Sovereignty: Unconstrained Right?

This article is based on **"Not an unfettered right"** which was published in The Hindu on 23/03/2020. It talks about the UN High Commissioner for Human Rights filing an application in Supreme Court of India seeking to intervene as **amicus curiae** in a petition challenging the constitutionality of the Citizenship (Amendment) Act, 2019.

Recently, the UN High Commissioner for Human Rights (UNCHR), Michelle Bachelet, filed an application seeking to intervene as **amicus curiae** in a petition **('Deb Mukharji & Ors vs Union of India & Ors')** challenging the **constitutionality of the Citizenship (Amendment) Act, 2019** (CAA) in the Supreme Court of India.

The government of India in a strong reaction stated that the CAA is an internal matter, concerning the sovereign right of Parliament to make laws, and no foreign body had any locus standi (the right or capacity to bring an action or to appear in a court) on issues pertaining to India's sovereignty.

In this context, this case provides an opportunity for India to have clarity on questions pertaining to sovereignty in relation to international law which may intervene in domestic proceedings.

Amicus Curiae

An amicus curiae **(literally, "friend of the court")** is someone who is not a party to a case and may or may not have been solicited by a party and who assists a court by offering information, expertise, or insight that has a bearing on the issues in the case.

UNCHR

The post of the UNCHR was established in pursuant to the UN General Assembly Resolution 48/141 (1993), with the mandate to:

- Promote and protect the effective enjoyment of human rights.
- Take an active role in preventing the continuation of human rights violations.

- Engage in dialogue with governments in the implementation of human rights obligations.
- Support domestic courts, with their constitutional or judicial function, in ensuring the implementation of international legal obligations.

What is the concept of Sovereignty?

- **Sovereignty** is the full right and power of a governing body over itself, without any interference from outside sources or bodies.
- The **Preamble to the Indian Constitution** lays out the position, wherein the people of India have resolved to constitute the Indian Republic into a sovereign country.
- However, in practical terms, no country can exercise sovereignty by being isolated with other countries, it has to engage and collaborate with other nations under a defined set of international law.
- According to the **International Commission on Intervention and State Sovereignty,** "national political authorities are responsible to the citizens internally and to the international community through the UN".
    - Therefore, it is appropriate to say that an authority's right to sovereignty is not unfettered.
- Further, **Article 51 (c)** of the Constitution directs the state to "foster respect for international law".

Case of Locus Standi of UNCHR

- This is a voluntary application rather than at the invitation of the Supreme Court.
- India is a state party and signatory to various international conventions including the **International Covenant on Civil and Political Rights** and the **International Covenant on Economic, Social and Culture Rights** which contain important non-discrimination clauses, including on the ground of religion.
- Further, as part of its mandate, the UNCHR routinely intervenes before regional and domestic courts across the world.
    - Accordingly, the UNCHR has previously filed amicus briefs before regional courts such as the European Court of Human Rights and the Inter-American Court on Human Rights as well as domestic courts such as the US Supreme Court and final appellate courts in Asia and Latin America.
- Moreover, while interpreting fundamental rights under the Constitution, the Supreme Court (SC) has taken into account and given due weightage to India's international legal obligations.
    - In the KS Puttaswamy case, SC's conception of the **"right to privacy"** was informed by India's international law obligations.

Conclusion

India should reconsider its stance of not allowing UNCHR as amicus curiae in CAA case. If the intervention is allowed, the Indian government will also have the opportunity to address the implications of the CAA under international law. This will also send a strong signal to the international community that India is a nation that respects the rule of international law.

Moreover, the case provides an opportunity for the Supreme Court to lay down the law on whether such applications interfere with national sovereignty.

Drishti Mains Question

A sovereign nation can operate independently without interference from foreign powers. Critically analyse.