

Right To Self-Determination and Indian Constitution: An Analysis

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Abstract – "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development." Right to self-determination states that "people, based on respect for the principle of equal rights and fair equality of opportunity, have the right to freely choose their sovereignty and international political status with no interference" The right to self-determination is a basic and important right constituted in the International law. Public participation is essence of democracy. Without self-governance, there is no possibility of real public participation and therefore democracy loses its authenticity without exercising this right. If we look at the historical evolution of this legal right, it has different origins in historical sense. Before the Second World War that is prior to the establishment of U.N and adoption of the U.N charter, right to self-determination wasn't considered as legal right under the international framework. It was first expressed in 1860's and gained attention after that. The two individuals Vladimir Lenin and U.S President Woodrow Wilson significantly contributed towards the emergence of the principle of self-determination at international level. Wilson stated "National aspirations must be respected; people may now be dominated and governed only by their own consent. So to save democracy we all must take initiatives to protect the right of self-determination.

Key Words – Self-determination, Pluralism, Secession, Colonialism, Affirmative Obligations, Universal Declaration of Human Rights (UDHR)

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MEANING AND NATURE OF SELF-DETERMINATION

Traditionally, the right to self-determination meant right to political independence, relevant to many colonized people of Africa and Asia. But once these countries became independent, the meaning of right to self-determination has changed to include the freshly emerging political equations of these former colonies. The principle of equal rights and self-determination of peoples has been defined in the Declaration of Principles of International Law Concerning Friendly Relations and Cooperation between States adopted by the General Assembly in 1970. It says: "All peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter". Thus the right of a group of people to freely determine would conflict not infrequently with the plenty State's duty to respect that right. Such conflicts underline the demand for self-determination. Rightly or otherwise, the group politics and the pressure of international opinion make right to self-determination most controversial since the States are sovereign and all of them have to respect sovereignty as per the UN charter.

The political rulers of the new nations however would argue that this principle has largely lost its meaning since the decline of colonialism and apartheid. After the Second World War, right to self-determined as a dynamic concept. It brought about rapid de-colonization and gave expression to human rights of the people historically living as groups. When the cold war was over, the right to self-determination assumed a new meaning with the United Nations General Assembly passing an important resolution¹. It declared that "determining the will of the people required an electoral process that provides equal opportunity for all citizens to become candidates and put forward their political views, individually and in cooperation with others as provided in Indian Constitution and laws. For this world to grow into a free democracy where participatory rights of people cannot be arbitrarily abridged by any government, right to self-determination provides the necessary cement to hold the society together. There is a three way linkage involved in this world-view: democracy, human rights and peace". The right to self-determination is actually a collective human right like the right to human development, right to environment protection, right to peace and security. It encompasses 'solidarity' rights which heavily

¹ GA Res. 4511 15 of February 21, 1991

underline the concept of fraternity since "It is the people, a community, or a group as a whole which is entitled to this right along with its members individually".

In this connection, it may be pointed out that the Universal Declaration of Human Rights contains a contradiction. Whereas the first sentence of the Preamble makes a noble claim: "where as recognition of inherent dignity and of the equal and inalienable rights of all human family is the foundation of freedom, justice and peace in the world" what actually follows after the Preamble, is a list of human rights worded in terms of individual human beings' rights. Take an example: it may take at least two persons to assemble or associate, but the Article 20 of UDHR has been phrased, 'everyone has the right to freedom of peaceful assembly and association'. Similarly, minorities have not been referred to as groups but as 'persons belonging to minorities'. The member States were actually afraid that minorities might push the self-determination too far, making governance difficult and, therefore, the rights of minorities were provided in individual terms. As a matter of fact, the UDHR did not even contain an Article on Right to Self-determination. This deficit was realized very soon and was rectified in 1966 in both the Covenants of human rights.

The first Article of both the Covenants is commonly devoted to the right to self-determination and very importantly, it has been phrased in a group sense: "**All peoples have the right of self-determination**". But again, the word 'peoples' remains undefined and ambiguous. In actual practice, one comes across three meanings of people - territorial, ethnic and indigenous. Indian people are an example of the first, Punjabis of the second, Adivasis of the third. After long debates in the Vienna World Conference on human rights in 1993 they agreed to use 'people' rather than 'peoples' "in order to avoid the risk that certain individual groups can claim rights as peoples".

The UDHR phrases it in individual terms and understand people in its abstract description making the right to self-determination of minority community a sterile concept in international law. But in practice, right to self-determination has gained wider expression and acceptance with the establishment of the UN Electoral Committee in 1991 to assist nations in guaranteeing free and fair elections on request. It appears now that the sovereign jurisdiction of the domestic law is coming to terms with the demand of the globalizing forces. One can identify three stages in the evolution of the collective right of self-determination:

1. At the ground level, there is a universal entitlement of every human being in the civil society to participate in the decision to shape the destiny and no government can abridge arbitrarily these participatory rights.
2. In its concrete manifestation, right to self-determination meant freedom from

colonization. This is known as external self-determination. With the end of colonialism and apartheid, self-determination came to underline the revolution of rising aspirations of the people. In fact, it 'has come to be understood that human right is not meaningfully secure without self-determination. This self-determination can be brought about through seeking independence, autonomy or self-rule of groups of people so that their human rights are secure.

3. The third stage is inseparably linked to democracy. This stage followed the downfall of the Soviet super power. The surviving super power of the cold war days, the USA and the liberal West now insisted on democracy and offered it in a package of human rights, development and international cooperation. Promotion of such democracy also enjoys international protection for electoral rights and for this necessary mechanism & working rules have also come up during the 90's.

Operationally speaking, there are three situations in which right to self-determination can be exercised:

- (i) Colonies clearly have the right to liberate themselves and become free.
- (ii) Large scale violation of human rights like genocide, ethnic cleansing etc. provides justifiable ground for intervention by the world community (UN sanctions, interventions etc.).
- (iii) Democracy is now being construed as a global entitlement of the people. A state is now internationally obliged to maintain democracy for its people.

Strange but true, this is what USA did on behalf of the UN to its small neighboring state of Haiti. It reinstated the elected prime minister of Haiti and its forces removed the army dictator who had ousted the prime minister. While ratifying the International Covenant on Civil and Political Rights in 1979, India has made its position clear, by explicitly laying down that "the words 'right to self-determination' appearing (in Article 1) apply only to peoples under foreign domination and that these words do not apply to sovereign independent States or to a section of people or nation which is the essence of national integrity". In this era of rising aspirations of diverse peoples of religious, linguistic and ethnic communities and dilution of State authorities against assaults of globalization, (transnational corporations, revolution in telecommunications etc.) and the global insistence on democracy as the legitimate political arrangement, right to self-determination is likely to be exercised more easily than before. This of course needs to be done more responsibly. This is clearly a warning to the state authorities anywhere: Human rights must be promoted and protected to the

satisfaction of the diverse groups of people so that self-determination is not pushed beyond limits, to secession.

RIGHT TO SELF-DETERMINATION INDIAN CONTEXT

In daily life, you encounter a variety of situations. You must be seeing that problems tend to get interconnected quite fast. Also there is no simple straightforward solution to any one problem. And, the question of the 'right to self-determination' is no exception. Most of the social issues of living together then get linked up with what rights an individual in a community may be entitled to. In India, we become more and more concerned about our rights, as we become 'anxious about our nationhood. As you know, the Indian Constitution is a noble product of our struggle for national self-determination and it defines our rights explicitly.

However, the problem arises when we see that, despite rights, the benefits of social and economic development tend to get concentrated in very few hands and the majority of Indians are deprived of a decent standard of living. That is how we define our concerns as activists, seeking to move the process of development along a more equitable path. Immediately, we run into a problem here. We see that there are communities and groups within our Nation and the States expressing these aspirations in their own ways. In India they are invariably expressed as demands for regional autonomy, a sense of injury against a dominant ethnic group or even demands for secession from the Indian union. The major communities in India, by and large, have become the basis for states within the Indian Union. Thus Tamil, Bengali, Marathi or Kannada nationalities etc. in India have acquired a constitutional recognition. Their struggles for betterment today get expressed in the centre-state disputes which by and large are resolved within the framework of our Constitution. Remember that India is a federation with the Union (Centre) and the States always trying to maintain a balance within the limits set by the Constitution. , The problem becomes tricky, however, when we consider the case of communities which have not acquired a political and legal recognition of their demands for more powers or autonomy within the constitutional framework. It is here that the militant and vicious struggles take place. The Bodos in Assam, the Jharkhand demand, the demand for autonomy in the Kashmir valley are cases in point. To understand the whole concept of the Self-determination we need to have look upon the following Schools or thoughts:

- a) The No-compromise School,
- b) The Liberal School,
- c) The Marxists, and
- d) The newly emerging Human Rights Groups.

THE NO-COMPROMISE SCHOOL

Simply put, the no-compromise school argues that India has been one civilization from time immemorial; therefore there can be no question of self-determination. The attempt on the contrary is to integrate various peoples and nationalities by the logic of a hard core cultural nationalism. One of the major figures in this literature is guru Golwalkar. Very often this No-compromise School's hardened stand leads to sectarian and ethnic divides and conflicts. Let us understand where minorities stand in India from a human rights angle. Do minorities Have Rights? Indian State is committed to protecting and promoting only the values and standards of the Indian Constitution and those of the International Human Rights Instruments. The private beliefs and creeds have been left to the individual and the domain of the community for their choice. It is this right to religious and cultural freedom that the Indian Constitution has guaranteed to all persons and groups as 'sections of citizens' having a distinct language, script or culture of its own' and 'minorities based on religion and language'. This right to cultural freedom again constitutes one of the corner stones of minority rights under Article 27 of International Covenant on Civil and Political Rights (ICCPR), under which the Indian Government is accountable to the UN Human Rights Committee, to which it is required to submit periodic Reports on its implementation.

The 1992 UN Declaration on Rights of Minorities goes beyond the minority's right to preserve its culture, language and script and puts the positive obligation on the States to not only protect the national, ethnic, cultural, religious and linguistic identity of minorities [Article 1 (1)], but also requires them (States) to create favorable conditions to enable the minorities to express their characteristics and to develop their culture, language, religion, tradition and customs [Article 4 (2)].

Similar obligations are put on the State to take "appropriate measures in the field of education, language and culture of the minorities existing within their territory" [Article 4(4)].

THE LIBERAL SCHOOL

The liberal school is a keen defender of pluralism and diversity. However, the defining point for this school is the needs of the market. The concern of this school tends to be overwhelmed by the demands of the global market. The market demands a uniform taste, culture and individualized consumer behavior. The recent emergence of globalization has brought in its train some developments which were not anticipated before. A global economy has emerged with an increasing share of gross national product directly dependent on foreign exchange and international capital flow. Capital no longer feels constrained by national stipulations. It goes where ever there is profit. Capitalism no longer sells just

commodities and goods for creature comforts. The consumer society of material goods of 60's & 70's is changing into a new system which Benjamin R. Barber calls "McWorld" - like in 'Macintosh' or 'McDonald'. Capitalism now sells signs, sounds, images, software's. The nature of consumption as becomes heavily dependent on the spectacle of advertisement which is fast becoming a global form of social integration. Look around and you will find how fast your culture and traditions, social and economic behavior are changing to give rise to a homogenized life-style thanks mainly to MTV, Hollywood films, personal computers etc.

So against this global trend of homogenized life-style or a 'cosmopolitan culture', some culture groups deeply feel that their essentials are under attack. Since "globalization destroys sovereignties", the question of identity of these aggrieved cultural groups occupies the centre of stage. The more globalization grows, the more such societies try to reconstruct their socio-cultural and religious particularities. Confronted with frustrations against this global judgment, they give birth to a cultural scene of opposition which can be graphically captured by Barber's another expression of "Jihad versus McWorld". In today's world, Chechnya, Bosnia exhibits this new phenomenon of cultural assertions which had also affected countries like Indonesia, Ethiopia etc.

THE MARXIST SCHOOL

The Marxist school has debated the right to self-determination very extensively. In this school the specificity of the historical growth of a community / nationality is kept in focus. Unlike the no compromisers who are overwhelmed with cultural nationalism or the liberals who are overwhelmed with the market, the Marxists try to find solutions to social problems keeping the potentiality of the community in view. The Marxist literature makes it clear that the 'self' we are talking about is a 'self' in community. Though it can be said that the cultural nationalists are also talking about a 'self' in community, the point of departure for Marxists however are the criteria laid out for the definition of this community as a nationality. For the Marxists, nationality and community should possess (for exercise' of Right to Self-determination), a sense of shared history, economic growth, language, cultural and psychological makeup. Unlike for the cultural nationalists, religion is not taken to be a defining criterion. The Marxists also do not place the needs of the market absolutely over and above the aspirations of the nationality. However, it is emphasized that the nationality question should be linked to an internationalist working class movement. It was thus that Karl Marx argued in the context of Ireland in 1860s that the needs of the working class movement were best served if Ireland became independent of British domination. Thus while the pro-market logic of liberals argued that England needed to maintain national unity, Marx was able to argue that such a national unity only prolonged the oppression of the working people in England and Ireland. Similarly,

Lenin emphasized that democrats of an exploiting nation should call for secession of an oppressed nationality in an exploited nation while it is considered a duty for the democrats of the oppressed nationality to call for national unity. From these examples we may find that, for the Marxists, the criterion of national unity is not absolute as it is with the 'no compromise' or the 'liberal' school. B.T. Ranadive, the Indian Marxist, was therefore able to point out the need for an Indian national unity in independent India since imperialism targets small nationalities to weaken Indian working people's efforts towards development.

THE NEWLY EMERGING HUMAN RIGHTS GROUPS

The newly emerging human rights groups have now raised another problem, namely the problem of the rights of the indigenous people. Indigenous people are also called "first peoples", "Tribal peoples", aboriginal and autochthons. They number more than 300 million and live in more than 70 countries on five continents. A good majority of them - 150 million -- live in Asia. At least 5,000 indigenous groups can be distinguished by linguistic and cultural differences and by geographical separation. All indigenous people proudly love their traditional lands which are in variably rich tracts of mineral and bio-diversity wealth. They argue that it would be wrong to bring indigenous communities within the traditional domain of either racial or minority discrimination or within the strict parameter of the nationality question (the Marxist version). It may be argued that the debate about the right to self-determination has moved away from the cultural nationalist or bourgeois liberal perspective, and has settled (at least in UN bodies) within the parameters evolved by anti-colonial and Marxian framework. However the specific problem of indigenous people continues to dog these parameters. As Douglas Salvors points out, the erstwhile Soviet Union placed the problems of the indigenous people of Latin America within the UN forum but refused to recognize this problem within its own borders. Similarly in India, Canada etc. the indigenous people were bypassed on one bound or the other.

UN and Indigenous People

UN's consideration of the human rights problems faced by indigenous people began in right with the famous study conducted by special Rapporteur (1971-1984) Jose R. Martinez Cabo. The study has led to the creation of the Working Group on Indigenous Populations which, under ca-Irene A. Daes, chairperson Rapporteur since 1984, has become the focal point for UN invitees concerning indigenous people: The Working Group meets once a year in Geneva and critically discusses current practices of various governments. There is a Voluntary Fund for Indigenous Populations which funds participation of indigenous people from remote areas in such International meets. The 1993 was declared as the year of Indigenous People. The

General Assembly International Decade of the World's Indigenous People, beginning from The UN Commission on Human Rights has submitted its request to create in the UN for proper representation of the interests of indigenous pending, so also is the approval of the draft on the rights of which the Working Group has expressed its unanimous agreement. The UN Working Group set-up to look into this problem combined with ten major human rights groups to work on a solution. In August 1988 it placed a draft which tried to evolve a common standard on issues facing indigenous people. It defined the following major issues:

- i) **Problems of Survival:** In the context of the Chittagong hill tribals, (the issues of survival i.e. right to hunting, slash and burn agriculture use of the resources etc. was highlighted.
- ii) **Issue of Equality:** Indigenous people have frequently been denied legal equality with other members of the State. Brazil's 'policy of treating Indians as minor is a contemporary example of the old pattern'.
- iii) **Cultural Survival:** "Equality rights alone will not protect indigenous peoples or other minorities against assimilations campaigns by the States. A mere tolerance of minority cultures is also not sufficient if the state is devolving resources to a mono cultural educational system and unilingual state services". An affirmative obligation on states is mandatory to "ensure that indigenous collectivities receive state's support for maintenance of their identity."
- iv) **Economic Rights:** Rights to ownership of traditional lands and resources. An attempt to hand over traditional Indian groups their lands in New Zealand recently is a case in point for limited acceptance of this demand. On the contrary, in Australia this move just backfired in the recent elections.
- v) **Political Rights:** The main debate in the UN is whether these issues can be addressed within the framework of full "rights to self-determination" under international law. Canada and Sweden have made representation to UN that Sami and Indian people 'collectivity' do not have the rights to 'self-determination'. Similarly Daes Report of 1986 argues that indigenous peoples do not have rights to secession. The Martinez Cobo Report on the other hand qualified this by saying that the indigenous people did not "necessarily" have the right to secession. Meanwhile, political conflicts continue to simmer on this question in East Timor etc. Douglas Sanders points out that, ultimately a possibility of some kind of principle of autonomy "reflecting the ideas of tribal

sovereignty in the US law, self-government in Canadian policy, and similar elements of State's practice or policy in Australia, New Zealand, Scandinavian countries and parts of Latin America", seems to be emerging. Further, he pointed out that the above "formulation is consistent with stated policies for nationalities or minorities in various countries". According to him, "the indigenous peoples generally have the strongest claim of autonomy, because typically they have greater cultural differences from dominant populations as compared to other minorities."

'Self- determination' is not a mere phrase; it is an imperative principle of action." He announced 14 points on right to self-determination. This all was happening during the First World War or after the First World War. But at that time this right remained as only a political slogan or political assertion, in spite of the emphasis laid on it. It wasn't considered as a legal right and was just a political assertion or illegal right at international level. This continued for the longer period of time until the end of Second World War.

INTERNATIONAL STAND ON THE RIGHT TO SELF-DETERMINATION

The end of Second World War was a game changer when this mere political assertion (Right to Self-determination) attained a status of International legal right after it was explicitly listed as a right in the U.N charter. It also attained a status of significant human right in the sense of collective rights of the people. The transformation of this political assertion in to the Legal right or entitlement in international framework began with the formation and development of the U.N Charter. This was a significant contribution for maintaining International Relations. The mention of the right to self-determination can be seen in the U.N Charter under Article 1(2) within purpose of the U.N charter .By the way of establishment of U.N Charter and its mention in it after Second World War, right to self-determination secure its place as a legal right in international legal framework. Article 1(2) of the U.N Charter states "to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace" This is not only the place in U.N Charter where right to self-determination is mentioned but there are other provisions in U.N Charter where reference is made to this right either directly or indirectly. Article 55 of the UN Charter contains provisions "with a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples."

After Second World War major expansion and development was seen in the Human Rights at

International level. Right to self-determination became significant part of the human rights framework and its development can be seen by adoption of a united general assembly resolution by united general assembly (1960) known as "Declaration on the Granting of Independence to Colonial Countries and Peoples" This resolution proclaims the "necessity of bringing to a speedy and unconditional end colonialism in all its forms and manifestations" This declaration qualifies this claim and states that "any attempt aimed at the partial or total disruption of the National unity and territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations." The another significant development with respect to right to self-determination is the Friendly Relations Declaration of 1970 adopted by the UN General Assembly which states, "by virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter". (UNGA 1970) Principle of Right to Self-determination became more significant and attained a status of a strong persona after its mention in the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights adopted in 1966 Article 1 of both the covenants states that "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development." After its inclusion in both the covenants, this right was now a claimable right. This provision broadly identifies the contours of this right but doesn't confine its application to a particular context. Thus, the current stand of right to discrimination in International law can only be understood with reference to this provision in the covenants along with the UN Charter and other declarations.

RIGHT TO SELF-DETERMINATION AND INDIAN CONSTITUTION

Our Constitution is a noble product of our struggle for National self-determination and it defines our right explicitly, but there is no mention of the right to self-determination in our Constitution or Statues. The stand of India on right to self-determination is also not clearly defined. For understanding the position or status of India on this right we have to examine the views expressed by India in International forum where the Declaration made by India when it became a party to the two Human Rights Covenants in 1979, helped in understanding India's position regarding Right to Self-determination. India made a declaration to Article 1 of both the Covenants. The declaration states that the Government of the Republic of India declares that the words 'the Right of Self-determination' appearing in [this Article] apply only to the peoples under foreign domination and that these words do not apply to sovereign independent States or to a section of a

people or nation which is the essence of National integrity.² The declaration limits the scope of the right to certain contexts only and that is foreign domination like colonialism, and is clearly against its application to postcolonial and other situations. It can be considered an authoritative statement of the Indian government irrespective of the change in the political parties and government. It is the legal position of India for both internal and external purposes and no other explanation is found in Constitution of India This right cannot be extended in any situation in India as it might be argued that there is no situation of foreign domination as India has attained freedom from colonialism. Countries like Bangladesh and Indonesia also took similar positions on Article 1 of both the Human Rights Covenants. But, countries like France, Germany, the Netherlands, and Pakistan objected to India's declaration as limiting the scope of the Right to Self-determination³. Prior to this declaration too, India had voiced a similar view. When the Friendly Relations Declaration of 1970 was drafted, India stated that this right did not apply to sovereign and independent states or to integral parts of their territory, or to a section of people or nation. In spite of the fact that there is no mention of the right to self-determination in our Constitution or Statutes, there is a possibility that this right can be claimed by the people of our country. It is not prohibited in our Constitution.

The Supreme Court has also ruled in the favor of the possibility of cession of territory by India. The Supreme Court was confronted with a situation of cession of parts of territory and its validity under the Constitution in the matter of *Re: The Berubari Union and Exchange of Enclaves v Reference under Article 143(1) of the Constitution of India (1960)*. This issue involved settlement of the dispute between the two countries Pakistan and India and transfer and cession of territories between the two countries. Both the countries signed Nehru- Noon agreement of 1958 that involved the division of Berubari Union which would be divided by giving half of the area to Pakistan while the remaining are adjacent to India would continue to be with India. It was argued before the Court in the Berubari case that "even Parliament has no power to cede any part of the territory of India in favor of a foreign State either by ordinary legislation or even by the amendment of the Constitution." It was further argued that the Constitution has expressly provided under Article 1(3)(c), the power to acquire other territories, and there is no such provision for ceding any part of the territory. In response, the Court held that Article 1(3)(c) does not confer power or authority on India to acquire territories. There can be no doubt that under International law two of the essential attributes of sovereignty are the power to acquire foreign territory as well as the power to cede national territory in favor of a foreign State. What Art 1(3)(c) purports to do is to make a formal provision for absorption and integration of any foreign territories which may be

² UNGA 1966

³ Hampson 2002

acquired by India by virtue of its inherent right to do so. Thus, the Court held that “on a true construction of Article 1(3)(c) (Article 1(3) provides that the territory of India shall comprise (i) the territory of the States; (ii) the Union territories specified in the first schedule; and (iii) such other territories as may be acquired) it is erroneous to assume that it confers specific powers to acquire foreign territories.”

Based on this, the Court held that if the power to acquire foreign territory which is an essential attribute of sovereignty is not expressly conferred by the Constitution there is no reason why the power to cede a part of the national territory, which is also an essential attribute of sovereignty, should have been provided for by the Constitution. Both of these essential attributes of sovereignty are outside the Constitution and can be exercised by India as a sovereign State.

The Court here expressed its noteworthy opinion that acquisition and cession of territories is beyond the Constitution and these aspects are in the realm of the sovereignty of a state. This view is particularly germane to the demands for the right to self-determination and secession of territories. Ascending a part of territory is not given in our Constitutional framework but demanding this sovereign right by the group of people under Right to self-determination is not prohibited under Indian Constitution. The right to determination is not accepted or mentioned in Indian Constitution but it is a claimable right and people can demand application of right to self-determination.

Demanding right to self-determination is not a crime. When ceding a part of a territory is not considered a crime and considered as a sovereign right than demand cede a part of territory to a particular group of people living on Indian Territory is also not a crime. But it is on the government of India whether it wants to yield that demand or not. After understanding India's position on self-determination and possibility of cession of territory as sovereign right, held by the Supreme Court it can be concluded that demanding the right to self-determination is not a crime. But the way the demand is made in front of authorities' matters. If the political demand is made by using violence or violating the existing laws than it will be considered as a crime. The mere demand for self-determination and political mobilization for that purpose is not and cannot be a crime per se.

CONCLUSION

The conception of 'self-determination' differs from perception to perception. According to India the right to self-determination is just limited to Colonial rule and it cannot be exercised or asserted on Independent States or Post-Colonial Independent State. As above explained nothing is mentioned in the Constitution about this right but as the Supreme Court held that acquisition and cession of territory are sovereign rights and are outside the Constitution. So as long as

cession of territory is not prohibited in India, the demand for right to self-determination cannot be considered as a Crime. The political process defines the success and failure of these demands or whether these demands should be taken in the consideration or not.

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