

HUMAN RIGHTS ARE NOT SOLELY AN 'INTERNAL MATTER'

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A protest in Srinagar in December 2016.

The human rights situation in Jammu and Kashmir (J&K) following the dilution of Article 370 and the passage of the Citizenship (Amendment) Act (CAA) have brought renewed international focus on India's human rights practice. Responding to criticism made by the United Nations agencies and others, the Indian state asserted that both J&K and CAA are entirely internal matters and there cannot be any interference in such sovereign decisions.

What is remarkable about modern international human rights law is its recognition of individuals as subjects. Classic international law governed the conduct between states and did not recognise the rights of individuals. Countries made agreements on the premise that a sovereign state had the exclusive right to take any action it thought fit to deal with its nationals. Such a notion of absolute sovereignty was challenged in 19th century with the emergence of humanitarian intervention to protect minorities living in other states. Later, in 1919, the evolution of labour standards led to the establishment of the International Labour Office (ILO). In 1926, the Slavery Convention adopted by the League of Nations prohibiting slave trade heralded the first human rights treaty based on the principle of dignity of a human being. The Universal Declaration of Human Rights, adopted in 1948 by the United Nations, was the first comprehensive international human rights document. The Universal Declaration has acquired the force of law as part of the customary law of nations. It has provided the basis for binding human rights treaties and non-binding guidelines/principles that constitute a distinct body of law known as international human rights law.

This progress of international law in the last 100 years makes the Indian state's assertion of its sovereign right unsustainable. The evolution of international human rights law is also about the gradual weakening of the concept of unrestricted sovereignty. The Indian government has ratified several international human rights treaties and submits periodic reports to the respective treaty bodies. By doing so, it has acknowledged the principle that the treatment of its citizens is not entirely an internal matter, and such measures do not enjoy an absolute sovereignty.

The Indian government's response to concerns about its human rights practice has always been that international scrutiny is unwarranted since the country is the largest democracy in the world with an independent judiciary, free media, and an active civil society. These claims sound less credible after the recent developments in J&K and the passage of the CAA.

Non-discrimination is a fundamental principle of human rights. Discrimination in various forms occurs in all societies, but what is of concern is institutionalised discrimination. Apartheid was pronounced as a crime against humanity since it institutionalised discrimination based on race. Similarly, for the first time in post-Independence India, a religious group has been excluded from the purview of a law dealing with citizenship.

The Office of the High Commissioner for Human Rights (OHCHR), which is the lead agency within the UN system on all aspects related to human rights, has expressed its concern stating that the CAA "is fundamentally discriminatory in nature". It has also said that "although India's broader naturalization laws remain in place, these amendments will have a discriminatory effect on people's access to nationality."

International human rights law includes safeguards against unwarranted foreign intervention and stresses the exhaustion of domestic remedies before an issue is considered by an international body. The Indian state always assured the international community that the judiciary, mainly its Supreme Court, would provide adequate remedies to victims of human rights violations. However, of late, the faith of the common people in the higher judiciary has been weakened. In the face of serious allegations about human rights violations in J&K, the Supreme Court has “ducked, evaded and adjourned”, as put across by advocate Gautam Bhatia.

While responding to criticism against its human rights practices, the Indian government also refers to the role of free media and civil society in protecting the human rights of vulnerable groups. However, in the context of J&K and the ongoing struggle against the CAA, the media has not come out any better. As for civil society organisations, the government since 2014 has systematically targeted them, including by making it difficult for them to receive funds from foreign donors. Since 2014, the government has cancelled the registration of about 14,000 NGOs under the Foreign Contribution Regulation Act (FCRA). It has also mainly targeted its own critics.

Indian and international human rights groups are getting increasingly concerned about the actions of people associated with the ruling party who are engaged in the intimidation of critics, attacks against minorities, and restrictions on the freedoms of artistes. The brazen attack on JNU students on January 5 by armed goons and the total lack of response by the police is emblematic of free reign given to non-state actors in various parts of the country.

The international community is sympathetic to governments that are committed to upholding human rights but lack human and other resources to pursue it. In the case of India, it is not a question of resources but an unwillingness to uphold human rights. The government’s action in J&K, the passage of the CAA, and its response to protests on the CAA demonstrate that the present regime is not fully committed to upholding human rights and does not respect international human rights standards. Of course, it is possible for the Indian government, due to its diplomatic clout, to avoid robust intervention by the UN Human Rights Council and other UN human rights mechanisms. However, it would not be able to avoid scrutiny by the international community, which would complement the struggle of the Indian civil society to reclaim the Indian Constitution and advance human rights.

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