

Status of One Country, Two Systems in Hong Kong

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Hong Kong continues to draw global attention for its tenacity to preserve and protect its democratic and liberal values under the shadow of the communist regime of the People's Republic of China.¹ The approval of the *Establishing and Strengthening the Safeguarding of the National Security for Hong Kong Special Administrative Region* which was submitted to the National People's Congress (NPC) on 28 May, 2020 has aroused a great deal of concern and anxiety in Hong Kong. The National Security Law aims at proscribing *actions to split the country, terrorism, and "subversion" of state power*. The legislature of Hong Kong, the Legislative Council was not consulted on the matter, although the deputies representing Hong Kong were present in the NPC meeting. The recently passed law would also prevent foreign political organisations from operation in Hong Kong.² There is widespread fear and anxiety that the national security law will further erode the autonomy and freedom pledged under the Sino-British Joint Declaration and the Basic Law of Hong Kong Special Administrative Region (HKSAR).

To put the pro-democracy movement in Hong Kong in perspective and the Chinese attempts to muzzle it through administrative and legislative action including the promulgation of the National

Security Law, it is pertinent to revisit the Sino-British Joint Declaration and the Basic Law- the bedrock of 'one country, two systems', and some landmark pro-democracy developments in Hong Kong.

The Joint Declaration

After protracted parleys and hard negotiation the Joint Declaration on Hong Kong³ was signed between the Chinese Premier Zhao Ziyang and the British Prime Minister Margaret Thatcher on 19th December 1984 in Beijing in the Great Hall of the People. The Joint Declaration is registered with the United Nations and the two sides have the obligation to honour it in letter and spirit. The Joint Declaration, *inter alia*, stipulated that following the provisions of article 31 of the constitution of the People's Republic of China, the Hong Kong Special Administrative Region (HKSAR) would be established consequent upon the 'reversion of sovereignty over Hong Kong' from Great Britain to China with effect from 1 July 1997. The Joint Declaration stated that the HKSAR will enjoy a high degree of autonomy, except in foreign and defence affairs which are the responsibilities of the Central Government. It further stipulated that the HKSAR will be vested with executive, legislative and independent judicial power and the laws currently in force will remain unchanged.

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Concerning the government of HKSAR, it mentioned that a Chief Executive will be appointed by the Central Government based on the results of election or consultation to be held locally. The Joint Declaration further envisaged that a *Basic Law* would be enacted and promulgated by the National People's Congress of China for the governance and administration of HKSAR.

The Basic Law

The Basic Law which was adopted by the National People's Congress after five years of intense deliberation in April 1990 enunciated the principles and objectives of Joint Declaration in greater details. The Basic Law⁴ has all the attributes of an ideal liberal democratic polity and laissez-faire economy, however, under the watchful eye of a communist regime. Some important features of the Basic Law which have come under severe test are elucidated here. Article 5 of the Basic Law stipulates that the socialist system and policies shall not be practised in the HKSAR, and present (extant) capitalist system and way of life will remain unchanged for next 50 years. This is the only article in the Basic Law that mentions the time-period of 50 years. No other article in the Basic Law mentions that the extant system will be maintained for 50 years.

There are some recent developments in Hong Kong and China as well which have eroded the spirit, if not the letter, of provisions of some articles of the Basic Law. Article 14 of the Basic Law mentions that the government of HKSAR shall be responsible for the maintenance of public order in

the Region. It further says that military forces stationed by the Central People's Government in HKSAR for defence shall not interfere in the local affairs of the Region. The government of HKSAR may when necessary, ask the Central Government for assistance for the maintenance of public order and in disaster relief. This article should be read in conjunction with article 23 which says HKSAR shall enact laws on its own to prohibit any act of terrorism, secession, sedition, subversion against the Central People's government or theft of the state secrets, to prohibit foreign political organisation or bodies from conducting political activities in the Region, and to prohibit political organisation or bodies of the Region from establishing ties with foreign political organisation or bodies. The failure of the Hong Kong government to make enabling laws in this regard impelled Beijing to draft the National Security Law. Under the new Security Law, the Central Government at Beijing can establish the presence of its security forces in Hong Kong for the first time. China says the new law is aimed, as mentioned earlier, at throttling secession, subversion, terrorism, foreign interference or activities that threaten national security. The 'one country, two systems', the political edifice of Hong Kong and the source of its sustenance the 'Basic Law' have been subjected to severe stress in recent times. As such, it is worth a while to critically look at the post-1997 developments, both in China and Hong Kong and how they are eroding the provisions and intents of the Joint Declaration and the Basic Law and on the democratic aspiration

of the people of greater China including Taiwan in the post-COVID-19 period.

The Umbrella Movement 2014

It is of interest to note how the autonomy of HKSAR as enshrined in the Joint Declaration and the Basic Law is slowly getting eroded incrementally. Article 45 of the Basic Law provides that the Chief Executive of the HKSAR shall be selected by election or through consultations held locally and be appointed by the Central Government. It further says that the method for selecting the chief executive shall be specified ‘in the light of the actual situation in HKSAR’ and following the principle of gradual and orderly progress. Thus it is an open-ended provision. China on August 31, 2014, decided that Beijing would tightly control the nomination of candidates for election of the Chief Executive of HKSAR, a move that triggered mass protests and resentment in the territory, which came to be known as the ‘Umbrella Movement’. The Standing Committee of NPC had decided that the city’s next chief executive would be elected by popular vote in 2017, but only after each candidate was approved (pre-screened) by a majority of a 1,200 member election committee. The next election to the office of the Chief Executive is due in 2022 and election to the Legislative Council will be held in September this year.

The Aborted Extradition Bill June 2019

The National Security Law also needs to be seen in the backdrop of the attempts by HKSAR authorities to introduce an extradition bill in June

2019 which was subsequently withdrawn under popular protest. What prompted the Hong Kong government to draft the extradition bill was a murder committed in 2018 in Taiwan by a Taiwanese citizen, who had strayed into Hong Kong and was charged with the offence of money laundering in Hong Kong, who was to be extradited to Taiwan after the expiry of his imprisonment in Hong Kong. As Hong Kong has no extradition treaty, it was not possible to send the convict back to Taiwan for his trial in the Taiwanese court. It was in this backdrop that the Hong Kong government wanted to pass the extradition bill to agree with other countries including mainland China for the extradition of offenders of the law. It was feared in Hong Kong that the HKSAR authorities might invoke the extradition law to extradite offenders including pro-democracy leaders and activists in Hong Kong to mainland China. The colonial-era drafters of Hong Kong’s extant law excluded the mainland from extradition because its courts could not be trusted to deliver impartial justice.

The proposed legislation evoked resentment and strong protest in Hong Kong in June 2019. Hundreds of thousands of people took to the streets to annul the proposed extradition law. The movement took a violent turn including ugly clashes and suspension of flights. China said protest movement had reached “near terrorism” after a night of ugly clashes at the city’s airport on 14th June, where demonstrator’s detained two members they suspected of being government sympathisers. US President Donald Trump described the volatile

situation as ‘tricky’ and said China’s government had moved troops near the border with Hong Kong.⁵ Both the Houses of US Congress have passed the Hong Kong Human Rights and Democracy Act.

China warned that it could not tolerate protester’s efforts to threaten the central government’s authority in Hong Kong and suggested that it could, if asked, mobilise troops in the PLA garrison there to maintain order. The warning came as China released a new defence strategy that accused the United States of undermining global stability and identifies separatism as China’s most immediate security threat. In the case of Hong Kong, the chief Spokesperson for the Ministry of National Defence Senior Colonel Wu Qian cited the protest outside the central government liaison office in Hong Kong, which protesters painted with graffiti, suggested destructive behaviour that was straining Beijing’s behaviour. He pointed out the special article in law (Article 14 of the Basic Law) detailing relations between the city and Beijing that allows PLA to intervene when requested by Hong Kong government to maintain order or assist in case of natural disasters.⁶

Emergency Law, 1922

On 4th October 2019 Hong Kong Police shot and wounded a teenage boy as violent protests erupted after Carrie Lam, the chief executive invoked colonial era (1922) emergency power last used more than 50 years ago. The emergency powers give the Chief Executive to “make any regulation” in the event of an emergency. One of

the emergency measures was to ban face masks which the protesters were said to use to avoid being identified. The pro-democracy lawmakers appealed the Hong Kong High Court seeking an emergency injunction against the ban, arguing the emergency powers bypassed the legislature and contravened the Basic Law which is the mini-constitution. But the senior judge dismissed their injunction demand. Eventually, the Hong Kong legislature on 23rd October 2019 formally withdrew planned legislation that would have allowed extraditions to mainland China.

The District Council Elections

The District Council Elections in November 2019 which were held in the backdrop of the pro-democracy protests are a landmark event. In the first place, the fact that the elections were held on schedule despite the political turmoil was a clear message of the independence of the Hong Kong government. It was certainly not manipulated by the communist regime in Beijing. The elections were free and fair. A record 71 per cent of the 4.13 million citizens who registered to vote had cast their ballots. Pro-democracy candidates captured 389 of 452 elected seats, up from 124 and far more than they ever had. The government allies held just 56 seats, a remarkable decline from 300 in 2015. The election results were viewed as a referendum. ‘There has been a very deep awakening of Hong Kong People’, said Alan Leong, chairman of the Civic Party, one of the largest pro-democracy parties.⁷ *The South China Morning Post* commented, ‘The tsunami of disaffection among

voters was clear across the board, as pan-democrats rode the wave to win in poor and rich neighbourhoods, in both protest and non-protest afflicted districts and town areas as well as suburbs. Less immediately obvious was whether there was a generational divide in the way people voted, but ousted reestablishment district councils suggested that young first-time voters had been instrumental in dislodging them from their perch.⁸

Traditionally the District Council elections are never taken seriously politically as they are concerned with mundane civic issues such as transport, street lights, bus-stops etc. but this time around it acquired a serious political connotation given the circumstances in which the elections were held. The election results can have serious consequences for the election of the chief executive of HKSAR in 2022. The Chief Executive Carrie Lam was graceful enough to admit that public dissatisfaction with her government fuelled a landslide win by pro-democracy candidates in local elections. Ms Lam admitted that ‘the district council election result revealed public concerns over deficiencies in government, including unhappiness with the time taken to deal with the unrest.’

The Reaction to National Security Law

It was in this backdrop of the sustained pro-democracy movement in Hong Kong and the perceived failure of the Hong Kong government to assuage the protesters, that the central government of China promulgated the National Security Law. The passing of the National Security

Law has also created panic among a section of the netizens and some degree of erosion of confidence in the autonomy of the territory. Immigration consultancy firms and banks received several queries regarding emigration and transferring of money abroad. Some are accelerating their decision to buy property overseas, while others are holding back their purchase of local properties. The uncertain future of Hong Kong once touted as the Eldorado of East has impelled some high net worth individuals (defined as those having more than Hong Kong \$10 million/ USD 1.29 million of wealth) to diversify their assets into other cities like London, Singapore and Taiwan.⁹

The USA and the UK, the two major stakeholders in Hong Kong’s stability have severely criticised China for trying to impose the dreaded law. President Donald Trump threatened to order the removal of the special status accorded to Hong Kong since Hong Kong is no longer sufficiently autonomous to enjoy the privilege. British Prime Minister Boris Johnson in a very thought-provoking and compelling article which appeared both in *The Times* and *The South China Morning Post* bemoaned the imposition of National Security Law by China on Hong Kong. He wrote, ‘If China proceeds, this would be in direct conflict with its obligation under the Joint Declaration, a legally binding treaty registered with the United Nations. Britain would then have no choice but to uphold our profound ties of history and friendship with the people of Hong Kong.’ He further wrote, ‘Today, about 350,000 of the territory’s people hold

British National Overseas (BNO) passports and another 2.5 million would be eligible to apply for them. At present these passports allow visa-free access to the United Kingdom for up to six months. If China imposes its national security law, the British government will change our immigration rules and allow any holder of these passports from Hong Kong to come to the United Kingdom for a renewable period of 12 months and be given further immigration rights, including the right to work, which would place them on a route to citizenship.”¹⁰

The offer to grant the BNO passports to eligible Hong-Kongers flabbergasted Beijing. It accused Brittan of *colonial mentality* after Johnson promised to offer the citizenship rights to bonafide residents of Hong Kong if the situation so demands. Expressing strong dissatisfaction and opposition to the offer, the spokesperson of China’s foreign ministry Zhao Lijian said, ‘The UK has recklessly commented on Hong Kong and made the groundless accusation to interfere in Hong Kong affairs.’¹¹ Johnson’s offer has evoked a mixed reaction in Hong Kong. While the rich and the well-off residents have shown some interest, the younger generations who are spearheading the pro-democracy movement in Hong Kong are not so enthused.

Conclusion

The pro-democracy movement in Hong Kong and China’s attempts to muzzle it through various means including the latest measure of National Security Law has certainly eroded the tenets of the ‘one country, two systems’, as pledged under

the Sino-British Joint Declaration and the Basic Law and in turn the efficacy of Hong Kong as an international business hub and financial centre. Hong Kong is the eighth largest exporter of goods in the world and is the fourth largest stock exchange in the world. Its banking system is seamlessly connected with the world; its currency is pegged with the US dollar. All these are at stake if stability in Hong Kong continues to be affected. Already ever since the reversion of Hong Kong to mainland China, some corporate houses have relocated themselves to other places including Singapore, Australia and Canada, and more will follow in due course of time. Taiwan has already started appealing students from Hong Kong for admission in its universities and colleges.

The pro-democracy movement in Hong Kong has polarised the Hong Kong society and polity. Broadly we can divide the citizens of Hong Kong into three categories, the Anglicised who co-opted themselves with the British and benefited from them in service or business, the immigrant Chinese who share deep loyalty to the motherland, and finally the younger generation, born during or after Hong Kong’s handover to China. These younger generations are spearheading the pro-democracy movement in Hong Kong today. Yet students from mainland China who are studying in the universities and colleges of Hong Kong are loyal to China and they are looked upon with suspicion by their peers in Hong Kong. The pro-democracy movement has broken the political apathy or insularity of Hong Kong people. The unprecedented turn out in the District Board elections and the resounding victory

of pro-democracy parties have signalled the advent of electoral politics which Hong Kong has shunned all these years. Now onwards, the demand for direct election to Legislative Council for all seats will increase. Since the elected members of the District Board also have a voting share for the election to the Legislative Council, the number of pro-democracy candidates will increase. But as per the revised electoral law, an aspiring member for Legislative Council has to obtain the prior approval of China.

The development in Hong Kong and China's iron fist attempts to suppress and stifle the democratic aspiration of the people have raised questions on the 'one country, two systems' in Hong Kong and the prospect of its replication in

Taiwan, where the Democratic Progressive Party (DPP) is growing strong. Even the opposition KMT sensing the people's sentiment in Taiwan has started distancing itself from mainland China. Perhaps China doesn't care much about the economic wellbeing of Hong Kong as it already has been successful in emulating it in the form of Shanghai, an alternative financial hub. China is rather more worried that if the pro-democracy movement is allowed to function in Hong Kong, in the long run, it will have a contagion effect on mainland China, arousing fresh bouts of democratic aspirations. It, thus, wants to demonstrate that no dissent can be tolerated in the communist regime. The decline of Hong Kong has already set in and its resilience is already put to test.

References:

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