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RIGHTS IN SPACE LAW: UNDERSTANDING SPACE LAW FROM A CITIZEN'S PERSPECTIVE

Ridhi Shree Nair¹

Abstract

An American aerospace company, SpaceX led by the richest man of the world, Elon Musk² launched the world's first private crewed spacecraft. This intrigues a solid question in everyone's mind, who controls the space? Can private individuals go to space? What are the rights that a citizen has in the outer space?

United Nations Office for Outer Space Affairs³ defines space law as, **“A law that can be described as the body of law governing space-related activities. Space law, much like general international law, comprises a variety of international agreements, treaties, conventions, and United Nations General Assembly resolutions as well as rules and regulations of international organizations.”** With the help of space law, the countries can preserve, and protect the environment of the Earth and the outer space, resolve the transnational developing space issues, check the upcoming dangers from space, broadcast better communication networks and rescue the astronauts crew stuck in space.

Keywords

Outer space, space tourism, human rights, spaceflight and space object. s

I. Regulation of the Outer Space

¹ Second year BALLB Hons., Dharmashastra National Law University, Jabalpur, MP

² Forbes list 2024, <https://www.forbes.com/sites/forbeswealthteam/article/the-top-ten-richest-people-in-the-world/?sh=209368c754dc> (last visited January 4, 2024)

³ UNOOSA,

<https://www.unoosa.org/oosa/en/ourwork/spacelaw/index.html#:~:text=Space%20law%20can%20be%20described,and%20regulations%20of%20international%20organizations.> (last visited January 4, 2024)

The regulation of the outer space is done via international cooperation in the activities that happen in space. It is regulated via convention, multi-lateral treaties and other kinds of international frameworks.

i. The Outer Space Treaty, 1967

The foundational treaty that regulates the space is The Outer Space Treaty⁴ that entered in force on 1967. This treaty was considered by the Legal Subcommittee in 1966 and later it was passed by the UNGA. Russia, UK and USA opened this treaty for signature. India is also a signatory to this treaty. The Outer Space Treaty includes principles like: -

- The utilisation of resources of outer space and exploring it can be made by all countries with interest in mankind.
- The exploration of outer space is for all countries and must be done for peaceful and re-creational purposes.
- In any manner, country shall not place any sort of weapon or arms in the outer space or in any of the celestial body that can cause mass destruction.
- All celestial bodies and the Moon shall be used for knowledgeable and peaceful purposes.
- A state that causes damage to the outer space will be held liable for the destruction due caused.
- States while exploration must avoid any sort of contamination or use of any noxious substance in the outer space and the celestial bodies.

ii. The Rescue Agreement, 1968⁵

It is an agreement that regulates the rescue of astronauts and to ensure return of space objects been launched. When astronauts are in distress and they need to be rescued, the State upon a request shall promptly take aid and assistance to rescue and return the astronauts.

iii. The Liability Convention, 1972⁶

⁴ UNOOSA <https://www.unoosa.org/oosa/en/ourwork/spacelaw/treaties/introouterspacetreaty.html> (last visited January 4, 2024)

⁵ UNOOSA <https://www.unoosa.org/oosa/en/ourwork/spacelaw/treaties/introrescueagreement.html> (last visited January 04, 2024)

⁶ UNOOSA <https://www.unoosa.org/oosa/en/ourwork/spacelaw/treaties/introliability-convention.html#:~:text=Elaborating%20on%20Article%207%20of,to%20its%20faults%20in%20space.> (last visited January 04, 2024)

It is another law that regulates the outer space. This convention, clearly states that the 'Launching State' will be held liable for any damage that is caused by its objects that was made to explore the outer space. This convention also provides the due procedure by which the countries can solve and settle the claims of damages.

iv. The Registration Convention 1976⁷

This convention was made and launched by the UNGA. It ensures that the launching state gives all sort of details and the purpose of the space object launched in the outer space. UNGA will maintain the registry of all such launchings to ensure responsibility of the launching state to follow and maintain the Outer Space Treaty principles.

v. The Moon Agreement 1979⁸,

It is an agreement made to ensure that all space objects launched by the launching state on the Moon or on any of the celestial body is for peaceful purposes. The USA is not a signatory of this treaty. On the Moon and the other celestial bodies there are planetary protection guidelines which is defined by COSPAR⁹. It states that the celestial bodies and the Moon cannot be used for any sort of military purposes.

II. Private Bodies in Space

A. Can private bodies go to space?

Sovereignty cannot be claimed by any nation on the outer space. No nation can "own" any celestial body or the outer space. Hence, it is not a daunting task for the private bodies to explore the fields of outer space. The launching state is responsible and will be held liable for any activity conducted in space by the private individuals¹⁰. All the private commercial endeavours will be done under the supervision of the launching state. **"The meaning of Private Spaceflight means when the spaceflight is not undertaken by any government agency like NASA or ISRO etc."** Private spaceflight includes commercial activities like space

⁷ UNOOSA <https://www.unoosa.org/oosa/en/ourwork/spacelaw/treaties/registration-convention.html> (last visited January 04, 2024)

⁸ UNOOSA <https://www.unoosa.org/oosa/en/ourwork/spacelaw/treaties/intromoon-agreement.html> (last visited January 04, 2024)

⁹ COSPAR <https://cosparhq.cnes.fr/> (last visited January 04, 2024)

¹⁰ The Outer Space Treaty, 1967

tourism, broadcast satellite for communication, TV, radio etc. In the USA there is also a certified occupation of 'Commercial Astronaut'¹¹. Billionaire Jared Issacman in 2021 rented the famous Dragon Resilience Spaceship and went on a three-day journey to explore the outer space of Earth. Apart from this, NASA has planned to build commercial orbital platforms by the end of this decade to occupy civilians as the space tourist.

B. Space Tourism

“Space tourism, recreational space travel, either on established government-owned vehicles such as the Russian Soyuz and the International Space Station (ISS) or on vehicles fielded by private companies”¹². Space tourism commenced from Russia, and spread to South Africa, USA etc. The first space tourist was Dennis Tito. He had a 7-day trip in 2001. Even ideas for lunar hotels have been set by NASA. The ISRO has announced that India can expect the evolution of space tourism by 2030. With the emergence of private ventures and commercialization of the activities in the outer space it has become very important to have space regulation laws for private entities.

Since private entities have made their way to explore the outer space, there is an ardent need to have an explicit set of space legislation that governs the activities conducted in the outer space by state as well as private individuals. In the contemporary dynamics there is no set of defined law that characterises human rights in space, and this can create a future conundrum if it is ignored. In a nutshell, a comprehensive well-defined space legislation needs to be drafted.

I. Rights of Citizens in Outer Space

A. Are astronauts entitled to human rights?

The astronauts in the space have human rights. The UNOOSA demands that the state must consider the astronauts as **“envoys of mankind in outer space”**. In addition to this, the astronauts are supposed to be rescued by all member countries in case of distress and emergency. And in such situation they are also permitted emergency landing in foreign countries.¹³ Hence, subjected to international laws, astronauts have human rights. The Article 12 of ICESCR includes right to health for astronauts. It talks about work environment that is

¹¹ Riley Sparks, the new space odyssey balancing private interest with global science, International Science Council, <https://council.science/current/blog/the-new-space-odyssey-balancing-private-interests-with-global-science/> last accessed 5/10/2023

¹² Seedhouse, Erik. "space tourism". Encyclopedia Britannica, 12 Dec. 2023, <https://www.britannica.com/topic/space-tourism>. Accessed 4 January 2024.

¹³ The Rescue Agreement, 1968

devoid of mental and physical ailment. The inter- governmental agreement allows the partner states to extend their national jurisdiction in the outer space, and when the national jurisdiction is extended this helps to determine, what laws are applicable in activities happening in outer space¹⁴. Prima facie the least of the international human rights can be analysed from these international conventions, but there is an acute lack of international law that devises human rights for astronauts. The states must regulate some basic set of rules for the astronaut's crews and the family as they are the one contributing the state with the knowledge about space.

B. Are astronauts Employees under Labour Law?

Astronauts like any other employee deserve fair treatment and labour regulation but there is no clear interpretative guidance or jurisprudential knowledge to support further conclusion¹⁵. Rescue Agreement of 1968 is the international set of laws that explicitly talk about rights of astronauts in space. Prima facie there is a grave lack of labour laws for astronauts. Countries like Russia has developed labour code that is all-inclusive regarding rights of astronauts. Therefore, astronauts need to be included in the ambit of labour law of each state individually or internationally.

C. Intellectual Property Rights

The Intellectual Property Rights exist in space laws. The objective of IPR in space is to avoid infringement of patent, trademarks, copyrights of space objects. This ensures originality and novelty of nations in space activities. The IPR disputes will be resolved with the help of the contract signed and the existing international laws. The IPR in outer space means that the owner of the space object forbids the others to create the same object. This right has effect in the space but enforceable in the launching state. The major issue faced is that the space laws does not have one set of significant IPR laws. Appropriate legislation will help to debar the monopolistic behaviour and develop a healthy atmosphere for innovation in space activities.

D. International human rights in space

¹⁴ European Space Agency, https://www.esa.int/Science_Exploration/Human_and_Robotic_Exploration/International_Space_Station/International_Space_Station_legal_framework (last visited January 04, 2024)

¹⁵ Rohit Gupta, Are Astronauts Employee too? In Search for a Labour Law for Outer Space, Berkeley Journal of International Law, accessed January 10, 2024,

a. What is the need to have human rights in space?

Space is the mankind's future, it is the metaphor for human's future¹⁶. Mankind is opening its frontiers to the space and in future we are the civilian of the space. In the epochal era of commercial business of tourism in space, the existence of human rights is important. Human rights can be applied extraterritorially. It is generally understood that when the state has 'effective control' over the territory or the person, the least of human rights which are basic in nature be extended¹⁷. Human rights can be understood as rudimentary rights you are born with, for example right to life, dignity, health etc. Human rights from the ancient time of Hammurabi to modern space laws have been recognised and are fundamental in nature.

During the cold war era between the first world war and the second, there was a substantial space race between the west and the east which exacerbated with the launch of Sputnik – 1 by USSR. The heinous end of world war – II made the countries sign the Outer Space Treaty, 1967 to preserve the human dignity and the right to life. This itself shows that the basic human rights are the values imbibed before making the 5 treaties¹⁸. The principle mentioned in the Outer Space Treaty, 1967 'all countries have interest in exploring space activities', shows equality for all countries to explore the outer space. The principles that debar the space mining, contamination of space and militarisation in space can be analysed as to avoid the infringement of the rights of other countries. Hence, international human rights are set to apply in space¹⁹.

b. Right to life in space

Right to life and right to clean environment are connected to international human rights in space. Right to Life is enshrined in article 6 of ICCPR²⁰. Hence, it shall be applied in outer space. Right to clean environment is not explicitly mentioned in any of the international conventions, but again it can be inferred. The major challenge of "space debris" and waste from the space objects launched is an environmental issue. This 'space junk' can be a threat to mankind, so the right to life²¹. The Artemis Accord²² must be considered as an international

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¹⁷ Legal Consequences of Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Rep.136 (July 2004)

¹⁸ The Outer Space Treaty 1967, The Rescue Agreement 1968, The Liability Convention, 1972, The Registration Convention 1976 and The Moon Agreement 1979.

¹⁹ G.A. Res 41/128, Declaration on the Right to Development, UN Doc. A/RES/41/128(Dec. 4, 1986)

²⁰ International Covenant on Civil and Political Rights, Article 6, 1976

²¹ UNESCO Expert Meeting on the Right to Enjoy Benefits of Scientific Progress and its Application Programme and Meeting Document, SHS/RSP/HRS- GED/2009/PI/H/1,5(July 17, 2009)

²² The Artemis Accord 2020

human rights law in the outer space. It talks about principles to use space exploration for recreational and peaceful purposes.

The another aspect of this is the emergence of private or commercial players in space activities. Does this mean that the international human rights still exist in the realm of private space players? Space tourism is currently ventured by the private parties.²³ This makes an ardent need for lawyers and agencies to work with government and the private sector to code the non-derogable space rights for the civilians. The private players can space mine or cause irreversible harm to the space, hence division of international human rights for space even for private players is important.

Conclusion

Outer space is for interest of all countries. It can be explored by any country for peaceful and scientific purposes. The five treaties that make the set of international convention as a space law also determines the international human rights in the outer space. To protect the outer space and the civilian rights there is an urgent need of an international code that devises the human rights. With the emergence of private players and the space tourism it has become a space race between the countries to explore the outer space. Several rights have been inferred from the civilian perspective from the international treaties and conventions signed but mostly we need a comprehensive volume of human rights in space.

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