
CITIZENLY SOVEREIGNTY & ITS CLASH WITH LAW

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ABSTRACT

A modern state is said to be the one which has ushered in a system of democracy and developed legal mechanisms to constrain those in power (the executive) and protect the rights of those perceived as powerless (the people). Most constitutions in such systems strive to grant rights and privileges to the population in the sense that instead of vesting sovereignty in the hands of a few considered the most responsible, it's the people who end up being the sovereign and are supposed to be served by those in power (public officers). However, most constitutions in such systems (like the Indian constitution) are majorly shaped by concrete events that are saturated in terms of context and are often interpreted as a by-product of a historical process of political nature. Such processes are usually driven by the desire to belong somewhere; and, it invariably happens to be 'citizenship', which has almost always been concerned with political relations.

However, with citizenship's multiple meanings and interpretations, the question which lingers is, whether, in a democratic setup, citizenship is a right that must be asserted by the people vested with sovereignty or a legal status governed and regulated by those officially in powerful positions. The essay seeks to reflect and put forward an argument on the same.

KEYWORDS: Citizenship, Nation-state, Sovereignty, Law, Identity

Scholars, researchers and academics in the field of social science studies have always been spirited about the idea of 'nation states'. Infact, the most cited text/piece of scholarship in the history of social science (and humanity, by extension) is authored by a very famous south-east asian philanthropist, Benedict Anderson, titled 'the nation as an imagined community'. According to him, a nation is indeed an imagined community in the same way that a state is a fiction, but at the same time, it is also not an unreal entity. This imagination is of a limited and a sovereign community in the sense that it is not global, which means that not everyone can claim to belong to a particular nation state. Thus, governments of modern nation states across the world largely deal with its people through the following three modalities:

- 1) Citizenship: Individuals are recognized as 'citizens' and given particularistic or differentiated set of rights,
- 2) Statelessness: By declaring people as stateless, they are rendered entirely dependent on the mercy of the state for their livelihood. In authoritarian regimes, they are discriminated against and can also be subjected to brute force, and;
- 3) Population: An intermediary category of people, the state is compelled to deal with them through some kind of contractual arrangement, merely by virtue of them having a stake in democracy.

Clearly then, the most fundamental of all rights is the right to have rights in the first place. According to Hannah Arendt, human rights fail us precisely when we need them the most.¹ In the most ideal case scenario, human rights accrue to you simply by virtue of being a human. The more bearer of a human being you are, the stronger your rights should become.² However, the ground reality stands obtuse to this fact and so, all those rights that we enjoy or take for granted become meaningless without the right to belong somewhere. In this strife for belonging, associating or getting recognized with a certain political community ends up becoming the most important aspect and the political form which has become the most pervasive in these modern times is, undoubtedly, the nation state. The term 'nation' comes from the term 'natio' or by extension 'native' and all these terms are connected by the idea of birth. Thus, the nation ends up having a constitutive link to this idea

¹ Christoph Menke, Birgit Kaiser, and Kathrin Thiele, *The "Aporias of Human Rights" and the "One Human Right": Regarding the Coherence of Hannah Arendt's Argument*. Social Research 74, no. 3 (2007): 739-62. Accessed May 28, 2021. <http://www.jstor.org/stable/40972123>.

² James D. Ingram, *What Is a "Right to Have Rights"? Three Images of the Politics of Human Rights*. The American Political Science Review 102, no. 4 (2008): 401-16. Accessed May 28, 2021. <http://www.jstor.org/stable/27644535>.

which was also propounded by Ernest Renan, the French theorist, when he delivered a lecture titled ‘What is a Nation?’. According to him, empirically and sociologically, people infer different things with the idea of nation.³ Even today, nation states have many acknowledged categories, the most prominent among them being, ‘dynasty’, ‘race’, ‘language’, ‘religion’, ‘geography’. Where in early 1900s, many a progressive nation (like US) had ‘citizenship’ exclusively based on racial basis, the concept of citizenship itself now, remains the most dominant and easily identifiable form of belonging to a nation despite the fact that it is not the only form of belongingness that you can associate with a nation state. Today, there are two most dominant ways in which one can acquire citizenship in modern legal and political regimes, which is either by birth or by naturalisation. Two types of citizenships exist as a result of this:

- 1) Jus Soli (The place where you are born)
- 2) Jus Sanguinis (Belonging to the same group of people among whom you can claim citizenship right)

The rules of citizenship that are contained in Articles 5 to 10 of the Indian Constitution are basically the principles of Jus Soli, i.e., citizen by birth. But, by practice, it is slowly getting converted into Jus Sanguinis. Thus, it can be seen that in some ways, the law tries to tame the sovereign claim of an individual to ‘belong’. It has the capability to define and lay down the criteria of who is going to be sovereign, even though it has never really been able to define sovereignty itself. Nevertheless, citizenship is not necessarily a question of law, but fundamentally a question of sovereignty. Law would inadvertently require one to prove his/her allegiance, but it’s the radical claim of sovereignty arising from the ideology of citizenship which empowers one to assert ownership.

Looking back in the past, the Athenian idea of citizenship used to be concerned with self-governance. Romans also relied upon citizenship for the purpose of asking the support of the state and also expected protection of the laws made by the state. From the very beginning, the idea was that the citizens have certain rights against the state and the state is under an obligation to realize and protect those rights. Of course, this does not mean that the citizens do not have any responsibility towards the state. In fact, they were supposed to abide by all the duties set for them by the state. More so, in a democratic set-up, these rights and duties were and still are

³ Ernest Renan and M. F. N. Giglioli, *What Is a Nation? and Other Political Writings*. New York; Chichester, West Sussex: Columbia University Press, 2018. Accessed May 28, 2021. <http://www.jstor.org/stable/10.7312/rena17430>.

decided by a constitutional mandate. However, the constitution is not purely a legal unity of manifest norms but rather, a political unity of people coming together and giving to itself that constitution and framing a fundamental law for itself. The Indian Constitution, in particular, compels the state to refrain from certain actions or exercises of power that affect people's fundamental rights and liberties, as well as provide positive assistance to those who have been left behind either by the state or by the dominant parts of society by deliberate action or negligence. However, since the political nature of the government in the country has historically been either aristocratic or imperialist, those in power always try to bring in some or the other regulation so as to tip the scales of responsibility and make the governed feel more accountable to them instead. Thus, all the schemes proclaimed to reduce corruption and bring justice to the citizens inevitably gets revealed as nothing short of a facade. Demonetisation, marketed as an attempt to flush out black money (undeclared wealth) of the uber-rich and bring justifiable compensation to the bank account of the common man ends up being a massive inconvenience for the public which was forced to queue up in large numbers at banks across the country. Aadhaar program projected as a tool to provide universal proof of identity to every Indian resident and improve the administrative efficiency of welfare programmes becomes a headache for a regular taxpayer with its incessant requirement to link it with every other government provision and in the case of the under-privileged, accessing the basic amenities.

Today, modern political theory poses a fundamentally paradoxical question when it comes to talking of citizenly sovereignty, which is, 'Did the people make the law or are the people made by this law in the very first place?' From a democratic point of view, one would say that it's the people who make the law. A naïve constitutionalist perspective would suggest that not only it's the law which makes the people, but also whatever definition we have of the people should be derived from the law. Lawyers would have us believe that it's the supremacy of law, legality and the constitution. A genuinely politically conscious person would, however, argue that these conflicts are irresolvable and perhaps, the most productive when they remain so. We, the people, have given to ourselves this constitution, but at the same time, it is through the constitution that, we the people, are actually constituted in the first place.

Acclaimed Indian political scientist Partha Chatterjee in his book 'A Princely Impostor? The Strange and Universal History of the Kumar of Bhawal (2002)' has discreetly suggested that, in modern societies of control, people are all princely impostors until 'proven otherwise'.

Based on an extended Indian court case about a person claiming to be the prince of Bhawal, the book asks a very simple question about personal identity which may also be extrapolated to the constitutional identity of citizens of any democratic country like India. Chatterjee in this book throws shadow on the transition from monarchical sovereignty to popular sovereignty. According to him, the monarchical prince has been displaced by the people as the new prince. However, if looked through the lens of legal sanction, people themselves are merely princely imposters unless they are able to prove otherwise. This is the tension between the sovereignty and the law. The law always requires people to prove their ‘credentials’ either through documents, for instance like Aadhar, UID etc or furnishing of ideological commitments; or even through some or the other way that it fashions and decides. But sovereignty unfolds itself into that fundamentally sweeping claim that one makes irrespective of whatever the law of the land might be saying to proclaim that it is much more superior to that law of the land. It gives force to the idea that monarch has been conclusively displaced by the new prince, who happens to be the junta. But, often times, law comes in and enforces certain regimes and regulations in order to proclaim that the new monarch is still nothing more than a princely imposter and requires citizens to prove their allegiance.

So, when we ask ourselves, ‘Is sovereignty with the law’, then the answer from a democratic point of law is that it is not. Sovereignty is with the people and thus, it is the people who get to decide what the law is. Modernity, however, makes this concept of sovereignty very complicated. In the pre-modern times, sovereignty used to be an attribute or a facet of those considered the ‘most responsible’ towards the nation state. With the arrival of modernity and the revolutionary rupture that it signifies, sovereignty has become more of a relational capability, instead of a concrete property or quality of the responsible. An abstract relationship which the government shares with the governed.