National Law School of India Review

Volume 8 | Issue 1 Article 8

1996

Reservation to Human Rights 'Treaties - 'Treaties - A Threat to the "Universality" of Human Rights

QM Maarij Uddin

Reservation to Human Rights 'Treaties - A Threat to the "Universality" of Human Rights

Q. M. Maarij-Uddin*

The normative and practical significance which human rights have acquired in contemportary international relations cannot be controverted. The Universal Declaration of Human Rights, 1948 was the first instrument, to have proclaimed "Universal values" for the post war world. Though the implicit idea was that these values could not be derogated from there was nothing binding about it. The practise of international relations in the last fifty years has given a new dimension to the Universality of human rights. In the international legal parlance human rights have acquire the status of jus cogens or per emptory norms of international law. Thus, the proclamations of values through the UN Declaration of 1948, has acquired substantive significance. There have been a plethora of instruments which have been concluded at the international and regional level to strengthen and concretize these universal values, since 1948.

"Matters essentially within the domestic jurisdiction 'of states under Article 2.7 of the UN charter were kept out of external interference. In to days context, no state can take advantage of Article 2.7 for any question pertaining to human rights within it's territorial frontiers. To, take an example familiar to us which exemplifies this point is the Kashmir issue. India has been asked to defend it's position before the international community though the question is essentially a domestic one. In 1969, the Vienna Convention[1] on the Law of Treaties was signed by the states to regulate the treaty relations amongst themselves. The Vienna Convention provided for an organized framework to govern various aspect of treaty law.

The concept of reservations to the provisons of treaty was provided under Articles 19-23 of the Vienna Convention Reservations against the provisons of a treaty basically signify a states intention communicated in writing, that the particular provision is not binding upon it. Other states may or may not accept the reservation made by state A, in their bilateral relations with that particular state. However, no reservation can be made under Article 19 which is incompatible with the purposes of the treaty. So much for the concept of reservation under the Vienna Convention on the Law of Treaties, 1969.

---

* Final year student, National Law School of India University.

1. The Vienna Convention on the Law of Treaties was Concluded in 1969 and entered into force in 1980. The provision of the Convention reflect the general principles of international law affirmed by the International Court of Justice in the *Reservation to the Genocide Convention Case* of 1951.

Recent State practise relating to reservations in human rights treaties is a matter of concern. This is so because it questions the very notion of universality; which is implicit in the idea of human rights. There have been problems in the past dealing with the punishment awarded in certain Islamic Countries for certain crimes. But none of these problems were so profound as to question the universality of human rights.

The reservation of the Republic of Maldives to the Convention on the Elimination of all forms of Discriminations against Women is a locus classicus on this point. Their reservation read thus:

The government of the Republic Maldives will comply with the provision of the Convention, except those which the Government may Consider Contradictory to the principles of Islamic Sharia upon which the laws and traditions of Maldives is founded. Furthermore, the Republic of Maldives does not see itself bound by any provisions of the Convention which obliges it to change its Constitution and laws in any manner.

This reservation of the Republic of Maldives created a lot of controversy. On a logical construction of the reservation, it is clear that it signifies that certain values proclaimed under the Convention on the Elimination of all forms of discrimination against women are different or may be different from the Islamic Law of Sharia or its Constitution as professed by the Republic of Maldives. Going by this reservation, we can conclude that different states can have different value perceptions about the subject matter of human rights instruments. And a reservation' could be used as a means of articulating those value perceptions. Thus reservations to human rights treaties strikes at the fundamental norms of universality.

To acquire a holistic view about reservation to human rights treaties it is in our wisdom to look at some of the objections advanced by the Western Countries against the Republic of Maldives.

Finland raised an objection to the reservation of Republic of Maldives by stating "that the unlimited and undefined character of said reservations create serious doubt about the commitment of the reserving state to fulfill the obligations under the Convention. In their extensive formulation they are clearly contrary to the object and purpose of the Convention. Therefore, the Government of Finland objects to such, reservations".

Speaking on similar lines the government of Sweden said "that incompatible reservations do not only cast doubts on the Commitments of the reserving states to the object and purpose of this Convention but, moreover contributes to undermine the basis of international law. It is in the common interest of states that treaties to which they have chosen to become parties also are respected, as to object and purpose, by other parties and that states are prepared to undertake the legislative changes necessary to comply with such treaties".

Though these objections do not raise the question of universality of human rights the idea is inherent in the reservation and the objections to it. The United Nations Human Rights Committee[2] in its recent report did raise the question or reservations in the context of human rights treaties. It observed that as of 1 November 1994, 46 of the 127 parties to the International Convenat on Civil and Political rights had between them, entered 150 reservations of varying significance to their acceptance of the obligations of the Covenant, some of these reservations exclude the duty to provide and guarantee particular rights in the convenant. Others are couched in more general terms, often directed to ensuring the paramountcy of certain domestic provision. The Report further observed[3] that although treaties that are mere exchanges of obligations between states allow them, to reserve inter se application of certain domestic provisions rules of general international law, it is otherwise in human rights treaties, which are for the benefit of persons within their jurisdiction.

It needs to be stated that states do not have a carte blanche right to reserve against any provision of the human rights treaties. The U N Human Rights Committee is of the opinion that principles of customary international law which have acquired the status of per emptory norms cannot be derogated from under any circumstances. So much the better or universality. Accordingly, a state may not reserve the right to engage in slavery, to torture, to subject persons to cruel, inhuman or degrading treatment or punishment to arbitrarily deprive persons of their lives, to arbitrarily arrest and detain persons, to deny freedom of thought, conscience and religion to presume a person guilty unless he proves his innocence, to execute pregnant women or children, to permit the advocacy of national, racial or religions hatred, ecetra.

But going by the provision of the Vienna Convention on the Law of treaties it is clear that nothing can prevent a state' from invoking a reservation to a provision of any human rights treaty-atleast against those provisions which have not acquired the status of per emptory norms in international law. It is precisely this problem which induced the UN Human Rights Committee to comment that the Vienna Converntion was "inappropriate to address the problems of reservation to human right treaties".

To conclude, it is perhaps significant to emphasize that reservations relating to human rights treaties are a potential threat to universality of international human rights order. The reservations against provisions of human rights treaties which are not per emptory norms of international law can prevent them from becoming so in due course of time.

---

2. See. 15 *HRLJ*, 464. (1994).
3. ibid., p. 467.