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**Teaching and research of international law in an expanded world:** understanding from the indian perspective

**Ensino e pesquisa de Direito Internacional em um mundo expandido:** compreensão a partir da perspectiva indiana

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EXTRATERRITORIAL MECHANISMS, INTERNATIONAL  
COOPERATION, AND PROTECTION OF VICTIMS  
OF HUMAN RIGHTS VIOLATIONS

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# Teaching and research of international law in an expanded world: understanding from the indian perspective\*

## Ensino e pesquisa de Direito Internacional em um mundo expandido: compreensão a partir da perspectiva indiana

Shuvro Prosun Sarker\*\*

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### Abstract

The teaching and research of international law in India is affected in a manner, which is in many respects, occur different from that of the developed world. There exist salient differences in attitude, focus, approach, interpretation, and resources. Presently, the teaching of international law in India has been essentially Eurocentric, with course of study acquiescent to western anecdotes, and research which is largely detached from the relevant content. Such an approach was further strengthened by the adoption of “positivist methodology in both teaching and research”, which in a way rejected any excursions into the world of deep structures. For a greater part of Indian legal education there has been a sense of lack of relatability, particularly in addressing local legal issues. This has impacted students, the discipline, and legal pedagogy alike. Furthermore, because of the complexity of Indian society engendered by its own internal contradictions, one finds interesting disparities of substance and methodology adopted for dispersing knowledge. In this milieu, this paper discusses teaching and research methods of international law in India amidst a backdrop that provides context within which the newer approach can be centered around. This will be followed by an attempt to strengthen the teaching and research of international law in India, particularly in the light of Global North’s hegemonic dominance over the “form and content of treaties and institutions.” The paper while tries to examine the ongoing neo-liberal model, argues for injecting the process with equity. The paper concludes with a suggestion that in view of severe social and economic limitations, coupled with changing foreordination in knowledge and power, the subject of international law should really be given high priority.

**Keywords:** colonialism; critical international law; eurocentric; globalization; hegemony; imperial; TWAAIL.

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## Resumo

O ensino e a pesquisa do direito internacional na Índia são afetados de uma maneira que, em muitos aspectos, é diferente da do mundo desenvolvido. Existem diferenças marcantes em atitude, foco, abordagem, interpretação e recursos. O ensino do direito internacional na Índia tem sido predominantemente eurocêntrico, com currículo dominado por narrativas ocidentais e pesquisa que é amplamente destacada do conteúdo relevante. Para uma grande parte da educação jurídica indiana, houve uma sensação de falta de identificação, particularmente na abordagem de questões jurídicas locais. Isso tem impactado os alunos, a disciplina e a pedagogia jurídica. Além disso, devido à complexidade da sociedade indiana engendrada por suas próprias contradições internas, encontram-se disparidades interessantes de substância e metodologia adotadas para a dispersão do conhecimento. Este artigo discute os métodos de ensino e pesquisa do direito internacional na Índia com uma nota de fundo que fornece o contexto no qual a abordagem será centrada. Isso será seguido por uma tentativa de justificar a necessidade de ensino e pesquisa de direito internacional na Índia. O documento conclui com uma sugestão de que, em vista das severas limitações sociais e econômicas, assuntos de direito internacional devem realmente receber alta prioridade.

**Palavras-chave:** Colonialismo, Eurocentrismo, Globalização, Imperialismo, TWAIL

## 1 Introduction

There are two perspectives *apropos* the state of international law in India, one, that suggest that not much has changed over the years,<sup>1</sup> against the other which suggest that significant advancement to its understanding has been made.<sup>2</sup> In recent years, there are emergence of

<sup>1</sup> DHOKALIA, R. P. The Teaching of International Law and International Institutions in the Indian Universities. *Journal of Indian Law Institute*, v. 13, n. 3, p. 305-325, 1971. See also LAUTERPACHT, Elihu. International Law in India: some notes on teaching and research. *International Studies*, v. 3, n. 3, p. 318, 1961.

<sup>2</sup> CHIMNI, B. S. Teaching, research and promotion of international law in India: past, present and future. *Singapore Journal of International and Comparative Law*, v. 5, n. 2, p. 368-387, 2001; SINHA, Manoj Kumar. *Implementation of Basic Human Rights*. New Delhi: Manak Publications Pvt. Ltd, 1999; SINGH, Prabhakar. *Indian International Law: From a Colonized Apologist to a Subaltern Protagonist*. *Leiden*

institutions maintaining exclusive claim over international law courses. These claims have some authenticity, particularly when the world community is undergoing fundamental, political, social, economic and technological changes. In this manner, law making indeed demands plurality of processes, arenas and actors representing different ethnic-cultural and ideological systems, and congeries of different legal relationships.

At the same time, since legal studies can never be insular, and requires informed global perspectives, supported with critical legal thinking of contemporary issues. The question is how much of plurality is appreciated or acknowledged, especially when international institutions are “dominated *by* and located *in* the global North.”<sup>3</sup> Further, the manner in which international law is “constructed or reconstructed”, appear “predominantly to protect, project and promote the interest of the West.”<sup>4</sup> Also, the framers have been successful in establishing narratives, standards, and expectations—against the legitimate interest of the global South.<sup>5</sup>

Such domination by narratives and accounts, does also support use of positivist methodology in both teaching and research of international law in global South. This continuing use of positivist western text books to teach international law or use of positivist methodology to research appears incomprehensible, at least on two counts. *First*, it prevents “excursions into the

*Journal of International Law*, v. 23, n. 1, p. 79-103, 2010; SEN, Rohini. International Law in Indian Law Schools—What Remains Invisible. *RGNUL Student Research Review Blog*, 2020. Available at: [rsrr.in/2020/12/24/international-law-in-indian-law-schools/](https://rsrr.in/2020/12/24/international-law-in-indian-law-schools/). Access on: 02 June 2022.

<sup>3</sup> ANGHIE, Anthony. *Imperialism, sovereignty and the making of international law*. Cambridge: Cambridge University Press, 2004; See also IKEJIYAKU, Brian-Vincent. International Law is Western Made Global Law: The Perception of Third-World Category. *African Journal of Legal Studies*, v. 6, p. 337-356, 2013; ANGHIE, Anthony; CHIMNI, B. S.; MICKELSON, Karin; OKAFOR, Obiora. (ed.). *The Third World and International Order: law, politics and globalisation*. Leiden: Martinus Nijhoff Publishers, 2004.

<sup>4</sup> CHIMNI, B. S. The Past, Present and Future of International Law: a critical third world approach. *Melbourne Journal of International Law*, v. 8, p. 499-515, 2007. See also SINGH, Prabhakar. International Law as Intimate Enemy. *Oregon Review of International Law*, v. 14, n. 2, p. 377-429, 2012.

<sup>5</sup> See ANAND, R. P. *International Law and Developing Countries: confrontation or cooperation*. Dordrech: Kluwer, 1987; RAJAGOPAL, B. *International Law from Below: development, social movements and third world resistance*. Cambridge: Cambridge University Press, 2003; and CHIMNI, B. S. International Institutions Today: an imperial global state in the making. *European Journal of International Law*, v. 15, n. 1, p. 1-37, 2004.

world of deep structures”, confines domain to merely “addressing the normative phenomena”, and pervades a belief that any concern with the “world beyond rules” is reckoned spurious.<sup>6</sup> And *secondly*, while positivism assumes that rules of law can be “objectively identified and interpreted”, yet the practice of North remains “diverged from the ideal of the rule of law”, and generates “avoidable cynicism and pessimism.”<sup>7</sup> As a consequence, the study of international law is undermined, and a pool of international lawyers is prepared with a “high degree of detachment, disinterest, and cognitive dissonance from the content.”<sup>8</sup>

In this perspective, the present paper examines teaching and research of international law in India. Currently, the subject of international law is taught at undergraduate and post graduate level in nearly 1,721 law schools and universities across the country.<sup>9</sup> Having said this, in undergraduate level the range of the syllabus covered is quite wide, and at post-graduate level the range is somewhat narrowed down. Interestingly, at both level study of international law is not covered in depth. It also acknowledges the suggestions made for internationalization of legal education,<sup>10</sup> designing of multi-

-disciplinary courses,<sup>11</sup> and adoption of unique methods of pedagogy.<sup>12</sup> This in turn brings newer threats to the teaching and research of international law in India, which is making ardent efforts to make legal education distinctive, globalized and inclusive.

## 2 The partisan narrative of international law

The journey of development of international law saw no such existence of global North-South divide, and nation-States were more or less at similar position. In this sense history testifies co-existence of the States (of course with varying degree of autonomy). However, the approach changed significantly, particularly during the colonial period, which saw dominating western States base international law to legitimize or justify acts of exploitation and subjugation.<sup>13</sup> In this process, what was conceived as a universal, it became Eurocentric, having religious inspiration (or aspiration) “as the basis for civilization, capitalism as innate in humans, and imperialism as a necessity.”<sup>14</sup> The colonial period justified practices of slavery, exploitation, plunder, *etc.*, and completely ignored the autonomy of the colonized States.

The experience of colonial rule encouraged West to develop a stealthy, complex and cumulative process of principles and norms. As a result, some of the principles or norms established were superimposed upon colonized States. There are also efforts to re-write origin of international law and accordingly center it around the notion of sovereignty to “justify, manage and legitimize colonialism.”<sup>15</sup> For instance, trade negotiations often reveal apparent reflections of colonial racism and post-colonial paternalism, wherein the North conni-

<sup>6</sup> CHIMNI, B. S. Teaching, research and promotion of international law in India: past, present and future. *Singapore Journal of International and Comparative Law*, v. 5, n. 2, p. 371, 2001.

<sup>7</sup> CHIMNI, B. S. Teaching, research and promotion of international law in India: past, present and future. *Singapore Journal of International and Comparative Law*, v. 5, n. 2, p. 372, 2001.

<sup>8</sup> SEN, Rohini. International Law in Indian Law Schools—What Remains Invisible. *RGNUL Student Research Review Blog*, 2020. Available at: [rsrr.in/2020/12/24/international-law-in-indian-law-schools/](https://rsrr.in/2020/12/24/international-law-in-indian-law-schools/). Access on: 02 June 2022.

<sup>9</sup> See Bar & Bench. 1,721 law schools in India; more than twice as many private law colleges than government law colleges: Law Minister. 2022. Available at: <https://www.barandbench.com/news/lawschools/1721-law-schools-in-india-more-than-twice-as-many-private-law-colleges-than-govt-law-colleges-law-minister>. Access on: 02 June 2022. The Bar Council of India recognize International Law as a mandatory subject. See Bar Council of India, Part-IV: Rules of Legal Education. Available at: <http://www.barcouncilofindia.org/wp-content/uploads/2010/05/BCIRulesPartIV.pdf>. Access on: 15 June 2022. Rules on standards of legal education and recognition of degrees in law for the purpose of enrolment as advocate and inspection of Universities for recognizing its degree in law are prepared under Sections 7(1)(h) and (i), 24(1)(c)(iii), and (iii), 49(1)(af),(ag),and (d) of the Advocates Act, 1961 made by the Bar Council of India in consultation with Universities and State Bar Councils

<sup>10</sup> PANDEY, Abhishek Kumar. The Transnational Legal Practitioner: a case for connecting legal research instruction with current legal research practices. In: SIVAKUMAR, S; SHARMA, Prakash; PANDEY, Abhishek Kumar (ed.). *Clinical and Continuing Legal Education: a roadmap for India*. Gurgaon: Commonwealth Legal Education As-

sociation and Thomson Reuters, 2021. p. 200-213.

<sup>11</sup> CHIMNI, B. S. Teaching, research and promotion of international law in India: past, present and future. *Singapore Journal of International and Comparative Law*, v. 5, n. 2, p. 380, 2001.

<sup>12</sup> CHIMNI, B. S. Teaching, research and promotion of international law in India: past, present and future. *Singapore Journal of International and Comparative Law*, v. 5, n. 2, p. 368-387, 2001.

<sup>13</sup> CHIMNI, B. S. Third World Approaches to International Law: a manifesto. *International Community Law Review*, v. 8, p. 3-27, 2006.

<sup>14</sup> BEDJAQUI, Mohamed. Poverty of the International Order. In: FALK, Richard A. *et al.* (ed.). *International Law: a contemporary perspective*. Boulder: Westview Press, 1985. p. 153

<sup>15</sup> MUTUA, Makau W. What Is TWAIL? *ASIL Proceedings*, v. 94, p. 33, 2000. Available at: <https://core.ac.uk/download/pdf/236359788.pdf>. Access on: 18 June 2022.

ve negotiations around benevolence and empathy, yet offer unfavourable terms, and an opportunity to project South as obstreperous and unwilling.

The processes of adaptation of the international normative system in the public order appear partisan. Although, theatrically all sovereigns are equal yet in practice, there exist unfair power-sharing struggle. This is reflected well with the establishment of five world powers as permanent members of United Nations Security Council. With the rules of so-called global order, this partisan infrastructure highlights the post-colonial subjugation of the South that allows inferior sovereigns to “cross-fertilization, or cultivating and contributing to modern international law.”<sup>16</sup> Further, when International of Law Commission (ILC) or for that matter International Court of Justice (ICJ) were established, there were expectations in respect of reshaping, reformulation and interpretation of international law in an order to meet new conditions. Here, a narrative was given to the world that with the creation of an imaginative initiative to bring about an authentic juridical order, the global community will develop a positive network to advance the quest for a more just global order. In this process, the global institutions, in particular to those occupying “unified global economic space” like the World Bank, the World Trade Organization (WTO), and the International Monetary Fund (IMF), have dubiously impacted equitable participation, social justice, and accountability.<sup>17</sup> The result is quite opposite and few allege that with the politicization of elections to these bodies, and with their composition comprising mostly foreign ministry legal advisers rather than politically more independent legal luminaries, how universal standards of just world could be arrived at.<sup>18</sup>

The application of international law via the policies and actions of international financial institutions to dominate economic relations with least developed States (LDS) is transparent too. How successful or ignoble

this narrative is a matter of serious debate. Philip McMichael argued that international trade is not grounded upon “comparative advantage”, rather “comparative access to subsidies.”<sup>19</sup> For instance, over the years, the WTO and other international economic institutions have developed a mechanism/scheme that not just control but also manipulates schemes arising from emerging sectors in global South. As a consequence, the richer nations continue to negotiate exemptions and pursue indefinite subsidisation or exclusion of horizontal non-specific subsidies. This not only explains the dominance but also explains West’s ability to both push and promote favourable conditions to facilitate inequitable economic growth. Recently, a study reveals that a significantly greater bulk of research, especially on economic development, does not “involve researchers based in the global South.”<sup>20</sup> There are multiple reasons including limited access to research funding, research skills, English proficiency, travel grants, migration of qualified researchers, *etc.*<sup>21</sup> This alone however, cannot be an excuse to adequate representation, particularly when such researches have potential to affect future.

The impact could be foreseen in the manner in which international institutions have acquired significant control over the social, economic, and political scheme of things. B.S. Chimni examines this phenomenon in details and argues that there exist “a nascent global state whose function is to realise the interests of transnational capital and powerful states,”<sup>22</sup> at the expense of

<sup>16</sup> SINGH, Prabhakar. Indian International Law: From a Colonized Apologist to a Subaltern Protagonist. *Leiden Journal of International Law*, v. 23, n. 1, p. 80, 2010.

<sup>17</sup> CHIMNI, B. S. A Just World Under Law: A View from the South. *American University International Law Review*, v. 22, n. 2, p. 200-01, 2007. See also, SINHA, Manoj Kumar (ed.). *Business and human rights*. New Delhi: SAGE Publications India Pvt. Ltd., 2013.

<sup>18</sup> MCWHINNEY, Edward. *United Nations Law Making—Cultural and Ideological Relativism and International Law Making for an Era of Transition*. Paris: United Nations Educational Scientific and Cultural Organization, 1984.

<sup>19</sup> MCMICHAEL, Philip. Global food politics. *Monthly Review*, v. 50, n. 3, p. 97-111, 1998.

<sup>20</sup> See AMARANTE, Veronica *et al.* Underrepresentation of Developing Country Researchers in Development Research. *Applied Economics Letters*, v. 28, 2021. Available at: <https://ddrn.dk/wp-content/uploads/2021/11/Underrepresentation-of-developing-country-researchers-in-development-research.pdf>. Access on: 20 June 2022. The study reveals that “research on economic issues in developing countries is almost exclusively led by researchers who live not in these countries but mainly in the US and Europe.” Previously, there was another research finding on similar issue, see CUMMINGS, Sarah; HOENINK, Paul. Representation of Academics from Developing Countries as Authors and Editorial Board Members in Scientific Journals: DOES THIS MATTER TO THE FIELD OF DEVELOPMENT STUDIES? *The European Journal of Development Research*, v. 29, p. 369-383, 2017.

<sup>21</sup> It is worthy to acknowledge the importance or advantage of the first-hand knowledge, see AMARANTE, Veronica *et al.* Underrepresentation of Developing Country Researchers in Development Research. *Applied Economics Letters*, v. 28, 2021. Available at: <https://ddrn.dk/wp-content/uploads/2021/11/Underrepresentation-of-developing-country-researchers-in-development-research.pdf>. Access on: 20 June 2022.

<sup>22</sup> CHIMNI, B. S. International Institutions Today: An Imperial

global South—who loses autonomy. This has been only been possible because of the decisive State intervention without which “globalization could not have taken place.”<sup>23</sup> The North takes control of both form and content of international instruments to initiate the process of “deregulation, liberalisation, and privatisation,” both at domestic as well as at international level to pave the “way for new business strategies with a global reach.”<sup>24</sup> For instance, following the Uruguay Round, one crucial area which has been left unfair to the interest of Developing and LDS has been the agriculture agreement.<sup>25</sup> With unfavorable trade terms, followed with power asymmetries, there is greater likeliness towards constructing asymmetric trade rules. Consequently, such inequitable measure results in the growing concentration of corporate power in local businesses—at the cost of global South’s interest.

Even with such apparent biases, the global South not only continues to participate but also emerge pioneer to the development of the modern international law. Reform rather than repudiation is the strategy adopted. It acknowledges the fact that contemporary international law, although imperial in spirit, does have the potential to correct.<sup>26</sup> In fact since 1947, India has somehow been successful in expanded its regional and global relations. Its Non-Aligned Movement (NAM) had significant support from the newly formed Asian, African and Latin-American sovereign States.<sup>27</sup> Through *Panchsheel* Agreement (or good-neighbor policy), India presented new principles of international law, which was quite different

from the then dominant western vocabulary.<sup>28</sup> Besides contributing to the development of global agencies, India has supported regional, diplomatic, economic and strategic platforms to establish spirit of friendship, trust and understanding.<sup>29</sup> Commenting on this Indian *avatar*, Prabhakar Singh writes:<sup>30</sup> Globalization has clearly taught India the tricks of economy-and security-related symbiotic strategy in a world that is threatened by terrorism and financial insecurity. India has, there is no doubt, turned out to be a fast learner.

This aspect is further strengthened from the outcome of the recently held 12<sup>th</sup> Ministerial Conference (MC12) of the WTO, wherein India not only played a crucial role in averting institutional crisis, but also ensured that WTO will live to see another day.<sup>31</sup> Throughout the negotiations India maintained that it is fighting to protect livelihoods in developing nations.<sup>32</sup> Such approach has presented a unique opportunity for global South to only seize the moment through collective strengths, advocacy, and favorable concessions, but also reject narrative of elitist.

Global State in the Making. *European Journal of International Law*, v. 15, n. 1, p. 2-3, 2004.

<sup>23</sup> CARNOY, Martin; CASTELLS, Manuel. Globalisation, the knowledge society, and the network State: Poulantzas at the Millennium. *Global Networks*, v. 1, n. 1, p. 5, 2001.

<sup>24</sup> CARNOY, Martin; CASTELLS, Manuel. Globalisation, the knowledge society, and the network State: Poulantzas at the Millennium. *Global Networks*, v. 1, n. 1, p. 5, 2001.

<sup>25</sup> MARGULIS, Matias E. The Forgotten History of Food Security in Multilateral Trade Negotiations. *World Trade Review*, v. 16, n. 1, p. 25-57, 2016. See also, SINGH, J. P. *Sweet Talk: paternalism and collective action in North-South trade relations*. Stanford: Stanford University Press, 2017. The author argues that Developed nations strive to create the impression that their hearts and pockets bleed for the developing world. Yet, the global North continues to offer unfavorable trade terms to the global South.

<sup>26</sup> CHIMNI, B. S. Teaching, research and promotion of international law in India: past, present and future. *Singapore Journal of International and Comparative Law*, v. 5, n. 2, p. 369, 2001.

<sup>27</sup> SINGH, Prabhakar. Indian International Law: From a Colonized Apologist to a Subaltern Protagonist. *Leiden Journal of International Law*, v. 23, n. 1, p. 82, 2010.

<sup>28</sup> SINGH, Alakh Niranjani; SINGH Prabhakar. What Can International Law Learn from Indian Mythology, Hinduism and History? *Journal of East Asia and International Law*, v. 2, n. 1, p. 263, 2009. Prabhakar Singh argues that “The communist Chinese arrogance born of Security Council permanent membership, in the Sino-Indian war of 1962, however, killed the opportunity that the democratic India presented to the Third World in teaching how to alter the dominant vocabulary and offer resistance to the strong domination of language in modern international law.” See SINGH, Prabhakar. Indian International Law: From a Colonized Apologist to a Subaltern Protagonist. *Leiden Journal of International Law*, v. 23, n. 1, p. 83, 2010.

<sup>29</sup> These include: G4; G20; IORA (Indian Ocean Rim Association); South Asian Association for Regional Cooperation (SAARC); BIMSTEC (Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation); Mekong-Ganga Cooperation, Shanghai Cooperation Organisation (SCO); Financial Action Task Force (FATF); Quadrilateral Security Dialogue (QUAD). The group of BRIC countries (Brazil, Russia, India, and China); BBIN countries (Bangladesh, Bhutan, India and Nepal); BCIM countries (Bangladesh-China-India-Myanmar); IBSA (India-Brazil-South Africa).

<sup>30</sup> SINGH, Prabhakar. Indian International Law: From a Colonized Apologist to a Subaltern Protagonist. *Leiden Journal of International Law*, v. 23, n. 1, p. 83, 2010.

<sup>31</sup> GHOSH, Saptaparno. Indian interests at the WTO Ministerial Conference. *The Hindu*, June, 2022. Available at: <https://www.thehindu.com/news/international/indian-interests-at-the-wto-ministerial-conference/article65526701.ece>. Access on: 21 June 2022.

<sup>32</sup> RANJAN, Prabhaskar; SAWAL, Sunayana. The WTO Agreement on Fisheries is Flawed but Significant. *The Indian Express*, June 2022. Available at: <https://indianexpress.com/article/opinion/columns/the-wto-agreement-on-fisheries-is-flawed-but-significant-7985390/>. Access on: 21 June 2022.

Following these examples, one can fairly assume that global South is now maintaining two perspectives, *first*, wherein it accepts the past and thereafter make efforts towards establishing a new world order, and *secondly*, it avoids past and brings the idea of global law of welfare.<sup>33</sup> Here, both perspective demand 3R's i.e., recognition, redistribution and representation. Simply put, these 3R's anticipate that within the rules of new international law, the collective cause of nation-states could be fittingly served. This new narrative acknowledges efforts of all (an important prerequisite to make international law work), through stable domestic regimes. Under the new narrative the global South tries to plead its cause by referring to international law from a fresh perspective. It provokes global community to develop and identify *ways* and *means* to democratize knowledge production through equitable dissemination.

### 3 Treatment of international law and research in India

India possesses a rich history of eminently contributing to the cause of international law. In fact, alongside the framing of Indian Constitution, the world was witnessing the early years of the promising international body i.e., the United Nations, and the formulation of essential human rights document i.e., the Universal Declaration of Human Rights (UDHR). These developments had hugely influenced the text of the Constitution, so much so that its provisions not only explain how "to interact with the emerging international order", but also to "the norms of international law."<sup>34</sup> Further, the Indian judiciary appears to be acquiescent to international law, withal its usage is to assist constitutional hiatus or constitutional void, but not to override the Constitution.<sup>35</sup>

<sup>33</sup> CHIMNI, B. S. A Just World Under Law: A View from the South. *American University International Law Review*, v. 22, n. 2, p. 199-220, 2007.

<sup>34</sup> Constitution of India, 1950, Part III and IV.

<sup>35</sup> See *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241; *People's Union for Civil Liberties v. Union of India*, (1997) 3 SCC 433; *Apparel Export Promotion Council v. A.K. Chopra*, (1999) 1 SCC 759; *The Chairman, Railway Board v. Chandrima Das*, (2000) 2 SCC 465; *Kuldip Nayar v. Union of India*, (2006) 7 SCC 1; *Bhavesh Jayanti Lakhani v. State of Maharashtra*, (2009) 9 SCC 551. In certain cases, Indian Supreme Court has also "channeled international law through fundamental rights provisions, while determining the constitutionality of statutory provisions in light of India's international

Since the adoption of the Constitution, India acted dualist with regards to her engagements and establishment of her relationship between international law and municipal law. The position has significantly changed over the years, to an extent that in practice it even exhibits monist inclination.<sup>36</sup> It is interesting to note here that changes are witnessed in the North's approach too.<sup>37</sup> These developments are quite revealing and explain shift in global dominance. For instance, the process of globalization has hugely impacted historic hegemonic predominance by following 4Ds: deregulation, denationalization, disinvestment, and digitalization. Post-1991 liberalisation phase, India has managed to caught world's imagination following rapid economic transformation. This has significantly enhanced her bargaining capabilities and an skill to defend against established western powers. However, at the same time, it has provoked several contradictory responses too. Commenting on this change, Surya Deva observes:<sup>38</sup>

Whether globalization is about removing borders or strengthening the existing ones is not clear; it has removed borders regarding trade but not regarding several other important issues such as access to life-saving drugs, labor movement, employment, and immigration. The question of whether globalization, which is celebrated and resisted at the same time both in the West and in the "Rest", is inevitable/irreversible, or is an example of Western imperialism in an era of neo-liberalism and therefore reversible is a moot problem.

There have been remarkable changes in the pattern of people's lifestyle, habits and culture, followed by bit-by-bit departure of the State from public services. The role of states in the process of globalization has become "complex and full of difficult choices."<sup>39</sup> There

commitments." See *P.N. Krishna Lal v. Govt of Kerala*, 1995 Supp (2) SCC 187; and *John Vallamattom v Union of India*, (2003) 6 SCC 611.

<sup>36</sup> CHANDRA, Aparna. India and International Law: formal dualism, functional monism. *Indian Journal of International Law*, v. 57, n. 1-2, p. 25-45, 2017.

<sup>37</sup> See KOSKENNIEMI, Martti. Fate of Public International Law: Between Techniques and Politics. *Modern Law Review*, v. 70, p. 1-30, 2007.

<sup>38</sup> DEVA, Surya. Human Rights Realization in an Era of Globalization: the indian experience. *Buffalo Human Rights Law Review*, v. 12, p. 93-94, 2006.

<sup>39</sup> DEVA, Surya. Human Rights Realization in an Era of Globalization: the indian experience. *Buffalo Human Rights Law Review*, v. 12, p. 15, 2006. Laureen Snider observes, "States will do as little as possible to enforce health and safety laws. They will pass them only when forced to do so by public crises or union agitation, strengthen them reluctantly, weaken them whenever possible, and enforce them in a manner calculated not to seriously impede profitability." See

are pertinent issues *vis-à-vis*. Has globalization only shifting the location of the hegemon and not the form? Will it result in welfare of all? Does it accommodate alternate voices? Responding to these issues demands better understanding of new economic world order. There are concerns of alienation, lack of global homogeneity, and wider economic disparity, which seriously test existing international arrangement/order. Therefore, the *au courant* assessment demand building of an arrangement/order that would be honestly comprehensive and indubitably ensue extensive conformality from nation-states to appropriately apprehend the ongoing and eventual challenges. This would demand capability to observe and understand the different perspectives of new international law. Such careful insight will not only be crucial but also helpful in developing methods to use State systems in responding to threats so posed.

Thus far, this understanding appears limited with enduring search for strategies. There are also concerns over the attitude of teachers who teach and research in international law. Today, the world has moved beyond the question of whether international law is true law? or whether international is a vanishing point of jurisprudence? The need of hour is not only to discuss strengths, but also the future of international law. While these are pressing concerns for States to address; the teaching of international law in India (predominantly) only reflects “narratives and accounts of the West.”<sup>40</sup> Resultantly, there appear higher scale of disunion, impassivity and perceivable variance against the subject. For learners the subject of international law appears to be what Rohini Sen argues as a “boutique subject”—outside the immediate domain of relevance—and limited to sheer “academic opportunities and scholarship.”<sup>41</sup> In fact, a narrative is created wherein western ideas backed by “money, access to institutional resources, relationships to underlying patterns of hegemony, and influence” were given greater dominance in law profession.<sup>42</sup>

SNIDER, Laureen. The Regulatory Dance: UNDERSTANDING REFORM PROCESSES IN CORPORATE CRIME. *International Journal of Sociology of Law*, v. 19, p. 220, 1991.

<sup>40</sup> CHIMNI, B. S. Teaching, research and promotion of international law in India: past, present and future. *Singapore Journal of International and Comparative Law*, v. 5, n. 2, p. 369, 2001.

<sup>41</sup> SEN, Rohini. International Law in Indian Law Schools—What Remains Invisible. *RGNUL Student Research Review Blog*, 2020. Available at: [rsrr.in/2020/12/24/international-law-in-indian-law-schools/](http://rsrr.in/2020/12/24/international-law-in-indian-law-schools/). Access on: 02 June 2022.

<sup>42</sup> KENNEDY, David. What is New Thinking in International Law. *Proceedings of the American Society of International Law*, v. 121, 2000.

In sum, the shortcoming of international law teaching and learning in India is *in built*, and reflects absence of thorough engagement, appropriate construction, and advanced understanding *vis-a-vis* the content in the law schools.<sup>43</sup> For significant past, Indian scholars have often ignored the subaltern and tribal struggle.<sup>44</sup> Nevertheless, in recent years, there has been novel resistance coming, which rejects elite’s modernity with non-elite realities of India. Professor Chimni argues “why I should look up to someone who has nothing to say to the situation of my people.”<sup>45</sup> Following subaltern and tribal defiance against the existing international model of governance (which is largely affected by globalization and post-globalization effects), India of lately has been successful in not just capturing historical guilt but also in developing a scholarship to address epistemic injustices. It allows law scholars to explore the uncharted or imprecise sources in international law. This has in turn resulted in development of Indian version of the Third World approaches to international law (TWAIL).

## 4 Understanding TWAIL in India

TWAIL was conceived out of the factual empiricism of the prevailing state of affairs. While it tries to offer perceivable alternate dialogues, it also exhibits a critical approach to international law. It goes beyond Eurocentrism, traces heterogeneity in the study of international law, and exposes how international law was conceived to advance colonial methods. Of course, in modern times, the colonial methods are replaced with asymmetric imperialist dominance.<sup>46</sup> It is through this neo-colonial form, the imperialistic ideals are expanded,<sup>47</sup> which ulti-

<sup>43</sup> SEN, Rohini. International Law in Indian Law Schools—What Remains Invisible. *RGNUL Student Research Review Blog*, 2020. Available at: [rsrr.in/2020/12/24/international-law-in-indian-law-schools/](http://rsrr.in/2020/12/24/international-law-in-indian-law-schools/). Access on: 02 June 2022.

<sup>44</sup> SINGH, Prabhakar. Indian International Law: From a Colonized Apologist to a Subaltern Protagonist. *Leiden Journal of International Law*, v. 23, n. 1, p. 103, 2010.

<sup>45</sup> CHIMNI, B. S. Teaching, research and promotion of international law in India: past, present and future. *Singapore Journal of International and Comparative Law*, v. 5, n. 2, p. 376, 2001.

<sup>46</sup> SHAHABUDDIN, Mohammad. Introduction or a Preclude to Stories of an Ambivalent Relationship. In: SHAHABUDDIN, Mohammad (ed.). *Bangladesh and International Law*. New York: Routledge, 2021.

<sup>47</sup> CHIMNI, B. S. International Institutions Today: An Imperial Global State in the Making. *European Journal of International Law*, v. 15, n. 1, p. 7-9, 2004.

mately relocates economic sovereignty of Third World in international institutions. The current pool of international institutions not only dubiously defend but also aid in establishing “an emerging global state backed by the armed might of the advanced capitalist states.”<sup>48</sup>

According to B.S. Chimni, TWAIL encounters two-fold challenges wherein it, *first*, probes nuances of “new imperial, social, and political formation” as well as “the ways in which it is shaping international laws and institutions”; and *secondly*, unravels “preferred normative futures” to foretell a scheme for restructuring “the global capitalism, international laws, and institutions” *apropos* universal welfare.<sup>49</sup> Hereof, TWAIL represents a belief, inveigled by critical legal discourse on public international law; portraying an approach to transform international law into law *of* emancipation. It argues a case for “shaping and reshaping” of “international law as international legal norms that offer a life of dignity for the poor, deprived, oppressed and subjugated.”<sup>50</sup> That being said, does it mean TWAIL is a recent phenomenon? Makau Mutua argues it is not and “stretches back to the decolonization movement that swept the globe after World War-II.”<sup>51</sup> He observes that the third world approach movement draws inspiration from the Asian and Latin American opposition to their domination by industrialized West and is both reactive and proactive.<sup>52</sup>

Does TWAIL gives up on international law? The answer is negative; and within its broad dialectic a case is built to argue existing scheme rather opposing it altogether. In fact, historical traces are in abundance which suggest how global South continued its support to the

disciple with conceivable innovative ways that somehow held its relevance to make it work for marginalized sections of global society.<sup>53</sup> This in fact leads to the asseverated demand of rules-based principles with outright rejection to imperialism. For instance, the movement of decolonization,<sup>54</sup> non-alignment,<sup>55</sup> self-determination,<sup>56</sup> domestication of international criminal law,<sup>57</sup> new international economic order,<sup>58</sup> sovereignty over natural resources,<sup>59</sup> *etc.* compelled global North to alter the then prevalent legal arrangements and conform to the struggles of subaltern groups, peoples and nations.<sup>60</sup> It urges West to reread past by discarding arrogant elitist narrative.

This leads to another question: Is there any difference in attitude amongst TWAIL scholars? Here, B.S. Chimni classifies TWAIL movement in Indi into “TWAIL-I and TWAIL-II.”<sup>61</sup> In another paper, along with Anthony Anghie, Prof. Chimni explains the difference in attitude. They argued that the TWAIL-I scholars “critiqued the genealogy of international law and its Eurocentric assumptions”, whereas TWAIL-II scholars followed a “framework critical of the deference paid by the TWAIL-I generation to the newly independent post-colonial state and its right to non-intervention.”<sup>62</sup>

<sup>48</sup> CHIMNI, B. S. Capitalism, Imperialism, and International Law in the Twenty-First Century. *Oregon Review of International Law*, v. 14, n. 1, p. 18, 2012.

<sup>49</sup> CHIMNI, B. S. Capitalism, Imperialism, and International Law in the Twenty-First Century. *Oregon Review of International Law*, v. 14, n. 1, p. 20, 2012.

<sup>50</sup> CHIMNI, B. S. The Past, Present and Future of International Law: a critical third world approach. *Melbourne Journal of International Law*, v. 8, p. 499-515, 2007. See also IKEJIAKU, Brian-Vincent. International Law is Western Made Global Law: the perception of third-world category. *African Journal of Legal Studies*, v. 6, p. 339, 2013.

<sup>51</sup> MUTUA, Makau W. What Is TWAIL? *ASIL Proceedings*, v. 94, p. 33, 2000. Available at: <https://core.ac.uk/download/pdf/236359788.pdf>. Access on: 18 June 2022.

<sup>52</sup> Makau Mutua observes that it is reactive in the sense that “it responds to international law as an imperial project”, and is proactive because “it seeks the internal transformation of conditions in the Third World.” See MUTUA, Makau W. What Is TWAIL? *ASIL Proceedings*, v. 94, p. 33, 2000. Available at: <https://core.ac.uk/download/pdf/236359788.pdf>. Access on: 18 June 2022.

<sup>53</sup> CHIMNI, B. S. A Just World Under Law: A View from the South. *American University International Law Review*, v. 22, n. 2, p. 211, 2007.

<sup>54</sup> DESIERTO, Diane A. Postcolonial International Law Discourses on Regional Developments in South and Southeast Asia. *International Journal of Legal Information*, v. 36, n. 3, p. 387-431, 2008.

<sup>55</sup> HARSHE, Rajen. India’s Non-Alignment: an attempt at conceptual reconstruction. *Economic and Political Weekly*, v. 25, p. 399-405, Feb. 1990.

<sup>56</sup> NANDA, Ved P. Self-Determination Outside the Colonial Context: the birth of Bangladesh in retrospect. *Houston Journal of International Law*, v. 1, n. 2, p. 71-93, 1979.

<sup>57</sup> RAJAN, Sanoj. Domestication of International Criminal Law: international crimes Tribunal of Bangladesh. A Case Study. *ISIL Yearbook of International Humanitarian and Refugee Law*, v. 12, p. 132-155, 2014.

<sup>58</sup> BEDJAOU, Mohammed. *Towards a New International Economic Order*. Londres: London, Holmes & Meier, 1979.

<sup>59</sup> SRIVASTAVA, Nidhi. State, Courts and Energy Resources in India: revisiting permanent sovereignty over natural resources. *Indian Journal of International Law*, v. 59, n. 2, p. 209-228, 2021.

<sup>60</sup> CHIMNI, B. S. The Past, Present and Future of International Law: a critical third world approach. *Melbourne Journal of International Law*, v. 8, p. 503, 2007.

<sup>61</sup> CHIMNI, B. S. Towards a radical third world approach to international law. *International Center for Comparative Law & Politics Review*, v. 5, n. 2, p. 23, 2002. Prabhakar Singh brings another set of scholars i.e., TWAIL-III, see SINGH, Prabhakar. Indian International Law: From a Colonized Apologist to a Subaltern Protagonist. *Leiden Journal of International Law*, v. 23, n. 1, p. 99-101, 2010.

<sup>62</sup> ANGHIE, Antony; CHIMNI, B. S. Third world approaches to

Reflecting upon the contribution of TWAIL-I scholar, particularly of Professor R.P. Anand's, Prabhakar Singh argues that certain western doctrines are in a way "reproduction of archived Indian knowledge."<sup>63</sup> He writes:<sup>64</sup>

Such a discovery was important not only for a cultural resurrection of the Indian self-image but also for the rest of the Third World, from which the North has learnt and reproduced so much, primarily due to a colonial conjugation of cultures. Colonization educated the colonizer as much as it harmed the colonized

Similarly, TWAIL-II while critiquing structural bias in international law argued for its reform. This aspect went missing in the work of TWAIL-I scholars.<sup>65</sup> In this perspective, TWAIL-II scholars made a case for a meaningful "lived experiences of ordinary people of the third world"<sup>66</sup> that can survive the "dire confrontations of the politics of knowledge creation."<sup>67</sup> As a result, they brought inter-disciplinary approach to complete missing element in the teaching and research of new international law. This, in fact, has brought international law closer to India.

## 5 Teaching Critical International Law

Since TWAIL, reshapes the "process and application of international law", it not only brings a "criti-

international law and individual responsibility in internal conflicts. *Chinese Journal of International Law*, v. 2, n. 1, p. 79, 2003.

<sup>63</sup> SINGH, Prabhakar. Indian International Law: From a Colonized Apologist to a Subaltern Protagonist. *Leiden Journal of International Law*, v. 23, n. 1, p. 86, 2010. While recollecting Professor R.P. Anand's work, the author explains how Grotian international law was in fact retrieved from the Dutch archives on the ancient Indian treatise.

<sup>64</sup> SINGH, Prabhakar. Indian International Law: From a Colonized Apologist to a Subaltern Protagonist. *Leiden Journal of International Law*, v. 23, n. 1, p. 86, 2010.

<sup>65</sup> Prof. Chimni writes "The failure of the first generation of third world scholars to capture the intimate relationship between colonialism and international law also meant...the omission to critique the post-colonial state as it was only imagined as an agent of emancipation", see CHIMNI, B. S. The Past, Present and Future of International Law: a critical third world approach. *Melbourne Journal of International Law*, v. 8, p. 502, 2007.

<sup>66</sup> CHIMNI, B. S. The Past, Present and Future of International Law: a critical third world approach. *Melbourne Journal of International Law*, v. 8, p. 500, 2007.

<sup>67</sup> SINGH, Prabhakar. Indian International Law: From a Colonized Apologist to a Subaltern Protagonist. *Leiden Journal of International Law*, v. 23, n. 1, p. 87, 2010.

cal approach that gives meaning to international law" but also tries to "transforms it into international law of emancipation."<sup>68</sup> TWAIL has therefore ignited need for studying progressive critical approach towards international law, invoked by "a particular political geography, a set of affiliations and personalities, dispositions of the times, and outlooks."<sup>69</sup> Here, B.S. Chimni suggests "the geographical location of an author has an important influence on how different theories of international law and world order are received and evaluated."<sup>70</sup> It also reveals informed proclivity, predilection, perspicacity, together with perceptibility "in the process of knowledge production."<sup>71</sup> In this perspective, adopting critical perspectives in the classrooms in fact, offers a unique opportunity for teachers to engage with students on various dimensions connected with international law.

The study of critical international law gives students an opportunity to interrogate Eurocentric character of international law. Antony Anghie suggests "in order to address Eurocentrism we need to focus on local history and its relationship to international law when teaching in a particular country."<sup>72</sup> Similarly, the potential for research is immense. With West neglecting issues of the global South,<sup>73</sup> critical scholarship could be developed

<sup>68</sup> IKEJIAKU, Brian-Vincent. International Law is Western Made Global Law: The Perception of Third-World Category. *African Journal of Legal Studies*, v. 6, p. 339, 2013.

<sup>69</sup> CHIMNI, B. S. *International Law and World Order: a critique of contemporary approaches*. Delhi: Cambridge University Press, 2017. p. xi.

<sup>70</sup> CHIMNI, B. S. *International Law and World Order: a critique of contemporary approaches*. Delhi: Cambridge University Press, 2017. p. xi.

<sup>71</sup> BURRA, Srinivas. Teaching Critical International Law: reflections from the periphery. *TWAILR*, Mar. 2021. Available at: <https://twailr.com/teaching-critical-international-law-reflections-from-the-periphery/#easy-footnote-bottom-24-3588>. Access on: 23 June 2022.

<sup>72</sup> ANGHIE, Antony. Critical Pedagogy Symposium: critical thinking and teaching as common sense—random reflections. *OpinioJuris*, Aug. 2020. Available at: <http://opiniojuris.org/2020/08/31/critical-pedagogy-symposium-critical-thinking-and-teaching-as-common-sense-random-reflections/>. Access on: 23 June 2022.

<sup>73</sup> Interestingly, because of economic success, there has been efforts made on behalf of western institutions and scholars to study developments interested in Asia. See ANGHIE, Antony. Critical Pedagogy Symposium: critical thinking and teaching as common sense—random reflections. *OpinioJuris*, Aug. 2020. Available at: <http://opiniojuris.org/2020/08/31/critical-pedagogy-symposium-critical-thinking-and-teaching-as-common-sense-random-reflections/>. Access on: 23 June 2022. The call for research to trace historical developments were not new and was already argued earlier, see ALEXANDER, C. H. International Law in India. *International and Comparative Law Quarterly*, v. 1, n. 3, p. 289, 1952.

that establishes linkages between global South-North concerns like, Palestine, *dalits*, blacks, feminism, access to food, *etc.* Srinivas Burra argues that “drawing these links would make critical scholarship truly attentive to the realities and struggles of the Third World and, therefore, a more organic presence in the Third World classroom.”<sup>74</sup>

With such array of opportunities, there exist a paradoxical situation, wherein the international law does effectually frame all prospects for global community, yet contribution to such changes scarcely comes from the global South. The fact that global South produces fewer international lawyers, who have the expertise to deal with complex international agreements and regimes, perhaps reflects upon the future direction of the international legal order too.<sup>75</sup> Of course, the blame lies upon West that continues to disregard or even acknowledge Third World lawyers; *per contra*, a part of the blame rest upon the global South too, in the sense that the *praxis* of teaching of international law has still not gained significant foothold in Asian countries. This aspect was highlighted by the Teaching and Researching International Law in Asia (TRILA) Report,<sup>76</sup> which reveals that “teachers of international law in Asia have great difficulty in getting their students interested in the subject.”<sup>77</sup> Antony Anghie observes that “a country only becomes capable of engaging effectively with international law when it develops a bar with real depth in the subject.”<sup>78</sup>

<sup>74</sup> BURRA, Srinivas. Teaching Critical International Law: reflections from the periphery. *TWAILR*, Mar. 2021. Available at: <https://twailr.com/teaching-critical-international-law-reflections-from-the-periphery/#easy-footnote-bottom-24-3588>. Access on: 23 June 2022.

<sup>75</sup> LANGE, Felix. Hard Times for Voices from the Global South: decolonization and the validity of existing treaties. *Voelkerrechtsblog*. Available at: <https://voelkerrechtsblog.org/de/hard-times-for-voices-from-the-global-south/>, access on: 23 June 2022.

<sup>76</sup> TEACHING and Researching International Law in Asia (TRILA) Project: 2020 Report. Singapore: NUS Centre for International Law. Available at: <https://cil.nus.edu.sg/wp-content/uploads/2020/06/TRILA-Project-Report-Final-compressed-v2.pdf>, access on: 23 June 2022.

<sup>77</sup> TEACHING and Researching International Law in Asia (TRILA) Project: 2020 Report. Singapore: NUS Centre for International Law. Available at: <https://cil.nus.edu.sg/wp-content/uploads/2020/06/TRILA-Project-Report-Final-compressed-v2.pdf>, access on: 23 June 2022.

<sup>78</sup> ANGHIE, Antony. Critical Pedagogy Symposium: critical thinking and teaching as common sense—random reflections. *OpinioJuris*, Aug. 2020. Available at: <http://opiniojuris.org/2020/08/31/critical-pedagogy-symposium-critical-thinking-and-teaching-as-common-sense-random-reflections/>. Access on: 23 June 2022.

There are multiple reasons, including the manner in which syllabus of international law is created. Part of the issue owes to the over-reliance on both classical and modern Western textbooks that inexorably boast Eurocentric foresight. Further, the march of progressive development of Indian legal studies has been towards creating corporate lawyers.<sup>79</sup> Although there has been some success, yet inequality persists.<sup>80</sup> The neo-liberal model of education has created a pool of elitist lawyers whose focus is to partner the most remunerative growth in Indian corporate sector. In this process the concept of inclusiveness went missing and the emergence of Two India validated. This perhaps leads to the question: whether this divide will be cured? Upendra Baxi argues that we have failed to create social soldiers,<sup>81</sup> who can bring or initiate law reforms, deliver legal aid and services to underprivileged and vulnerable sections of society, and launch critique of unconstitutional governance policies.<sup>82</sup> Unfortunately, with the rise of premier institutions there exists serious issues of manifest injustice which the contemporary international lawyers fail to address similar to the colonial international lawyers.<sup>83</sup> They do teach lofty ideals, yet manifest a culture of diversity deficit. The lack of diversity effectively translates into underrepresentation and exclusion from opportunities and use of resources. This explains the preferential character of the globalization that supports certain kinds of institutions, modes of business, information,

<sup>79</sup> WILKINS, David B.; KHANNA, Vikramaditya S.; TRUBEK, David M. An Introduction to Globalization, Lawyres, and Emerging Economies: the case of India. In: WILKINS, David B.; KHANNA, Vikramaditya S.; TRUBEK, David M. (ed.). *The Indian Legal Profession in the Age of Globalization*. New Delhi: Cambridge University Press, 2018. p. 3-35.

<sup>80</sup> BAXI, Upendra. Enculturing Law? Some Unphilosophic Remarks. In: JOHN, Mathew; KAKARALA, Sitharaman (ed.). *Enculturing Law: new agendas for legal pedagogy*. New Delhi: Tulika Books, 2007. p. 3.

<sup>81</sup> BAXI, Upendra. Notes Towards a Socially Relevant Legal Education. *Journal of the Bar Council of India*, v. 5, n. 1-3, p. 1-33, 1976.

<sup>82</sup> BAXI, Upendra. Enculturing Law? Some Unphilosophic Remarks. In: JOHN, Mathew; KAKARALA, Sitharaman (ed.). *Enculturing Law: new agendas for legal pedagogy*. New Delhi: Tulika Books, 2007. p. 16-17. See also SARKER, Shuvro Prosun. Empowering the Underprivileged: The Social Justice Mission for Clinical Legal Education in India. *International Journal of Clinical Legal Education*, v. 13, p. 321-339, 2013.

<sup>83</sup> BASHEER, Shamnad *et al.* The Making of Legal Elites and the IDIA of Justice. In: WILKINS, David B.; KHANNA, Vikramaditya S.; TRUBEK, David M. (ed.). *The Indian Legal Profession in the Age of Globalization*. New Delhi: Cambridge University Press, 2018. p. 578.

knowledge, and culture.<sup>84</sup> Commenting on this phenomenon, Antony Anghie observes:<sup>85</sup>

Education, and in particular the neo-liberal model of education that is now so pervasive and dominant has become one of the means by which inequality—epistemological, representational, economic—is being accelerated and intensified.

Perhaps, for above-mentioned reasons the need for developing critical approaches becomes so essential and crucial. There is a belief that critical teaching might ignite or “further the struggle against inequality and injustice.”<sup>86</sup> Presently, the concept of critical legal education is nascent in India and we haven’t acknowledged its importance fully. There were piece-meal efforts made to sensitize legal education, however, progress remains scattered. Recently, Delhi High Court Judge, C. Hari Shankar reflected on this aspect, he observed:<sup>87</sup> Law, with all its legalese, is worth tinsel, if the underprivileged cannot get justice. At the end of the day, our preambular goal is not law, but justice with all its legalese, is worth tinsel, if the underprivileged cannot get justice.

## 6 Contemporary themes and imperatives: possibilities for future

The contemporary international law is divided with self-enclosed legal regimes. In a recent report by the Climate Change and Resilience Information Centre (CARE), it was found that despite promises made during 2009 Copenhagen Accord,<sup>88</sup> the global North has

not committed new and additional funds to help South in dealing with climate change.<sup>89</sup> The Report uncovers yet another classical case wherein North ignores promises,<sup>90</sup> which was reaffirmed in Paris Agreement.<sup>91</sup> Now, because of lack of funds, the impact could be realized by world altogether with reports confirming dangers of climate change as imminent and irreversible.<sup>92</sup> Besides, such indifferent attitude has affected the interest of global South in achieving specific Sustainable Development Goals (SDGs), particularly with various developmental works initiated on behalf of governments kept in jeopardy. This perhaps, explains their obscure position wherein the concern is demonstrated as global, yet accountability

Take another example, since the collapse of the Doha Round,<sup>93</sup> the global North has brought a narrative that the “WTO is no longer relevant”, and accordingly made every possible effort to keep it paralyzed.<sup>94</sup> This

gen-climate-change-conference-december-2009. Access on: 23 June 2022.

<sup>89</sup> HATTLE, Andrew; NORDO, John. That’s Not New Money: Assessing how much Public Climate Finance has been “new and additional” to Support for Development. *Parkstraat*. CARE, 2022. Available at: [https://careclimatechange.org/wp-content/uploads/2022/06/Thats-Not-New-Money\\_FULL\\_16.6.22.pdf](https://careclimatechange.org/wp-content/uploads/2022/06/Thats-Not-New-Money_FULL_16.6.22.pdf). Access on: 27 June 2022.

<sup>90</sup> SHARMA, Prakash. Climate Change, Technology Transfer and Access to Clean Energy: The Role of Intellectual Property Rights in the Transfer of Environmentally Sustainable Technologies. In: RAO, T. V. Subba; MALLAR, V.S.; ANUJA, S. Anuja (ed.). *Socio-Legal Dimensions of Climate Change*. Bengaluru: ENVIS Centre on Environmental Law and Policy, National Law School of India University, 2018. p. 51-71.

<sup>91</sup> Art. 9, Paris Agreement.

<sup>92</sup> The Working Group I contribution to the 6<sup>th</sup> Assessment Report of the Intergovernmental Panel on Climate Change. IPCC. *Climate Change 2021: the physical science basis*. 2021. Available at: [https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC\\_AR6\\_WGI\\_Full\\_Report.pdf](https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC_AR6_WGI_Full_Report.pdf), access on: 27 June 2022. See also RAO, R. Venkata; SHARMA, Prakash. Linking Climate Change and Sustainable Development Goals: India’s Responsive Efforts. *Indian Bar Review*, v. 48, n. 3-4, p. 17-27, 2021.

<sup>93</sup> WTO. *Doha WTO Ministerial 2001: Ministerial Declaration WT/MIN(01)/DEC/1*. 20 November 2001. Available at: [https://www.wto.org/english/thewto\\_e/minist\\_e/min01\\_e/mindecl\\_e.htm](https://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_e.htm). Access on: 27 June 2022.

<sup>94</sup> There were continues efforts to submit proposals, however “United States responded with disinterest to the proposed amendments, although it provided little reasoning as to why the proposals were unacceptable or unworkable.” See UNITED STATES Continues to Block New Appellate Body Members for the World Trade Organization, Risking the Collapse of the Appellate Process. *American Journal of International Law*, v. 113, n. 4, p. 822-831, 2019. Commenting on use of unilateralism and protectionism, People’s Republic of China said, “It is therefore not surprising that someone attempts to use its might rather than WTO adjudications to change trade policies

<sup>84</sup> *Id.* at 580. See also BAGCHI, Amiya Kumar. Globalisation, liberation and Vulnerability: India and third world. *Economic and Political Weekly*, v. 34, p. 3219, 1999.

<sup>85</sup> ANGHIE, Antony. Critical Pedagogy Symposium: critical thinking and teaching as common sense—random reflections. *OpinioJuris*, Aug. 2020. Available at: <http://opiniojuris.org/2020/08/31/critical-pedagogy-symposium-critical-thinking-and-teaching-as-common-sense-random-reflections/>. Access on: 23 June 2022.

<sup>86</sup> ANGHIE, Antony. Critical Pedagogy Symposium: critical thinking and teaching as common sense—random reflections. *OpinioJuris*, Aug. 2020. Available at: <http://opiniojuris.org/2020/08/31/critical-pedagogy-symposium-critical-thinking-and-teaching-as-common-sense-random-reflections/>. Access on: 23 June 2022.

<sup>87</sup> *Samarpal v. Union of India*, 2022 LiveLaw (Del) 605. <https://www.livelaw.in/news-updates/delhi-high-court-sensitize-justice-for-underprivileged-jhuggi-dwellers- eviction-rehabilitation-article-21-202956>, access on: 23 June 2022.

<sup>88</sup> UNITED NATIONS CLIMATE CHANGE. *Conference, Copenhagen Climate Change Conference-December 2009*. Available at: <https://unfccc.int/process-and-meetings/conferences/past-conferences/copenhagen-climate-change-conference-december-2009/copenha>

perhaps signifies that the *punctilio* of international trade has been consistently altered by power politics. Nonetheless, the establishment of Geneva-based WTO it was argued that it will secure a rules-based multilateral trade regime. Interestingly, while it served western interest for long, it was contravened to flounder the moment the rules of game changed when the emerging economies demand equitable share in the trade proceedings. For instance, since 2016 the United States had blocked the reappointment of WTO's Appellate Body members, and has rejected over a dozen proposals to launch selection processes that could fill the vacancies.<sup>95</sup> This strangulation of the Appellate Body is a reflection of unilateralism and protectionism that are on a sharp rise. It raises serious concerns on the future of multilateralism. Further, its impact on the interest of global South, appears to be regressive. Consequently, the scheme of governance through rules-based dispute settlement would probably be replaced by bilateral negotiations, which in a way, appears to be prejudicial to the interests of developing countries that have consistently been disadvantaged during bilateral negotiations and fared better in multilateral proceedings.<sup>96</sup>

This was expected and if at all any scholar from Third world held otherwise, they must be in some delusion. With shift in power dynamics, West is bound to act discordantly. On the other hand, rather than supporting global cause and work towards unity, West fear formation of new center of power. To counter such power dynamics, global North has created a narrative of pre-determined expectations wherein the global South is expected to (a) help in the process of democratizing the global governance, and (b) usher in a more equitable and progressive global order to make global institutions work for all. From the outset such expectations appear to be too big to fill; particularly alongside the existing global institutions. Further there are questions raised

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of other Members." See KANTH, D. Ravi. Explained: Why has the U.S. crippled the functioning of the WTO? *The Hindu*, Jan. 2020. Available at: <https://www.thehindu.com/business/Economy/why-has-the-us-crippled-the-functioning-of-the-wto/article30480585.ece>, access on: 28 June 2022.

<sup>95</sup> DAUGIRDAS, Kristina; MORTENSON, Julian Davis. Contemporary Practice of the United States. *American Journal of International Law*, v. 110, n. 2, p. 573-576, 2016.

<sup>96</sup> MOHAN, M. P. Ram; RAJ, Vishakha. Appellate Body Crisis at the World Trade Organization: view from India. *Journal of World Trade*, v. 55, n. 5, p. 829-852, 2021.

against the notion of "rise of rest",<sup>97</sup> by arguing whether it is the *rest* or a *handful few*?<sup>98</sup>

Be that as it may, it is beyond dispute that diverse participation in global institutes helps in its greater acceptance. Sarvepalli Radhakrishnan opined the "need is to treat world as a unit"<sup>99</sup> Therefore, rather than focusing on fragmentation of international law, perceived as a "threat to its perceived virtues of unifying humankind to achieve order and justice", focus must be towards attaining unity, which is "based on solidarity that understands the alienation and pain of victims of fragmented international law."<sup>100</sup> Clearly, with much not improved and there are few tasks of transformation to perform. *First*, revisit history of international law;<sup>101</sup> *secondly*, teach international lawyers the grammar of global justice;<sup>102</sup> *thirdly*, replace violence with humanity;<sup>103</sup> and *fourthly*, replace diversity of unity with diversity of diversity.<sup>104</sup>

## 7 Efforts from India

Till today no earnest effort is made to survey teaching and research of international law, which may give full and authentic account of their state in India. The available reports like TRILA are only Asia specific and didn't disclose much. In another recent survey conducted with Indian law school, 75.9% of the students who

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<sup>97</sup> See ZAKARIA, Fareed. *The Post-American World*. New York: Norton, 2008. The term West vs Rest was coined earlier by Professor Surya Deva, see DEVA, Surya. Human Rights Realization in an Era of Globalization: the indian experience. *Buffalo Human Rights Law Review*, v. 12, p. 94, 2006.

<sup>98</sup> HOPEWELL, Kristen. Heroes of the Developing World? Emerging Powers in WTO Agriculture Negotiations and Dispute Settlement. *Journal of Peasant Studies*, v. 49, n. 3, p. 561-584, 2021.

<sup>99</sup> RADHAKRISHNAN, S. *Eastern Religions and Western Thought*. New Delhi: Oxford University Press, 1940.

<sup>100</sup> CHIMNI, B. S. The Past, Present and Future of International Law: a critical third world approach. *Melbourne Journal of International Law*, v. 8, p. 509-510, 2007.

<sup>101</sup> CHIMNI, B. S. The Past, Present and Future of International Law: a critical third world approach. *Melbourne Journal of International Law*, v. 8, p. 512, 2007.

<sup>102</sup> CHIMNI, B. S. The Past, Present and Future of International Law: a critical third world approach. *Melbourne Journal of International Law*, v. 8, p. 513, 2007.

<sup>103</sup> CHIMNI, B. S. The Past, Present and Future of International Law: a critical third world approach. *Melbourne Journal of International Law*, v. 8, p. 514, 2007.

<sup>104</sup> CHIMNI, B. S. The Past, Present and Future of International Law: a critical third world approach. *Melbourne Journal of International Law*, v. 8, p. 515, 2007.

participated in the survey had not heard of critical international law (CIL).<sup>105</sup> Interestingly while responding to another question: *do you think CIL should be taught in Indian law schools?*, merely 50% students answer in affirmation. These are revealing responses and reflect upon the state of international law teaching in India.

For India, it is necessary to realise that international law is no longer a law which concerns itself with issues of war and diplomacy alone. In modern times, it aspires to control and regulate core aspects of economic and political life inside a sovereign State. B.S. Chimni observes that “imperialism did not die a natural death with the end of colonialism” and with talks “of re-colonisation”, international law could act as a “chosen instrument for the spatial extension of capital.”<sup>106</sup> This perhaps, call for reforms based on set agenda. The initial effort must bring interaction between international law scholars and government, and other with other fields. Thereafter, measures must be adopted to articulate international law in a manner which makes it accessible and relevant to the ordinary public.

Further, there is a felt need to reflect inward too. For significant period of time, India has been imparting knowledge of international law, yet it has not been able to have well recognized law-school based international law journals.<sup>107</sup> At the organization level, the *Indian Journal of International Law* (IJIL),<sup>108</sup> and the *ISIL Year Book of International Humanitarian and Refugee Law* are significant additions.<sup>109</sup> Further, with the explosion of new

international law scholarship, Indian scholars are contributing in various international law journals and are recognized as members of the boards of international law journals as well. And with the arrival of online journals, the speed and opportunity of academic publications has also expanded.<sup>110</sup> Be that as it may, international law education in India is still student driven with minimum faculty involvement. Thus far law schools have miserably failed in promoting high-quality and interdisciplinary international law scholarship. We were successful in terms of offering market-oriented education, however, lagged behind in imparting socially relevant education. There are successful law schools like, National Law School at Bangalore, Kolkata, and Hyderabad; Rajiv Gandhi School of Intellectual Property Law at Kharagpur; and certain private law schools like Jindal Global Law School at Sonapat, Vivekananda School of Law and Legal Studies at New Delhi, Symbiosis Law School at Pune, KIIT School of Law at Bhubaneswar, *etc.* who have developed excellent physical and intellectual infrastructures to become the laboratory for such experiments.

Another major concern is the quality of publication coming from Indian journals. Of course, there are significant Indian contributions to the reputed journals, including R.P. Anand,<sup>111</sup> Upendra Baxi,<sup>112</sup> B.S. Chimni,<sup>113</sup>

yearbook.htm.

<sup>105</sup> SHARMA, Prakash. Legal Research via Digital Access: Analysis and Implications for Scholarship in a Networked Age. In: NIRMAL, B.C.; SINGH, Rajnish Kumar; NIRMAL, Arti. (ed.). *Legal Research and Methodology: perspectives, process and practice*. New Delhi: Satyam Law International, 2019. p. 459-476.

<sup>111</sup> See ANAND, R. P. Role of the ‘New’ Asian–African Countries in the Present International Legal Order. *American Journal of International Law*, v. 56, n. 2, p. 383-406, 1962; and ANAND, R. P. Maritime Practice in South East Asia until 1600 AD and Modern Law of the Sea. *International & Comparative Law Quarterly*, v. 30, n. 2, p. 440-454, 1981. Professor Anand’s major contribution is his pioneering work in the area of the law of the sea, see SINGH, Prabhakar. Indian International Law: From a Colonized Apologist to a Subaltern Protagonist. *Leiden Journal of International Law*, v. 23, n. 1, p. 86, 2010.

<sup>112</sup> See BAXI, Upendra. *Human Rights in a Post-human World: Critical Essays*. New Delhi: Oxford University Press, 2007; and BAXI, Upendra. *The Future of Human Rights*. New Delhi: Oxford University Press, 2008. See also SHARMA, Prakash; MITRA, Partha Pratim; SHARMA, Aaditya Vikram. Upendra Baxi and Legal Education: an open reflection of illustrious career. In: SIVAKUMAR, S; SHARMA, Prakash; PANDEY, Abhishek Kumar (ed.). *Clinical and Continuing Legal Education: a roadmap for India*. Gurgaon: Commonwealth Legal Education Association and Thomson Reuters, 2021. p. 417-456.

<sup>113</sup> ALSTON, Philip. Remarks on Professor CHIMNI, B. S. A Just World Under Law: A View from the South. *American University International Law Review*, v. 22, n. 2, p. 221-236, 2007. Also, of all the

<sup>105</sup> SEN, Rohini. International Law in Indian Law Schools—What Remains Invisible. *RGNUL Student Research Review Blog*, 2020. Available at: [rsrr.in/2020/12/24/international-law-in-indian-law-schools/](https://rsrr.in/2020/12/24/international-law-in-indian-law-schools/). Access on: 02 June 2022.

<sup>106</sup> CHIMNI, B. S. Teaching, research and promotion of international law in India: past, present and future. *Singapore Journal of International and Comparative Law*, v. 5, n. 2, p. 374, 2001.

<sup>107</sup> There is no international law dedicated law school journal, however, few law schools have started international law quality journals. The West Bengal National University of Juridical Sciences (NUJS), in collaboration with the SAGE Publications has started the Scopus-Indexed *Asian Journal of Legal Education* (AJLE), information available at: <https://journals.sagepub.com/description/ale>. Similarly, the Jindal Global Law School has Scopus-Indexed journal *Jindal Global Law Review* (JGLR), information available at: <https://jgu.edu.in/jindal-global-law-review-becomes-scopus-indexed-journal/>.

<sup>108</sup> The quarterly journal of the Indian Journal of International Law (IJIL) has been published by the Indian Society of International Law (ISIL) since 1960. The contents of publications are available at: <https://www.isil-aca.org/contents.htm>.

<sup>109</sup> The Yearbook was introduced in 2001 and focus on the development of international humanitarian law (IHL) and refugee law. The contents of publication are available at: <https://www.isil-aca.org/>

and B. Rajagopal,<sup>114</sup> etc., however, others are considered “well below the international interdisciplinary academic standards.”<sup>115</sup> This perhaps explains the reason why international law community in India is still small. While the present focus is on reforms of modern international law,<sup>116</sup> there is a vast potential that remains unexplored. For instance, there is limited literature is available on how emerging powers are affecting interests of the rest of global South.<sup>117</sup> To conclude, we need to advance the global democratic project by “bringing collective imagination to bear on it”<sup>118</sup> against the obstacle of uneven distribution of “resources for learning, teaching and cultural criticism which are most vital for the formation of democratic research communities which could produce a global view of globalization.”<sup>119</sup>

## 8 Conclusion

Currently, we live in a divided world, wherein powerful states continue to hijack opportunities and bring newer challenges to the world. In order to maintain their hegemony, manipulated international law is cons-

tructed to nurture inequality and domination. The manifest and latent international legal norms, doctrines, principles, policies and the structural relationships between powerful and less powerful countries, in a way, influence knowledge production and its dissemination at global level. Further, the continuing adherence to mainstream Eurocentric international law in Indian law schools will hugely impact students, the discipline, legal pedagogy and the law teachers. At the same time, there has been some piece-meal effort (through TWAIL, feminist critique, critical international law, etc.) to question the sole narrative of the international legal discipline; yet these counter narratives are rarely assembled or critically evaluated or reimagined within the contours of teaching and research of existing public international law discourse in India. A question therefore arises as to how such an approach be corrected? The answer is through: (I) more collaborations, (II) equal partnerships, and (III) increased representation from nation-states. Such an approach would accommodate needs and demands, create more inclusive environment, and let the avenue for change open to all. In this manner, there will be exhibit of plurality and richness of dialogues amongst nations. This will reject culture of exclusivity, which ultimately encourages nations to not emit West. In this direction, the role of teaching and research of international law becomes crucial, particularly in present testing times, wherein we have to realize it sooner than later that the more divided we are, the less we talk about what divides us. In this perspective, international law can be used to serve the cause of world. Such an approach, would perhaps encourage *esprit d’escalier* on the current global relationship.

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Indian TWAIL-II scholars, Martti Koskenniemi mentions only B.S. Chimni, see KOSKENNIEMI, Martti. *From Apology to Utopia: the structure of international legal argument*. Cambridge: Cambridge University Press, 2005.

<sup>114</sup> See RAJAGOPAL, B. *International Law from Below: development, social movements and third world resistance*. Cambridge: Cambridge University Press, 2003.

<sup>115</sup> SINGH, Prabhakar. Indian International Law: From a Colonized Apologist to a Subaltern Protagonist. *Leiden Journal of International Law*, v. 23, n. 1, p. 101, 2010. See also PANDEY, Abhishek Kumar. UGC Regulation on Plagiarism: What Does it Mean for Indian Academia and Research? In NIRMAL, B.C.; SINGH, Rajnish Kumar; NIRMAL, Arti (eds.). *Legal Research and Methodology: Perspectives, Process and Practice*. New Delhi: Satyam Law International, 2019. p. 447-456.

<sup>116</sup> Here Prabhakar Singh argues that the novel resistance to contemporary international law coming from India “ought to emerge from the subaltern periphery and tribal meta-periphery” and here the TWAIL from India must capture its historical guilt,” see SINGH, Prabhakar. Indian International Law: From a Colonized Apologist to a Subaltern Protagonist. *Leiden Journal of International Law*, v. 23, n. 1, p. 103, 2010.

<sup>117</sup> The “existing scholarship on the impact of the rising powers” has overwhelmingly focused only on People’s Republic of China, “its manufacturing exports, demand for resources, or overseas investment and aid”, see BRÄUTIGAM, Deborah. *The Dragon’s Gift*. Oxford: Oxford University Press, 2009; CHIN, Gregory. The State of the Art: trends in the study of the BRICS and multilateral organizations. In: LESAGE, Dries; GRAAF, Thijs Van de (ed.). *Rising Powers and Multilateral Institutions*. London: Palgrave, 2015. p. 19-41.

<sup>118</sup> CHIMNI, B. S. Teaching, research and promotion of international law in India: past, present and future. *Singapore Journal of International and Comparative Law*, v. 5, n. 2, p. 387, 2001.

<sup>119</sup> APPADURAI, Arjun. Globalization and the Research Imagination. *International Social Science Journal*, v. 51, n. 160, p. 229, 1999.

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