

AN ANALYSIS OF THE CHALLENGES AND FATE OF INTERNATIONAL HUMAN RIGHTS WITH THE RISING TRENDS OF SOVEREIGNTY

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ABSTRACT

In this paper, the author has made an attempt to enumerate the rather complicated relationship that is shared between the human rights and State sovereignty. This is done by delving into the understanding of the nature of sovereignty over the years and the jurisprudential undertones of human rights by virtue of which the equation they share have come to be altered over the years. This paper discusses the positive and negative consequence of a powerful sovereign on the access to human rights of the citizens of the nation-state. It highlights the crucial fact that both internal sovereign regimes like dictatorships and external influence by a sovereign, say humanitarian intervention have a considerable effect on the access and nature of human rights in such nation-states. Through the recent developments on the International sphere, the author has brought to light the contemporary tendencies of the sovereigns across the globe and their approach towards human rights. In spite of the picture seeming grim prima facie, the author strives to remind the readers to keep hope and believe in the tireless work that the various bodies of the United Nation Organization and other independent International Organizations are undertaking to further the cause of human rights and bring to the citizens across the world the basic facilities that they deserve as human beings.

INTRODUCTION

In the domain of International Law “State Sovereignty” and “Human Rights” are among the most contentious terms, specifically their differing interpretations and their absolute importance in comparison to each other. Human rights, in its most basic and unexaggerated sense, are the rights that accrues to them ipso facto of being a human. The universal nature of human rights calls for equal rights for all humans. The fact that humans can be distinguished from non-humans and the similarity of belonging to a species calls for equal rights. Thereby, “conceptually” universal rights are entrusted to humans across the globe equallyⁱ. The natural school of human rights says that the commonality of being a human implies that there are some common aspects that are favourable and harmful to them allⁱⁱ. Humans possess these equal rights but the enforcement of these rights cannot be universal. There are numerous legislations and organizations under the International community with the purpose of propagating and safeguarding human rights. Article 1(3) of the UN charter enumerates that the purpose of the United Nations Organization is to “achieve international cooperation in solving inter-national problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for allⁱⁱⁱ.” The various conventions like the Genocide, Torture, Children, International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights along with the UDHR (Universal Declaration of Human Rights) have evolved the international law on human rights. They put a check on the sovereignty and all the States have to abide by them irrespective of having ratified them.

Through the 20th Century modern understanding of sovereignty, it is evident that the classical theory of sovereignty was absolute power and having such unlimited authority would pose as threat to the independence of other nation-states and to international peace. Hence, the present-day international law works with a more relaxed interpretation of it. The principle of relative sovereignty has substituted absolute sovereignty. Each State limits and is limited by the freedom of the other States, and their independence arises from the international law^{iv}. “Sovereignty can also be divided and limited”^v, thereby, making the nation-states the subjects of International law. Though Human rights are moral virtues, these rights are legislated upon and made available to the citizens by the nation-states themselves. This structure shares its philosophy with the early ‘social contract theory’ posed by philosophers like John Locke

and Thomas Paine. Taking from this positivist theory, it is implied that though human rights are natural, citizens are nevertheless required to give up their powers to the sovereign to be able to realize and enjoy these rights through legitimate means.

It is often argued that that protection of human rights conflicts with the sovereignty of States. In recent times, this argument has gained impetus amongst the scholars of international law. They not only ponder upon the changing idea of sovereignty but also question the effects that it could have upon the protection of human rights. With the rising trends of globalization, the interaction of the States with its own citizens and with the other international States are constantly altering. The States have become more interdependent and co-operative. The nation States unlash their economies and adopt structural adjustments that are created by the economics of the neo-liberal policies. The corporate globalization of Laissez-faire has made the States susceptible to unchecked depletion of resources. Moreover, also making them vulnerable to armed opposition, cross border conflicts and civil wars. This results in the breakdown of the internal economic and social structure of those States. Especially the developing countries which are not well equipped due to their various limitations, have to bear the major brunt of this. In this whole scenario, States could either resort to repression of others to establish their power and sovereignty or they give in to the pressures only to become unstable and ridden with conflicts. Hence, it is comprehensible that the notion of sovereignty under modern international law is about the sovereignty of the people rather than the sovereignty of the sovereign^{vi}. More often than not the claim of sovereignty causes an impediment in the protection of human rights. In many instances, the sovereignty of the States has to be breached by the international community to safeguard and impose human rights in that State; the vice versa also being true. In this scenario, can a balance be created between the requirement of human rights while simultaneously maintaining State sovereignty?

Sovereignty and human rights share a relationship that is complex, contrasting and contentious. They co-exist with each other but are also the biggest rivals of each other, a true form of paradoxical experience. Who are the violators of the modern sovereignty? Under modern International law, violation of sovereignty is possible as efficiently and callously by an outsider as by an insider, an indigenous ruler. In fact, a sovereign's liberation can be achieved by external entities as much by the indigenous factors. The invasion of an outside force is an irrefutable way in which the invader suppresses the will of the people thereof. On the other

hand, the practice of insider entities, who use the apparatus of violence, corruption to aid them and take over the will of the people through means like coups and putsch, thereby assuming all the authority over the domestic, to itself, are also transgressors of this sovereignty. A reflexive instance of this that comes to us are the dictatorships. The dictators reckon that they are synonymous to the 'sovereign'. They hold the idea of State sovereignty as a shield and inflict misery upon the people and flout human rights. Another pertinent instance of internal transgression is the Syrian conflict; Nearly nine years of continued violence, widespread unrest and a sheer contravention of human rights lays bare the weakness of international law, that is, it's enforcement mechanism. The civil wars, rebellion and blood-shed has devastated Syria. Innumerable refugees scour the earth looking for a place to make a living. The multiple attempts at restoring peace by the United Nations Organization and the international community have fallen flat on their face. Even the ICC has no jurisdiction in the matter of the Syrian conflict as Syria is not a signatory to the Rome Statute (this is a strong claim of the idea of sovereignty, which incapacitates action against non- signatory irrespective of the nature of the dispute). Although, the failure cannot be pinned to just one reason, it is a layered combination of political and other intricate causes. The onus should be borne by not only the internal factors but also the external sovereignties who made inappropriate use of humanitarian intervention; the eventual consequence being further and further chaffing of human rights.

THE PALESTINE-ISRAEL CONFLICT

The Palestine-Israel conflict explores a different facet of the relationship between State sovereignty and human rights. The idea of self-determination of States had emerged as a concept post the 2nd World War. This prolonged unrest due to the oppression by the Israelis comes from this notion of exerting the supremacy of having a sovereign. Ethnic cleansing of the non-Jewish population for the procurement of an exclusive majoritarian Jewish State that would be democratic which would highly regard human rights, is as inconsistent as the 'War of Independence' could get. The principle of Self-determination evolved rapidly post World War II. Through the right of self-determination, a sovereign protects the human rights. It enables the people to protect their rights and gives them the authority to control their future without the exploitation from external factors. The UN charter also upholds the importance of self-determination. Article 1 of the Charter states that amongst others, a purpose of the UN is

to “develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples”^{vii}. Israel occupied and built settlements on the land that as per the UN belonged to Palestine. They not only built settlements that under international law are illegal but have also violated the right to self-determination of Palestine. The Israeli forces were determined to crush the Palestinian resistance and offered submission and compromise as the only way out of the atrocities and the torture that they were inflicting upon them. A recent tripartite agreement amongst Israel, UAE and the USA^{viii}, seeks to normalise the relationship between Israel and UAE by way of cooperation and providing aid to each other. This deal become a four-leaf clover for Israel for the reason that it could attain temporary peace in the Palestinian region without having to release their control over the occupied areas but it claims to bestow upon the Palestinians a better life, provided that they give up on their desires of freedom. Security of their human rights with the prerequisite of abandoning the sovereign. In this scenario, the interdependence of human rights and a sovereign becomes apparent, undermining of sovereignty inevitably leads to the undermining of human rights. Though it is not always that the protection of the sovereignty also means the protection of the right of self-determination of the people. In a totalitarian regime, it does not give individuals the authority to determine their own social and cultural developments. Having said that, not all States have fully and completely effectuated this doctrine of self-determination.

An instance of rising trends of nationalistic understanding that disregards the values of human rights is the immigration policy under the recent US administration^{ix}. The indifference towards international law is an unpleasant news for the lives of Hispanics, Muslims within the country as well as the asylum seekers at the border of the country. It shows sheer want of empathy and the acknowledgement that these identities also require protection. The DHS border security and the Custom Border Protection (CBP) have illegally refused asylums to the seekers on the border of US and Mexico. These acts are sheer non-observance of the obligation that the US has as per the International refugee law^x. There are numerous accounts of the forceful mass separation of families by the DHS. The “zero-tolerance policy” has the potential to lead to a horrific ill-treatment of the families to the extent of torture. Mandatory and arbitrary detention of asylum-seekers during their claim, on the basis of their status of migration, without a parole. Such detention in the absence of any arrest charges is deemed illegal not only under the US domestic laws but also under International law. It results in the breach of the UN Convention

Against Torture, an international law human rights treaty that has been ratified by the USA. Besides such policies for refugees and asylum-seekers, there have been violations of environmental and nuclear agreement provisions and obligations. Such audacious contempt for international laws and treaties makes it apparent how nation-states under the garb of protecting and strengthening the sovereign (the American sovereignty in this case) are in reality flouting the international human rights that they themselves had agreed to comply with in the first place. In an international community having a preferential and geopolitical interpretation of human rights gives a perspective about the modern approach towards the disregard for the values and the morality of these rights; and their disregard of the the command and the enforcement of international laws and in turn the atrocities they seek to mitigate.

HUMANITARIAN INTERVENTION

Article 8 of the Montevideo convention which came into force in 1934, mentions that States do not have a right to intervene in the external or internal affairs of another State. This non-interventionist approach was also supported by Article 2(7) of the founding charter of the UN organisation in 1945, which expressed that other States may not intervene in the in matters of dispute which are limited to the domestic jurisdiction. However, a report by the International Commission on Intervention and State Sovereignty (ICISS) in 2001 on Responsibility to Protect(R2P), mentions that “Sovereign States have a responsibility to protect their own citizens from avoidable catastrophe – from mass murder and rape, from starvation – but that when they are unwilling or unable to do so, that responsibility must be borne by the broader community of States^{xi}.” The Genocide Convention also asserts the responsibility of the international community in protecting the people from such crimes^{xii}. Nevertheless, the disinclination of the nation-states to intervene at the present stage along with the Russian intervention for the support of the Assad regime, shows that even this responsibility is coloured with self-interest rather than the preservation of universal human rights. Nonetheless, a form of intervention wherein a State forcefully enters the other nation to protect its own citizens in that State is a distorted sense of the responsibility that international law bestows upon the nation-states. The literal idea of humanitarian intervention is when a nation-state enters into another nation-state’s sovereign for the protection and reinstatement of human rights in that State. Humanitarian intervention reflects upon this tussle between sovereignty of a State and

human rights. The UN charter has provisions for both and speaks highly in favour of both. Post the world wars, the UN resolved to ensure equality of all sovereign States, and to prevent them from a situation of war gave legitimacy to these nation-states. In the above instances it has been illustrated that if the legitimacy of the State sovereignty is practiced staunchly, human rights have to bear the brunt of it. Thus, humanitarian intervention opens up a scope of ensuring that there will be avenues to protect and enforce human rights.

CONCLUSION

Despite all of the above, it is not yet game over for human rights. Through the cracks and crevices light still manages to shine through and the rays of hope are spreading wide and quick making people believe that doom's day is far away. It would not be correct to jump to the hasty assertion that human rights are failing. Many issues, for example gay rights, weren't seen as human rights earlier, their maltreatment are now seen as a violation. The standards of human rights are not static. As new ways of violating human rights emerge, it is a constant effort of advocates and scholars to keep expanding the ambit of human rights. Many nation-states which seem immune to these have also time and again been pestered and accosted by the international community to change their conduct towards these rights. The European nations give up a part of their sovereignty and make it a point to comply with the European Court of Human Rights^{xiii}. The UN is persistently striving to restore peace in Syria, no matter how bleak it might seem. Turkey has agreed to provide cross-border food and health services through UNICEF to Syria which has become manna from heaven for the Syrian families^{xiv}. Several countries have to some degree aligned their domestic laws with the international recommendations and laws on such rights. The Western countries in the nascent stage had conveniently decided to hold the political and civil rights as enforceable and the social, economic, and cultural rights as only advisory and not enforceable rendering them non-obligatory. This duality of approach did not deter the rise of many mechanisms that created a pressure on the sovereign States to observe and enforce human rights in its holistic sense. Though this is a complex and perineal question under international law with strong assertions from both sides, a commonly accepted stand across scholarships is that an overtly nationalistic and poignant attachment towards the sovereignty that that a nation-state commands in more cases than not results in the

contravention of human rights. This sovereignty should be asserted for the protection of the dignity of the people.

Respect of human lives across the globe is imperative even if complexity in the international legal system comes with it.

ENDNOTES

ⁱJack Donnelly, *Relative Universality of Human Rights*, 29 *Human Rights Quarterly* 281, (2007).

ⁱⁱMichael J. Perry, *Are Human Rights Universal? The Relativist Challenge and Related Matters*, 19 *Human Rights Quarterly* 461, (1997).

ⁱⁱⁱUN Charter, art.1.3 (1945)

^{iv}FRANZ PERREZ, *COOPERATIVE SOVEREIGNTY FROM INDEPENDENCE TO INTERDEPENDENCE IN THE STRUCTURE OF INTERNATIONAL ENVIRONMENTAL LAW* (2000).

^vHersch Lauterpacht, *Private Law Sources and Analogies of International Law*, 7 *Journal of the Royal Institute of International Affairs* 144, 299 (1927).

^{vi}W. Michael Reisman, *Sovereignty and Human Rights in Contemporary International Law*, 84 *AJIL* 866, 867 (1990).

^{vii}UN Charter, art.1 (1945).

^{viii}*Trump Brokers Historic Israel-UAE Deal for Peace and Prosperity*, US EMBASSY IN GEORGIA (Aug.18, 2020), <https://ge.usembassy.gov/trump-brokers-historic-israel-uae-deal-for-peace-and-prosperity/>.

^{ix}*The United States Is Failing Refugees Under President Trump*, AMNESTY INTERNATIONAL (Oct.1,2020), <https://www.amnestyusa.org/press-releases/the-united-states-is-failing-refugees-under-president-trump/>.

^x*USA: 'You Don't Have Any Rights Here'*, AMNESTY INTERNATIONAL (Oct., 2018), <https://www.amnesty.org/download/Documents/AMR5191012018ENGLISH.PDF>.

^{xi}ICISS, *The Responsibility to Protect* (International Development Research Centre,2001)

^{xii}Genocide Convention, art.3 (1948).

^{xiii}David Cole, *Have human rights failed?* THE NEW YORK REVIEW OF BOOKS (Apr. 18, 2019), https://scholar.harvard.edu/files/ksikkink/files/have_human_rights_failed.pdf.

^{xiv}*War in Syria: 'Carnage', flouting of rights and international law, must stop: Guterres*, THE UN NEWS (Mar. 12, 2020), <https://news.un.org/en/story/2020/03/105928>.