

NON-DEROGABLE RIGHTS IN THE ICCPR: IMPLICATIONS FOR THE PROTECTION OF HUMAN DIGNITY IN SITUATIONS OF ARMED CONFLICT AND COUNTER-TERRORISM

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ABSTRACT

Although Non-Derogable rights are prevalent and in force during the time of Public emergency which threatens the life of nation yet the question of Human Dignity still remains an unsettled domain that how it will be intact and taken care of even in the emergency of public nature under the International Covenant of Civil and Political Rights. Despite the extensive literature of this covenant Article 4(2) and Article 7 there is no study which treats human Dignity as an operational, non-derogable legal constraint in armed conflict and counter-terrorism context. This article suggests by using the Doctrinal methodology to theorize that Human Dignity must also be defined and its threshold must be crafted by the International Bodies in order to intact it as per the Article 2 of Universal Declaration of Human Rights.

Keywords: Non-Derogation, Armed Conflict, ICCPR, UDHR, GCs, Human Dignity, NIAC.

1. INTRODUCTION

The notion of non-derogable rights holds a unique significance within the context of international rights and human rights law. These rights, which a nation cannot suspend even during public emergencies that jeopardize national survival, embody the essential core of human dignity and the absolute boundaries of acceptable governmental behavior. The International Covenant on Rights, Civil and Political (ICCPR), adopted in 1966 and put into effect a decade later, enshrines this concept in Article 4, which specifies a definite set of rights from which no deviation is permitted. The rights encompassed include the right to existence, the prohibition of torturing and cruel, inhuman, or degrading treatment or

punishment, the prohibition of servitude and slavery, and the principle of legality in criminal law. The current significance of these protections has been highlighted by the increase in armed conflicts and the escalation of counter-terrorism efforts worldwide. From the protracted conflicts in the Middle East to the ongoing struggle against transnational terrorist networks, States have repeatedly invoked national security imperatives to justify encroachments upon fundamental liberties. The tension between security and liberty is neither novel nor inherently illegitimate; what demands rigorous scrutiny, however, is the extent to which such encroachments respect the inviolable boundaries established by non-derogable rights.

In addition to investigating the juridical content, doctrinal foundations, and practical consequences of non-derogatory rights under the International Covenant on Civil and Political Rights (ICCPR), the purpose of the current research project is to investigate the protective function of these rights in contexts of armed conflict and the fight against terrorism. Whether it be through explicit derogation or intentional interpretation with the intention of evading their protective scope, the erosion of non-derogable rights puts not only individual victims in jeopardy but also the fundamental credibility of the global human rights framework. This is the primary concern that drives the study.

It is on design that the International Covenant on Civil and Political Rights (ICCPR) serves as the primary legal basis. Governments have signed the Covenant, making it the most important and broadly applicable international convention on rights in civil and political life. It is also the most internationally recognised convention on rights. Forming itself under Article 28 of the Covenant, the Committee for Human Rights has gathered a plethora of interpretative help in the shape of General Comments and Views in particular communications. This guidance is very helpful in comprehending the breadth and depth of non-derogable responsibilities. In addition, there is a lack of adequate theory in the field on the complicated issues of normative interaction that arise when the ICCPR and IHL collide in armed conflict scenarios.

By explaining the proposed thesis's structure, defining the inquiry's scope, and placing it within larger disputes in international legal theory, this introductory chapter prepares the groundwork for the research. The central argument advanced herein is that non-derogable rights function as constitutional constraints upon state power, and that their effective protection in emergencies requires both doctrinal clarity and institutional vigilance.

This research addresses a central issue: despite the formal acknowledgement of non-derogatory rights in Article 4(2) of the International Criminal Court (ICCPR) and their status as fundamental to global human rights law, these protections encounter ongoing and systemic challenges in contexts of

armed conflict and counter-terrorism, jeopardising their practical effectiveness and normative consistency.

This overall issue consists of several interrelated aspects. At the doctrinal level, ambiguity remains over the exact extent of several non-derogatory rights, such the right to live and the ban of torture. The acceptability for fatal force in warfare, the difference between torture and inhumane, degrading, or cruel treatment, and relevance of these concepts to new kinds of state behaviour continue to be areas of significant interpretative contention. The Human Rights Committee's recent efforts to elucidate these issues in General Comment No. 36 have not settled all disputes and have faced criticism from many State parties.

The lack of a mandatory judicial procedure for enforcing the ICCPR against individual States at the institutional level results in considerable accountability deficiencies. Human Right Committee's authority to hear individual communications is contingent upon the adoption of optional procedures; furthermore, even when such authority is present, the Committee's Views do not possess legally binding effect. The hesitance of some States to actively participate in the Committee's proceedings diminishes the efficacy of the supervisory mechanism.

At the practical level, States engaged in armed conflict or counter-terrorism operations have demonstrated a persistent tendency to circumvent or reinterpret non-derogable obligations rather than formally derogate from them. This practice of constructive non-compliance, whereby States maintain the formal applicability of rights while construing their content so narrowly as to permit virtually any conduct, represents a particularly insidious threat to the integrity of the non-derogation regime.

The problem is further compounded by the phenomenon of permanent emergency, whereby exceptional powers initially justified by reference to temporary crises become normalised features of the legal landscape. This phenomenon, seen in several jurisdictions during the post-9/11 era, undermines the clear demarcation between normality and emergency that the derogation system relies upon. When crises become chronic, the notion of non-derogable rights as constraints

in exceptional situations loses its functional relevance.

2. Significance of the Research

This research is significant at multiple levels. At the theoretical level, the study contributes to the ongoing elaboration of a coherent jurisprudence of non-derogable rights, addressing interpretive questions that have divided scholars and institutions. The examination of the connection between non-derogable rights and respect for human dignity provides an ethical framework that has the potential to guide the formation of future interpretative advancements.

The report provides guidance to nations, international organisations, and non-governmental entities engaged in the protection of human rights during emergencies. At the final chapters, proposals are created with the intention of being actionable. These recommendations address institutional improvements and interpretative clarifications that would increase the efficiency of the safeguarding of non-derogable rights.

3. Research Methodology

This study employs a doctrinal legal approach supplemented by interdisciplinary insights from political philosophy and international relations. The doctrinal approach, defined by methodical analysis of legal standards, judicial rulings, and institutional practices, constitutes the methodological foundation of the inquiry. This method is suitable considering the main emphasis on the interpretation and implementation of treaty terms and customary global law.

The research advances over multiple interrelated methodological phases. The initial phase entails an exhaustive examination of primary legal sources, encompassing the text compiled by the ICCPR and its travaux préparatoires, the legal precedent of the Committee on Human Rights, rulings of International Court of Justice and local human rights judicial bodies, as well as decisions from worldwide criminal tribunals.

The sources are examined using traditional legal interpretation methodologies, such as textual, structured, teleological, and historical techniques.

Second stage engages with secondary literature across multiple disciplines. Legal scholarship on human rights, IHL, and constitutional emergency powers provides the principal reference point, supplemented by philosophical work on rights theory and political science research on security governance. This interdisciplinary engagement serves to contextualise doctrinal analysis within broader theoretical frameworks and to identify practical constraints upon legal regulation.

The third step employs comparative research to analyse governmental practices and judicial rulings across various jurisdictions. Special focus is given to the actions of the nations that have officially deviated from the ICCPR, along with the legal precedents established by regional systems addressing similar issues.

The fourth stage entails a critical assessment of current counter-terrorism policies in relation to non-derogable rights. This evaluation component utilises documentation sources, such as official reports, parliamentary enquiries, and non-governmental organization investigations, to evaluate the alignment of specific activities with relevant legal norms. The study design blends normative and empirical components, merging doctrinal analysis with fact-sensitive assessment.

The research is qualitative in character, eschewing quantitative methods in favour of interpretive and evaluative approaches appropriate to legal inquiry. The study is desk-based, relying upon published sources and electronic databases, and does not involve empirical fieldwork or human subjects research.

4. Non-Derogable Rights in the ICCPR:

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At the practical level, States engaged in armed conflict or counter-terrorism operations have demonstrated a persistent tendency to circumvent or reinterpret non-derogable obligations rather than formally derogate from them. This practice of constructive non-compliance, whereby States maintain the formal applicability of rights while construing their content so narrowly as to permit virtually any conduct, represents a particularly insidious threat to the integrity of the non-derogation regime.

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5. Implications for the Protection of Human Dignity in Situations of Armed Conflict and Counter-Terrorism

Despite the extensive evidence reviewed above, significant deficiencies in academic comprehension remain. Initially, there exists inadequate integration between the logical examination of non-derogable rights and the actual conditions of modern armed disputes. A significant portion of current discourse operates at a high level of abstraction, addressing treaty texts and court rulings without a thorough examination of the practical situations in which these standards are to be implemented. The unique issues presented by asymmetrical warfare, urban conflict, and the rise of non-state players need a more detailed study than has hitherto been offered.

Second, the counter-terrorism literature, while extensive, tends to focus upon particular jurisdictions or specific practices rather than offering a systematic evaluation of non-derogable rights across the full spectrum of contemporary threats. The connections among targeted killing and the freedom of life, enhanced interrogation and the removal of torture, and preventative detention and the ban of arbitrary deprivation of freedom have been examined separately rather than as parts of a cohesive protective framework.

Third, The normative interplay among the ICCPR and global humanitarian law is insufficiently theorised. The notion of concurrent application is widely known, although the actual mechanisms of its cohabitation remain poorly understood. The issue of whether World wide Humanitarian Law alters the substance for Covenant commitments instead of just the methods for their execution has significant ramifications for the safeguarding of non-derogable rights during armed disputes. In GCC No. 36, the Committee on Human Rights makes several contentious claims about the right to life's extraterritorial scope, and these claims need to be carefully considered.

Fourth, The institutional aspect of safeguarding rights that are not derogatory has been inadequately addressed. The efficacy of absolute restrictions significantly relies on the presence of strong monitoring and enforcement systems. A comparative examination of the respective strengths and shortcomings of the Human Rights

Committee, local human rights courts, local judiciaries, and global criminal tribunals in the protection of non-derogable rights is necessary. The primary objective of this research is to conduct a comprehensive and critical analysis of non-derogable rights under the ICCPR, investigating its theoretical foundations, legal content, and practical application in scenarios of armed conflict and counter-terrorism. This primary purpose is subdivided into the following particular aims:

I. To examine the drafting history, textual interpretation, and jurisprudential evolution of Article 4(2) of the ICCPR, delineating the breadth and substance of the specified non-derogable rights.

II. To analyse the correlation between rights that are not derogatory and global humanitarian law, elucidating the mechanisms of normative interaction in contexts of armed conflict.

III. To assess the efficacy of institutional frameworks for safeguarding non-derogable rights, including the Human Rights Committee, regional courts, and national judiciaries.

IV. To evaluate current counter-terrorism activities in relation to the norms set by non-derogable rights, pinpointing areas of adherence and infringement.

V. To provide proposals for enhancing the safeguarding of non-derogable rights in urgent circumstances, using comparative and multidisciplinary approaches.

6.Recommendations.

The lack of a mandatory judicial procedure for enforcing the ICCPR against individual States at the institutional level results in considerable accountability deficiencies. Human Right Committee's authority to hear individual communications is contingent upon the adoption of optional procedures; furthermore, even when such authority is present, the Committee's Views do not possess legally binding effect. The hesitance of some States to actively participate in the Committee's proceedings diminishes the efficacy of the supervisory mechanism.

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7.Conclusion.

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The report provides guidance to nations, international organisations, and non-governmental entities engaged in the protection of human rights during emergencies. At the final chapters, proposals are created with the intention of being actionable. These recommendations address institutional improvements and interpretative clarifications that would increase the efficiency of the safeguarding of non-derogable rights.

At this level for policy, the research contributes to the ongoing discussions that are taking place about the optimal balance that should be struck between freedom and security in democratic society. The era after the attacks of September 11, 2001 has been marked by a persistent growth of security authorities across a variety of jurisdictions,

sometimes with little attention paid to the consequences these capabilities have for human rights. Based on the authoritative framework of the World wide Covenant on Civil and Political Rights ICCPR, the present research offers a legally founded criticism of such expansions.

At academic level, this research covers the gaps that were found in the literature evaluation. It provides the first complete examination of non-derogable rights that includes a systematic integration of viewpoints on armed conflict and counter-terrorism. By engaging with political theory and international relations from a variety of disciplines, this work differentiates itself from just doctrinal interpretations and strengthens its capacity to explain things.

The study is pertinent to the current context. The protracted wars in Ukraine, Gaza, Sudan, and Myanmar, together with the continuous menace of transnational terrorism, keep issues of emergency powers and non-derogable rights at the forefront of international legal discourse. The findings of this research are designed to be directly relevant to policymakers, practitioners, and academics addressing these pressing issues.

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