpreted this right as extending married women who conceived as a result of forced sex, bringing in the perspective of marital rape. This case also included people who identified themselves as other genders, thus widening the perspective. Further in another case, it was stated

that a women's right to termination of pregnancy cannot be taken away in the case of rape or sexual assaults. This will amount to imposing forced motherhood on her. This issue still has a long path to go but considering Indian culture and ethics along with immense celebration of motherhood, taking such legal steps is bringing a positive progression in the country.

Conclusion

The overturning of the landmark *Roe v. Wade* judgment in the US has not only impacted the nation but also reverberated globally. The confusion among states regarding abortion laws and the rise of anti-abortion campaigns reflect the geographical disparity in abortion rights. The judgment's repercussions have been felt in numerous countries, with some expanding abortion rights and others restricting them. While there have been positive developments, such as increased gestational terms and decriminalization in some countries, the regressive nature of certain laws raises questions about societal progress. India's Medical Termination of Pregnancy Act demonstrates a progressive approach, considering various circumstances and extending abortion rights to women. However, there is still room for improvement, particularly regarding sexual assault cases. The global scenario demands thoughtful consideration of women's rights and personal autonomy, recognizing the significance of individual choices while upholding the principles of human rights and a progressive society.

Regarding India's position,the inclusive judgement of the chief justice of India marked a crucial departure from traditional interpretation paving the expansion of the scope for future rules encompassing transgender individuals.

THE ROLE OF UNCRPD IN DEVELOPING THE INTERNATIONAL FRAMEWORK TO PROTECT THE RIGHTS OF PERSONS WITH DISABILITIES.

-Navya Joshi

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The United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) is an important treaty in the realm of laws that protect the rights of persons with disabilities across the world. The Convention was ratified by India on October 1st, 2007. The UNCRPD has played a vital role in establishing the domestic law in India which is the Rights of Persons with Disabilities Act, 2016 which was passed with the objective of ensuring equality for persons with disabilities in India.

The UNCRPD is a Convention that stands by the principle of equality and inclusiveness with the primary objective of establishing a comprehensive legal framework at the international level to address the lacunae in the law so that the rights of persons with disabilities can be recognized and protected. Although many international human rights treaties have been established on the principle of equality and to prevent discrimination of vulnerable communities, the UNCRPD distinguishes itself with the shift to a rights-based approach towards ensuring accessibility and equality of opportunity for persons with disabilities.

The UNCRPD places three main obligations on each State Party. The first obligation is that the State has to implement the provisions of the Convention. The second obligation is that the State has to harmonize the municipal laws with the UNCRPD. Lastly, the countries have to mandatorily prepare a Country Report. According to Section 35 of the UNCRPD, the report can include the various factors and difficulties that the country may face while fulfilling its obligations under the UNCRPD. The State Party must submit the first report within two years of entering into the Convention.

The impact of this international convention can be better understood in the Indian context where the Rights of Persons with Disabilities Act, 2016 (RPwD) replaced the Persons with Disabilities Act, 1995. The 2016 Act was well-defined and followed an approach that was focused on the fundamental rights of persons with disabilities which need to be safeguarded by law. The RPwD Act was primarily based on the UNCRPD. The UNCRPD places special emphasis on vulnerable groups like women and children as they face various difficulties while trying to access basic rights and freedoms. Article 6 and Article 7 of the UNCRPD provide for the protection of women and children with disabilities by ensuring that they are treated equally in society. Article 6 of the UNCRPD focuses on women with disabilities as they face multiple discrimination and State Parties are to ensure protection of their human rights and fundamental freedoms. Article 7 of the UNCRPD focuses on children with disabilities. The Article emphasizes that the state parties must ensure that the rights and freedoms of the children are protected by keeping their best interests as the primary consideration. The UN Convention on the Rights of the Child (UNCRC) is another important international convention that states that the best interests of the child shall be a primary consideration.

Article 10 of the UNCRPD recognizes the right to life of persons with disabilities and the responsibility of the State to protect this right by working together with various stakeholders. The right to live with dignity is a fundamental and basic human right. Article 13 of the UNCRPD states that State Parties should ensure that persons with disabilities have

access to justice on an equal basis. They must be given the facilities to be direct and indirect participants in the justice system. In India, it is implied in the Constitution that persons with disabilities have the right to access justice under Article 14 of the Constitution of India. The challenges to implementing Article 13 of the UNCRPD in India primarily revolve around issues relating to accessibility and reasonable accommodation. This challenge is addressed by the RPwD Act that was passed in 2016.

Another important article of the convention is Article 24, which protects the right to education of persons with disabilities. The convention emphasizes the importance of education for children with disabilities. Education should focus on being inclusive and accessible for all individuals so that they have equality of opportunity, which is one of the fundamental principles enshrined in the Convention.

The UNCRPD has played a vital role in ensuring that the countries that have ratified this Convention introduce domestic legislation in accordance with the UNCRPD that will promote diversity and inclusion. One of the prominent examples is the RPwD Act, 2016 was passed in India to empower persons with disabilities by focusing on a model that is centered on universal legal capacity. The convention recognizes and focuses on the holistic development of a person with disabilities so that they can enjoy all their rights. The UNCRPD is an important international Convention that has taken the step in recognizing and protecting the basic human rights of persons with disabilities at the international level.

SPACE LAW: EXAMINING THE LEGAL CHALLENGES POSED BY INTERNATIONAL SPACE ACTIVITIES

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Space law is a complex and rapidly evolving field that deals with the legal issues of exploring, using, and exploiting outer space. As humanity continues to explore and utilize outer space, the legal challenges that arise from international space activities will become increasingly complex and essential. These challenges range from jurisdiction and property rights to questions of liability and responsibility in the event of accidents or incidents. As space activities become increasingly globalized, the need for effective international regulation of space activities has become more pressing.

The Outer Space Treaty (hereafter OST) of January 27, 1967, also known as the Treaty on the Principles of the Exploration and Use of Outer Space Activities of Nations, including the Moon and Other Celestial Bodies, signed by the United States, the Soviet Union, and the United Kingdom in 1967. It establishes basic principles for exploring and using outer space and is considered the cornerstone of international space law. This contemporary subset of international law was founded on it. It establishes that outer space is not subject to national appropriation and that all nations can explore and use it for peaceful purposes. However, this treaty does not provide specific legal guidelines for commercial space activities, so there is a need for additional agreements and regulations to fill in these gaps. The OST is a foundational document of space law, and the treaty addresses several legal issues, including:

1. (Article II) No country can claim ownership of any celestial body, including the Moon and other planets.
2. Article IV prohibits placing nuclear weapons or other weapons of mass destruction in orbit or on any celestial body.
3. Article IX requires parties to the treaty to avoid harmful contamination of the space environment and to take measures to prevent the detrimental effects of space debris.
4. Article VII establishes the liability principle for damage caused by space objects, stating that a launching state shall be liable for damage caused by its space object.
5. Article XI encourages international cooperation in exploring and using outer space.

While the OST is a comprehensive and vital document in space law, there are still some legal gaps that it does not address. The OST needs to provide clear guidance on the rights and obligations of private companies in space. While it allows private entities to engage in space activities, it does not give any clear framework for regulating their operations or address issues such as property rights, liability, or resource exploitation. The OST prohibits the placement of weapons of mass destruction in space, but it does not address the issue of conventional weapons or military activities in space. This creates a legal grey area where the development and deployment of military assets in space are not regulated. With the increasing number of satellites and spacecraft in orbit, there is a growing need for an effective space traffic management system. However, the Outer Space Treaty provides no clear guidelines for managing space traffic or preventing collisions in orbit.Other than the Outer Space Treaty, there are several international treaties and conventions based on space law that various countries have adopted to regulate space activities. Here are some of the most important ones:

1. Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects

Launched into Outer Space (1968), requires signatories to take all possible steps to rescue and assist astronauts in distress and to return them to their country of origin. It also requires the return of space objects to the launching state.

2. Convention on International Liability for Damage Caused by Space Objects (1972), elaborates on the liability provisions in the Outer Space Treaty. It establishes a liability system for damage caused by space objects and requires the launching state to compensate for damage caused by its space objects.

3. Convention on Registration of Objects Launched into Outer Space (1975), requires signatories to register space objects launched into outer space. It establishes an international registry of objects launched into space and involves sharing information about them.

4. Agreement Governing the Activities of States on the Moon and Other Celestial Bodies (1979), provides a legal framework for exploring and using the Moon and other celestial bodies. It prohibits the ownership of any part of the Moon or other celestial bodies by any entity and establishes principles for using resources found on these bodies.

5. Space Debris Mitigation Guidelines (2007), adopted by the United Nations Committee on the Peaceful Uses of Outer Space, provide a framework for mitigating space debris. They recommend measures to reduce the creation of space debris and to limit the impact of debris on other space objects.

International space activities can give rise to several legal challenges under space law. Some of the key challenges are jurisdiction, liability, resource exploitation, space traffic management and commercialization of space. The issue of jurisdiction can be a challenge in space law. The Outer Space Treaty provides that outer space is not subject to national appropriation and that space activities are to be carried out for the benefit of all countries. However, there may be disputes over the jurisdiction of certain activities or the application of specific laws. Liability is another critical challenge in space law. The Liability Convention provides a liability system for damage caused by space objects. Still, the liability issue can be complex in cases where multiple parties are involved, or damage is caused to a third party, not a party to the space activity.

As space activities move towards resource exploitation, there is a need to develop legal frameworks for using resources found on celestial bodies. The Moon Agreement provides some guidance, but spacefaring nations have yet to adopt it widely. With the increasing number of satellites and other space objects in orbit, there is a growing need for space traffic management. However, there is currently no internationally agreed-upon framework for managing space traffic or preventing collisions in space.

The commercialization of space is also a challenge in space law. While the Outer Space Treaty permits private entities to engage in space activities, there is a need for clear frameworks to regulate their operations and address issues such as property rights, liability, and resource exploitation.

In conclusion, international space activities pose inevitable legal challenges to mankind. To overcome these challenges, nations and private companies need to work together to establish clear and enforceable laws and regulations for international space activities. It is imperative that nations and private companies together must be committed to cooperation, transparency, and the development of clear and enforceable laws and regulations for the peaceful and sustainable exploration and use of outer space. Even nations must work together to find solutions to these challenges, in order to ensure the peaceful and sustainable use of outer space for the benefit of all humankind.

CLIMATE JUSTICE: THE RECOGNITION OF ECOCIDE AS A CRIME AGAINST HUMANITY

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Ecocide is defined as unlawful or wanton acts committed with the knowledge that there is a substantial likelihood of severe or widespread or long-term damage to the environment caused by those acts. More lucidly put, it refers to the mass-scale damage and destruction of the living world. Put literally, it means "killing one's home".

There isn't yet a definition of what constitutes "ecocide" under international law.

The campaign to make ecocide an international crime aims to make government officials and chief executives criminally liable while also establishing a legal duty of care for all life on Earth.

The Vietnam War (1955–1975)'s closing years saw the concept of ecocide start to take shape as the country was still suffering from the war's destructive effects. Agent Orange attacks, which used the potent herbicide as a chemical weapon, caused hundreds of thousands of deaths and barrened millions of hectares of land. The term "ecocide" was first used at the Stockholm UN Environmental Summit in 1972 when Olof Palme, the Swedish Prime Minister, charged American policies in Vietnam with ecocide. At the time, participants from various nations, including Tang Ke of China and Indira Gandhi of India, proposed that ecological devastation should be viewed as a crime against humanity.

Polly Higgins' Contribution to the Green Movement

Higgins, a British lawyer and one of the green movement's most inspirational personalities, spearheaded a decade-long battle to have "ecocide" recognised as a crime against humanity. Fourtypes of crimes collectively referred to as Crimes Against Peace and intended to be "the most serious crimes of concern to the international community as a whole" fall under the purview of the International Criminal Court, or ICC for short. Genocide, crimes against humanity, war crimes, and acts of aggression currently fall under this category. Either crimes against humanity should include ecocide or ecocide should be formed as a distinct Crime Against Peace in order for the ICC to recognise it.

In 2017, pioneering attorney Polly Higgins (1968-2019) and current Executive Director Jojo Mehta co-founded Stop Ecocide International (SEI).

The burgeoning international push to make ecocide a crime against humanity is being driven by SEI. Their primary focus is mobilising and building cross-sector support for this globally. To do this, they work with NGOs, indigenous and religious organisations, NGOs, politicians, lawyers,corporate leaders, academic specialists, grassroots movements, and individuals.

<u>Arguments Advanced by Activists</u>

The harm is increasing despite the existence of numerous international accords, including codes of behaviour, UN Resolutions, Treaties, Conventions, and Protocols. The mission statement of Ecological Defense Integrity, a U.K.-based non-profit that seeks to advance a law of ecocide at the ICC, states that not one of these international treaties forbids ecocide. The ability of ecocide crimes to hold those with "superior responsibility" accountable in a criminal court of law is their ability to establish a legal duty of care.

The notion that ecocide should be considered an

international crime existed before the ICC was established. Initially, a statute of ecocide was part of the Rome Statute, the founding text of the ICC. The Draft Code of Crimes Against the Peace and Security of Mankind, which would later become the Rome Statute, was under consideration by the United Nations International Law Commission (ILC) in the 1980s. The Draft Code even went so far as to claim that the crime of ecocide could be proven without demonstrating a perpetrator's intention to cause environmental harm.

"Since perpetrators of this crime are typically operating with a business motive, intent should not be a prerequisite for liability to punishment," a U.N. representative from Austria said in 1993. However, the section of the final Code that the ILC adopted in 1996 that dealt with the crime of environmental destruction was eliminated. Only deliberate environmental damage committed as crimes of war was covered by the Rome Statute's inclusion of environmental issues. A 2012 analysis from the University of London's Human Rights Consortium, which examined the history of ecocide law, stated that peacetime ecocide, committed by businesses and governments, "was fully, and quite inexplicably, excluded from the Code."

Counter-arguments to the Criminalisation of Ecocide

An ecocide statute, in the opinion of those who oppose its inclusion in the Rome Statute, would result in unspeakable human suffering. They think the movement wants to outlaw these particular economic practises rather than just regulate or restrain them. National economies would collapse as a result of such criminal restrictions.

While they acknowledge that development can hurt localised habitats and can result in pollution, they think that efforts should instead be focused on mitigating and eliminating that impact through sensible environmental regulatory measures. Ecocide need not continue after that point. In conclusion, it is conceivable to uphold reasonable environmental standards without outlawing the actions that enable contemporary civilization and widespread affluence.

Additionally, they assert that criminalising such activities appears more like an effort to stifle capitalist industries than to protect the environment given the extensive environmental impactreports that businesses are required to provide and the stringent permit procedures that are frequently necessary before companies can even begin operations in the West.

Instances of Ecocide

The situations shown below indicate instances where it was clear that ecocidal techniques and policies were being used to completely or partially destroy a group.

Ecocide with genocidal intent - One well-known instance of ecocide that is unmistakably linked to genocidal intent is Saddam Hussein's draining of the marshlands of southeast Iraq in the 1990s to punish 500,000 Marshland Arabs for rebelling against his control. Instead of draining the marshlands for an ostensibly advantageous reason, like economic development, the draining was specifically designed to ruin the marshland Arabs' way of life, force their emigration, and reduce them to pauperism. Here the use of ecocide as a deliberate mechanism for bringing about genocide violated the clause in the UNGC which defines genocide as "deliberately inflicting on [a] group conditions of life calculated to bring about its physical destruction in whole or in part" with the intent "to destroy, in whole or in part, a national, ethnic, racial or religious group, assuch."

Secondly, ecocidal actions in partnership with genocidal policies are reflected in the case of one multinational oil company, Talisman, in Darfur. Talisman is alleged to have hired its own advisors to

coordinate military strategy with the government in order to work on a plan for the security of oilfields with the Sudanese government. In a recent court decision against Talisman, the court rejected the defendant's argument that case law from the International Criminal Tribunals for Rwanda (ICTR) and Yugoslavia (ICTY) did not accurately reflect customary international law because these tribunals were established under special circumstances. The court instead held that corporations may be held liable under international law for crimes against humanity.

Regional Efforts and the EU

A dozen nations—Georgia, Armenia, Ukraine, Belarus, Ecuador, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Uzbekistan, and Vietnam—have categorised ecocide as a crime within their borders while the discussion is still ongoing. Some have imposed prison terms of up to fifteen years, including Georgia and Armenia.

A group of 11 citizens from nine EU nations formed the European Citizens Initiative (ECI) to End Ecocide in Europe in 2013. The 1 million signatures required by a petition for this specific initiative to request a new law from the EU were not obtained. Nevertheless, the European Parliament "discussed" it. It is very evident that more work has to be done after eight years. Citizens shouldn't be expected to "propose" the laws that will protect endangered ecosystems and humanity. Legislators must take the initiative and act morally. "Encourage the EU and member states to advocate the designation of ecocide as an international crime under the Rome Statute ofthe International Criminal Court," was another goal of the EU's recently enacted Biodiversity Strategy.

Towards a Global Pact

The global community has also made some progress. In order to build the groundwork for an international environmental law, the United Nations General Assembly adopted the resolution Towards a Global Pact for the Environment in 2018. The University of London's Ecocide Project is also advocating for this. This initiative plans seminars, conferences, courses, and other events to advance the advancement of international environmental law.

Conclusion

In her recent "Manifesto for Justice" at COP26, environmental lawyer Farhana Yamin, who has participated in climate discussions for more than 30 years, wrote:

"The atmosphere, ocean, soils and forests don't get to negotiate. Smaller countries and indigenous people are nature's custodians. Mother Earth may be mentioned in the Paris Agreement, but she lacks any legal standing."

With or without the explicit purpose to commit mass murder or wipe out entire communities, ecocide can result in genocide-like effects. The traditional definitions of crimes against humanity need to be updated and expanded to include the destruction of populations' health and habitat through careless, intentional, or wanton industrial and environmental destruction, depletion, or contamination, especially for marginalized communities. A requirement for their prevention or mitigation is professional integrity in the assessment of these events. Ecocide is a product of human decision, just as genocide. Both must end due to human choice.