
Minority Rights Protection Under International Law

Dr. Nemichand

Assistant Professor, Jodhpur Institute of Law, Jodhpur National University

ABSTRACT

Minorities have been threatened by the power of the majority throughout the world. After minorities rights problem became more serious as many Central and Eastern nationalities found themselves circumscribed by territories and within jurisdictions of nation-states to which they did not belong. After the world war many states enacted the laws to protect the minority rights. In the United States, protection for minority rights is written into law. the original framers of the U.S. Constitution added the Bill of Rights. Constitution of India also protects the rights of minorities and it is a fundamental right. UNO has also protected the rights of minorities by declaring the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities 1992. Still minorities are unsafe because there is a lack of International authority who can punish the violation of international minority rights. International court of justice has not such kind of jurisdiction and all the countries are also not the members of 1992 UNO declaration.

Keywords: *Minority rights, International declaration, Protection*

INTRODUCTION:

There has been a recent development in International law and politics which has influenced the legal protection of groups under the auspices of the UNO. The Universal Declaration of Human Rights 1948 and its two International Covenants of 1966 declare that "All human beings are equal in dignity and rights" and prohibit all kinds of discrimination – racial, religious etc. The UN Declaration against all Forms of Religious Discrimination and Intolerance 1981 outlaws all kinds of religion-based discrimination. The UN Declaration on the Rights of Minorities 1992 enjoins the States to protect the existence and identity of minorities within their respective territories and encourage conditions for promotion of that identity; ensure that persons belonging to minorities fully and effectively exercise human rights and fundamental freedoms with full equality and without any discrimination; create favorable conditions to enable minorities to express their characteristics and develop their culture, language, religion, traditions and customs; plan and implement national policy and programmes with due regard to the legitimate interests of minorities; etc.

It is difficult in defining the rights of a particular class of people; that is, those who belong to groups which are distinguished from the rest of society by characteristics such as language, religion, ethnicity and culture. Unlike human rights, which belong to all individuals, or inherently collective rights (such as the right of peoples to self-determination or of states to diplomatic immunity or freedom of the high seas), the rights of minorities apply only to some individuals who happen to belong to a particular kind of group known as a 'minority'.

In legal context the use of the term “minority” can be traced to the nineteenth century political movement of nationalism and nation-state theory as developed in Europe and understood in the sense of unification and citizenship based upon the common racial, linguistic, cultural, religious and historical ties of persons within the boundaries of a state. The problem of minorities within a nation-state was first realised in 1878 when the Berlin Congress was held. The Treaty of Berlin required legal equality for everyone within a state irrespective of their religious persuasions. Following World War I the problem of nation of national minorities became more serious as many Central and Eastern nationalities found themselves circumscribed by territories and within jurisdictions of nation-states to which they did not belong. It happened due to political territorial rearrangements after the war. In order to tackle hostilities between majority and minority generated by this rearrangement League of Nations came into being.

Some specialized UN organizations, such as UNESCO and ILO, have emphasized on certain aspects of minority rights relevant in their particular fields. Regional international bodies like the organization of American States, the Organization of African Unity and the European Community have concerned themselves with regional minority groups and their rights.

Over the years it had been realized that minority rights problems and conflicts cannot be treated as purely domestic matter of the concerned states because of international ramifications of such conflicts and problems. The relationship between intra-state minority problems and international relations, in the due course of time, had gained focus of the international community. In the same manner it was also increasingly realized that without the group or collective rights of minorities their survival as a group cannot be guaranteed making individual rights, in the ultimate analysis, meaningless. However, there are still states which deny group rights to minority groups in the name of nation-building. There are still more which consider that the way they deal with minorities within their jurisdiction is solely a domestic matter. It is for this reason, coupled with the problem of enforcement of collective rights of the minorities without the co-operation of sovereign states, that the international community has not been able to recognize collective rights as human rights.

Throughout history the rights of minorities have been threatened by the power of the majority. This remains true today. All around the world, minorities struggle against attacks on their human rights. Some of these attacks are backed by government power, and others are merely the result of societal prejudice, but all must be dealt with if minorities are to share equally in the human rights accorded to all peoples.

The difficulties in arriving at an agreed definition of ‘minority’ have frequently prevented substantive consideration of minority rights, and the adoption of the Minority Declaration only became possible after a decision was taken to proceed with the Declaration without defining the persons to whom it would apply. Even if there were agreement on a general definition of ‘minority’, the various instruments speak of different kinds of minorities, including national, ethnic, religious and linguistic minorities. A final related issue is the distinction between protecting ‘minorities’ per se and protecting ‘persons belonging to’ minority groups.

HISTORICAL DEVELOPMENT OF MINORITY RIGHTS:

History teaches us that equality in theory—or equality “on paper”—is an inadequate means of delivering minority rights and quelling tensions. Therefore, it is not enough to draft a handful of laws and policies with the aim of protecting minorities and engendering tolerance toward them among society. Rather, they must realize full equality in both the private and public spheres. Minority groups must be allocated their appropriate shares in the power structures, institutions, and public spaces that steer and define the current status and future development of the states in which they live.

The reluctance to consider minorities as worthy of particular attention is only a phenomenon of the second half of the twentieth century, which has recently begun to change. For example, most early empires considered at least religious minorities worthy of recognition. The ‘millet’ system which developed under the Ottoman Empire allowed religious communities a degree of personal and cultural autonomy, although it has been observed that the millets were ‘the solution devised by a government that did not know what nationality meant and, therefore, was unfamiliar with the majority-minority concept’ The development of autonomous, religious-based communities was also consistent with Quranic injunctions of tolerance for other religions, and large non-Muslim communities continued to flourish throughout the Ottoman Empire.

PROTECTION OF MINORITY RIGHTS

The protection offered to minorities-the protection called for by UN resolution-varies greatly from country to country. Some countries go out of their way to offer protection for minorities and their cultures. In Scandinavia, the Sami, an indigenous people, have their rights guaranteed by law. The Sami language is supported by the government, and laws protect the Sami from violent attacks. Canada has similar, though less extensive, legal protections for the Inuit peoples of the northern territories.

In the United States, protection for minority rights is written into law. the original framers of the U.S. Constitution added the Bill of Rights, the first ten amendments to the Constitution, specifically to defend the rights of political minorities, and these rights apply to ethnic and racial minorities as well (although minorities have not always been protected by them in practice). the Constitution, combined with subsequent laws passed by Congress, makes it illegal to discriminate against people on the basis of their race, ethnicity, or religion. The United States has also enacted a variety of what are called “affirmative action” Programs, which give job and educational opportunities to members of minority groups who might not otherwise have access to them or have historically been denied them. These affirmative action programs have been attacked in recent years’ some critics call them a form of reverse discrimination, because majority groups are, in effect, being discriminated against. Affirmative action advocates respond by saying that affirmative action programs merely counteract the racism that still bars advancement for minorities (as well as making up for past injustices that have left minorities at an economic disadvantage). Another form of minority protection is hate-crime law. These laws declare that crimes against certain groups- African Americans, Asian Americans, gays, and others-that are motivated by hatred deserve harsher penalties. Hate-crime laws are criticized by

some because they penalize criminals not only for their actions but also for their thoughts, and thus are an indirect attack on the rights to free speech and free expression.

DECLARATION ON THE RIGHTS OF PERSONS BELONGING TO NATIONAL OR ETHNIC, RELIGIOUS AND LINGUISTIC MINORITIES 1992:

The General Assembly, reaffirming that one of the basic aims of the United Nations, as proclaimed in the Charter, is to promote and encourage respect for human rights and for fundamental freedoms for all, without distinction as to race, sex, language or religion, Reaffirming faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small.

Desiring to promote the realization of the principles contained in the Charter, the Universal Declaration of Human Rights, the Convention on the Prevention and Punishment of the Crime of Genocide, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, and the Convention on the Rights of the Child, as well as other relevant international instruments that have been adopted at the universal or regional level and those concluded between individual States Members of the United Nations, Inspired by the provisions of article 27 of the International Covenant on Civil and Political Rights concerning the rights of persons belonging to ethnic, religious and linguistic minorities, Considering that the promotion and protection of the rights of persons belonging to national or ethnic, religious and linguistic minorities contribute to the political and social stability of States in which they live, Emphasizing that the constant promotion and realization of the rights of persons belonging to national or ethnic, religious and linguistic minorities, as an integral part of the development of society as a whole and within a democratic framework based on the rule of law, would contribute to the strengthening of friendship and cooperation among peoples and States,

Considering that the United Nations has an important role to play regarding the protection of minorities, Bearing in mind the work done so far within the United Nations system, in particular by the Commission on Human Rights, the Sub-Commission on Prevention of Discrimination and Protection of Minorities and the bodies established pursuant to the International Covenants on Human Rights and other relevant international human rights instruments in promoting and protecting the rights of persons belonging to national or ethnic, religious and linguistic minorities, Taking into account the important work which is done by intergovernmental and non-governmental organizations in protecting minorities and in promoting and protecting the rights of persons belonging to national or ethnic, religious and linguistic minorities, Recognizing the need to ensure even more effective implementation of international human rights instruments with regard to the rights of persons belonging to national or ethnic, religious and linguistic minorities, Proclaims this Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities:

Article 1 States that the States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity and States shall adopt appropriate

legislative and other measures to achieve those ends.

Persons belonging to national or ethnic, religious and linguistic minorities (hereinafter referred to as persons belonging to minorities) have the right to enjoy their own culture, to profess and practice their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination.

Persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic and public life and Persons belonging to minorities have the right to participate effectively in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live, in a manner not incompatible with national legislation. Persons belonging to minorities have the right to establish and maintain their own associations. Persons belonging to minorities have the right to establish and maintain, without any discrimination, free and peaceful contacts with other members of their group and with persons belonging to other minorities, as well as contacts across frontiers with citizens of other States to whom they are related by national or ethnic, religious or linguistic ties.

Article 3 states persons belonging to minorities may exercise their rights, including those set forth in the present Declaration, individually as well as in community with other members of their group, without any discrimination and no disadvantage shall result for any person belonging to a minority as the consequence of the exercise or non-exercise of the rights set forth in the present Declaration.

States shall take measures were required to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law. States shall take measures to create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs, except where specific practices are in violation of national law and contrary to international standards. States should take appropriate measures so that, wherever possible, persons belonging to minorities may have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue. States should, where appropriate, take measures in the field of education, in order to encourage knowledge of the history, traditions, language and culture of the minorities existing within their territory. Persons belonging to minorities should have adequate opportunities to gain knowledge of the society as a whole. States should consider appropriate measures so that persons belonging to minorities may participate fully in the economic progress and development in their country.

National policies and programmes shall be planned and implemented with due regard for the legitimate interests of persons belonging to minorities. Programmes of cooperation and assistance among States should be planned and implemented with due regard for the legitimate interests of persons belonging to minorities. States should cooperate on questions relating to persons belonging to minorities, inter alia, exchanging information and experiences, in order to promote mutual understanding and confidence. States should cooperate in order to promote respect for the rights set forth in the present Declaration.

Nothing in the present Declaration shall prevent the fulfillment of international obligations of States in relation to persons belonging to minorities. In particular, States shall fulfill in good faith the obligations and commitments they have assumed under international treaties and agreements

to which they are parties.

The exercise of the rights set forth in the present Declaration shall not prejudice the enjoyment by all persons of universally recognized human rights and fundamental freedoms. Measures taken by States to ensure the effective enjoyment of the rights set forth in the present Declaration shall not prima facie be considered contrary to the principle of equality contained in the Universal Declaration of Human Rights. Nothing in the present Declaration may be construed as permitting any activity contrary to the purposes and principles of the United Nations, including sovereign equality, territorial integrity and political independence of States. The specialized agencies and other organizations of the United Nations system shall contribute to the full realization of the rights and principles set forth in the present Declaration, within their respective fields of competence.

CONCLUSION

Minorities have suffered discrimination, land seizures, forced assimilation, deportation and even death at the hand of intolerant majorities and territorially ambitious governments. Despite such pressures, however, minorities will always exist within state boundaries: it is impossible (and perhaps not even desirable) for every state to be ethnically, linguistically and religiously pure. While one must be careful not to undermine the legitimate rights of the majority, upon which democracy is based, the challenge for the twenty-first century is to do a better job of protecting the more vulnerable, often minority, members of society than was evidenced in the twentieth century.

Although there are numerous International Laws, Treaties and all the theory developed in thousands of books and essays concerning minorities that the modern world can be proud of, in reality and action the situation remains still disappointing. Still further steps should be taken for minorities they are as follows

- There is lack of an adequate legislative framework defining and criminalizing all forms of racial discrimination or lack of effective mechanisms, including lack of recourse procedures.
- There should be a International authority who can punish the violation of international minority rights. International court of justice has not such kind of jurisdiction.
- All countries should be the member of International conventions on minorities of UNO. The conventions should be binding on all the member of UNO.

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