ISSN: 2582-6433

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed JournalMulti Disciplinary
Peer Reviewed6th Edition

VOLUME 2 ISSUE 7

www.ijlra.com

 ISSN: 2582-6433

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ISSN: 2582-6433

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ISSN: 2582-6433

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www.ijlra.com
Volume 2 Issue 7 | April 2023
ISSN: 2582-6433

OBJECTIVITY VS SUBJECTIVITY: PERCEPTION OF INTERNATIONAL LAW AND JUSTICE IN A GLOBALIZED WORLD

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Abstract

It has always been claimed that when it comes to law, we seek to move towards more and more objectivity, in order to achieve justice. This argument, however, is not always true in every case. When we talk about international law in particular, this argument does not suffice. The concept of perception of international law and justice in a more globalized world has been discussed here. Justice, as per John Rawls's theory and Amartya Sen have been mentioned briefly. The arguments have revolved around the issue as to whether their universal perception or a subjective perception is more likely in a globalized world. Outi Korhonen's argument of making scope for subjective interpretation in international law, along with the already existing legal objectivism, has been put forth here. The aim is to clarify as to how we can proceed towards the objective as well as subjective standards of international law and justice. Through the discussions of certain concepts such as secularism, CSR and so on, internationally, the approach and perception involving both the universal or objective standard and subjective standard is shown. It is shown that the conception that international law is universal or objective and applies everywhere in order to achieve justice, which is also universal, is not necessarily true.

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Introduction

Objectivity and subjectivity are two important criteria when it comes to determining justice in the realm of international law. These two criteria are nothing but methods of interpretation of law. The laws are interpreted either objectively or subjectively, in order to achieve and maximize the scope of justice in international law. Although, it is also done with respect to other domestic and municipal laws as well, but methods of interpretation are extremely important and crucial for international law, with the increasing globalization. However, even more important issue that arises is that of the interpretation of justice. What may seem like justice for one state may or may not be justice for another state. But should justice be state centric or individual centric? Whether there should be an objective or subjective standard for justice as well remains to be a significant question. Thus, it is important to understand, whether justice itself is a concept having universal meaning or not.

Over the years, right from the ancient times to the medieval times, modern times and now the recent times, justice has remained to be the most important concept, be it in the social, political, legal or economic spheres. After the French revolution in 1789, most of the people came to believe that justice is liberty, equality and fraternity. Even with the changing times that have led to several alterations in the nature and scope of justice, the true nature and essence of justice could never get altered. This can be seen from the work of one of the most important scholars, John Rawls. According to Rawls, there are two principles of justice, first concerns the political institutions and the second concerns the social and economic institutions. The first principle implied that everyone must have same basic liberties and the second principle implied that in order to achieve justice one must try to reduce inequalities as much as possible and seek equality, i.e., “fair equality of opportunity”, and also try to improve the conditions of “least advantaged” members of the society. However, he gave priority to the first principle over the second and further gave priority to the first part of the second principle over the second part. Still, he laid emphasis on the significance of both the principles required together to achieve justice. Thus, his work showed us that the true nature and essence of justice, being liberty and equality could never get altered. However, even this theory was subjected to criticisms by none other than another great pioneer, Amartya Sen. According to Sen, justice as a concept is not that simple and universal as Rawls made it seem. He was uncertain, whether Rawls theory could be objective, universal and applied everywhere. His main focus was on implementation and application of laws in order to achieve justice, rather than just dissecting the nature of justice.

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Therefore, from the above discussions by the scholars with respect to justice, the issues that arise before us are, whether the international laws need to be made and interpreted more subjectively rather than objectively, in order to achieve justice in the globalizing world, and whether this justice itself needs to be understood and interpreted in a more subjective manner rather than objective manner in the globalizing world.

Objectivism vs Subjectivism in the Perception of International Law and Justice in a Globalizing World

Over the years, many supporters of objective standards in international law, have argued that subjectivity will deprive law of its legality and its legitimacy through involvement of politics in the subjective standards. However, what they are not realizing is that application of international law requires relative as well as subjective assessment. Further, what they are not realizing is that if we just follow the old and contemporary method of approach towards international law, which is objective in nature, then Prof. BS Chimni's third world approaches to international law and Hilary Charlesworth's feminist approaches to international law, will become completely nullified and pointless. Such approaches are crucial because they involve subjective perceptions in international law, and the subjects involved in their approaches are people from the developing world and women around the globe. Objectivists further fear that bringing subjective approaches may totally eliminate the system of international law. However, that is not the case, because with the increasing globalization, the need for international law, which is accommodating enough to involve both legal objectivism and subjectivism has escalated.

In order to understand the system of objectivities and subjectivities surrounding international law, we can look at certain examples. For instance, taking secularism as a concept, if we talk about its general meaning it requires separation of religion from state and politics. However, its interpretation and the way it gets applied in various nation-states is fully laced with politics and subjective views with regards to it. By taking the example of few nation-states, we would understand this subjective viewpoint better. In case of Turkey, being a predominantly Muslim country having about 99 percent Muslim population, it has chosen to be secular. There, Muslim headscarves are banned from all public offices and universities. An important court case had ensued in 2005, when a young medical student, Layla Sahin had challenged the headscarf ban and took the case to the European Court of Human

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Rights (ECHR). She had claimed that this ban violated her freedom of religion under European Convention on Human Rights, but the court had rejected her claim and ruled in favour of the secular Turkish government.

However, when we look at another secular country such as India, wherein majority of the population is of Hindus (about 85 percent), whereas Muslims are in minority, such bans would never suffice, because the secularism followed in India is different from that of Turkey. Thus, if ECHR or any other international court or organization were to judge for India, in the manner as they did in the Turkish case, then it would not have been deemed just and fair by the Indian standards of secularism. Another case to be considered is that of France, which is a western secular country. In 2004, the French Government had banned wearing of ostentatious religious symbols in state schools. It was inclusive of religious symbols such as headscarves, burqa, niqab, Jewish yarmulkes, turbans and so on. The interpretation and application of French way of secularism deems it just, because they do not believe in diversity and multiculturalism, but rather believe in assimilation of everyone into French. However, that may not be the case for other states. If such bans were to be imposed in India, then it would be the violation of form of secularism followed in India, and it would not ensue justice. In India, secularism has been envisaged in the preamble of the Constitution, thus its violation would be deemed unconstitutional. However, if we look at the objective meaning of secularism, then one may argue that no violation would happen. However, that is not the case and its subjective understanding, as per the situation in India is followed. Therefore, from the cases of Turkey, India and France, with respect to secularism, in spite of having a universal and objective meaning, it is interpreted and applied subjectively in these nation-states and even the interpretation of justice (i.e., political justice) is subjective for this concept.

Another concept that can be analyzed is that of Corporate Social Responsibility (CSR), internationally. According to United Nations Industrial Development Organization (UNIDO), CSR is the responsibility of the corporates to include social and environmental concerns along with their business operations. Further, according to World Bank, "*taking into account the economic, social and environmental impacts in the way a business operates, CSR actions are voluntary actions that business can take, over and above compliance with minimum legal requirements.*" Thus, from the above meanings of CSR, it is clear that the international organizations such as UNIDO and World Bank advocate for a universal and objective interpretation of CSR, which is that it is "voluntary" in

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nature. However, when we do comparative study of certain nation-states, we find out that such is not the case. There is a stark difference with respect to interpretation and application of CSR, especially in various developing and developed nation-states.

We have got states like India and China where CSR is mandatory and legal and not just voluntary. In India, Section 135 of Companies Act, 2013 read along with Companies (Corporate Social Responsibility Policy) Rules, 2014 and Schedule VII of the Act, shows the mandatory nature of CSR, with the Companies being mandated by the state (government) to do the CSR spending in accordance with the guidelines, subject to the provisions. In case of China, where companies are state-owned, mandates are issued by the Government to promote CSR, as a way to have a harmonious society and also improve China's international image. On the other hand, there are countries like Germany, in Europe, that still want to keep the voluntary nature of CSR intact, by allowing lesser intervention by the Government. In the context of UK, few Prime Ministers, from both the Labour as well as the Conservative parties, have deployed "soft laws" with respect to CSR when required, even though mostly it has remained voluntary. However, recently in some European countries, the nature and scope of CSR has started shifting more and more towards mandatory. One such example is that of Netherlands where it is claimed that the government, apart from the responsibilities of businesses, also has an important role to play, by setting frameworks for CSR. Thus, by altering the voluntary nature of CSR into mandatory, they seek to achieve their desired results.

Therefore, from the cases above it is clear that subjectivity is dominant here, when it comes to interpretation and application of the laws with respect to CSR. If the objective standards for CSR were followed everywhere, then many of the nations would have struggled to achieve their targets of socio-economic benefits for their citizens through CSR.

Thus, if we discuss even further with respect to the international refugee laws or international human rights law as envisaged by UN Declaration of Human Rights, then we may end up finding even further subjectivism with respect to the interpretation and application of those laws and justice. It is extremely difficult to set objective standards when it comes to such kind of issues, as they are extremely political and at times controversial as well. Therefore, subjectivity is imperative within the regime of international law and justice. With more and more globalization around the world, the need for newer understanding of justice has been required. Hence, the subjective understanding of justice in a world full of diverse subjects living in diverse states, became inevitable.

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Conclusion

One thing that we need to understand is that objectivity in science is the most important element. However, that is not necessarily the case in legal justice. Before deciding on whether both law and justice in international law need to become more subjective and need to be interpreted subjectively, one must firstly understand who the subjects of international law are. The subjects of international law in the true sense are the individuals living in the states. They are the subjects and not objects of international law. All of them, belonging to different states and having diverse backgrounds, cannot be treated the same or objective. With the advent and now further increase in globalization, subjects of international law belonging to different states, have started acknowledging their diversities more and more. Thus, these diverse subjects of international law, understand the concepts of law and justice differently. Hence, it becomes extremely difficult to follow a universal set of objective laws and interpret them universally and objectively. However, that does not mean that there should never be a set of objective and universal rules along with objective and universal interpretation of law and justice, at all. In fact, if certain objective standards are not present in the realm of international law, then it may lead to anarchy and chaos amongst the subjects of the states. Thus, globalization not only helps us understand the value of subjectivity required for justice, but it also helps us realize the value and importance of objectivity which is needed as well. Law being the means and justice being the end, if subjective means are more likely to achieve an end in international, then they should not completely be rejected. However, it should also be realized that it is the objective base, around which different kinds of subjective interpretations get evolved. Thus, making room for subjectivity and not compromising with the objectivity, should be the key for international law.

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