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PERMANENT SOVEREIGNTY OVER NATURAL RESOURCES: THE PERSPECTIVE OF PAKISTAN'S LAW AND INTERNATIONAL LAW

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Abstract
The concept of Permanent Sovereignty over Natural Resources (PSNR) that is analysed in the paper is through the lens of domestic law regime of Pakistan and the part they have to play in terms of international law regulating the concept. PRS is a claim to permit states and people to manage and enjoy the benefits of their own natural resources, a claim that began with a depoliticization struggle in the 1960s. A good instance of the inconsistency of constitutional sovereignty, provincial autonomy and international responsibilities particularly in matters relating to the international arbitration and the BIT constitute the case of Pakistan as a resource based yet economically dependent state. This paper focuses on the clauses in the constitution, case and international relations and Pakistan participation in international human rights, investment and environmental regimes. It concludes with recommendations of harmonising domestic constitutional principles and international obligation of protecting them to meet national interests and resources to enhance justifiable handling of resources.
The present paper is the critical appraisal of PSNR concept concerning the Constitutional provisions of Pakistan and its obligation by the international law. Beginning with the anti-colonial movements of the 1960s, PSR recognizes the rights of states and peoples to exercise power and gain associated with their natural resources. Although this principle is enshrined in the international and domestic law tools, there are disadvantages when it comes to its application at the practical level; particularly to the developing economically dependant countries like Pakistan with a lot of available resources. The paper is an evaluation of the constitution and judicial interpretation of the Pakistani Constitution and the Pakistani involvement with international human rights and investment and environmental regimes. It then denotes the conflict between sovereignty and foreign investment will be noted in the Reko Diq investor case. Lastly, it suggests amendments to laws and policy in order to reconcile the domestic Pakistani constitution and the international one, in an attempt for exercising its sovereignty over its resources in a way that is just and sustainable.

1. INTRODUCTION

The principle of PSNR is fundamental to international law and domestic constitutional orders of numerous resource-rich states. First codified in UNGA Resolution 1803 (1962), PSR guarantees states and peoples their right to freely dispose of their natural wealth in the interests of development and well-being (United Nations, 1962). While the concept is well agreed upon, its actual implementation is debated especially in developing states which traditionally observe sovereignty balance with international commitments and the demands of international foreign investment (Tyagi, 2015).
For Pakistan, PSNR just has a different meaning. The constitutional structure of the country grants ownership of the natural resources to the state and provinces requiring they use them for the public interest. But the strengthening of absolute sovereignty is a matter in which the dependence of foreign investment of Pakistan, on international treaties and arbitration is limiting. This tension is clear given the case of Reko Diq whereby the sovereignty right of Pakistan had conflict with what it owed under bilateral treaties of investment.
According to Birconin, it is claimed that PSNR became one of the most significant innovations of the modern international law. It came up in an era when the recently independent countries were being decolonized, to now enable

them to have power over the freely disposable nature of their natural resources, to enable them develop and have a well being. This was codified in UNGA resolution of 1803 (XVII) in 1962 and was directly related to the necessity of the right of self-determination in general (United Nations, 1962).
In the case of Pakistan, PSNR has explosive implications. The nation is blessed with colossal natural resources that comprise of oil, gas, copper, coal and hydro electricity potential, yet it has been affected by economic helplessness, incompetence of governance and external obligations that limit its independence. This paradox - between the sovereignty over the resources and the commitments under the bilateral investment treaties (BITs), international arbitration and environmental promises - it makes Pakistan a fertile area of PSNR in practice. It is argued in this paper that though the constitutional and judicial systems in Pakistan present sound guarantees towards the protection of PSNR, the international investment and trade regimes in most cases undermine it and hence necessitates a re-adjustment of strategies at both local and global levels.
The concept of PSNR traces its origins to the era of shift in the mentalities of the international relations - the period of decolonization that took place in the mid-Twentieth Century. Colonised African, Asian, and Latin American states also aspired gain political autonomy not merely in terms of their geographical sovereignty, but also of the control over their destiny economically. Naturally, over the decades, the colonialists and the foreign companies had been sucking the natural resources out of these countries with very little or nothing coming back to the localizations in these regions. This exploitation in the past left behind massive inequalities that provided motivation for the new independent states to assert their right to full sovereignty over their natural resources.
The various comparisons, arguments, and interpretations of resource sovereignty in a globalized world were boiling down to the UNGA: the culmination of global debate was the 1962 UNGA 1803 (XVII). This resolution proclaimed that "the right of peoples and nations to permanent sovereignty over their natural resources and wealth shall be exercised in the interest of their national development and the well-being of the individuals" (United Nations, 1962). It was a major turning point in international law because it associated the principle of PSNR with the general principle of self-determination. By placing the control of resources within the ambit of sovereignty, the resolution was addressing the economic control of former colonial powers and multinational corporations.
Throughout the 1960s and 1970s, PSN was a cry of war for the developing world. It was further elaborated in the Charter of Economic Rights and Duties of States (1974), which aimed to enhance the economic independence of the developing countries by their right for regulating foreign investment and to nationalise industries. This historical context makes PSNR stand out as a way to protect the population from exploitation by outsiders, but also to be used proactively as an instrument for developmental justice (Schrijver, 1997).
In Pakistan, the above global debates struck a particular chord. As a newly-independent state in 1947, Pakistan inherited a resource-rich but poor economy. Its nation building project was based on struggle over control of its natural fortune (be it oil, gas or coal or mineral resource). The 18th amendment, which had a significant effect on the Constitution of 1973 in Pakistan and the later amendment of 2010 was the Constitution of 1973, which created PSNR a legal right in the Constitutional landscape of Pakistan, the federal government and the provincial government were granted the rights to resources in their Constitutions. Cases in court (such as Reko Diq case) As might be viewed, the procedure of PSNR has also found its way to the courts of Pakistan, to help prevent the feeling that the general population is being exploited by foreign investors.
At the international level, though, both the past history of PSNR and globalisation and the international investment regime anonymously marked their appearance. In the late 20th century, because of the increase in bilateral investment treaties (BITs) and other investor-State dispute settlement (ISDS) schemes, the states ceased to exercise their (unilateral) sovereignty over their resources. It was especially important to note the developing tension in Britain in Pakistan based on its signing of first-ever BIT in 1959. This historical obscuring of the distinction between the aims of decolonization and the facts of globalisation is exemplified by the award of Reko Diq arbitration that imposed USD 5.9 billion dollars in damages on Pakistan (ICSID, 2019).
Thus, its history demonstrates PSNR as a policy, which was created during the anti-colonial struggle; the policy is founded on the benchmarks of justice, equality and self-determination. In the case of Pakistan, through the exercise of the historical dimension, the concept of constitutional and judicial devotion to the sovereignty of the resources is understood and it is explicit that the challenge is being internationalized by an international order that is inclined towards prioritizing the interest of investors. An understanding of this history is important if we are to situate the current debates on the relation of PSNR in Pakistan and devise strategies for balancing sovereignty and international obligations.

2. LITERATURE REVIEW: PSNR IN INTERNATIONAL LAW

The development of PSNR in international law started with the struggle for independence. UNGA Resolution 1803 (1962) defined the right of nations and peoples to permanent sovereignty over their resources related to the right to self-determination (Schrijver, 1997). Later instruments, Charter of Economic Rights and Duties of States of 1974 focused on dominating domestic laws where regulation of resources was concerned, but not without a struggle from developed countries (Salacuse, 2015).

International human rights law further established the validity of the PSNR by Article 1(2) of both the ICCPR and the International Covenant on Economic, Social and Cultural Rights (ICESCR), to which Pakistan is a party. These provisions ensure the right of all peoples to the free disposal of their natural wealth and resources (UN, 1966a; UN, 1966b).

At the similar time, international investment law has frequently compromised PSNR by creating rights for foreign investors that can be enforced at an international level via arbitration, which reduces the regulatory authority of states (Dolzer & Schreuer, 2012). The new bilateral investment agreements of the 90s have added additional restrictions on the sovereignty of the developing nations, Pakistan included, (Miles, 2013).

The literature on PSNR is influenced by intricate relationship between the international developments in law, economic interests, and political dilemma. Since codification, PSNR has been a controversial subject, at times including references to state sovereignty and at times outlining the contours of state sovereignty as a limitation of globalization, the organization of investment and the issues of the environment.

2.1 Historical Foundations

Aligning PSNR formation with the broader anti-colonial struggle can also be regarded as a phenomenon of the second half of the 20th century. PSNR concept of protection as a shield against all external exploitation and the concept of a sword in the fight against developmental injustice can be explained by Schrijver (1997). UNGA Resolution 1803 on the Right of Peoples and Nations to the Free Disposal of Their Natural Wealth and Resources (1962) leading the principle that the right of nations and peoples to the free disposal of their natural resources and wealth is an expression of the right towards self-determination. The resolution is the compromise within the sovereignty of states and the need for international cooperation and protection of foreign investment according to host country laws. This duality continues to have implications for discussions of the scope of PSNR. Scholars such as Higgins (1973) have argued that PSNR was at first more a political declaration than binding international law. However, later on by state practice and by treaty law, it has been shown to have been gradually crystallizing into a legal norm. The Charter of Economic Rights and Duties of States adopted in 1974 further elaborated this principle and underscored supremacy of national sovereignty related to natural resources regulation although against the resistance of developed states (Salacuse, 2015).

2.2 Human Rights Dimensions of PSNR

A substantial body of literature places PSNR in relation to human rights. Article 1(2) of the ICCPR and the ICESCR explicitly codify PSNR by defining that "all peoples may, for their own ends, freely dispose of their natural resources and wealth." (United Nations, 1966a; 1966b). Scholars, such as Cassese (1995) and Tomuschat (2008), interpret this to be a guarantee of human rights, nexus resource control directly to the principle of self-determination.

This human rights dimension especially applies to indigenous people and marginalized communities. Anaya (2004) in his view PSNR forms the basis for the claims of indigenous peoples for land and resources rights, as it forms part of a larger claim to self-determination under international law. The PSNR also has been enshrined in the African charter on human and peoples' rights, thereby giving global acceptance to the concept of national human rights as part of the collective human rights jurisprudence (Okafor, 2000).

2.3 PSNR and International Investment Law

Much of the contemporary debate on PSNR centres on its discomfort with international investment law. In the 1990s and 2000s, the emergence of bilateral investment treaties (BITs) and investor-state dispute settlement mechanisms (ISDS) formed a competing legal regime that frequently infringed on state sovereignty. Dolzer and Schreuer (2012) note that BITs often favour investor rights, offering guaranteed enforceable rights including protection against expropriation and fair and equitable treatment of investors, limiting host states regulatory powers. Miles (2013) traces the origins of investment law back to colonial practise of protecting foreign capital, and argues that contemporary BITs continue the latter's legacies by limiting the capacity of developing countries to exercise PSNR. Similarly, Eberhardt and Olivet (2012) point to how mechanisms for resolving ISD, dominated by arbitral tribunals, have persistently privileged investors at the expense of host states, resulting in massive awards for damages which discourage states from regulating in the public interest. The Reko Diq dispute in which Pakistan was held liable to pay USD 5.9 billion in damages (ICSID, 2019) is a classic example of such tension. Scholars believe that in instances such as this, it shows a structural imbalance in the world economic order in which PSNR, while remaining a formal principle, is undermined in practical application (Tienhaara, 2011).

2.4 Environmental and Sustainable Development Perspectives

PSNR has become an ever-growing subject of analysis from the perspective of sustainable development and the protection of the environment. Schrijver 1997 stresses that PSNR entails not only rights but responsibilities, too: States must, for example, ensure that exploitation of resources will not lead to environmental degradation and harm future generations. The 1992 Rio Declaration and the 2015 Paris Agreement reflect this evolving understanding and states must balance sovereignty with global environmental responsibilities (UNFCCC, 2015). Experts like Redgwell (1996) have pointed out that a state no longer has absolute and absolute sovereignty over natural resources, but this is subject to international environmental initiatives. This has dilemmas to resource-dependent countries like Pakistan because exploiting the coal deposits will not only satisfy temporary energy needs but also will default on environmental treaty engagements. Therefore, PSNR is gradually established not as the freedom of sovereignty but as good stewardship.

2.5 Regional and Comparative Perspectives.
According to comparative literature, PSNR in various regions was understood differently. Resource nationalism Frequently, resource nationalism appeals have made reference to PSNR in order to lend credibility to nationalisation of enterprises, e.g. Venezuela, in Bolivia (Corrales & Penfold, 2015). African countries, on the other hand, have been using PSNR to negotiate with multinational corporations to both negative and positive outcomes (Mbaye, 2010). These experiences point at the malleability of the principle, and it is also vulnerable to global asymmetries in the economic arena. In the case of South Asia, as Khan (2012) points out, PSNR (federal - provincial) is the embedded system through the constitution. Nevertheless, its use in the conflicts remains subject to political wrangling and exposure to international arbitration. This follows the broad data of literature that draws our attention to the strained relationship between the connexion between pull domestic Constitutional commitments and pull global legal regimes.

2.6 Critical Perspectives
The question that critical legal scholars pose is if PSNR is empowering the developing countries or PSNR is merely a palaver that obscures the current economic dependency. Anghie (2005) believes that PSNR, regardless of the seemingly anti-colonial intentions, belongs to an international law order that still privileges exceptional states and corporations. Likewise, Sornararajh (2015) condemns this asymmetry of investment arbitration since PSR lags behind investor in practise. The latter criticism is particularly relevant with regards to Pakistan as a question of sovereignty over resources remains perpetually important in the region due to the pressure exerted by outside economic forces in the form of conditionalities of IMF as well as supposed claims of foreign investors. Therefore, the emancipatory potential of PSNR and the structural inhibitors to this potential are visible in literature.

2.7 Synthesis of Literature
The literature demonstrates that PSNR was and continues to be a human rights guarantee, an international economic law principle of state sovereignty, and a controversial norm. This balancing toward an anti-colonial principle, followed by the topic of a contentious doctrine on the territory of investment law, is the strength as well as a weakness of a really contemporary doctrine. For Pakistan, it is apparent from the literature both the opportunities and the limitations: a constitutional framework to resist PSNR, but an international order that often restricts it in practice.

3. Pakistan's Constitutional Framework on Natural Resources
The Constitution of Pakistan (1973) clearly states the sovereignty of the state over the natural resources. Article 172(2) puts in the hands of federal government, and these are all the properties that are not owned privately, and Article 172 (3): The strips of oil, gas and minerals owing both to federal government and province governments as biennial. The 18th Amendment (2010), which has substantially enhanced provincial rights on natural resources, reinforced federalism (Khan, 2012). Article 38 of the Constitution (Principles of Policy) further requires natural resources to be used for purposes of social justice and the creation of people's welfare. These provisions reflect the PSNR principle at the domestic level ensuring the exercise of sovereignty for development.

3.1 Judicial Interpretation
Superior courts of Pakistan have enforced the constitutional principle of PSNR:
Riko Diq Case (2013, Supreme Court of Pakistan) Riko Diq case, the Court declared a mining agreement between Tethyan Copper Company and local community null and void for violating the constitutional sovereignty and transparency (Supreme Court of Pakistan, 2013).
Thar Coal Case (2013, Sindh High Court): Underlined provincial ownership and duty to develop resources for the benefit of local communities (Sindh High Court, 2013).
These rulings demonstrate the commitment of Pakistan's judiciary to the principle of PSNR, although at times it conflicts with international obligations.

4. Pakistan and International Law on Natural Resources

4.1 Human Rights Law

Pakistan is a party to the ICCPR and ICESCR, which both codify PSNR as constituting the right of self-determination (UN, 1966a; UN, 1966b). This generates a dual responsibility: to manage its resources for development on the one hand, and to ensure that this development is to its people on the other. Failure to meet these commitments may constitute a violation of human rights.

4.2 Bilateral Investment Treaties and Arbitration

Pakistan signed the world's first BIT with Germany in 1959 (UNCTAD 2015). Since then, it has entered into over 30 BITs. However, these treaties have usually placed investors' rights above nation sovereignty. The largest one being the Reko Diq case (Tethyan Copper Co. v Pakistanon ICS ID Award in 2019) in which Pakistan was ordered to pay USD 5.9 bn in damages for withholding a mining lease. Rewarding relates the conflict between domestic constitutional sovereignty and obligations under international arbitration (ICSID, 2019).

4.3 Trade and Environmental Obligations

As a member of the World Trade Organisation (WTO) and a signatory of Paris Climate Change Identity (2015), Pakistan is now caught among the freedom of resources from sovereign rights and the necessity of Scarboro and implementation of Paris Agreement on Climate Change encompassing trading liberalisation and environmental sustainability (UNFCCC, 2015). These in turn in some ways restrict domestic resource policy especially by coal and energy.

5. Challenges to Pakistan's Sovereignty

1. Foreign Investment dependence: the reliance of Pakistan on foreign investments makes it create less regulatory autonomy in Pakistan.
2. The Irrelevance of Federalism: The provinces are insisting on a greater share of resources especially after the 18 th Amendment - there are several aspects of federal commitments in treaties.
3. International Arbitration: Reko Diq amounts such as awards undermine the sovereignty of the State where the money given to investors comprise its own taxes.
4. Resource Management and Welfare: Pakistan is a poor country in terms of distributing the revenues of the country fairly and impartially to the detriment of the people-centred character of PSNR.
5. Balancing Domestic and International Legal Responsibilities.

Pakistan must protect the sovereignty by fulfilling the international law by:

Simplify its Model BIT: The tour of India and South Africa, Pakistan then ought to draught treaties that can reach reasonable compromise between these two objectives of investors protection and regulatory sovereignty.

Enhance Domestic Law: To address the conflict, it can open mining and energy regulations to reduce the conflict.

Right Claims in the International Fora: Pakistan should continue its engagement with developing countries in the discussion of the United Nations and Word Trade Organisation on the changes being made to the investor-state dispute settlement (ISDS) mechanism.

Create a better Federal/ provincial coordination: There should be more overt and visible means of revenue sharing of resource wherein there is higher domestic legitimacy to boost.

6. CONCLUSION

PSNR is a constitutional right and an international concept. To Pakistan it is a matter of weighing the sovereignty of the nation internally and internationally. The principle of sovereignty is safeguarded by the courts and the Constitution, however Bitteen and arbitration awards often restrict the utilisation of this principle. This would be exemplary in the Reko Diq case. Pakistan would have to overhaul both of its practises in order both to negotiate treaties with foreign countries and attempt to constitute a more effective domestic organisation of rules, and also to ask with great vigour at the international level that more equitable rules should be adopted. Permanent Sovereignty over Natural Resources is a global law and a constitutional right. To Pakistan it is the promise of cultivating the natural resources to the national good and well being of the community. But, institutional implementation of PSNR is restricted by international rules on investment and trade, arbitrations judicially enforced and by environmental standards. It is the Reko Diq issue which is precisely the case of tension between domestic and international commitments. Going forward, Pakistan will need to restructure the treaty practices, strengthen the domestic regulatory framework and coordinate with other developing nations to advocate more reasonable principles on international investment. By doing so, it can bring together sovereignty and global obligations, ensuring that natural resources are a foundation for equitable and sustainable development.

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