

property right, etc. are significant factors in encouraging foreign investors. As the third generation policies directly deal with economic fundamentals of which investment decisions are primarily founded, country should straightforwardly implement these policies which are perceived to be the crucial to change the fundamental characteristic of the Sri Lanka as a destination for FDI in the South Asian context.

Rule of Law and Right to Democracy in International Law: To Contradict or Conform to Constitutionalism?

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Introduction

Rule of Law, a principle in constitutional law and a concept in political science discourse has been understood for more than a century as a heavily loaded tenet of democracy. Governments were to be tested for their qualitative character of democracy by employing the yardstick of rule of law. Constitutionalism has come into being as one of the best means of ensuring rule of law. By asserting the supremacy of the constitution the principle of rule of law was to be embodied into various constitutions around the world.

However, during the cold war period the Socialist block maintained that 'people democracy' should prevail over the 'western liberal democracy' and hence the quality of the rule of law could be tested only for its ability to safeguarding peoples' rule. As such, Constitutionalism for such States was nothing but the supremacy of the constitution that entrenched the peoples rule. Sovereignty of the people was thus explained not in the sense of ownership but in its characteristic of being possessed by the rulers.

With the collapse of the Soviet Union and other socialist regimes, debates over constitutionalism resurfaced with a new vigour in that international human rights regime

has come to influence and dominate domestic laws in many of those newly admitted members to the democratic guild.

Since early 1990s, there has been a debate among scholars of international law as to the legality of the right to democracy in international law. In light of the globalization process of the last two decades, many States have to face the challenge of either rewriting their constitutions or allowing international human rights norms to roll back into their domestic legislative sphere. There were occasions of forceful introduction of these norms into domestic law and r legality of that has not been checked in any international forum.

As such, this paper attempts to discuss the legal basis of the claim of right to democracy from constitutional and international law perspective. Analysis of the constitutional principle of rule of law and its scope and application would form the main basis for testing the legality of the claim over democracy.

Hypothesis

If the meaning of rule of law really does not mean rule of international law, constitutionalism becomes meaningless and still leaves room for dictatorial rule.

Research Questions

What are the reasons for which a domestic legislation should conform to international law?

Are there any States, which proclaim themselves as democratic ones, in the position to reject international human rights standards being incorporated into their domestic law?

If constitutionalism means supremacy of the constitution, can it be interpreted in isolation of the international human rights standards?

Does rule of law mean the rule of just law which satisfies the essentials of the basic rights of individuals of which there is a wide -spread consensus among the members of the international community?

Does the emphasis on rule of law import the right to democracy for individuals?

Methodology

It is intended to carry out the research heavily based on secondary sources such as books, journals, international treaties, and other legal instruments and resolutions of international/regional institutions.

Outcome

The operation of international law, a system still considered as a State one, heavily depends on the principle of State sovereignty and equality of such sovereign bodies. It is a principle of customary international law that the method of fulfilling the obligations undertaken by the members of the international community is best left with the members themselves and it cannot be prescribed by any 'outsider'. Generally, by way of legislative and other measures the members fulfill their obligations. Even the quality of such measures is not tested for its conformity with international law in general and human rights law in particular. Any expectation beyond this would be considered as overstepping the sovereignty limit and amounting to violating Art. 2 (4) of the UN Charter.

But, if you go by the argument of right to democracy in international law there has to be a legal basis for demanding such right overriding the customary norm of State sovereignty and political independence. On the other hand, the guarantee of the right to democracy as envisaged under international law would become an empty shell if there is no means to test constitutions for their democratic contents.

At the same time, the principle of rule of law cannot remain merely a decorative phrase in constitutions but should ensure the right to democracy to the people over whom the supreme law of the land enjoys sole and full authority.

A critical analysis of State practice in the light of international and regional human rights instruments and soft law helps us to consider that constitutions no longer enjoy monopoly of their sphere of operation or immunity of scrutiny from 'outside' concerns. The question still remains as to the legitimacy of such concerns. It is illogical to think that the last two decades of the process of globalization has operated in isolation of the 'hands-off' policy of domestic law including the constitutions.

If sovereignty is to remain with the people, the ownership must be safeguarded through democratic ideals which in turn warrant rule of international human rights law. Since State sovereignty is considered as a non-absolute concept in modern times, it is better protected by its adherence to international human rights standards.

Conclusion

The development of international human rights law jurisprudence suggests that the time has come to assert that there is a right to democracy in international law. Going by the State practice which is more discernible in the bulk of human rights treaties ratified by members of the international community the right to democracy may become a customary norm in international law. If that is the case, then the constitutional principle of rule of law could be understood only in the context of international law and thereby it would become rule of international law. It may not be an exaggeration to contend that it could be the only way in which a State may mull over adhering to the principle of constitutionalism in the name of people's sovereignty.

The Credibility of the International Criminal Court: A Critical Review of the Jurisdiction and the Functions of the World Court

Mrs Wasantha Seneviratne

Background

The establishment of the International Criminal Court (ICC) is seen as one of the greatest achievements of the new millennium. During the last century a number of temporary (*ad hoc*) international criminal tribunals were set up with specific purposes and limited mandates. The idea of having a permanent ICC was not new but it finally became a reality in year 2003. The Rome Statute of International Criminal Court of 1998 provides the legal framework of the ICC. There are advantages and disadvantages of having a permanent world court with much power. However, more than ever, the credibility of the ICC is being questioned at present due to numerous reasons. The objectives of this research paper