



Research Article

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Regulating social welfare systems in International Law: A comparative analysis of legal challenges across diverse frameworks

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Abstract

This manuscript aims to discuss the issue of the regulation of social welfare systems and examine the legal issues arising from the provision of international law. However, according to Lorenzi (2013), this article analyses and looks at the specific legal barriers preventing welfare state development and access to welfare benefits in developed countries such as Sweden and the United States, as well as developing nations such as Brazil. Some of the highlighted issues consist of funding, equity, and the controversies concerning sovereignty and international responsibilities. For example, Sweden, which possesses one of the most developed welfare systems, experiences problems with financing its numerous programs; India similarly has the problem of exclusion and frail legal protection of the minority and vulnerable population. Also, the article discusses how the independence and structure of national welfare states and the key international legal documents, including the Universal Declaration of Human Rights, adopted in 1948 and the International Covenant on Economic, Social and Cultural Rights (ICESCR) ratified in 1966, affected the development of these systems. Thus, it can be concluded that this manuscript explains that the welfare policies are very important in the field of national policies of various states, though more harmony with the standards of international law is necessary to eliminate these problems. Consequently, social protection systems, especially in developing countries, need enhanced cooperation as well as more sophisticated legal support.

Keywords: International Social Law, Welfare State Challenges, Legal Barriers, Social Protection Systems, Equity and Sovereignty.

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1. Introduction

People are critical to social injustice, economic equity, human rights, anti-poverty, health care, and basic income. Such systems are not only included in the national legislation but also base their rules and norms on the international legislation norms for humanitarian law that define how the states should protect the interests of the citizens (Almeida, Shmarko and Lomas, 2022). The universal declaration on human rights and the international covenant on economic social and cultural rights guarantee the difficult to define right to social security which binds the countries to enact provide and protect the welfare of its people. However, social welfare systems by international law cannot be seen to lack legal issues on regulation. Their main research question that is addressed in this article is identifying the problem. The two core questions that need to be answered when examining the international legal framework for regulating social welfare systems across several national jurisdictions relate to the following: In what way can international law be used to enable the regulation of social welfare delivery in various contexts? This paper attempts a qualitative analysis of several countries' experience in designing and, to some extent, implementing social welfare systems and their levels of success and failure in terms of meeting international legal obligations. Therefore, a comprehension of the specifics of the application of International Law when it comes to the regulation of social welfare as well as the effectiveness of the protection of social welfare is best explained using a consideration of legal systems used in countries that are situated at different legal, economic-political position within the world such as Sweden USA, Brazil, and India (Blackstock, Bamblett, and Black²⁰²⁰).

The justification for this particular subject stems from the increase in awareness of human rights, rights for all, sustainable development goals (SDGs) as well as an effort to look for newer welfare regimes. For instance, to achieve the first sustainable development goal Africa requires higher health, education and possibly investment spending. However, challenge includes lack of equal flexibility, and inadequate and political interference that has considerably affected the abilities of the countries to honor their ceremonial duties. Thus, this article contributes to the expansion of existing knowledge and enhances the comprehension of how these legal aspects can be addressed without breaking the rules of international law and what steps every country should undertake in order to enhance the welfare systems in the countries (Boyle, Redgwell, Birnie, and Redgwell's²⁰²¹).

2. Literature Review

Social Welfare is the category of public measures, policies and arrangements aimed at guaranteeing a minimum required level of living of households and, in particular, those in a state of need. Such programs are likely to comprise health, jobless benefits, disability, and pensions. As the above sections pointed out, social welfare is signified as one of the human rights internationally by instruments in the

international human rights law such as the Universal Declaration of Human Rights (UDHR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). These frameworks require states to ensure that they put in place social protection mechanisms that will protect the dignity of the people. International Law is defined as the sum total of rules, standards, principles and regulations that facilitate relations between international actors such as states and the rest of the world. In Social Welfare, when referring to topics of Inter-country cooperation, protection of Rights of People, and coordination of Foreign Policies with International Goals like SDG. Welfare systems legal issues include for instance funding, equity, politics, and sovereignty-clouded global duties. These challenges are major and very much diverse across the regions and their effects directly influence effectiveness of social welfare systems (Chesterman, 2020). In the past few years, scholars have explored the issues of social welfare systems and international law from several angles. One such critical focus of analysis has been the influence of cross-national human rights frameworks on the formation of national welfare regimes. The two key documents are UDHR and ICESCR which articulate and guide states on issues of social security and state's responsibilities as to welfare of the populace. For instance, in Boyle and Redgwell's (2021) study on international environmental law, realization of human rights policy showed that the legal idea of justice and equity was relevant in policy formulation of human rights – which therefore is also valid to the concept of social welfare systems. Comparative Analyses of National Welfare Laws have always been key tools in comparing how different countries address the issue of social welfare. The analysis of the findings has been done by Fischer (2022) and Siems (2022) based on the comparison of the welfare systems of the developed and the developing nations. These give analyses of inequity of power resources and political will and legal frame work that determine the efficiency of social protection (Dettlaff and Boyd, 2020). For example, the European Union has historically been a model of socially oriented legislation, including such large-scale programs like the European Pillar of Social Rights, according to which citizens of the EU countries have the right to affordable medical care, education, and social services. However, using resource constraints and institutional capacity constraints in developing country such as India and Brazil exposed women, children and people with disability to exclusion of welfare benefits. UN and World Bank involvement in policy formulation of welfare is also worthy of consideration. These two organizations have helped improve reforms in social welfare through offering financial support, technical advice and policy advocacy. Almeida et al. (2022) highlight how United Nations as an intergovernmental organization promotes the national legal policies by offering guidelines and funding sources that support the states to adopt social protection systems that are compliant with International Human Rights legislation (Almeida, Shmarko and Lomas, 2022). When analyzing social welfare systems mainly from a comparative perspective, some pivotal legal issues arise. A primary complex is the ability to obtain Social Security benefits most prominently in nations characterized by high inequality rates. According to Blackstock et al., (2020), legal or policy questions limit welfare service

uptake particularly for indigenous people. For instance, while Canada has sound national laws on children's social welfare, indigenous children are in the child welfare system proving that legislation does not adequately safeguard vulnerable groups' rights. Financial sustainability is still another challenge. Sweden also has fine welfare services basic but the problem of financial solvency has emerged due credit and the increasing ageing populace is putting pressure on pension and health care systems. This is aggravated by global economic factors and the dilemma of domestic policy agenda and compliance with international processes. Inequality in Welfare Provision also prevails in many social welfare systems still. For instance, the social welfare system of the United States is characterized by high levels of inequality, especially in materia of health-care and unemployment insurance. In sum, there are the basic problems of the legal regulation of welfare in the United States: there is no universal health insurance in the country, while such systems are highly developed in such Northern European countries as Norway, Denmark, Sweden, and others. This makes the delivery of welfare services incomplete in some regions and heavily depended on in others all because there is no federal approach to the organization of welfare distribution (Blackstock, Bamblett, and Black, 2020).

Despite the extensive research interest and knowledge base about social welfare legal structures and especially about their access, equality or inequity and sustainability concerns that remain untouched are nevertheless paramount. First, there are very few systematic assessments of the implications of international treaties and global human rights frameworks for national welfare states especially in the developing Nations. The issue of how international law can more readily be incorporated into national law is still an academically overlooked question as to how such laws can be integrated into the legal systems of national states, particularly in sub- Sahara Africa where many governments lack the necessary enforcement power to actualize international norms. Besides, there is lack of empirical studies that could compare the efficiency of different legal tools employed by IOs, including the UN and the World Bank, to influence the welfare policies of different regions (Saputra and Emovwodo, 2022). There should be more studies on how these international organizations can assist countries to manage their sovereignty and international law in international relations. Finally, there has been a development of a new line of research focusing on the impact of technology on facilitating or aggravating access to social welfare benefits given the increased use of digital welfare services. Scholarly studies focusing on the effect of digital social welfare and its legal consequences on vulnerable groups including people in the developing countries are however, indeed limited.

3. Methodology

As a result, this article uses a qualitative comparative legal analysis to assess the legal framework of social welfare systems in light of international law. The Work employs both primary and secondary data collection approaches as the tool to look at the legal environment, policies and case study in detail. The research employs a comparative

legal analysis methodology, which compares legal regimes and practices regarding social welfare systems in developed and developing countries. Such an approach enables for the comprehension of how certain worldwide regulation impacts on local procedures, as well as the problems which one comes across when implementing nationwide legislations with the international norms on human rights protection. This manuscript includes a look at social welfare laws in selected countries (e.g., Sweden, the United States, Brazil, India); supranational instruments such as the ICESCR and UDHR; and the legal instruments proffered by the UN and other institutions such as the World Bank. This research also includes cross-sectional articles, books, and reports supplemented by case law regarding social welfare and international law in relation to national legal frameworks of participating countries.

The comparison involves a number of countries and regions for which the SW system is being compared: the European Union, USA, Brazil, India. These are chosen for their unique legal, economic and political environments that offer some different views on welfare regulation. A review of the selected case studies is devoted to the impact of international law on national welfare systems, within which legal factors are properly reflected in policy choices.

4. Comparative Analysis of Legal Challenges in Different Systems

Some of the main legal issues of the social welfare systems depend on the state due to sovereignty in matters to do with economy, politics and social issues. This comparative analysis centers on EU, US, and Indian systems of social welfare to give an insight into their distinctive regulatory systems, key legal issues, and compliance with the international laws. The paper focuses on the imbalance of national policies new and old Global Economic Realities, and human rights mechanism as determinants of social welfare policies. The European Union (EU) ultimately symbolizes a region in which social welfare is enshrined in political and legal systems. Measures of Social Integration: The EU has social policies in order to establish basic social standards in all its member states; Health Care: Unemployment Benefits: Social Security. These policies are defined by the legal acts including EU Social Pillar and the European Social Charter according to which the members of the EU should guarantee the access to the essential public services. Nevertheless, there are differences in the realization of these policies among countries (Saputra and Emovwodo, 2022). However, nations in Scandinavia have well maintained and fully developed welfare programs in their countries due to their welfare state while Nations in the Southern Europe including Greece and Spain try to deal with welfare issues due weight issues and cuts during the Europe credit crunch period. In the United State however a much less integrated model exists with social welfare programs that have been more episodic in nature or specialized rather than all embracing. And services such as Social Security, Medicaid and Unemployment Insurance are offered, but again, these tend to offer limited benefit and are not available to all. The US system is also problematic in certain areas such as immigration status as most of the people classified as refugees are denied

entry to some of the benefits for being undocumented immigrants. However, India has legal structure that can be deemed as protecting the society for its extensive and pluralistic population. Other welfare schemes for employment, food securities and making money include the NREGA for rural employment, PMJDY for financial inclusion especially for the poor. Still, various sources show that India's welfare system is constrained by such problems of finance, corruption, and bureaucratic bottlenecks; vulnerable groups often cannot receive adequate services (Siems, 2022).

4.1 Key Legal Challenges in Social Welfare Systems

Benefit claim procedures are another key issue found among SW systems, especially for targeted groups of citizens. In the US, welfare is still very much a restricted concept in terms of accessibility, especially to immigrants and informal, non-standard employees. The immigrant who is an important factor in the growth of the economy is barred from several social welfare policies such as Medicaid's health care and unemployment benefits. This exclusion only widens the social divide and leaves about millions of people without any basic welfare services. Likewise, the Indian programs like NREGA though aimed at the rural and deprived sections of the society, the roll out of these programs are also not even. Lack of awareness, inefficiency and corruption make many of the deserving beneficiaries fail to get the benefits. To the contrary, the EU still largely guarantees the increased access to welfare but still the level of inequality remains admissible between the member states. For instance, social benefits in Italy are excluded to the informal economy that is widespread in many of the southern regions. This exclusion holds to a significant part of the whole population such as the migrants and low wage earners (Lake, Martin, and Risse, 2021).

Another significant area of legal concern is the disparity and discrimination in receiving welfare assistance. Pay gap and inequality is highlighted in the US as women, particularly single mothers struggle to access welfare programs. For example, Medicaid and Social security will not cater for women in the right way without considering their responsibilities of bearing children and /or being caregivers. Currently, racial discrimination has also not changed and has contributed to the exclusion of African Americans and the Latinos from the welfare programs. Thus far, the EU has worked on gender mainstreaming in welfare policies and service delivery; however, countries such as Poland and Hungary have lagged behind in effective and appropriate implementation of gender-mainstreaming strategies. Further, the social welfare systems are marked with caste inferentiality in India where the lower caste people and woman are the most discriminated lot in availing these welfare services. These systemic issues are some of the reasons that would give calls to reform the law in order to remove specific unfair barriers to the welfare including inequality in access (Tzouvala, 2020). The issue of financial sustainability is also significant, especially when considering developing countries such as India. Primarily, funding issues, poor taxonomy and poor political stability to support social welfare programs are big hindrances in India. The NREGA and similar programs rely heavily on state

funding which is always inadequate due to financial challenges. Likewise, the Greek and other EU member Southern European states discovered that after 2008's financial crisis that their financial state was poor and consequently they had to cut welfare provision by significantly lowering public spending. General adjustment policies have presented deep consequences for welfare states in these nations by declining essential services like health and education. The high cost of healthcare, combined with an ageing population in the United States puts tremendous pressure on Medicare and Social Security programs, consequently sparking an influential discussion on the feasibility of these programs in the future. These welfare systems are now facing severe problems of financial sustainability due to demographic changes factors such as ageing population and rising levels of income disparities.

4.2 The Role of international law in regulating Social Welfare Systems

Human rights systems and conventions are a crucial element of the ways through which the welfare of the society is regulated by international law. This paper provides an understanding about the Universal Declaration of Human Rights (UDHR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR) for inception of the right to social security and other social protection. These documents impose on states the duty to ensure availability of minimum social needs, such as medicals, education and shelter, as human rights (Almeida, Shmarko and Lomas, 2022). In the EU these international standards are usually codified in national legislation, and the EU's legislation provides a fairly high degree of social protection. The European Social Charter strengthens these obligations within Member states invoking that each should adhere to basic social rights. However, when countries do not or cannot meet these international obligations, they cause difficulties because of national political reasons or economic difficulties. For instance, the International Monetary Fund and World Bank have been involved in reorientation of social policies in the developing states such as India and Brazil by pushing for the monetarist structural adjustment which erodes forms of social protection (Jerker and Svantesson, 2021). This leads to two levels of raw materials resources conflict national versus international legal systems – whereby governments are trapped in the dilemma of attending to the welfare needs of its people against pressures from the international financial creators. International law is the principal source of regulation of social welfare, but the enforcement of this regulation is usually accompanied by challenges in governments that prefer economic liberalization or preservation of political power to protection and provision of social services.

5. International law and its role in regulating social welfare systems

International law is also central in defining social welfare systems by informing normative legal requirements that support such systems for the guarantee of social justice and security. The Universal Declaration of Human Rights (UDHR), adopted by the United Nations in 1948, recognizes the right to social security under Article

22, which asserts that “everyone, as a member of society, has the right to social security.” Moreover, the International Covenant on Economic, Social and Cultural Rights provides the following essential clarification: adopting in 1966, this document strengthens the worldwide focus on the right to social protection. Despite recognizing the right, states have an obligation to take steps to ensure that adequate social services remain accessible, such as health, education, and social security. These treaties and others including the European Social Charter and the African Charter on Human and Peoples’ Rights are useful instruments to facilitate the formation of government social welfare policies and programs that respect human rights (Tzouvala, 2020). The commitment and ability of different countries to the regulation of social welfare systems under international law significantly varies. For instance, Sweden aligns itself with the international human rights laws and practices, and has one of the best mechanisms for social security today. Sweden’s universal health care and social security systems are compatible with those states’ commitments to the ICESCR and EU regulations, and Sweden’s social mobility ranking is high. The United States on the other hand has a multifaceted system of welfare, where support is offered through various programs including Medicare and Social Security but limited from access to most social services by groups notably the undocumented immigrants. Despite the United States’ ratification of the UDHR, it has been accused of not adhering strictly to the international welfare standards: people of color, in particular, are often excluded from welfare services because of legal barriers.

Nonetheless, integration of the welfare systems in the different nations to international mandates is not easy. Legal sovereign continues to presents a challenge given that the nations’ political authorities are sometimes willing to put into operation national laws rather than the regional international ones especially when the domestic laws and policies contravenes the international human rights standards. In the same way, the shocks that IMF sets as its structural adjustment measures following financial crises have reduced social expenditure to countries, thus constraining their ability to meet IMF standards of social risk management (Saputra and Emovwodo, 2022). All these challenges raise questions about the relations between legal sovereignty and the international legal commitments of states.

5.1 Case Study 1: Sweden’s Social Welfare System and International law

Focusing on Sweden, the study is capable of becoming an example of how international law influences the national social welfare policies. Sweden ratified both the ICESCR and the ESC, which both enshrine the right to health, education, to social security. Therefore, Sweden provides FULL Health Care for everyone and Huge Unemployment Benefits through Highest Ranked taxation. These rights are respected in Sweden since its government provides high ratings in all aspects of gender equality, health system, and social protection. Sweden has also enacted sound policies, including paid parental leave that conforms to international human rights conventions. Having an ageing population is not easy but Sweden remains one of the top countries that guarantee availability of social welfare where the Government

of Sweden has budgeted 10.9% of the GDP towards social protection. The analysis of this case clearly reveals the benefits of integrating national welfare systems with the international human rights law when legal essentials are backed up by political willingness and sound governance systems (Almeida, Shmarko, and Lomas, 2022).

6. Discussion and Policy Implications

The comparative analysis and case studies discussed throughout this study provide valuable observations about use of international law in managing social welfare systems. One of the significant discoveries made is the central role that international legal instruments including the Universal Declaration of Human Rights (UDHR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) have played in forming of welfare policies at the national level. But there are certain problems for practical application of these standards, mainly, political and national priorities can overrule international ones. Swedish case looks at how implemented welfare policies have been supplemented by international law for Sweden, while Indian case underlines the deficiencies that slow down the wielding of implemented welfare policies such as bureaucratic entanglements, political opposition, and resource shortage (Dettlaff and Boyd²⁰²⁰). Another key theme is legal sovereignty, which manifests in that states' is work in their interests, which may disregard global responsibilities and exclude particular vulnerable groups from protection (Freund, 2024). These challenges can be worked out under international law by enhancing the compliance procedures that uphold the international welfare standards. In this regard, the existence of legally enforceable international agreements with substantive enforcement provisions could contribute to holding states to decent compliance with prescribed minimum levels of social protection for sensitive categories of social insurance. One very important suggestion is that each state sign such treaties as basic welfare provisions, for instance in the form of internationally set minimums for such things as health care and insurance, unemployment compensation, and social security for everyone, citizens of the states-participants as well as immigrants. Moreover, international organizations such as the United Nations and the World Bank could increase the level of participation in the implementation of such frameworks, financial assistance, and supervision of their adoption by developing countries. Along with the ambitious changes in all the foreign legal acts and documents, there should be effectiveness of the cooperation of the states in terms of their experience and initiatives for the creation of stable welfare states. The developed countries especially the ones with efficient welfare programs like Sweden or Germany could help the developing countries (Siems, 2022). Also, there are opportunities for interregional cooperation in the development of region-specific social welfare policies within the European Union or the African Union. Follow-up studies should establish how international law is likely to adapt to new areas of social welfare provision relating to climate change and migration that puts a challenge on social protection systems globally. Future research needs to examine how legal instruments on the international

plane can be utilized for the shielding of climate induced refugees and displaced persons. Also, research could focus on how this inequality can be redressed through international law since welfare state regimes are underdeveloped, and frequently under-financed, in the global South (Siems, 2022).

7. Conclusion

Therefore, the place of international law in governing social welfare systems is significant and multifaceted. The study further notes that although general Human Rights frameworks exist across the world as the basis on which welfare systems should operate, the real-world application of these entities is not necessarily easy because of the issue of enforcement and nationalism. Comparing the two different responses of Sweden and India is rather valuable when emphasizing the role of stronger universal international mechanisms for the purpose of social protection. The study further confirms the need to bring national welfare policies in compliance with International Human Right Laws and argue that the later requires a radical review to meet challenges that are currently defining the new social welfare needs such as climate change and migration. This research has discussed the concrete legal issues in relation to various countries in the field of social welfare systems to define how international law can help solve those issues. As global concerns of inequities, immigrations, and climate changes get worse international law must be strengthened for every citizen to receive social basics. But as the realm of international law expands its ability to address these issues in the future of social welfare systems will be vital.

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