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Human Rights and State Sovereignty

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Abstract:- The essay aims to demonstrate how human rights and state sovereignty are inextricably inter-related yet incongruous. The theme of the essay has diverging point of views due to which we cannot proceed with a single thesis. The essay contends with the hypothesis that state sovereignty subjugates the international declarations of human rights because of supremacy to implement the international laws. The domestic laws might concur or refuse to adhere to its policies. However, in certain cases the international pressure has also endowed the abidance of a state to the international human right laws. The above-mentioned hypothesis is supported by historic illustrations. The essay exemplifies the incidents where sovereignty and human rights have complemented each other. Thorough examination of the factors causing the states to approve to the international instruments which are contradictory to their national interest is provided. Finally, the primary purpose is to examine the issues of denial of right to dignity to the stateless population due to the vested authority of implementation of human rights in the hands of sovereign powers.

I. CONTENT

"Protection of individual rights as a human or State supremacy?" is the topic of heated debates and vigorous discussions. Eminent debaters are generally in the state of dilemma because both the doctrines are contradictory yet existent. The lexical definition of sovereignty is one who is supreme or rank above or a kind of authority. This implies that the states possessing sovereignty have a vested right to exercise legitimacy over their citizens and have an absolute right of exempting other states or any international organization from intruding the domestic affairs. However, post second world war active steps were taken to foster human rights by the United nations. The major aim was promotion and protection of an individual's right as a human. Internationally the United Nations has actively adopted measures by formulating charters and conventions to protect human rights. Sadly, it is lagging behind in terms of practical implementation.[1] This is because Article 2 of Charter of United Nations[2] has mandated non-intervention into the domestic jurisdiction of sovereign states. That is why the practical implementation of the norms and international laws are of the state's jurisdiction. The state might legitimately choose to ignore the international obligations or adhere to it.

After the second world war,1945 the state centered traditions were demolished, and all the nations accorded itself to an international institution in order to maintain cordial relations among states and maintaining peace, integrity and harmony. The individuals of any state were to be held accountable for their actions if it violated international law. They were bound and prosecuted under those provisions. The bone of contention was that many learnt jurist questioned that if the individuals are obliged and bound by the international law then should the right of these individuals also be protected. Rights and duties being correlated aspects they formulated laws to protect the vested interest. The universal declaration of human rights [3]is one such historic document which provides a detailed and extensive list of article aimed at preservation of human rights. Human right activist hankered for formulating this declaration into a binding doctrine. However, the rule of state sovereignty made it a mere piece of optional guidelines. Example: the laws of Saudi Arabia tends to violate Article 11(1) [4]and 18 [5]of the Universal declaration of human rights. Despite its assertions to the declaration by virtue of its membership to United Nations it violates some of its provisions. This infers that the state can choose to ignore these international declarations because these are articulated as good faith and lack political or legal sanctity. The international power can impede only if any state suffers from external aggression or unwanted aggression from other states but not domestic affairs.

The international pressure by the international community is one of the way by which human rights can be effectively enforced because there is a lack of legitimacy and legal or political power for implementation. Subsequently after the cold war there has been a drastic change because of the intervention of international community on humanitarian grounds. Many global organizations have brought into light how sovereignty implies responsibility of protection of human rights. These world community has created international pressure so that

[1] Pollis, Adamantia, Human Rights Quarterly, vol. 4, no. 4, pp. 540–542(1982)
[2] UN Charter art. 2 states that "Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter."
[3] The Declaration was proclaimed by the United Nations General Assembly in Paris on 10 December 1948.
[4] Article 11(1) states that "Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense."
[5] Article 18 states that "Everyone has the right to freedom of thought, conscience and religion."

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the independent states try to avert situations like internal war, repression, insurgency, civil wars, apartheid, state failures, etc. due to which millions of victims are deprived of their basic innate rights as humans. The moral obligation of the state is brought into light many times historically. Example United Nations general assembly had built international pressure by condemning the practice of apartheid committed in South Africa and calling all the member nations to end military and economic relations on November 6, 1962. In 1973 united nations labeled apartheid as "crime against humanity'. South Africa was suspended from the General assembly in 1974. [6]This portrays international pressure and condemnation can preserve human rights of individuals.

There are two school of thoughts who have given contradictory views regarding this insight. One school of thought enunciates by passing sovereignty because it is a major threshold for protection of human rights. They elevate human rights overs state supremacy. The partisans of this school opine that the traditional nature of state sovereignty should be dodged due to the loopholes which prevent enforcement of human rights. Richard Falk propounded that there is an urge for a new system where world orders which are not based on sovereign nation states because it renders international protection of human rights weak and marginal. [7] This school of thought is popularly known as transnationalism. The scholars of other school have a negative attitude towards protection of human rights through international intervention because they pinpoint that preserving human rights is a domestic matter and internal concern. Hence according to them mere enactment of foreign policy is not adequate to fulfil the primary goal of addressing violation of human rights. Though human rights are inseparable and inalienable from citizen of any state, yet its implementation is vested in the hands of states because it is a national power. It is the legal and political autonomy which authorize them to enjoy their legitimacy and supremacy over their citizens. Despite of the loopholes, the global community is constantly indulged in effective monitoring and intensive superintendence of the violations by the state. The periodic reports are generally demanded by many organizations globally. The collected statistical data is thoroughly analyzed and reviewed. The transnational and national NGO's functioning all across the globe also examine the concerns regarding gross violation. Conventions, charters, treaties, agreements, commissions, etc. are the instruments which impose obligations on the state for the omission or commission of an act exempting barbaric violation of human decency and vested rights. These formal international scrutiny have created a negligent impact on the states so that they effectively fulfil their moral responsibility of protection of human rights. However, there are impediments like state sovereignty which hinder the implementation and effective enforcement. This proves that international law is a mere piece of theoretical rules incorporated in the state-based system with a marginal application.

The international community has stepped forward with normative authority surpassing considerable number of violations. This has dramatically facilitated advocation of human rights creating a political pressure on the states to value human life by providing them justice, equity and dignity. Example the civil and military dictatorship in Latin America and political liberalization in African and Asian countries [8]are some instances where international community is successful in imposition of its pressure. Many debates have raised the issue that periodic reports like Convention on the elimination of all forms of racial discrimination [9]and Convention on the elimination of discrimination against women [10]are effective in building a pressure internationally. These periodic reports are generally reviewed, analyzed, discussed, debated in the international forums with agendas to solve these issues. It brings in the international attention which might embarrass the state for its culpable activities. These measures play a prominent role in building subtle pressures levying virtual enactments on the state to act in a certain way or prohibits certain actions. However, there is no imposition of real authority because of the existence of doctrine of state sovereignty. Such international actions are supplementary to national actions. This might enable the state to review its own violative practices raising awareness and sensitivity, but this methodology is still a soft resistance. The world community might foster constructive national action because mere international law is a small but subsidiary action to enforce human rights.

History depicts that state sovereignty has an upper hand in international politics because even if the periodic reports or any other allegation is discussed in the international platform then the state has no obligation to respond to the allegations. This policy was sternly criticized by the world leaders post Rwandan genocide. [11]The question of fact arose whether international actions should overpower the state sovereignty in case of excessively

[6] The UN general assembly session of 12th November, 1974 suspended South Africa due to international opposition against apartheid.

[7] Falk, Responding to Severe Violations, in Enhancing Global Human Rights 245 (1979)

[8] Murphy, Craig N., and Enrico Augelli., International Institutions, Decolonization, and Development, International Political Science Review / Revue Internationale De Science Politique, vol. 14, no. 1, 1993, pp. 71–85. JSTOR, www.jstor.org/stable/1601376.

[9] The convention was adopted and opened for signature by the United Nations General Assembly on 21 December 1965 and entered into force on 4 January 1969. As of April 2019, it has 88 signatories and 180 parties.

[10] The convention was adopted and opened for signature by the United Nations General assembly on 18 December 1979 and entered into force on 3 September 1981. It has 99 signatories and 189 parties.

[11] Hoeksema, S. (2016). Ingando: Re-educating the Perpetrators in the Aftermath of the Rwandan Genocide. In Üngör U. (Ed.), Genocide (pp. 197-218). Amsterdam: Amsterdam University Press. Retrieved from www.jstor.org/stable/j.ctt1d8hb37.12

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brutal violation of human rights. Many of the world leaders proposed the idea that Genocide should be an exception to the rule of national implementation. The inhuman activities of the state are generally shielded by the state under the guard of state sovereignty hence in such cases the international intervention should overpower the state for undermining the human right abuse. In 1994 the plane which carried the Rwandan President Juvénal Habyarimana and the Burundian President Cyprien Ntaryamira was shot down created unprecedented mass killing and violations. The capital of Rwanda, Kigali also experienced a widespread violence. The genocide was orchestrated by the Hutu extremist due to which approximately three-quarters of Tutsis was killed. The Rwandan security forces joined their hands with extremist Hutu civilians and slaughtered the Tutsis and the Hutu moderates who defended Tutsis. Further in the mid-July the Rwandan Patriotic Front which were the Tutsi ethnic based rebels in Uganda defeated the Rwandan government. The traumatizing genocide took place from 7th April to 15th July taking away the lives of about 800,000 innocent lives. The genocide committed by the Rwandan security force was a culpable practice in which thousands of innocent lives were the victims. It is the matter of debate because the government enjoyed the shield of sovereignty avoiding the foreign intervention hence abusing its legitimacy and powers. The united nations expressed the failure on its part to prevent this mass killing.[12]

Alternatively, the state sovereignty is used as an efficacious tool according to their convenience. The dominant powers often proclaim policies according to their own convenience and impeccably use border protection and sovereignty [13]as a shield often making mockery of the human right laws. The paragon example which can be referred to here is the gross violation in Manus detention center run by the Australian Government. In 2001 the Australian government passed the offshore policy[14] which was subsequent policy after the Tampa incident. Later on, this offshore policy was discarded by the government which was headed by Prime Minister Kevin Michael Rudd in 2008 in order to secure its borders. However, on 19th July, 2013 the government assented to Regional Resettlement Arrangement between Australia and Papua New Guinea (RRA)[15] according to which the people will seek asylum in PNG provided that Australia would bear all the costs incurred. The detention center in Manus Island is subjected to human rights violations like subjection to torture, inhuman treatment, inadequate health care, restricted movement, harsh punishments, inadequate standards of living, etc. In 2016 the supreme court of Papua New Guinea declared that the detention center violates the provisions of human rights laws in the PNG constitution and the Australian and PNG government should take effective steps to restrict the same. However, this verdict is not binding on Australian government. The local inhabitants of Manus Islands were not acquainted with the placement of hundreds of asylums. There was a paucity of adequate measures of effective planning which lead to violent attacks with military interventions and this ultimately derived the local people from right to security. As demonstrated in the case it can clearly be inferred that border policies and state sovereignty are used according to the convenience of the state due to which millions are deprived of their decency and dignity.

The above cited demonstrations have profoundly justified the hypothesis that state sovereignty overrides the international interference or any other states intervention while enforcing its human right policies. The bone of contention arising out of this hypothesis is the alignment of these states in the international conventions, treaties, forums, charters, agreements, etc. It was observed that these instruments directly or indirectly created abstract commitments which have enabled effective enforceability of human rights up to some extent. Though these rhetorical commitments have not completely sabotaged the widespread violation and failure to implement the pre-existing instruments, yet it has shown remarkable progress. Socialization has occupied a lion's share which has compelled the states to ratify the human rights and associated policies even at the cost of their national interest.[16] There are certain incidents where the human rights treaties are signed and ratified but due to lack of implementation these remained as mere declarations. However, these ratifications have indirectly enforced legal obligations which has enforced the cause of human rights. The imposition and coercion of political and moral ideologies by the powerful nation-states on the recessive developing countries is responsible for the ratification of the instruments. They tend to advocate the ideologies through initiating incentives and sanctions. Most of the states tend to emulate policies and political structures of the developed states. Hence even the international signatures

[12] David Usborne, UN pilloried for failure over Rwanda genocide, Independent, Friday 17 December 1999. Accessible at : https://www.independent.co.uk/news/world/africa/un-pilloried-for-failure-over-rwanda-genocide-739072.html

[13] Briskman, Linda, and Victoria Mason. "Abrogating Human Rights Responsibilities: Australia's Asylum-Seeker Policy at Home and Abroad." Migration and Integration in Europe, Southeast Asia, and Australia, edited by Juliet Pietsch and Marshall Clark, Amsterdam University Press, Amsterdam, 2015, pp. 137–160. JSTOR, www.jstor.org/stable/j.ctt16f986x.12.

[14] Referred to by the Australian Government as "regional processing" is the term used to describe the arrangements by which Australia sends people seeking asylum who arrive by boat to either Nauru or on Manus Island in Papua New Guinea (PNG), where their refugee claims are determined.

[15] The regional resettlement arrangement (RRA) was announced on 19 July 2013 by Australian Prime Minister Kevin Rudd and Papua New Guinean Prime Minister Peter O'Neill, effective immediately, in response to a growing number of asylum seeker boat arrivals.

[16] Wotipka, Christine Min, and Kiyoteru Tsutsui., Global Human Rights and State Sovereignty: State Ratification of International Human Rights Treaties, 1965-2001, Sociological Forum, vol. 23, no. 4, 2008, pp. 724–754.

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assented to are generally imitated. That is why there is significant resemblance in the adherence to these conventions. Sometimes the normative influence is also exerted by the international bodies which creates great influence on the people compelling the government of that state to assent to the covenants. During the cold war due to the divide of power blocs the world politics intersected with the human right policies which were effective in drawing countries to the respective power blocs. For instance, the western bloc headed by United Nations focused on the blacks so that they gain massive support by the newly decolonized African states which were earlier suppressed due to racial discrimination. The capitalist bloc disavowed to Rhodesia's UDI [17]and other discriminatory policies in order to garner their support. [18]

Though sovereignty might hinder into the enforcement of international human right laws yet there are certain views put forward by monist and dualist school of thoughts who have put forward views regarding consistency of international human rights with the national agendas. There are numerous instances where the international policies to enforce human rights have coincided with the national laws. In fact, many nations have adopted these international methodologies without any refutation. There are cases where these international laws and national agendas have rather complemented each other boosting up the implementation rather than compromising the human rights defying the purpose of international human right laws. The moral acceptability is a single thread which adjoined the state strategies and international laws. Many instances have proven the hypotheses that the international norms are the universal aspirations which are directly or indirectly incorporated into the rule books of respective domestic laws. The classic example is the mentioning and compliance of the international principles in the constitution of Afghanistan. [19] The preamble in the Constitution of Afghanistan clearly illustrates the compliance of the nation to the Universal Declaration of Human rights and United nations charter. The preamble of the constitution of Afghanistan mentions about formation of a civil society devoid of oppression, atrocity, discrimination and violence. It is based on the rule of law which aims at securing justice and human rights. This portrays that the normative international standards for securing human rights are enabled and facilitated through the constitutional and other legal mechanisms of the state. Further the preamble also states the position of Afghanistan in the international family. The views regarding consistency is further classified into two major views – one being the monist[20] school which states that the gamut of international law on human rights is inherent and a part and parcel of the domestic law. Whereas the dualist school [21]moves forward with the view that international law can be applied in the domestic laws only if the states assent to such. The consider International laws of human rights to be persuasive and not mandatory. The latter school opines state sovereignty overpowers international pressure.

If the implementation of the human rights is in the hands of the nation-state then there are many controversies regarding the stateless people. There are millions of refugees all across the globe who are deprived of their basic rights. Even the asylums are subjected to n number of abuses. The existence of state sovereignty has clearly impeded the universal human right declarations. Though international pressures have endowed remarkable pressure on the states, yet sovereignty has made a mockery of many human right laws. The human rights regime is practically hindered by the self determination of the states by-passing the world population. States use the weapon of legitimacy and self-rule according to their convenience. The global community could cease the gross violations only in a handful cases. We can see the clash between human right policies and state sovereignty. Even in the most democratic countries there are human rights abuses at an unprecedented rate. For instance, the immigration policy of President of USA, Vladimir Putin's repression of dissidents, violations due to Israel-Palestine conflict is a mockery of the universal human rights. These international aspirations will remain marginal if sovereignty is used as a shield to safeguard self-determination policies of the state. At the end, Are the human rights of an individual under the protectorate of the state? How will the stateless people be guaranteed dignity if human rights are under the domain of the state?

[17] The Unilateral Declaration of Independence (UDI) was a statement adopted by the Cabinet of Rhodesia on 11 November 1965, announcing that Rhodesia, a British territory in southern Africa that had governed itself since 1923, now regarded itself as an independent sovereign state.

[18]Komer to Johnson, October 4, 1965, Foreign Relations of the United States, 1964–1968: Volume XXIV (Washington: Government Printing Office, 1999), 814.

[19] Accessible at: http://www.afghanembassy.com.pl/afg/images/pliki/TheConstitution.pdf (Date: 31st December, 2019)

[20] Alam, M. Shah, Enforcement of International Human Rights by Domestic Courts in the United States, Annual Survey of International & Comparative Law(2004) Volume 10 Issue 1, Article 3

[21]The dualist tradition is founded in English Common Law practice and therefore is found in India, Bangladesh and Canada. Lord Bingham's asserted:

Times have changed. To an extent almost unimaginable even thirty years
ago, national courts in this and other countries are called upon to consider
and resolve issues turning on the correct understanding and application of
international law, not on an occasional basis, now and then, but routinely,
and often in cases of great importance"

Cited from 'Foreword' in S Fatima, Using International Law in Domestic Courts, (Hart Publishing, Oxford, 2005).