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# Political Science & International Relations Crash Course

*Lecture - 27*

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Evaluate the role of the International Court of Justice in inter-State disputes. 15m [2019]

### Introduction

- The International Court of Justice, also known as the **World Court**, is one of the six principal organs of the United Nations. It settles disputes between states in accordance with international law and gives advisory opinions on international legal issues.
- The seat of the Court is at **the Peace Palace in The Hague (Netherlands)**. The Court is composed of 15 judges, who are elected for terms of office of nine years by the United Nations General Assembly and the Security Council. Presently, Indian judge Dalveer Bhandari serves as one of its judges.

### Role in Settling Inter-state disputes

- The Court may entertain **two types of cases: legal disputes between States submitted to it by them (contentious cases)** and requests for advisory opinions on legal questions referred to it by United Nations organs and specialized agencies (**advisory proceedings**).
- **Only States (States Members of the United Nations and other States which have become parties to the Statute of the Court)** may be parties to contentious cases.
- States have **no permanent representatives accredited to the Court**. They normally communicate with the Registrar through their Minister for Foreign Affairs or their ambassador.
- When they are parties to a case before the Court they are represented by an agent. An **agent plays the same role, and has the same rights and obligations, as a solicitor in a national court**.
- By signing the Charter, a **Member State of the United Nations undertakes to comply with the decision of the Court in any case to which it is a party**. Since, furthermore, a case can only be submitted to the Court and decided by it if the parties have in one way or another consented to its jurisdiction over the case.
- A State which considers that the other side has failed to perform the obligations incumbent upon it under a judgment rendered by the Court may bring the matter before the **Security Council, which is empowered to recommend or decide upon measures to be taken to give effect to the judgment**.
- Opinions provided by the court in advisory proceedings are essentially advisory and not binding.

## Positives of ICJ

- In **May 9, 2018, ICJ has stayed death sentence of Kulbhushan Jadhav** after India had moved a petition before the UN body to seek justice for him, alleging violation of the **Vienna Convention on Consular Relations by Pakistan**.
- The ICJ has one important advantage over the UN political organs: **All parties are guaranteed a fair and impartial hearing**. Despite concerns that its judges may be biased, studies have shown that in their decisions, they (even the ad hoc judges) willingly vote against their own national governments. Eg- **In Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada v. United States of America)**. Judge Schwebel voted against the United States.
- By restricting itself to the legal issues involved, the **Court remains free from the political considerations and entanglements found elsewhere within the UN**. The integrity of the Court is its greatest strength.
- ICJ has successfully solved many cases including **Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)** and **Obligation to Negotiate Access to the Pacific Ocean (Bolivia v. Chile)**

## Drawbacks

- **Consensual jurisdiction is the Court's greatest weakness**, since not all states have granted their consent. States can also withdraw their consent, and their reservations to **Article 36(2)** often render their consent meaningless.
- Moreover, ICJ can only entertain a dispute if it requested to do so by one or more state. It does not have suo moto power.
- When the Court seeks to invoke its compulsory jurisdiction, the **risk of nonappearance by parties exists**. There were many incidents of nonappearance during the 1970s and 1980s, the **most famous being the U.S. absence in the Nicaragua case**.
- **States also have a history of noncompliance with the Court's rulings**. Although the Court's judgments can be enforced through a Security Council resolution, **no international police force** exists to ensure compliance. Instead, enforcement is achieved by peer group pressure from other states.
- Other criticisms include the following: the **Court's reluctance to use provisional measures; its alleged lack of proactivity; its slow progress in hearing cases on the docket; and most controversial, the lack of standing for non-state entities**.
- **Other International courts like the International Criminal Court are not under the umbrella of the ICJ**. Thus, conflicting opinions from various international courts make it difficult for the international community to collectively enforce peace.

## Conclusion

- Organisations like the International Court of Justice were **not created to take humankind to heaven but to save it from hell**. Despite, its limitations ICJ has successfully played its role in try to maintain rule of law across the globe.
- The Court settles cases of extreme international complexity in less than five years. It accounts for less than 1% of the UN's budget. It is unique to the world. Through its judgement, opinions and orders, ICJ **lends its support to the United Nations so that it can achieve its primary purpose which is to maintain and promote international peace and security**.

## Discuss the importance of personal data protection in the context of human rights.15m [2019]

### Introduction

- According to Laski's rights are 'conditions of social life without which no man can seek, in general, to be himself at his best'. For Laski, rights are essentially a social concept, and individual rights are closely related to social life. Dworkin considers rights as trumps.
- So, for the overall development of the humans, rights are essential. These rights are universal, inalienable, and are inherent to all human beings regardless of the class, caste, sex etc.
- Personal data is defined as **any information that is clearly about a particular person. Information is considered personal data whenever an individual can be identified, directly or indirectly,** "by reference to an identifier such as a name, an identification number, location data, or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person. In contemporary times data is considered as new oil which needs to be protected.
- Hence, with the growth of technology and its expanding reach, **protection of Privacy and personal data has become as important as the protections of other Human Rights like Health and Education.**

### Importance of personal data protection in relation to human rights

#### Protection of right to privacy

- Since the **global surveillance disclosures of 2013, initiated by ex-NSA employee Edward Snowden**, the inalienable human right to privacy has been a subject of international debate. In combating worldwide terrorism, government agencies, such as the NSA, CIA, R&AW and GCHQ, **have engaged in mass, global surveillance.**
- There is now a question as **whether the right to privacy act can co-exist with the current capabilities of intelligence agencies to access and analyse virtually every detail of an individual's life.** A major question is that whether or not the **right to privacy needs to be forfeited as part of the social contract to bolster defence** against supposed terrorist threats. In addition, threats of terrorism can be used as an excuse to spy on general population..
- The human right to privacy is embedded in various international human rights legal instruments. For example, Article 17 of the International Covenant on Civil & Political Rights (ICCPR) and Article 12 of the Universal Declaration of Human Rights (UDHR).
- In the context of Europe, this right is established under Article 8 of the European Human Rights Convention (ECHR).
- The Right to Privacy has been recognised as a fundamental right emerging primarily from Article 21 of the constitution of India, in Justice K.S. Puttaswamy case.

- To make this right meaningful, it is the duty of the state to put in place a data protection framework which, while protecting citizens from dangers to informational privacy originating from state and non-state actors, serves the common good.
- The Indian State has come up with the **Personal Data Protection Act** based on the recommendations of the **BN Srikrishna Committee**.
- The **European Union has also come up with the General Data Protection Regulation (GDPR), it contains the vital "Right to be Forgotten"**. It is the right to have private information about a person be removed from Internet searches and other directories under some circumstances.
- ***Prevention of surveillance capitalism***- Shoshana Zuboff in her book, 'The Age of Surveillance Capitalism' (2014)- highlights the negative implications of Surveillance capitalism. She argues that it unilaterally claims human experience as free raw material for translation into behavioural data, and social media apps make their money collecting data on users and monetising that.
- For example Health-Engine, a medical appointment booking app, was found to be sharing clients' personal information with Perth lawyers particularly interested in workplace injuries or vehicle accident and Cambridge Analytica. So preventing the misuse of personal data is imperative.
- ***Bridging power asymmetries***- Institutionalisation of monopoly of data science of a group of companies leading to development of prediction markets, their ability to shape the behaviour of individuals and populations, control of our channels for social participation, and their vast capital reserves. This may create the ***new types of haves and haves not*** which can further intensify the already existing inequalities.
- ***Preventing human beings' alienation***- As the behaviour of human beings can be predicted and modified with the use of personal data it is necessary to have data protection mechanism in place otherwise human beings will be alienated. ***For inclusive citizenship- Ramanath Jha*** argues that the internet and social media played a significant and sinister role in stoking the fires of divisiveness, and this was unfortunately breaking down the idea of inclusive citizenship. So data's protection for inclusive citizenship will be key.
- ***Realizing other democratic rights*** - In 2016 elections of USA it was alleged that Russia misused social media data that helped in creation of favorable campaign for the then presidential candidate Donald Trump. This shows how the misuse of data can affect the use of other rights like right to vote, free speech and expression etc. will further get what Marx call alienated.

## Criticism

- Certain scholars believe that although privacy is an important human right but it **cannot be equated at the same level as other important human rights like health, survival and education**.
- It continues to be a **bourgeois right, many poor people have no access so smart phones**, hence there is no threat to their personal data and personal data doesn't exist online.



- Rather than focusing on protection of personal data, our focus should be first to **ensure that there are no more deaths of starvation and each individual lives a life of dignity and honour.**
- In the garb of protection the personal data of individuals, state also harms the people's fundamental right to speech and expression

## Conclusion

- ***As per Ranganatha*** "**Framing 'data' as the new oil is dangerous.** According to **Amba Kak** This is a tired analogy that doesn't seem to get us anywhere except to recognise that data is a source of profit for the private sector. Rather, It is a public good that we need to safeguard as a collective through laws that make controllers of data accountable.
- Zeynep Tufekci's definition argues that we should think of data privacy like clean air or safe drinking water instead of data as new oil.
- **So, for creating an equitable, democratic, and just world protection of the personal data is sine qua non.**