



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2022 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium, provided the original work is properly cited.

Scrutinizing Minority Rights under International Law

Rian Gupta^a

^aBennett University, Greater Noida, India

Received 26 July 2022; Accepted 26 August 2022; Published 29 August 2022

Human rights have been a serious issue in recent years. Diversity in society and culture has been created by the existence of minorities, such as racial/ethnic/ethnic minorities, linguistic minorities, as well as minorities from other civilizations and cultures. These minorities have resulted in a richer cultural heritage in each country. Every country in the international community, on the other hand, is bound by the norms and values that it has set for itself. Even though the constitution-making process in every nation is dependent on the people and government of that nation, this does not mean that they are free to make their own laws, because the international legitimacy of every government and constitution is predicated on adherence to universally accepted values and rules of governance. At the Vienna Congress, the notion of “minorities” was first introduced, and today, a wide variety of minorities can be found around the world. The term “minority” does not have a well-defined meaning in international treaties and declarations. This article uses international texts to study minority rights in international law and to comprehend minority rights in the context of international law.

Keywords: *minority rights, international law, human rights, cultural heritage, community.*

INTRODUCTION

Despite the fact that the United Nations and specialised organisations have made several attempts to give a clear and thorough definition of minority, there is no definition of the minority on which all scholars and international organisations agree. In a memorandum dated December

27, 1949, the UN Secretary-General stated: "Although it is academically difficult to offer a really precise definition of minority, the term "minority" is presently used in a more restricted meaning. Currently, the phrase is typically applied to a section of society that has been distinguished from the country's elite".¹ Article 27 of the International Covenant on Civil and Political Rights² does not specify any legal restrictions on the right of minorities to enjoy their cultural identity; nevertheless, the Human Rights Committee's general viewpoints in number 23 state: *None of the laws supported in Article 27 must be exercised in a manner or to the extent that is inconsistent with the other articles of the treaty*³. In order to aid minorities in keeping their identity, governments may not violate their other rights, such as their right to non-discriminatory practices.⁴ The committee supreme council was established by the Treaty of Versailles⁵ in order to aid minorities in new nations. Before receiving international recognition, all newly installed governments were required to sign treaties on minority rights.⁶ Even though the new states were legally recognised, they were unable to become operational until the final peace treaty was completed. German and Polish law disagreed on the subject, and German minority rights in Poland remained protected under Polish law in Germany.⁷ It refers to both the collective as well as the individual rights which are provided to the groups of minorities. Minority rights may also refer to the rights of those who are excluded from majority decisions⁸. Civil rights groups, such as the rights of women all around the world, and the rights which are demanded by the diverse LGBT movements, or the movements with respect to the rights of the myriad racial minority, typically work to ensure that minority status does not lead to the denial of individual rights (such as the Civil Rights Movement in the United States). The minority group is a legal term for a group of people differentiated from the social majority or those who hold the majority of social authority positions in a community. As the term indicates, "*minority group*" refers to the aforementioned

¹ Amir Arjmand, *Worldwide Search: Reflections on Human Rights of Law Researches* (Shahid Beheshti University Publications 1998)

² International Covenant on Civil and Political Rights 1966, art 27

³ *Ibid*

⁴ Amir Arjmand (n 1)

⁵ Treaty of Versailles 1919

⁶ *Ibid*

⁷ N Zolein, 'Protection of Minority Rights in International Law' [1995] *Journal of Law Researches* 55

⁸ *Ibid*

instead of a relational "*social group*."⁹ The distinction may be determined by one or more observable human characteristics, such as ethnicity, race, religion, caste, gender, wealth, health, or sexual orientation. Despite its frequent misassignment with a numerical, statistical minority, the expression is used to denote a wide range of historical events and civilizations¹⁰. In the social sciences, the term "*minority*" refers to socially subordinate groups of persons. The term "*minority group*" commonly comes with the major civil rights and collective rights discourse of the 20th century.¹¹ Members of minority groups regularly endure prejudice in the nations and communities in which they dwell. This bias may be directly based on an individual's perceived membership in a minority group, regardless of that individual's accomplishments. Indirectly, inequality may result from uneven access to social institutions.¹² Activists working on a range of issues, including student rights, consumer rights, and animal rights, may adopt the vocabulary of minority rights¹³.

DEFINING MINORITIES

"*Minority*" is an idiomatic expression denoting a group of citizens in a country or city whose religion or race distinguishes them from the majority¹⁴. A minority is a group that is not active in ruling the nation, has a smaller number than the rest of the country's population, and whose members, although being subjects of the government, share a feeling of solidarity to maintain their culture, customs, religion, or language. A minority is a group of a country's subjects who make up a tiny amount of the population, do not participate in the government, and have distinct racial, religious, or linguistic features than the majority of the society. They desire genuine and legal equality with the bulk of the people and share a sense of togetherness that arises from a collective resolve to live. The Organization of the Islamic Conference is the sole

⁹ *Ibid*

¹⁰ G Barzilai, *Communities and Law: Politics and Cultures of Legal Identities* (University of Michigan Press 2010)

¹¹ *Ibid*

¹² J S Phinney, 'Stages of Ethnic Identity Development in Minority Group Adolescents' [1989] *The Journal of Early Adolescence* 34-49

¹³ *Ibid*

¹⁴ B Ariamanesh, 'Minorities Rights in Constitution and International Law' [2011] *Journal of Law Development Researches* 15-37

global religious organisation.¹⁵ Statement 47 of the eighth conference of leaders of member countries of the Islamic Conference Organization in Tehran in 1977¹⁶ and statement 46 of the 25th conference of Ministers of Foreign Affairs of member countries of the Islamic Conference Organization in 1998¹⁷ indicate that this organisation intends to identify and defend the rights of Muslim minorities residing in non-member countries of the Islamic Conference Organization. After the conference in Qatar, a number of ambassadors and experts from this organisation gathered in Spain to explore strategies to protect the rights of the Muslim minority and to propose guidance¹⁸. The secondary commission of the United Nations provides another definition of minorities: *A group that is smaller in number than the rest of the country's population and is in a non-governing situation; its members (the subjects of the government) have ethnic, religious, or lingual properties that differ from those of the rest of the population; and especially and persistently have a sense of unity through which they defend their culture, customs, and language.*¹⁹ A minority is a tiny population that shares racial, cultural, and ethnic features with the majority population. According to the second meaning of minority supplied by Britannica, the term “minority” in political and social sciences refers to a small number of individuals who are obliged to cohabit with the rest of the community. Minorities are rarely involved in social issues and do not have the same rights as the majority. Moreover, minorities are weaker politically than the majority of society. The author of "International Law and Minorities Rights,"²⁰ Patrick Thornberry, defines a minority as *“a group that is not involved in the government and has a smaller population than the rest of the society, but whose members are subjects of the country and have different ethnic, religious, or lingual characteristics than the rest of the country's population and have a sense of unity of benefits and cooperation in order to maintain their culture, customs, religion, or language”*²¹. Another definition

¹⁵ *Ibid*

¹⁶ 8th Conference of leaders of member countries of the Islamic Conference Organization in Tehran 1977, statement 47

¹⁷ 25th conference of Ministers of Foreign Affairs of member countries of the Islamic Conference Organization 1998, statement 46

¹⁸ J Feinberg & H Gross, *Philosophy of law* (Dickenson publishing company 1975)

¹⁹ *Ibid*

²⁰ M Ghari Seyed Fatemi, 'Treaties of Human Rights' [2003] Publications of University of Office of International Law Services 22

²¹ *Ibid*

indicates that a minority has its own distinct features,²² and if a group varies from the dominant group in terms of race, nationality, religion, or language, it is termed a minority²³.

MINORITIES IN INTERNATIONAL LAW

The issue of minorities has increasingly taken on national, ethnic, and religious aspects since ancient times and the advent of vast empires. In the early twentieth century, international law dealt with this issue²⁴. Several nations' boundaries were redrawn following World War I and World War II, and new states arose on the international scene. There was a merger of cultures, religions, and languages, which resulted in the creation of minorities in these nations. Minorities' rights and privileges were examined when the International Society was founded, but this idea was ignored because of objections from some countries. Nevertheless, some rights and privileges were considered for them by the International Society. A rule of international control was needed to protect the rights of minorities in the global society by permitting such groups to bring concerns about their plight directly to the United Nations Security Council, the body in charge of oversight.²⁵ As a result, if the council and receiving nation disagreed, it was brought to the Permanent International Justice Perpetual Court, whose ruling was definitive and irreversible²⁶. An analysis of the legal documents revealed that the principles of equality and non-discrimination are the primary means through which international law safeguards minorities.²⁷ The international community does not, therefore, have a legally binding, comprehensive agreement that focuses specifically on minorities. Article 27²⁸ and the 1992 Declaration of Principles are considered to be minority-specific legal provisions²⁹. So, some people believe that international law only gives minorities two rights: the right to life, the ban against genocide, and the freedom to identify.³⁰ Article 27 of the treaty on Civil and Political law

²² M Haeri Yazdi, 'Article on Islam and Human Rights Declaration' [2011] Journal of Tashayo, Qom 1341

²³ *Ibid*

²⁴ W A Kemp, *Quiet Diplomacy in Action* (OSCE High Commissioner on National Minorities 2001)

²⁵ *Ibid* 10

²⁶ J D Skrentny, *The Minority Rights Revolution* (Harvard University Press 2009)

²⁷ *Ibid*

²⁸ International Covenant on Civil and Political Rights 1966, art 27

²⁹ P Thornberry, *International law and the Rights of Minorities* (Oxford University Press 1991)

³⁰ *Ibid*

provided the impetus for the latter.³¹ There is still a long way to go before recognising and protecting the rights of minorities. A number of specific principles exist in international law to ensure the protection of minorities. Everyone, regardless of nationality, colour, or religion, has the same basic rights and must be able to exercise them without prejudice. These principles emphasise this reality. For racial and religious minorities, certain regular person rights are of particular significance.³² The freedoms recognised in international treaties include the freedom to assemble, the freedom to speak, the freedom to get an education in one's native language, and the freedom to associate.³³ Despite the absence of the terms “minority” and “ethnicity”³⁴ in the UN charter³⁵ and the Universal Declaration of Human Rights, parts 3³⁶ and 4³⁷ of the first article and articles 55³⁸ and 65³⁹ of the UN charter address the enforcement of human rights and basic freedoms without regard to race, gender, language, or religion⁴⁰. They will be mentioned briefly in the following paragraphs.⁴¹

PROBLEMS OF MINORITIES

In truth, the current worldwide technique reflects the fact that minority rights have been formed and addressed on an individual rather than a social basis. None of these rights is required by law, and those who are underrepresented in society generally have access to them, although minorities themselves do not⁴². International civil and political rights convention provides a starting point.⁴³ A number of notable minority rights breaches include unlawful arrests and convictions, governmental lawlessness, restrictions on free speech, and disproportionate minority domination⁴⁴. Governments are only obligated to make periodic reports to the Human

³¹ International Covenant on Civil and Political Rights 1966, art 27

³² *Ibid*

³³ *Ibid*

³⁴ United Nations Charter 1945

³⁵ *Ibid*

³⁶ Universal Declarations of Human Rights Convention 1951, part 3

³⁷ Universal Declarations of Human Rights Convention 1951, part 4

³⁸ United Nations Charter 1945, art 55

³⁹ United Nations Charter 1945, art 65

⁴⁰ Universal Declarations of Human Rights Convention 1951

⁴¹ *Ibid*

⁴² J Pejic, ‘Minority Rights in International Law’ [1997] Human Rights Quarterly 666-685

⁴³ *Ibid*

⁴⁴ E O John, ‘Rule of Law in Nigeria: Myth or Reality’ [2011] The J Pol & L 4-211

Rights Committee (HRC)⁴⁵ based on the criteria they have established to execute the treaty on the issue⁴⁶. The political ramifications of this event are not insignificant, although they cannot be felt “*on the present scene*” in the short future.⁴⁷ Article 41⁴⁸ is not currently applied to the process of submitting a complaint within a country. It's quite unlikely to happen anytime soon, based on political considerations. This treaty's first optional protocol allows individuals to file individual complaints. As more countries have signed the protocol, it looks to be more widely accepted.⁴⁹ A notable example is the UNESCO Convention against discrimination in education,⁵⁰ which was signed in 1960 and has been in place since. Minority protection has also been addressed in international treaties such as the 1965 CERD⁵¹ and the 1948 Convention on Genocide Eradication and Punishment,⁵² but they haven't been mentioned in particular. As with the UNESCO Declaration of 1978⁵³ on race and racial prejudices and the UN Declaration of 1981⁵⁴ on the elimination of all forms of prejudice and discrimination based on religion and beliefs, many social rights have been addressed in these documents.⁵⁵ To achieve the two goals, this basic approach of overcoming challenges in creating a legally defined definition of minorities has been endorsed.

CONCLUSION

In recent years, minority rights organisations and institutions have proliferated. Protecting minorities requires keeping in mind the three concepts of connection, collaboration, and community. To protect the rights of minorities, we must search for commonalities among individuals, as there is no general definition. Today, not only are minorities not encouraged, but they are also frequently harassed and neglected. As a result of these discriminatory practices,

⁴⁵ *Ibid*

⁴⁶ Muhammad Anwar & Ors, *State policies towards Muslim Minorities* (Sweden, Berlin 2004)

⁴⁷ *Ibid*

⁴⁸ Universal Declarations of Human Rights Convention 1951, art 41

⁴⁹ *Ibid*

⁵⁰ UNESCO Convention against discrimination in education 1960

⁵¹ International Convention on the Elimination of All Forms of Racial Discrimination 1965

⁵² UN Convention on Genocide Eradication and Punishment 1948

⁵³ UNESCO Declaration 1978

⁵⁴ M Weller, *The Rights of Minorities in Europe, A Commentary on the European Framework Convention for the Protection of National Minorities* (Oxford University Press 2005)

⁵⁵ *Ibid*

socioeconomic inequality has increased. The Constitution of the Islamic Republic of Iran incorporates human rights treaties and international agreements on individual and social freedoms known as human rights. The declaration of minority rights has received particular attention. Since there is no significant guarantee of punishment for violations of the aforementioned rights, there is no question that the international system of human rights is a bit lopsided. Some of these contradictions are inevitable and even tolerable under international law as a result of the country's political and social environment. According to the Constitution, minority rights will not be in conflict, and the double-flexibility of Iranian legislators on this topic compared to international mandatory texts, treaty articles, and international common law will be evident.