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HUMAN RIGHTS AND MINORITIES – AN INTERNATIONAL PERSPECTIVE

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Abstract

Human right extends protection and promotion of the rights of the individuals without any discrimination. However, few groups of people those who do not constitute as a core group of society always suffer in the hands of the majority. They are normally described as minorities. In order to extend protection to these groups of people, the international community adopted a number of conventions to protect them nationally. This paper briefly analyses the international law of human rights of the minorities and the responsibility of the states to extend protection to the rights of the minorities.

Introduction

Human rights being the inalienable rights of the mankind, they need to be protected at all times either by the state or by the international comity whether they are first (Civil and Political), second (Economic, Socio, & cultural) or third generation (group or collective) of rights. However, many a times, among the various vulnerable groups, minority's rights are not given due respect and are relegated to secondary position. An examination of the annals clearly depict that the minorities are always suffers in the hands of oppressive majority populace of the society.

Until the 19th century, protection of the minorities' rights was limited only to religious minorities. But, with the recognition of Diet of Hungary in 1849, the concept of minority's rights has been expanded and consequently the ethnic, religious, linguistic, indigenous and sexual minorities became part of the international human rights law like any other vulnerable group such as women, children, elderly persons, and, disabled. But, at the same time, since attempts to codify the rights of sexual minorities have met with stiff resistance from many of the member of the United Nations, they have not been much focused. Accordingly, this paper confines itself to discuss the international legal position with respect to the rights of other class of minorities in a shuttle perspective.

Definition of Minorities

Until the adoption and establishment of the Charter and of the United Nations, there is no specific instrument in the legal sphere of international law

dealing with the rights of the minorities. In reality, a discussion about the minorities and their rights was considered as a social taboo. Though the Charter and some of the Conventions recognized the rights of the minorities, till the end of the Cold War, the issue of minorities rights was not given the due consideration and recognition by the comity of nations. It is only after the Cold War, in the third phase of globalization and liberalization of the economic interests of the States in the late sixties and early seventies, the rights of minorities too gained currency internationally. Even after the adoption of a number of Conventions, Covenants, and Declarations, dealing either wholly or singularly concerning the human rights of the minorities, till date there is no uniform standard definition is there defining the term 'minority.' This is because of the differential attitude that the states parties possess in defining the term in their municipal legal parlance, they are unable to arrive at a common definition. This divisiveness has prevented the UN sub-Commission on Prevention of Discrimination and Protection of Minorities too not able to formulate an acceptable definition. However, according to Mr. Francesco Capotori, Special Rapporteur of the Sub Commission¹ has defined a minority as:

A group numerically inferior to the rest of the population of a state, in a nondominant position, whose members-being nationals of the State-possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language.

In the year, 1985, another member of the Sub-commission² submitted an amendment to the original definition. Accordingly it reads as follows:

A group of citizens of a State, constituting a numeral minority and in a nondominant position in that state, endowed with ethnic, religious or linguistic characteristics which differ from those of the majority of the population, having a sense of solidarity with one another, motivated, if only implicitly, by a collective will to survive and whose aim is to achieve equality with the majority in fact and in law.

In the succeeding years though the working groups established by the Sub-Commission discussed extensively whether to take extra efforts to define the term or to confine to the above, finally, they contended with the definition of the former OSCE High Commissioner on National Minorities³.

1 See the report of the Special Commissioner, UN Document 1979

2 Jules Deschenes, Member of the Sub-Commission on the Prevention of Discrimination and Protection of Minorities, UN Document 1985

3 Max Van Der Stoel, the First High Commissioner on National Minorities report 1992; also see Magalena Sepulveda et.al., (eds). Human Rights : Reference Hand Book, University for Peace, 2004, 357-64

According to Mr. Stoel minority means:

A minority is a group, who's linguistic, ethnic, or cultural traits set in apart from the majority. It is also a group which preserves its identity.

In spite of the extensive debates and various commentaries, the lack of a clear definition led many states to adopt different definitions according to their national priorities. This in turn led to non-recognition of the definition given by one state by another.

Minorities and International Law

Though international Law has quickly crystallized numerous Conventions, Covenants and Declarations on Human Rights after 1945, the development of standards for the protection of minorities has been slow and is fragmented. An enumeration of the various provisions scattered across in a number of international instruments amply specifies beyond any doubt that international law of human rights has no direct remedy to dictate the states parties for their non-observance for the simple reason that the enforcement mechanism is always soft and linked with that of the concept of sovereignty.

Among the various instruments, the Convention on the Prevention and Punishment of the Crime of Genocide 1948 is the first one to address the protection of minorities through genocide without using the term minorities⁴. Later the Convention on the Elimination of All forms of Discrimination 1965⁵; International Covenant on Economic, Social and Cultural Rights 1966; International Covenant on Civil and Political Rights 1966; Convention on the Rights of the Children 1989; the UNESCO Convention against Discrimination in Education 1960; The UNESCO Convention on Race and Racial Prejudice 1978; and finally the UN Declaration on the Rights of the Persons Belonging to National or Ethnic, Religious and Linguistic Minorities 1992 are the few of the instruments that address the various aspects relating to minorities.

Among all the instruments, the ICCPR 1966 is the most directly binding instrument on the States parties which address the rights of minorities through article 27⁶, which clearly impose an obligation on the states where in the

- 4 Art 2 of the Convention Genocide means any one of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious groups.....
- 5 This Convention too though not addressed directly of minorities, they fall under the protective clauses of the Convention
- 6 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 practice their own religion, or to use their own language.

status of minorities, is recognized by a state. Accordingly, a state which recognizes the status of minorities is under an obligation not to deny the rights in community with other members of their groups, to enjoy their own culture, to profess and practice their own religion, or to use their own language. This means, a state which has not categorized minorities especially from that of the majority of the populace of the state, the minorities have no claim.

States which have recognized the rights of minorities have under an obligation to protect their rights at all times. Any discrimination and derogation of these rights is violative of the provisions of the Charter that of the various human rights instruments of the UN and the specialized agencies of the UN.⁷ In spite of the number of provisions that are spread across in a number of instruments, taking into consideration of the feelings, opinions of some of the member states, on the relegation and violation of the rights of the minorities in view of lack of a specific instrument. However, in the year 1992, the General Assembly adopted the Declaration on the Rights of Persons, Belonging to National or Ethnic, Religious and Linguistic Minorities⁸ with a set of rights and obligations in addition to the universally recognized human rights instruments with an aim that the Declaration may serve as a guiding principle in assisting the states parties in the augmentation of the rights of minorities.

The Declaration contains nine provisions in which article 2 clearly advocates the following rights of minorities:

(a) To enjoy their own culture, to profess and practice their own religion, and to use their own language, in private and public freely without any discrimination and interference by the state or any group;

(b) To participate effectively, cultural, religious, social, economic and public life;

(c) To Participate in the decision making process of the State effectively especially any act or acts which affect them either directly or indirectly;

(d) To establish and to maintain institutions of their own; and

(e) To establish contacts freely with in themselves and other groups of minorities within and outside the State.

Since the Declaration is not a binding legal instrument on the state parties, the UN Commission on Human Rights requested the UN High Commissioner on Human Rights to appoint an independent expert to submit frequent reports on the situation in extending protection to the rights of the minorities.⁹ The High Commissioner, taking into consideration of the request of the Commission on

7 For details. Murty. Y.S.R.: Human Rights Hand Book, New Delhi, Butterworth, 2007, p.196-97

8 UN Doc. A/RES/47/135; G.A. records 18 December 1992.

9 For details see UNCHR resolution 2005/79

July 29, 2005 appointed Ms. Gay McDou Gall of USA as the first independent expert to submit reports on various aspects relating to the protection and rights of the minorities across the globe. Individuals also can submit their requests and bring in any aspect relating to the rights of the minorities.

Conclusion

The brief discussion amply brings the point to the fore that thought the mandate of international law of human rights is clear that the nation-states of the comity of nations have an obligation to protect the rights of the minorities at all times without any deviation to promote the international peace and security. However, due to their internal bickering and political compulsions, they often tend to sink their responsibility, though they might have had legal and constitutional dictums.

No doubt all the countries in the world have minorities among their population. It is also true that the experiences of the minorities are varied depending on their socio, economic, political, legal and cultural experiences. But the problems faced by them are almost common to all them. They are persecution, marginalization of minorities in the decision making process, and unevenly benefiting the majority groups in every front. Well for this, it is not the states alone to be blamed. It is the lack of understanding of the special issues concerning them by the majority of populace of a state need to be considered.

As a responsible organ, the State has an onerous responsibility to take necessary steps to impart the values of human rights. This can be better equipped only through the introduction of human rights education which aims to foster morals, values and the understanding perspective of the problems of other communities. As endorsed by the international community through the 1993 Vienna Declaration and programme of Action on the eve of the World Conference on Human Rights, they need to reaffirm themselves to ensure the enjoyment of all human rights and fundamental freedoms and to respect the value and diversity of the cultures and identities of minorities as an integral part of the majority of the population of the polity.

Without taking sides to reexamine their commitment, making provisions in constitutional or legal frame work remain only as legal guarantees, but in no way bloom the rights of the minorities in the social milieu. It is the duty of the states as actors of the comity of nations to take steps to protect the rights of minorities to which they themselves proclaimed, adopted in international forums. Such a commitment to adopt the rights of minorities will pave the way for their augmentation of their religious, linguistic perspectives in order to preserve their own culture, profess and practice their own religion, and language without any mercy or political gimmicks shown by nation states in their internal policies.