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**RIGHT TO SELF- DETERMINATION AND THE INDIAN
CONSTITUTION****INTRODUCTION**

The right to Self- determination is a right of the people to determine their own destiny with respect to choose their own political status also to determine their own form of economic, cultural and social development. Now the main aspect which is to be taken into consideration here is that the exercise of this right can result into different outcomes. The key element which is vital in this context is the right of choice because the outcome of people's choice will certainly affect the others right of choice, in simple words the outcome of people's choice should not affect the existence of the right to make a choice¹. Now coming to Indian perspective, India is among those countries which has insisted on adding the recognition of right to self- determination.

Discussing it further it is important to understand this right because primarily right to self-determination is embedded in the issue of human rights. One important aspect which is to be noted here is that India understands the right to self-determination under international law as limited to situations of foreign domination and colonialism, and declines to extend it to postcolonial and other situations. Moreover, Indian constitution and statutory framework in India are silent on this issue².

**INDIAN CONSTITUTIONAL WITH RESPECT TO RIGHT TO SELF
DETERMINATION**

¹ Self-determination. (2017, September). Retrieved October 6, 2020, from <https://unpo.org/article/4957>,(Last Visited: 06-10-2020)

² Burra, S. (2017). Where Does India Stand on the Right to Self-determination? 2. Retrieved from <http://164.100.47.193/fileupload/current/Where Does India Stand.pdf> (Last Visited: 06-10-2020).

It is evident to know that Indian constitution is silent with respect right to self-determination but at the same time does not prohibit the possibility of claims for right to self-determination. Going into the depths of the right, internal right of self-determination of the natives “*basically provides for a people to be able to have a full voice within the legal system of overall nation state, control over natural resources, the appropriate ways of preserving and protecting their culture and way of life and to be able to be a visible partner or participant with strong powers within the overall national polity*”³.

RIGHT TO SELF-DETERMINATION WITH RESPECT TO JAMMU AND KASHMIR

It is pertinent to note that Kashmir has also been issue/conflict between India and Pakistan. Why is it important to note this because every time it has become Pakistan’s habit to raise Kashmir issue at a UN General Assembly session. “*In reality, it is the people of India as well as of our region and beyond, have to suffer most egregious violation of human rights inflicted by terrorism emanating from beyond our borders,*” because to misuse any forum for “narrow political gains” is not correct and right to self-determination cannot be abused to undermine a nation's territorial integrity. Important perspective which is to be noted here is that right to self-determination should not be abused and misrepresented with an aim of undermining the sovereignty and territorial integrity of a state⁴. When we talk about Kashmir, one important point which comes into the perspective is that Kashmiri people should have right of self-determination. The leaders of India and Pakistan reached on with agreement British government that the people of Kashmir will have full right to decide their future and to affiliate with India or Pakistan but the agreement was lapsed when free and impartial election was held in 1951 in the Kashmir valley with constituent assembly as body of Kashmiris. Hence no further right of self-determination can be exercised by the people of Kashmir⁵.

RIGHT TO SELF DETERMINATION VIZ-A-VIZ HUMAN RIGHTS

³ *Supra.*,

⁴ *Right to self-determination can't be abused to undermine territorial integrity: India*, THE ECONOMIC TIMES, Oct. 2018, <https://economictimes.indiatimes.com/news/defence/has-become-pakistans-habit-to-misuse-any-forum-for-narrow-political-gains-india/articleshow/66440537.cms> (last visited Oct 10, 2020)

⁵ Muhammad Mumtaz, *RIGHT OF SELF DETERMINATION FOR KASHMIRI PEOPLE; AN INTERNATIONAL LAW PERSPECTIVE*, 1 INTERNATIONAL JOURNAL OF BUSINESS, ECONOMICS AND LAW (2012), <http://ijbel.com/wp-content/uploads/2014/06/Right-Of-Self-Determination-For-Kashmiri-People-An-International-Law-Perspective-Muhammad-Mumtaz.pdf> (last visited Oct 10, 2020)

It is very much important to understand with respect to human rights because there is always a confusion which is involved between political goals and basic human rights norms. The main issue which comes into the sphere is that its potential impact which involves encouragement towards the violent conflict, which usually happens also. Even during the times of wars also a lot of human rights were involved in it. In India also specifically when India was fighting for the independence at that time also there was a question of human rights involved because many violent movements were also taking in place. There were many instances where Indians were exploited by the Britishers which forced Indians to seek independence and enjoy their all civil, political and human rights. That is the reason why right to self-determination has its connection with colonial times.

WHERE DOES INDIA STANDS WITH RESPECT TO INDIAN CONSTITUTION

This is the most important question in the context of the Indian constitution. Thus, it is very important to understand right to self-determination with respect to the position of the Indian Constitution. Interesting fact is that India is one of those countries which had insisted on adding the right to self-determination to the International Bill of Human Rights, which was adopted by the United Nations in 1976 and gave it a legal reform. By virtue of this rights people can freely determine their economic, social, cultural and political development. Right to self-determination can be understood from various contexts but its significance starts from Article 1 of the constitution which clearly describes the scope of the said right that it is just not confined to the territories of India rather its relevance can also be seen in parts of the other countries as well. One important aspect which is coming into the context is that it more towards the individual than community as a whole. It deals specifically with respect to the individual rights and their right of expression. All these rights and expression comes with when the characteristics of right to self-determination is recognised which are as follows⁶:

- When there is sovereign and independent state.
- Secondly when individuals can freely associate with another state
- Thirdly which is the most important free integration with another state after they have expressed their will to do so.

⁶ RIGHT TO SELF-DETERMINATION IN INTERNATIONAL LAW, [https://blog.ipleaders.in/right-to-self-determination-in-international-law/#:~:text=The right to self-determination refers to the right of,economic%2C cultural and social development. \(last visited Oct 10, 2020\)](https://blog.ipleaders.in/right-to-self-determination-in-international-law/#:~:text=The right to self-determination refers to the right of,economic%2C cultural and social development. (last visited Oct 10, 2020))

It can be right to say that in colonial rule it was not given to the people because the sovereignty and independence was not there. Though India insisted United Nations for the right to determination but India does not have or explicitly mentions right to self-determination. Also, the constitution of India talks about the sovereignty but by not giving the said right to its people within the country itself, its emphasis has shifted to the sovereignty and territorial integrity of nations.

When it comes Jammu and Kashmir this shift is quite evident because many a times it has happened that the rights of people have been taken like Article 19 that right to speech and expression and 21 right to life. This was the time when their right to access the internet was taken place that is it was reduced from 4G to 2G and dues to which they were not able to access many facilities⁷.

CONCLUSION

The question of right to self-determination is up to a certain extent but one thing which is to understood here is that one of the main reasons which attracted people of Jammu and Kashmir towards India was this right which was championed by the leaders of the India before the Independence and this was the base on which India achieved its freedom. After the alienation this tempted the Pakistan and they became champion of the same right. The partition would not have taken place if India had consistently respected the very spirit of the right to self-determination, then the alienation would have taken place. The main dilemma which involved in that time and today is the choice between the national integrity/ sovereignty and right to self-determination and it would be interesting to note that both the rights are also interconnected to each other. Hence there is a requirement to balance between the National Sovereignty and Right to Self Determination.

⁷ Right to access Internet not a fundamental right, J&K tells SC, The Hindu, April 30,2020, <https://www.thehindu.com/news/national/other-states/right-to-access-internet-not-a-fundamental-right-jk-tells-sc/article31467807.ece>(last visited Oct 10, 2020)