

# Khalistan Controversy

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In the global sphere relations between States are maintained through a delicate balance of international obligations and State sovereignty. In today's interconnected world, offsetting this balance can result in severe consequences for the concerned parties, but at the same time no international player is safe from the ripples of tension escalating between two participants as observed on a number of occasions.

Recently, the world was taken aback by the Canadian Prime Minister's statement regarding the involvement of Indian diplomats in the killing of Canadian Sikh activist, Hardeep Singh Nijjar. Although, the Indian government has denied these allegations. The killing of a Canadian national on Canadian soil with the involvement of another state poses a serious threat to the principle of State sovereignty and if proven true, this can result in questions about the extent of diplomatic immunity and the potential actions that can be taken against the Indian government.

Hardeep Singh was a prominent activist of the Khalistan movement – briefly about the movement, the notion is rooted in Sikhism, a faith that arose in the 15th Century. After the partition of the Indian subcontinent in 1947, the Punjabi Suba movement started which asked for the establishment of an autonomous Sikh state in the Punjab region. In 1952 Jawaharlal Nehru made it clear that he would suppress the demand for a separate Punjabi speaking state, however, in 1966 Punjab was created with Chandigarh as its capital. In the 1970's and 80's the Khalistan movement reemerged, the rebellion lasted more than a

decade and was suppressed by a violent crackdown by the Indian government. The forces stormed the Golden Temple and flushed out separatists, as a result of which thousands of Sikhs died. In 1984, Indra Gandhi who had ordered the raid was assassinated by two of her Sikh bodyguards, which led to a lot of violent clashes between the Sikh and Hindu population.

Amritpal Singh, a Sikh separatist who had revived calls for an independent homeland in the region and was able to find support amongst some groups. Although he was arrested in April the Indian government continued to conduct raids to arrest anyone associated with the Khalistan movement as there is still a sense amongst small fractions of Sikhs that injustice has been done to them in Punjab.

However, can these attempts for an independent homeland qualify for the right to self-determination under international law. Historically, the right to self-determination belonged to nations or in other words the “principle of nationalities” was applicable. However, after the United Nations Charter was adopted in 1945 it was defined as a right for all peoples with no mention of nationalities, but the term “peoples” has not been defined under any of the International Law conventions. It is however often cited as a basis for ethnic, social or linguistic minorities to protect their rights or to support more democratic rights like the voting, political participation, peaceful protests etc.

Self-determination can be further categorised into two parts, internal and external. The former is often characterised as exercising the right within an existing state which can be implemented through devolution and self-government. The answer lies in creating autonomous regions or the establishment of Federal systems without having to separate the territories or the need for forming an independent state. This in most cases is seen as a tool for conflict mitigation and has proven effective in suppressing secessionist movements. As was the case when Greenland, a colony of Denmark, wanted increased economic and political independence, as a result of which self-government was constituted and the Self Government Act 2008 was introduced. Greenland remained a part of the Danish state but was guaranteed representation in central parliament and could realize its right by electing its own Parliament.

On the contrary, the idea of external self-determination is more closely associated with secessionist movements, as it is used against any government systematically abusing human rights of a particular set of population. Although, international law aims at curtailing the secessionist element by forming a

presumption against its effectiveness and allows it as a remedy for gross violations of Human Rights. In either case it is quite evident by the recent moves of the Indian government that it will not willingly allow such a move.

Since a large population of Sikhs, around 770,000 are based in Canada, which is why India has been criticizing Canada as a breeding ground for Sikh terrorists. Despite the accusations no conclusive proof to that end has been produced this far. In fact, a far bigger concern for India is if the Canadian prime minister's statements are proven to be correct, upsetting the principle of State Sovereignty and the repercussions it might entail.

The principle itself comprises that the state is the supreme and independent authority over a territory and its population and if a wrong is committed by any of its citizens, then it is the responsibility of the concerned state departments to bring its people to justice. No other state has the right to meddle with the affairs of another state, which is explained in the United Nations charter in the following words "all members shall refrain in their international relations from the threat to use of force against the territorial integrity or political independence of any state." Not abiding by which would result in a breach of customary international law. The purpose here is to understand that even if India had certain concerns, then they should have been addressed to the Canadian government for resolution as opposed to their own involvement.

On the other hand, direct involvement of Indian diplomats brings in certain complications, as this brings into play the Vienna Convention on Diplomatic Relations, which protects diplomats from prosecution in the receiving state for the entire period for which they hold the post. Even though immunity is by no means a carte blanche for misconduct and diplomats in the past have been held accountable for criminal abuse of diplomatic immunity. A useful example to quote would be when the deputy ambassador of the Republic of Georgia killed a 16-year-old girl due to drunk driving, Georgia waived off his diplomatic immunity which resulted in a criminal trial in the receiving states courts where he had to spend seven years in prison. The receiving state is still dependent upon the home state to waive off the immunity so the trial can be carried by them as in the case of Georgia or the receiving state can label the officer a "persona non grata" and send them back to their home country for trial.

This does not leave Canada with much option, as they can directly hold the officials accountable if India allows them or they can be sent back that too with no guarantee if they will be tried in the local courts. Another option available to Canada would be to hold the state of India liable because any wrongful actions committed are the sole responsibility of the home country and more so due to the violation of international customary law.

In which case, they can take the matter to the International Court of Justice, or the matter could be resolved by the United Nations Human Rights Committee. To settle the matter the coming weeks would be of crucial importance. Depending on the kind of evidence Canada can produce which will ultimately determine the course of action they can take. If no evidence is produced, then eventually the matter will be left to die down over time. In this case what holds more importance is how Canada will ascertain such an incident does not take place again and the extent of its action will be vital in curtailing such incidents from taking place on Canadian soil again.