

THE RIGHT TO SELF-DETERMINATION IN INTERNATIONAL LAW (1999). BY B.C. Nirmal. Deep & Deep. Pp. xiv+368. Price Rs.700/-

THE CHARTER of the United Nations, recalling experiences of the international community of the two world wars, *inter alia*, stresses upon the friendly relations among nations based on respect for the equal rights of states and the right to self-determination of peoples. It, in ultimate analysis, de-recognizes the hitherto international legal order that permitted *inequality among states and nurtured the colonial spirit of the advanced nations* and justified the therewith associated power of domination over, and exploitation of, the helpless and hapless people.¹

In due course of time, the United Nations, in its de-colonization spirit and quest for the legitimizing the right to self-determination of colonial peoples,² has not only transformed the right to self-determination into one of the operative principles of international relations but also mandates every state to render assistance to it (the United Nations) in promoting friendly relations and co-operation among states and in realizing the right to self-determination.³

The right to self-determination, however, has not lost its significance even after the former colonies of the western European powers have secured their independence and acquired the territorial sovereignty and thereby assimilated in the international community. Most of the modern states are confronted with frequent claims from their racial, religious or ethnic minorities for the right to self-determination.⁴

However, the right to self-determination, at its operational levels in both the colonial and non-colonial circumstances, has not only given rise

1. See Arts. 1; 55 & 56. See also, Chaps. XI & XII of the UN Charter.

2. See the Declaration on Granting of Independence to Colonial Countries and Peoples, G.A. Res. 1514, 15 U.N. G.A.O.R., Supp. No. 16, 66, UN Doc. A 4684, 1960.

3. See, the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, G A. Res 2615 and its Annexe 25, U N G A O.R., Supp. No 28 at 121, U N Doc A 8082. (1970)

4 Among these who recently claimed the right to self-determination have been the Biafrans, the South Sudanese; the Taiwanese; the Somalis; the Kurds and Armenians; the Germans of Roumania, the Scots and Welsh in Great Britain; the Catholics in Northern Ireland; the French Canadians in Quebec, the Tamils in Sri Lanka, the Sikhs and Kashmiri Muslims in India.



to a number of pertinent politico-legal and pragmatic issues but also acquired some new dimensions.

The book under review⁵ sketches the evolution of the right to self-determination in international law and offers an objective and in depth analysis of its prominent facets and pertinent legal and pragmatic issues associated therewith.

The author has delved deep into the right to self-determination in three major thematic segments comprising twelve chapters. They are: 'Evolution of Higher Law of Self-determination'; 'Self-determination of Colonies: U.N. Law and Practice', and 'New Dimensions of the Right of Self-determination'.

In part I of the book (comprising two chapters) the author offers a comprehensive evolutionary sketch of the law of self-determination and demonstrates its use by the anti-colonial forces for boosting the emancipation of the European colonies and accelerating their consequential independence. An elaborate analysis of the right to self-determination as reflected in the UN Charter as well as in other international instruments and in the leading judicial opinions of the ICJ also finds place in this part of the book.

A contextual and procedural analysis of the right to self-determination⁶ (along with its limitations⁷), and its nexus with the principles pertaining to: the use of force; non-intervention; terrorism, and the territorial integrity of states,⁸ constitute the subject matter of the part II of the book. It also highlights the role of the United Nations in the de-colonization process and the problems encountered by it in the process.

Offering an elaborate analysis of the legal framework within which the United Nations has to operate the right to self-determination and highlighting, with apt illustrations, its approach to self-determination, the author opines that the United Nations has placed its reliance on the attainment of preconceived non-colonial results rather than on the exercise of free choice by the people concerned.⁹ The United Nations, owing to reluctance of the states' for extending the principle of self-determination beyond the context of de-colonization and the general nature of its authority under the UN Charter, has, according to the author, also done very little in resolving the non-colonial controversies pertaining to self-determination.¹⁰

5. B.C.Nirmal, *The Right to Self-determination in International Law* (Deep & Deep, New Delhi 1999).

6. Chaps. 4-6 & 8.

7. Chap 7.

8. Chaps. 7&9.

9. *Id* at 328-329.

10. *Id* at 331.



The author, in the chapters that are devoted to the limitations of the right to self-determination and its nexus with the use of force, has deliberated upon the right to self-determination *vis-à-vis* the territorial integrity of a state; national liberation movements, and terrorism. International law in vogue, though accords legitimacy, subject to certain restrictions, to the use of force for asserting the collective right of self-determination, does not, according to him, accord any legitimacy to the excessive claims of self-determination seeking the right to secede. Nevertheless, he, surprisingly without advancing any convincing arguments, inclines to justify the third world countries' resistance to the militants' national liberation movements by labeling them as the 'terrorist organisations' and their (the third world nations) insistence for differentiating 'terrorism' from 'wars of national liberation'.¹¹

Part III of the book captioned 'New Dimensions of the Right of Self-Determination', examines claims of ethnic communities and of indigenous people for the right to self-determination.

In the post-de-colonization international order, racial, religious or ethnic minorities and the indigenous people, whose human rights, fundamental freedoms, and cultural identities are (supposedly) at stake in the given polity, have been pressing for their right to self-determination. Recalling recent assertions of the minorities and the negative responses thereto of the parent states premised on their (states) perception that the right to self-determination is contextually inapt in the modern non-colonial situations, the author opines, and rightly so, that the outright rejection of the application of the right to self-determination to the constituents of the existing nation states is neither conducive for the resolution of the ethno-lingo-cultural conflicts nor pragmatic.¹² He, however, pleads for proper balancing between the parent state's claim for sovereignty & territorial integrity and the interests of her minorities. The proposed balance, according to him, could well be achieved by granting to such minorities the right to internal self-determination and by allowing them to participate effectively (along with the majorities) in the political process and governance of the state.

Perceiving the right to self-determination as a continuing process empowering individuals to make, in consonance with their aspirations and political ideology, meaningful choices, the author looks at the right to self-determination as a means to ensure respect for human rights; rule of law; democracy and autonomy. With this spirit, he, in the concluding chapter of the book, offers a set of sound 'general considerations' to be born in mind in considering the scope and content of the right to self-

11. *Id.* at 330.

12. *Id.* at 243.



determination and suggests 'measures' that need to be resorted to realize effectively the right to self-determination

The book under review, which is a well-articulated research piece, undoubtedly provides a comprehensive analytical and pragmatic account of the right to self-determination along with all its nuances and manifestations existing and emerging. It is a welcome addition to the vast literature on the right to self-determination. The author deserves compliments for the research endeavor

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BOOKS RECEIVED FOR REVIEW

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