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# Protection of Rights of Minorities under International Law

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## ABSTRACT

*There is hardly any country in the world that does not have minorities within their territories. Although there is no accurate statistics, the UN estimates suggest that 10 to 20 percent of the world's population belong to minority groups. In most cases minorities are the most disadvantaged groups in the society. They are often subjected to discrimination; exclusion from power; denial of dignity, identity and culture. They are also excluded from meaningful participation in public and political life. Even in this modern age, cases of genocide targeting minorities are also reported. Although protection of minorities has been one of the oldest concerns of International Law, the need of their protection has never been as urgent as it is in our times. This research paper aims at putting light on the rights of minorities under International Law by inspecting the chronological development of the same.*

**Keywords:** *Minority rights, International Law, UNDM 1992, Art 27 ICCPR.*

## I. MINORITIES UNDER INTERNATIONAL LAW

### (A) “Minority”- definition

There is no internationally agreed definition as to which groups constitute minorities. It is often stressed that the existence of a minority is a question of fact and that any definition must include both objective factors (such as the existence of a shared ethnicity, language or religion) and subjective factors (including that individuals must identify themselves as members of a minority). The difficulty in arriving at a widely acceptable definition lies in the variety of situations in which minorities live. One of the first ‘official’ attempt to define ‘minority’ was undertaken by the Permanent Court of International Justice in its advisory opinion in connection with the emigration of Greco-Bulgarian communities. The most widely cited definition of ‘minority’ is probably that is proposed by Francesco Capotorti, who had carried out the UN’s study on the question of minority. He defined ‘minority’ as “*a group which is numerically inferior to the rest of the population of a state and in a non-dominant position,*

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*whose members possess ethnic, religious or linguistic characteristics which differ from those of the rest of the population and who, if only implicitly, maintain a sense of solidarity, directed towards preserving their culture, traditions, religion or language.*” Despite the lack of a clearly formulated definition, scholars agree that it is possible to find out some elements of the concept of minority based on different definitional proposals. There is a broad agreement about the requirement of stable ethnic, religious, or linguistic characteristics which are different from the rest of the population, a numerical minority position, non-dominance and the wish to preserve their distinct identity.

### **(B) Need for protection of minority rights**

It is a matter of fact that in most multi-ethnic societies, the majority communities tend to enjoy inherently dominant socio-economic and political position, in comparison to that of the minorities. Some of the minority problems include:

- Discrimination
- Exclusion of power
- Oppression and persecution
- Threat to identity

It is because of their vulnerability in any given society, minority groups always need special status and protection to ensure that they also enjoy the same rights and protection as enjoyed by the majority. It is in the light of these facts, a consensus has arrived, both at international and national level, that minority groups need special rights and protections to save them from oppression, persecution and forceful assimilation. In some situations, special affirmative actions are also needed in their favour to achieve the real and substantial equality in the society. In *Minority Schools in Albania Case(1935)* , the PCIJ insisted on the notion of equality in fact and held that there would be no true equality between a majority and a minority, if the latter were provided of its own institutions and were consequently compelled to renounce that because of it being a minority. The PCIJ also stated that minority rights fall beyond anti-discrimination objectives, that is, they specially aim at preserving the characteristics which distinguish the minority from the majority.

### **(C) Development of Minority Rights**

#### **1. Early development**

Protection of minorities has been one of the oldest concerns of International Law. One can trace the international protection of minorities at least to the Treaty of Westphalia, 1648,

wherein the State parties agreed to respect the rights of certain religious minorities. The Congress of Vienna of 1815, also dealt with the rights of minorities to some extent. Treaty of Berlin 1876, also recognised the traditional rights and liberties of religious minority community of Mount Ethos in Greece. In addition to this, the Bulgarian Constitution of 1879 contained safeguards for its Greek and Turkish minorities.

## **2. Minority protection under the League of Nations**

The minority protection system developed by the League of Nations through peace treaties was the first remarkable, systematic and comprehensive attempt to offer legal protection to minorities at International level. The League of Nations system created legally binding obligations through a set of international treaties, formulating rules for minority protection enforced by the League Council and adjudicated by the PCIJ. The League system was certainly a bold and innovative experiment but was far from being perfect. It had significant limitations and weaknesses. Its scope embraced only the States on which the peace treaties imposed obligations. Further, the system primarily directed at achieving peace, rather than providing protection to minorities per se. The system was discriminatory as main powers like Germany and Italy did not undertake any commitment to grant same rights to their minorities. Despite numerous shortcomings, the merits in League of Nations system continue to provide inspiration even today.

## **3. Minority protection under the United Nations**

The United Nations succeeded the League of Nations as a new world organisation immediately after the World War II. Unlike its predecessor, it took a different approach to the issue of minority rights. For a long time, the UN took little interest to adopt the minority protection system of the League of Nations or to develop a new system of its own. The UN preferred to develop a universal system of protection of human rights for all. It was argued that the broad system of human rights supported by strong prohibition on discrimination based on race, ethnicity, language or religion would be sufficed to protect the legitimate interests of minorities and no special measures for them would be required. Hence, neither the UN Charter nor the UDHR made any reference to minority rights. The only exception to this trend was the adoption of the Genocide Convention in 1948, indirectly protecting minorities' right to physical existence.

The initial reluctance of UN towards minority protection was broken, when the UN Commission on Human Rights decided to establish a Sub-commission on Prevention of Discrimination and Protection of Minorities in 1947. Until mid-1970s, the Sub-commission

could not address the issue of minorities in depth. However, it finally succeeded in getting a provision on minority protection inserted in the draft of ICCPR. Later in 1978, its special rapporteur, Francesco Capotorti completed the most seminal study on minorities and the Sub-commission also recommended the adoption of a declaration on the rights of minorities.

The major UN breakthrough was the insertion of Article 27 in the ICCPR in 1978. This is regarded as the first norm that has universalised the concept of minority rights. Today, in International Law Article 27 of the ICCPR is the most widely acknowledged provision affording protection to minorities. It states, *“In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.”*

The UN started paying more attention after the end of the Cold War in the wake of number of highly visible and violent ethnic conflicts along with the potential for more violence. A strong move towards developing comprehensive minority rights regimes was clearly noticed. It was during this time that the United Nations Declaration on Minorities was adopted by the UN General Assembly in 1992. This declaration is the first international document to solely address minority rights.

The renewed interest of the international community in the field of minority rights resulted in the adoption of a surprising number of declarations, resolutions, expert reports and even treaties designed to strengthen the international legal protection of minorities at regional level especially in Europe. The European institutions like the Council of Europe and the Organisation for Security and Co-operation in Europe have made remarkable work in the field of minority protection in the recent past. The Council of Europe’s Framework Convention for the Protection of National Minorities of 1994 is of particular significance in the evolution of the international protection of minority rights. It is not only the first but also, so far, the only multilateral treaty explicitly addressing minority rights in detail. These European advancements strongly influence the development of minority rights even at the international level.

## **(D) Contents of Minority Rights**

### **1. Right to physical existence**

The right to existence of minorities was first recognised in the *1948 Genocide Convention* which prohibits the physical or biological destruction of national, ethnic, religious or racial group. Right to existence here is viewed in terms of protection against genocide. Though there

is no direct reference in the convention about minorities, they are natural beneficiary of it. It is in this context, the convention is considered as an integral part of minority rights.

The adoption of the *UN Declaration on Minorities in 1992* was another development explicitly recognising the right to existence of minorities. The Declaration obliges the States to protect the 'existence' and 'identity' of minorities within their territories.

## **2. Right to enjoy one's own culture**

Cultural rights are safeguarded in most human rights instruments. *Article 27 of UDHR* states that everyone has the right to freely participate in the cultural life of the community. The same has also been recognised in *Article 15 of the International Covenant on Economic, Social and Cultural Rights*. It provides that steps are to be taken by States to promote the preservation, development and diffusion of science and culture. More specifically, *Article 27 of the International Covenant on Civil and Political Rights* recognises the rights of people belonging to minorities to enjoy their own culture. The *UN Declaration on Minorities* also proclaims more positive cultural rights by obliging States to create favourable conditions for the development of minority cultures.

Based on the interpretations of the *Committee on Economic, Social and Cultural Rights*, the right to take part in cultural life generally entails three things. Firstly, it enshrines the right to engage in one's own cultural practices and to express oneself in the language of one's choice. It also includes the right to seek and develop cultural knowledge and expressions and to share them with others. Secondly, the right to know and understand his or her own culture and that of others through education and information and to receive quality education and training with due regards for cultural identity. The use of cultural resources such as language, institutions and land, water, biodiversity and also the enjoyment of benefits from the cultural heritage are also included therein. Thirdly, it entails the right to be involved in creating the spiritual, material, intellectual and emotional expressions of the community. This also includes the right to take part in the development of the community to which a person belongs. In addition to different aspects of cultural rights, the right to education is also considered as an important requirement for the true and effective enjoyment of cultural rights. This right is particularly vital for the preservation of the identity of distinct cultural groups. The Convention against Discrimination and Education in its Article 5 recognises to the members of national minorities the right to carry on their own educational activities which not only include the right to maintenance of their schools but also use of their mother tongue for giving instructions. Similarly, the Committee on Economic, Social and Cultural Rights in its General Comment on

right to education emphasises on securing a culturally appropriate education, especially for minorities and indigenous people.

The cultural rights of minorities are not absolute. Cultural practices which are inconsistent with national laws and contrary to the international standards are excluded from the ambit of cultural rights of minorities. Thus, minority rights mainly aims at protecting minority groups from cultural assimilation into dominant cultures and to secure the minimum conditions necessary for the preservation of the cultural identity of minorities.

### **3. Right to Profess and Practice Religion**

*Article 18 of UDHR* guarantees everyone the right to freedom of thought, conscience and religion. This right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance. Similarly, *Article 18 of ICCPR* guarantees the same rights listed in Article 18 of the UDHR. It also adds more rights, that is, right of parents to direct the religious education of their children. Although the ICCPR does not explicitly refer to the right to change one's religion, experts interpret the provision as fully recognising the same, as proclaimed by the UDHR.

*Article 27 of ICCPR* exclusively deals with minorities and protects their members from being denied the right to profess and practise their own religion. Moreover, for the purpose of the Covenant the religion is interpreted in broader sense, so as to encompass both theistic and non-theistic religions, as well as, rare and virtually unknown faiths.

The *1981 UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief* provides a comprehensive catalogue of religious rights which include - the right to have a religion or belief of one's choice and manifest the same in worship, observance, practice and teaching; to worship or assemble in connection with a religion or belief and to establish and maintain places for these purposes; to make, acquire and use necessary articles and materials related to the rites or customs of a religion or belief; to write, issue and disseminate relevant publications in these areas; to teach a religion or belief in places suitable for these purposes; to observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of one's religion or belief; to establish and maintain communications with individuals and communities in matters of religion and belief.

### **4. Right to Use One's Own Language**

The right to use one's own language is a major aspect of minority rights. In many States minorities speak languages different from that of the dominant group and often face difficulties

in using their language in the public sphere. In this regard, *Article 27 of ICCPR* provides that individuals belonging to a minority may use their language amongst themselves and the State must not seek to restrict their affairs because of their status as a linguistic minority. For instance, minorities are allowed to maintain their schools imparting instruction in their own languages, although a government is not obliged to financially support such schools.

The *1992 UN Declaration on Minorities* provides more explicit provisions on language and education. It encourages States to adopt appropriate legislative and other measures to protect and promote the linguistic identity of minorities. For example, *Article 4* obliges States to create favourable conditions to enable persons belonging to minorities, not only to express their characteristics, but also develop their culture, language, religion, tradition and customs. It further provides that the State should take appropriate measures, so that wherever possible persons belonging to minorities have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue. It also obliges the States to promote the learning about history, tradition, language and culture of the minorities.

The European instruments specify linguistic rights of minorities in greater detail, especially raises the standards of the protection particularly in areas where International instruments are extremely deficient. The first International legal instrument devoted to the protection of minority language, the *European Charter for Regional or Minority Languages 1992* covers the provisions relating to the use of minority languages in education and in media, in legal and administrative contexts, in economic and administrative contexts, in economic and social life, for cultural activities and in trans-frontier exchanges. *The European Framework Convention for the Protection of National Minorities 1995*, also sets forth a number of significant principles relating to protection of linguistic minorities including- the right of individuals belonging to a linguistic minority to use their language among themselves, in private as well as in public; the right to use of minority languages before public authorities; the right to use one's personal names in the minority language; the right to display minority language signs, inscriptions and other information of a private nature visible to the public; obligation of States to display traditional local names, street names and other topographical indications intended for the public also in the minority language, especially in areas traditionally inhabited by minorities; right to teach the minority language itself and other subjects in that language without prejudice to the learning or teaching in the official language; right to setup and manage their own independent educational and training institutions without any financial obligation on the part of the States.

In addition to the above-said international instruments, *Article 30 of the Convention on the Rights of the Child* provides that “in those States in which ethnic, religious or linguistic



minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language”.

## **II. CONCLUSION**

The presence of one or more minority groups in almost all States is a reality of modern time. It is neither imperative nor possible for every State to be ethnically, religiously and linguistically pure. It is also a fact that minorities have suffered discrimination, forced assimilation and even genocidal attacks and all that still continue to take place today in many States. It is in the light of these facts, a consensus has arrived, both at international and national levels that minority groups need special rights and protections. It is now clearly recognised that mere observance of equality rights and prohibition of discrimination may not be sufficient for an adequate protection of minorities and to address their concerns. Therefore, States are required to take special measures to preserve the existence and identity of minorities. Minority rights are also necessary to achieve the goal of substantive equality as opposed to formal or legal equality. The protection of minorities also contribute to the political and social stability of States. Even though there are various international instruments explicitly recognising minority rights, their adequacy and efficacy are often in question. Some of the limitations include- minority right provisions are not only very general but are also subject to multiple interpretations; implementation mechanisms are also very weak; many minority rights instruments are not legally binding.

The International community has made significant strides in articulating minority rights. What is now required is to ensure that political and legal commitments accepted by States for their minorities are effectively monitored and enforced in good faith. This is also an essential condition for greater stability and peace within and across State borders.

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