DEROGATION OF SELF-DETERMINATION RIGHTS OF MINORITIES – AN IMPORTANT CAUSE TO OTHER HUMAN RIGHTS VIOLATIONS

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Abstract

The self-determination in modern International law has attained its importance especially after the World War II. At that time, several countries such as India, Pakistan, Israel, etc., got their independence through the decolonization process across the world, to protect their self-determination right. Several International law documents emphasizes the importance of state sovereign and self-determination of states including United Nations Charter. By upholding the above mentioned principle, a state is free from inference from other states in determining their own status. But, consider a religious state which has their religious and cultural shade even in their government and administrative blocks. Then minorities in that nation, who may be indigenous people as well, who follow different religions may face discrimination even by that State itself. Though several documents like ICCPR protect the self-determination rights of such people, still those minorities' rights were derogated at several instances. And at the worst case, their basic Human rights itself got violated. Here arises the question of protection and standard of life of minority groups who follow different religious, cultural or ethnical practices other than the majority practice of that state. This article deals about the minority rights of self-determination

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(internal self-determination), derogation of Human Rights of those minorities and status of International law and International community in handling these issues relating to the rights and protection of minority groups.

Keywords: Minorities, Self-determination, Human Rights, Sovereign state.

Introduction

"We need to promote greater tolerance and understanding among the peoples of the world. Nothing can be more dangerous to our efforts to build peace and development than a world divided along religious, ethnic or cultural lines. In each nation, and among all nations, we must work to promote unity based on our shares humanity."

- ***Kofi Annan***

Every humans, here on this earth, have our own belief towards everything. Those may correlate or contradict with the belief of every other fellow beings. This individual belief is the outcome of their cultural or ethnic practice, place of origin, religious practices, etc. No one has the authority to force any other person to follow a particular religion or cultural practices. All people have the choice on their own practices and that must be respected. Thus, a particular religious or ethnic group has their right to follow their own cultural or traditional practices without any external interference or influence. This is guaranteed under the RSD, a collective human right. But, human ego cannot tolerate other groups with different set of practices. If we look at the past, the internal conflicts across the world rapidly increased after the Second World War and most of them were the disputes between religious, ethnic, cultural or linguistic groups of those states. And at many instances the sovereign power of those states (especially religious or ethnocentric state) themselves involved in those conflict and had done irreparable damage to the innocent civilians. Those atrocities were done against those civilians on the mere fact that they belongs to particular religion or cultural or ethnic or linguistic group. In majority of those conflicts, the principle of International Humanitarian law were violated by the disproportionate attack on the minority groups. And the attacks were done against children, women and elderly people without upholding the discrimination principle law of armed conflict. This leads to more aggravated form of Human rights violations such as arbitrary arrest and detention, extrajudicial execution,

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genocide, rape, murder, etc., that constitutes the crime of ethnic cleansing. Thus, breach of right to self-determination (RSD) of minorities ultimately results in the other violation of their basic human rights. This article discuss about minorities and their RSD, legal validity of self-determination under international law, violation of other fundamental human rights emerging from denial of self-determination right and several historical incidents relating to it.

MINORITIES UNDER INTERNATIONAL LAW

In our International legal instruments, we can encounter many references of "minorities". Even with these many references, there isn't any universally accepted definition on "minority"[1]. The traces of the concept of minorities has found in the history from a long time ago. However, this term "Minorities" was used to refer the groups of national, religious or ethnic minorities in the states which consists of different groups of people. This understanding of term "minorities" was widened during 1960s and 70s, and included several other groups such as gender, disability, sexual orientation, etc. Other definitions for the term minority were proposed and shared over time[2].

The literal meaning of minority refers to the little amount and a small proportion that naturally refers to a group of people in a territory and those can be differentiated from the groups of majority in terms of race or religion. In most cases, the minority group is not involved in governing the country and when compared to other population of that state they will be smaller in size. Although, the members of these groups are also the subjects of the government like any other population, they have religious, ethnic or lingual properties different from the other population of that state. This results in the inducement of feeling of unity among them to maintain their ceremonies, culture, religion or language.

When we look into the status of National Minorities, they have the hybrid form of characteristics which cannot be accepted as same as the authenticated mother population and they are not also dominant territorial population. The reason is, they are not mostly the authenticated reproduction of their mother population, though having the language and cultural tie with them. And they do

[1] Francesco Capotorti & Religious and Linguistic Minorities UN. Subcommission on Prevention of Discrimination and Protection of Minorities. Special Rapporteur to carry out a Study on the Rights of Persons belonging to Ethnic, *Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities /: By Francesco Capotorti, Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities.* (1979), https://digitallibrary.un.org/record/10387 (last visited Feb 10, 2025).

[2] Arístides Díaz-Pedrosa, *GAETANO PENTASSUGLIA, MINORITIES IN INTERNATIONAL LAW: AN INTRODUCTORY STUDY (STRASBOURG: COUNCIL OF EUROPE PUBLISHING, 2002)*, 16 REVUE QUÉBÉCOISE DE DROIT INTERNATIONAL 377 (2003).

not have the sociological and ideological characteristics of the dominant population, though they have the geographical, economic, political link with them[3].

Thus, even with the minority policy by the native state, they deserve an exceptional support in their inhabit state. The idea of "minority" is historically vague and could not be precise and the past definitions given to minority hardly includes the all possibly existing minority groups across the globe[4]. Thus it is difficult under International law to propose any essential guidelines with respect to defining the minority[5]. This is considered as the major reason for the absence of universally accepted definition for the term "minority".

Francesco Capotorti, a special rapporteur of the UNs sub-commission on prevention of Discrimination and Protection of Minorities, proposed a definition for minority in 1977 and that is considered as the most widely accepted definition[6]. He conducted study on interests of people who belonged to Religious, Ethnic and Linguistic minorities. To facilitate that study, he formed a definition for minorities with the help of Article 27 of International Covenant on Civil and Political Rights (ICCPR). In his view, the minority is considered as a numerically inferior group in comparison with the remaining population of that state, they would not possess the dominant position in that region, the members of that group who are the nationals of that state possess different ethnic, linguistic or religious characteristics from the remaining population and have the feeling of solidarity, which directing them towards the feeling of preserving their culture, religion, language or tradition[7].

The text regarding the definition of minority was submitted to Human Rights Commission by the Sub-Commission in 1985, which was prepared by Jules Deschenes. But, that definition was not accepted by the commission. This definition had mostly the same essentials as of Capitorti's. However, some elements were criticized by many scholars as they were being vague, inadequate and misguiding for the diversified situations[8].

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[3] Matjaž Klemenčič & Jernej Zupančič, *The Effects of the Dissolution of Yugoslavia on the Minority Rights of Hungarian and Italian Minorities in the Post-Yugoslav States*, 32 NATL. PAP. 853 (2004).
[4] JAVAID REHMAN, THE WEAKNESSES IN THE INTERNATIONAL PROTECTION OF MINORITY RIGHTS (2000).p. 14.
[5] *Id.* p. 41.
[6] Jelena Pejic, *Minority Rights in International Law*, HUMAN RIGHTS QUARTERLY (1997), https://www.academia.edu/90318867/Minority_Rights_in_International_Law (last visited Feb 10, 2025).
[7] Capotorti and UN. Subcommission on Prevention of Discrimination and Protection of Minorities. Special Rapporteur to carry out a Study on the Rights of Persons belonging to Ethnic, *supra* note 1.
[8] James Summers, *Review of Democracy, Minorities and International Law*, 16 INTERNATIONAL JOURNAL ON MINORITY AND GROUP RIGHTS 266 (2009).

The International organisation formed based on the religion is Islamic Conference Organisation. In 1977, in Tehran, statement 47 was issued in the eighth conference of leaders of the members of Islamic Conference Organisation. And in 1988, after the twenty fifth conference meeting of ministers of Foreign Affairs of members of the organization, statement 46 was issued. Both these statements was issued to defend the Muslim minorities, who are living in states other than their member countries. This shows that they had plans to identify and protect the Muslim minorities' rights.

According to Professor Ion Diaconu, the process of determining various categories of minority groups involves high sociological perspective than the legal perspective. Teodor Carnat described minorities as the groups with members having another language, nationality, culture, religion or any other characteristics. The minority alone cannot have the self-determination right as there is no subject of law status and no collective rights. However, the collective rights can be exercised by the people belonging to the national minorities.

A majority, which contradicts with the minorities, denotes the group which has dominance in political conditions of the state even if they do not have the numerical majority. They have the effective control over internal and external affairs of that state and over the matters that has the impact on the state. There are several methods to choose the government of the states. One such method is Democracy, where the government is elected by the people and hence considered as the rule by the people. In this method, there are high possibility for the protection of rights, social practices, cultural identities and religious practices of all groups. To respect the will of people, a majority rule with protection and respect towards the interests of minorities has been included in the constitution of several states. Here arises a question, whether these provisions in constitution really respected by the rulers of majority government? The answer cannot be certainly favourable[9].

RIGHTS OF MINORITIES UNDER INTERNATIONAL LAW

After both the World War I and II, there were drastic changes in borders of several states and many new sates were formed and recognized under International law. These scenarios resulted in the mixture of religious, racial and lingual characteristics in states and formed the minorities' settlements in those states. Due to the enlargement of International society, the recommendation

[9] Comment By Martha Llonch, *Patrick Thornberry, International Law and the Rights of Minorities, 1991*, *in* BRITISH CONTRIBUTIONS TO INTERNATIONAL LAW, 1915-2015 (SET) 2067 (Jill Barrett & Jean-Pierre Gauci eds., 2020), https://brill.com/view/book/edcoll/9789004386242/BP000083.xml (last visited Feb 11, 2025).

was proposed that some area of international society treaty includes the minorities. But, no importance was given as some of the governments denied those suggestions. However, there are certain privileges and rights that were considered.

The minorities support in International society contains an International control regulation. Under that regulation, the minorities could directly raise a complaint to Nations Society Council, regarding their situation in their sovereign state. The discussion of the subject matter would takes place in that council. In case of any contradiction between the beneficiary state and council, then the matter was referred to International Justice Perpetual Court and the decision of the court would be final and irrevocable[10].

By examining the legal documents of International law, it can be understandable that the protection of minorities initially with the equality and principle of non-discrimination under International law. There is a lack of obligatory, legal, comprehensive, specific document for minorities for International society. The civil-political law treaty under Article 27 and the 1992 statement with the mentioned principles are considered as the specific legal documents for minorities[11]. Thus, some have the opinion minorities have just two rights. One is right to live which constitute prohibition of genocide and another is right of identity, under civil-political law treaty, Article 27.

Most of the human rights instrument contains the issues regarding the interests of minority person. The United Nations accepts that minority rights are significant to secure the people who have desire to preserve their values and practices which they share among the other members of same community. The protection was ensured under Article 27 of ICCPR[12] and under the Article 30 of Child convention. Apart from this, the UN has the Declaration on the Rights of Persons for those who are the member of National or Ethnic, linguistic and Religious minority groups. This instrument forms the basic standards and guidance to the states to make legislative and essential steps to protect the interests of minority people. The conference on security and Co-operation in Europe and council of Europe adopted the Instruments which covers only to National minorities.

[10] M. WELLER, THE RIGHTS OF MINORITIES IN EUROPE: A COMMENTARY ON THE EUROPEAN FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES (2005).

[11] Muhammad Anwar, Jochen Blaschke & Åke Sander, *State Policies Towards Muslim Minorities*. (2004)

[12] CCPR General Comment No. 23: Article 27 (Rights of Minorities) | Refworld, https://www.refworld.org/legal/general/hrc/1994/en/26900 (last visited Feb 11, 2025).

The declaration for Minorities has the wider scope, including ethnic or national, religious and linguistic minorities. It also includes the preservation of cultural identity[13].

This Declaration on Minorities adopted by the UN is the document which particularly devoted to subject of Minority rights. Thus, it is considered as the most important UN document on rights of minorities. But, this is not the only one document through which United Nations put efforts to develop and secure the rights of minorities. Apart from this, there are various documents which involves the minority rights such as Genocide convention, Racial Discrimination convention, UNESCO's convention which prohibits discrimination in education and another on race and racial prejudice, declaration against Intolerance and discrimination on basis of religious belief, Article 26 of UDHR, Article 13 of ICESCR, and programmes of action adopted and the declarations which are adopted by two World Conferences against Racial Discrimination in 1978 and 1983.

Under Article 13 of ICESCR, the right to education is established and states have the responsibility to make the possible opportunities for parents or legal guardians in choosing the schools for their children, apart from those founded by the government officials which have fulfilled the minimum prescribed standards. The ICESCR implementation with Limburg Principles[14] focused of eliminating all ways of discrimination and includes special steps to allow the groups with disadvantages to exercice their rights on economic, social and cultural aspects[15].

The committee on human rights can accept the complaint from individuals under the Optional Protocol I of ICCPR. This committee is an expert body which was founded to supervise the ICCPR's implementation along with its protocols in the member states. The member countries have the responsibility to submit the report every five years, on legislative actions and implementation steps that they have done in relevant to the guaranteed rights in the covenant and on development in enjoyment of these rights. This committee has the role of assessing those reports and progress.

The individuals who has the complaint over the infringement of their rights and liberty, and the situation in which those violations are done by the member of the Optional protocol, then the

[13] Daniele Conversi, *Nations and Nationalism by Ernest Gellner*, 13 NATIONS AND NATIONALISM 341 (2007).
[14] Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights, RIGHT TO EDUCATION INITIATIVE, https://www.right-to-education.org/resource/limburg-principles-implementation-international-covenant-economic-social-and-cultural (last visited Feb 12, 2025).
[15] BRIGIT TOEBES, ECONOMIC, SOCIAL, AND CULTURAL RIGHTS: A TEXTBOOK (2001).

Committee has the jurisdiction to entertaining those individual procedure mechanism[16]. The racial discrimination convention is extending its protection to minorities. As per Article 14 of this convention, the Committee on Elimination of Racial Discrimination (CERD), the first body under United Nations to supervise and assess the action of states, which was adopted to fulfill their obligations prescribed by the human rights agreement.

Under the convention, there are three procedures mentioned to make the situation in favour for CERD to assess the judicial, legal, administrative and other measures taken by the member states to satisfy their obligations against the racial discrimination. Procedure I – every member states have the obligation to submit reports periodically as prescribed to CERD. Procedure II – the convention guarantees the right to the states to make complaint against another state. Procedure III – which is considered as the significant step in Human Rights law, that the individual or group of people claimed as victims of discrimination on basis of race can make complaint with CERD against the violating state.

On the other hand Genocide convention[17] also extends its protective umbrella to the minority groups. In Article 2 of this convention Genocide is defined as the act committed with the intention to destroy a national, ethical, religious or racial group, whether wholly or partly. This includes killing the members of particular group, inflicting serious bodily or mental injury to those members, deliberating inflicting the conditions to make that group physically destructed wholly or in part, imposing steps to restrict the births within the group, and transferring children of particular group forcible to another group.

In 1992, a Declaration was adopted by UN. This adoption was seen as the impact of events that happened after the downfall of communism. At present, this is the basic instrument which directs the United Nations in this subject matter. A list of rights was included in this declaration for the persons belonging to the above mentioned minority groups. This declaration fixes the obligation on member states that they have to protect the existence and identity of all minorities mentioned under this declaration, within their territories. under Article 1. Whereas the drawback of this declaration is that the absence of precise information on state obligations. However, as we know

[16] Chief Bernard Ominayak and Lubicon Lake Band v. Canada, CCPR/C/38/D/167/1984, UN Human Rights Committee (HRC), 26 March 1990, https://www.refworld.org/jurisprudence/caselaw/hrc/1990/en/17141 [accessed 12 February 2025]

[17] UN General Assembly, Convention on the Prevention and Punishment of the Crime of Genocide, United Nations, Treaty Series, vol. 78, p. 277, 9 December 1948, https://www.refworld.org/legal/agreements/unga/1948/en/13495 [accessed 12 February 2025]

this is just a political declaration thus only considered as the soft law and cannot have the legally binding effect on parties. Still, it is one among the first international document that tries to develop the security of the minority rights[18].

SELF DETERMINATION RIGHTS OF MINORITIES

Under International law, the RSD is considered as the basic and significant principle. This principle acts as the medium for other rights that are in close connection with it and fix obligations for people who are enjoying it. This principle denotes that the group bound by same identity to aspirations and language, interest, customs, traditions and characters has right to organize themselves in its own state. There are two component elements which can be distinguished within the framework of this self-determination principle, which are equal in rights and the right of every people to enjoy self-determination.

States have to bind by this principle and have to respect self-determination right of people. They are restrained from the conduct of coercions and violating to the explicit will of people, which could deprive their self-determination freedom. The enjoyment of the self-determination right depends on a significant component i.e. territory, which is the constituent element of state. Even if there was lack of cultural, ethical, linguistic or religious singularity in the territory, the unity of self-determination can be formed over the time and people in that area will be represented by that inhabited territory.

Considering these facts, the RSD be exercised only by certain set of people in a particular territory, and not by the others or minorities. Thus, legally the self-determination right cannot be invoked by minorities for any area they occupied, as this would cause numerous and countless divisions of minority groups and increase the complexity. This was supported by Professor Diaconu as that a state was constituted by every minority would be confronted in its turn with own minorities, there was no end for this cycle practically. This adverse consequences would also impact the integration which was already build over recent decades.

In International law, there is no legally recognized remedial right of self-determination in which the minorities or an ethnic group can secede from the state. But, this area of self-determination principle is still ambiguous and debatable among the scholars of International law. ICJ actually had the opportunity of clearing this ambiguity through the Kosovo opinion case. However, the

[18] FLORENCE BENOÎT-ROHMER, THE MINORITY QUESTION IN EUROPE: TOWARDS A COHERENT SYSTEM OF PROTECTION FOR NATIONAL MINORITIES (1996), http://archive.org/details/minorityquestion0000beno (last visited Feb 12, 2025).

clarity was not given by ICJ, and it failed to highlight the legality and applicability of remedial right of secession under the post-colonial situation.

A. INTERNAL SELF-DETERMINATION

When we think of the self-determination in the subject outside of colonial perspective, the right to internal self-determination is considered as the most important mode of self-determination right. This subsequently increase the weightage of importance in how this concept is being defined. In general, this concept of internal self-determination is defined as the involvement and inclusion of all groups, irrespective of majority and minority, in the democratic process of the nation. By adopting this practice, the cultural identity of all groups including minorities can be preserved. This helps in the development and maintaining their equal social and legal status in comparison with the majority of that nation. This inclusion of minorities in the political and governing body of the state can restrict the strict application of majority principle.

The necessary steps should be taken to ensure the minorities are not overruled systematically by majority. If a state applies the majority principle strictly then it will end up in situation where the minorities will be treated arbitrarily and they might have no say in structuring their own status. In the genuine democracy, the internal self-determination right of the minority people and their interests should be placed under proper consideration as same as considering the rights of majority. Even the rights of the single individual belonging to the minorities will be protected as the same way the rights of individual of the majority member protected. This result can be achieved by adopting the preferential rules in favour of minorities through the positive discrimination. This idea of balancing the interests creates a genuine democracy.

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B. AUTONOMY

Autonomy can be considered as both the alternative as well as the expression of self-determination[19]. Both the concepts are more or less same as “autonomy” derived from Greek terms “auto” and “nomos”, together has the meaning of “self-determination”. In practical application also, there is a similar characteristics in “autonomy” and one mode of self-determination known as internal self-determination. Ensuring the right of minority to deliberate

[19] Lauri Antero Hannikainen, *Self-Determination and Autonomy in International Law*, *in* AUTONOMY: APPLICATIONS AND IMPLICATIONS 79 (Markku Suksi ed., 1998); A. Cassese, Self-determination of Peoples (Cambridge University Press, Cambridge, 1995); AUTONOMY, SELF-GOVERNANCE AND CONFLICT RESOLUTION, (Marc Weller & Stefan Wolff eds., 0 ed. 2005), https://www.taylorfrancis.com/books/9781134299089 (last visited Feb 12, 2025).

regarding the issues which are in close relevance for preservation of their identity is paramount to forming a framework that ensures the participation of these groups systematically in significant process of making societal decision. It is acceptable that the system of autonomy usually have a larger reach, however, it is considered as true that guaranteeing specific minority and group rights stands at the centre of set of such rules. This system of autonomy may even be considered as the queen among minority protection instruments.

This autonomy system may be found not it one form but in different ways. Under the circumstances, every autonomous order is unique. Most autonomous orders are typical in their territorial entrenchment. Consider addressing the autonomy issue, which is territorial in nature, then this indicates the application on particular part of the territory of that nation. At the first instance of this issue, it may be understood that the function of autonomous order is fixed merely between a minority protection system and the application of self-determination with impacting changes in that territory. Whereas, minority rights themselves are protecting the interests of the individual and this protection of individuals lead to protection of whole minorities and thus acquiring the collective dimension. For instance, the political representation right can be exercised by an individual which in fact applies to whole of that group.

The territorial criteria here observed is just the pre-conditional criteria for the application of right and it is not considered as the context of the regulation. In the system of autonomy, the constitutive element role for the whole protective mechanism, the basic rights of sovereign of that territorial state, is acquired by that territory. Under this autonomous system, dynamic elements can be observed as some protective measures are included to changing needs by the members of minority groups. Whereas, measures related to the sovereign prerogatives of the territorial state autonomy rules are static in nature. In other words, these system has the characteristic in specific, by that the sovereign power of the territorial state cannot be challenged. The autonomous systems, thus have the observable characteristics of compromise that contains imperfections and doubts. After the achievement of agreement on autonomy, at any time, the compromise may be questioned again. The sovereign power may interpret the provisions of autonomy in a restrictive and narrow manner and the concessions may be retreated if the sovereign feels it has dominant hand in the struggle with the regions of autonomous systems. On the other hand, there may be the possibility for the minority to use the autonomy as the basic ground for further request that may lead to secession and become independent statehood.

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Recently, new concept of the autonomy system was suggested in the form that would countervail these tendencies of secession[20]. However, as there is still lacking in the substantial evidence to support this claim, this is the area open to debate. Any extreme alternative to the current autonomy which results in more competence and power to a group or the territorial state, could come at a high price[21].

Sometimes autonomies are viewed with an attitude of doubt, this can be resulted to the fact that for a long period no immediate basis was provided under international law for this concept[22] and there was a difficulty to fix the definition for this concept that was commonly agreed. In relevant to this context, the special attention has to be provided to Effective Participation of National Minorities in Public Life of 1999 recommended by Lund, which portraits the significance of the territorial arrangements in terms of realization of the minorities effective participation. Various writings on the issues related to autonomy highlights the paramount importance of the autonomy arrangements as the protection instrument of the minority rights[23].

Such autonomy arrangements have found most useful implication in a special field that of indigenous people's protection. Still more could be done in this field after these kind of arrangements have recognized internationally and gain support from the UN's rights of Indigenous people declaration of 2007[24]. However, this declaration clarifies that the secessionist claims of indigenous peoples cannot be constituted based on the right to autonomy[25].

On summarizing, it can be observed that among the available instruments protecting the minorities, autonomy is considered as the successful one[26]. This is mainly because, autonomy successfully withstand the test of fears that often stressed in the past, according to which the autonomy concession could facilitate the process of secession by initiating the first step for

[20] Hannikainen, *supra* note 21.

[21] David Kretzmer, *Autonomy: Flexible Solutions to Ethnic Conflicts by Ruth Lapidot. [United States Institute of Peace Press, 1997].*, 34 ISR. LAW REV. 134 (2000).

[22] Henry Steiner, *Ideals and Counter-Ideals in the Struggle over Autonomy Regimes for Minorities*, 66 NOTRE DAME LAW REVIEW (2014), https://scholarship.law.nd.edu/ndlr/vol66/iss5/18.

[23] AUTONOMY, SELF-GOVERNANCE AND CONFLICT RESOLUTION, *supra* note 21. Hannikainen, *supra* note 21.

[24] United Nations Declaration on the Rights of Indigenous Peoples, 4 Annex, unga Res. 61/295, 13 September 2007, 61 un gaor (vol. 111), Supp. No. 49, p. 15, un Doc. a/61/49:

[25] CHRISTIAN TOMUSCHAT, MODERN LAW AND SELF-DETERMINATION (1993)., Gudmundur Alfredsson, *Indigenous Peoples and Autonomy*, *in* AUTONOMY: APPLICATIONS AND IMPLICATIONS 125 (Markku Suksi ed., 1998), https://brill.com/view/book/9789004637429/B9789004637429_s012.xml (last visited Feb 13, 2025).

[26] Modernes Minderheitenrecht | Professor Dr. Peter Hilpold, https://www.peterhilpold.com/?page_id=190&lang=en (last visited Feb 13, 2025).

independence have lost and during conflict situations preparedness is to be marked to refer to autonomy directly as an instrument of solution[27].

INTERNATIONAL LEGAL FRAMEWORK ON SELF-DETERMINATION

A. THE UNITED NATIONS CHARTER, 1945

The fundamental freedoms and the human rights of all people was secured by UN charter without any discrimination on religion, nationality, language etc. according to Article 1(2) of the charter, the friendly relations among the states have to be developed by respecting the equal rights principle and self-determination right of people, and other steps to maintain universal peace[28]. This, self-determination right is inherent and the implementation was obligatory on the states. Another significant document besides the charter is the Declaration regarding granting independence to colonial territories and people, 1960.[29] According to this document, the domination, subjugation and exploitation of people is considered as the refusal of Human rights and it violates the charter. However, this document was framed for the colonial territories and people, and highlights the achievement of independence for the dependent people who were desperate for freedom[30]. Rigo had the view that for achieving decolonization the RSD was the vehicle of choice[31].

B. ICCPR AND ICESCR, 1966

States showed the willingness to adopt this right in to a provision of law in 1966. This was resulted in recognition of RSD (RSD) in two significant human rights instruments (ICCPR and ICESCR), under international law. In both the covenants, under Article 1, RSD has been recognized to all people globally. Under Article 1(1), RSD applies to all people. Under this right they can freely choose their political status and also pursue for their economic, social and cultural development freely. Under Article 1(3) of the covenant, the state parties have the

[27] Asbjørn Eide, UN Special Rapporteur on Possible Ways and Means of Facilitating the Peaceful and Constructive Solution of Problems Involving Minorities & Yugoslavia, *Possible Ways and Means of Facilitating the Peaceful and Constructive Solution of Problems Involving Minorities :: Final Report /: Submitted by Asbjorn Eide.* (1993), https://digitallibrary.un.org/record/170889 (last visited Feb 21, 2025).

[28] United Nations, *Chapter I: Purposes and Principles (Articles 1-2)*, UNITED NATIONS, https://www.un.org/en/about-us/un-charter/chapter-1 (last visited Feb 14, 2025).

[29] Declaration on the Granting of Independence to Colonial Countries and Peoples, OHCHR, https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-granting-independence-colonial-countries-and-peoples (last visited Feb 14, 2025).

[30] *Id.*

[31] A. RIGO SUREDA, THE EVOLUTION OF THE RIGHT OF SELF-DETERMINATION: A STUDY OF UNITED NATIONS PRACTICE (1973).

obligation to promote the realization of RSD and have to respect this right to ensure the provisions of UN charter.

The initial paragraphs under Article 1 of the covenant is described as inalienable rights, means this is unchangeable and absolute. This article both ensures the protection of RSD as well as inflicting the obligation on states. The ICCPR committee noted that states are not that much willing to provide explanation and adequate information regarding the implementation. There is the obligation of states to take measures in constitutional and political process to make effective implementation of this right. Article 1(2) of this covenant is related to self-determination in economic aspect and guarantees the right for the people, without any prejudice to obligations arising from International economic cooperation, to dispose freely of their natural wealth and resources.

States have the obligation to mention the contrary factor that prevent of restraint the disposal of wealth and natural resources. There are corresponding duties for all international community and states, with regards or the protection of this right. The states also have to explain the impact of this right on enjoying other rights provided under this covenant. Paragraph 3 of Article 1 inflicts specific obligation to states. The people who are in pursuit or deprived of or struggling for RSD also included in this. The scope of this provision has the link to all entities which is not a state, not recognized and also includes the occupied people as well as freedom fighters.

This provision stresses that the states have to take positive measures for realization of RSD. The positive measures nullifies the interference in other state's matter that negatively impacted the enjoyment of this right. The ICCPR committee also highlighted that the history has demonstrated that the acknowledgment and respect for the RSD of peoples fosters amicable relations and collaboration among governments, as well as enhances internal peace and understanding[32]. Thus, the significance of this right cannot be neglected. Though RSD is ensured in Article 2 of both ICCPR and ICESCE, it linked to other legal documents also, such as, UN charter 1945, friendly declaration 1970 and other international instruments.

[32] UN Human Rights Committee (HRC), CCPR General Comment No. 12: Article 1 (RSD), The RSD of Peoples, 13 March 1984, https://www.refworld.org/legal/general/hrc/1984/en/11735 [accessed 15 February 2025]

C. DEDUCEMENT AND APPLICATION OF INTERNATIONAL PROVISIONS FOR THE SAKE OF MINORITIES

There has been an uncertainty and confusion with regards to the term 'people', whether it applies to minority groups or not, under Article 1 of both the covenants – ICCPR and ICESCR. Many scholars has the view point that minorities cannot be included in the term 'people' and they cannot have the right to exercise self-determination over a territory (external self-determination). Whereas, some argues that, the minorities do have the right to exercise self-determination over the territory when the concerned territorial states failed to protect the basic rights of the minority groups or that state itself violated the basic right of that people. However, the practical implication for this argument contains enormous difficulties which will make the international community unstable.

In Kosovo opinion 2010, ICJ considered it was not necessary to address the issue of whether minority people has right to external self-determination[33]. But, opinions given by Arbitration commission of peace conference of Yugoslavia[34] and the Canadian Supreme Court[35] widely observed as the initiating point for the implementation of self-determination in post-decolonisation era. Both the bodies did not gave clarity on whether 'people' includes minority or not. Instead of that, they prescribed the manner by which the minority's RSD can be implemented legally, by pronouncing the difference between 'External' and 'Internal' form of self-determination[36].

These opinions prescribed that the minorities are 'people', but they cannot have the primary right of external self-determination. However, they can exercise their right internally, that means

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[33] Accordance with international law of the unilateral declaration of independence in respect of Kosovo - advisory opinion, p. 438, paras. 82-83, https://www.icj-cij.org/case/141 (last visited Feb 15, 2025).; Theodore Christakis, *The ICJ Advisory Opinion on Kosovo: Has International Law Something to Say about Secession?*, 24 LEIDEN JOURNAL OF INTERNATIONAL LAW 73 (2011).

[34] Opinion No. 2, Arbitration Commission of the Peace Conferencefor Yugoslavia, 92 INT. LAW REP. 167 (1993).; Alain Pellet, *The Opinions of the Badinter Arbitration Committee A Second Breath for the Self-Determination of Peoples*, 3 EUROPEAN JOURNAL OF INTERNATIONAL LAW 178 (1992).

[35] Secession of Quebec, Re, Reference to Supreme Court, [1998] 2 SCR 217, (1998) 161 DLR (4th) 385, (1998), 55 CRR (2d) 1, ILDC 184 (CA 1998), 20th August 1998, Canada; Supreme Court [SCC], OXFORD PUBLIC INTERNATIONAL LAW, https://opil.ouplaw.com/display/10.1093/law:ildc/184ca98.case.1/law-ildc-184ca98?prd=OPIL (last visited Feb 16, 2025).

[36] James Summers, *The Internal and External Aspects of Self-Determination Reconsidered*, *in* STATEHOOD AND SELF-DETERMINATION 229 (Duncan French ed., 1 ed. 2013), https://www.cambridge.org/core/product/identifier/9781139248952%23c02933-3520/type/book_part (last visited Feb 16, 2025)., STATEHOOD AND SELF-DETERMINATION: RECONCILING TRADITION AND MODERNITY IN INTERNATIONAL LAW, (Duncan French ed., 1 ed. 2013), https://www.cambridge.org/core/product/identifier/9781139248952/type/book (last visited Feb 16, 2025).

without violating the constitutional framework of their host state and correlate with the territorial integrity principles[37]. Internal measures includes representation in legislature of a state proportionately, political autonomy to a particular geographical region where minority population is dominant numerically, or special policies and law adopted to preserve minorities[38]. These measures particularly adopted to promote internal self-determination are considered as domestic political matter and which will be negotiated by the minority groups and that territorial state[39].

Through the provisions of International Human rights law, we can interpret and deduce the right of self-determination. The freedom of expression under Article 21 of ICCPR, the freedom of assembly under Article 22 of ICCPR, then the right to vote and to be elected at the periodic elections genuinely, under Article 25b of ICCPR and the right to take part in the public affairs, through representative chosen freely.

DENIAL OF RIGHT TO SELF DETERMINATION – POTERNTIAL BASE FOR OTHER HUMAN RIGHTS VIOLATIONS

It can be concluded that the minority groups do not have the primary right of exercising the external self-determination and thus cannot attain the independence from the territorial state and cannot become the independent state. However, they have the right to exercise the other form of self-determination that is internal self-determination. But, in several places across our globe, this right of minority groups is being violated by the territorial state as well as the majority population of that state. The violation of this self-determination right can be the initiation of chain reaction and this may result in the basic human rights violation at the end of that chain.

For instance, consider a state X with the majority population A and minority population B, where the self-determination right of minority population B is being violated by that territorial state. As a form of this violation of their self-determination right, people from the minority group B are restricted to participate in the state legislature election. And this will subsequently results in the governing body of the sovereign state, which constitutes the panel of people representatives

[37] Secession of Quebec, Re, Reference to Supreme Court, [1998] 2 SCR 217, (1998) 161 DLR (4th) 385, (1998), 55 CRR (2d) 1, ILDC 184 (CA 1998), 20th August 1998, Canada; Supreme Court [SCC], *supra* note 40.; Opinion No. 2, *supra* note 39.

[38] Michael Jewkes, *Self-Determination without Secession*, 28 PUBLIC AFFAIRS QUARTERLY 147 (2014).

[39] Secession of Quebec, Re, Reference to Supreme Court, [1998] 2 SCR 217, (1998) 161 DLR (4th) 385, (1998), 55 CRR (2d) 1, ILDC 184 (CA 1998), 20th August 1998, Canada; Supreme Court [SCC], paras. 128-130, *supra* note 40.

without any of the minority people from group B as a part of it. Thus, this results in the state, where the minority population of B has no say in the political matters including the law and policy which governs that state. Thus, the outcome of legislature may in the way it discriminates those people and favours towards the majority population A. They can amend the existing provisions and laws which might provide protection to the minority group B.

As the minority people B have no support from the legislature of their own state, there may be a high possibility of majority population A to exploit them and their property, sometimes by their own territorial state. Without the representatives in the country's legislature those minority people do not have any control over the law which governs them. As they are already outnumbered and without the support of legislature, the minority people will struggle to maintain even their daily basic life standards. The dominant population will exploit those people physical body and property. Most of the minority people's origin was not accepted by that territorial dominant population, thus this leads to a situation, where majority population wants the vulnerable minority population to leave that territory.

This diversified thought among the majority population developed in the form of hatred towards those minorities and induced them in involving physical attack over that population. Sometimes, a group of rebels may be formed on behalf of the minority groups and involved in the armed conflict to regain their rights and dignity. But tragically, both the conflicting parties may at several instances cause harm to the civilians of the minority population. The rebellion group of minority itself may at some point made the civilian minority population as hostages, sexual abuses, etc. on the other hand the majority population and the violating state have the motto to violate the basic human rights of those minority people with the motive of destroying the particular group. Thus, they involved in violent activities such as rape, murder, voluntary causing physical disability, extra judicial execution and to the extent of genocide. As the minority groups did not provided the internal self-determination right to being the part of governing system of that state that may leads to severe human rights violations as demonstrated above, due to their vulnerability and lack of protection. Thus, refusal of self-determination right can act as the catalytic component by which the human rights violations can increase tremendously.

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1. ETHNIC CONFLICT IN SRI LANKA AND VIOLATION OF HUMAN RIGHTS OF SRI LANKAN TAMIL

Sri Lanka was under the controlled of colonial rule of British Empire. That territory had the multi-ethnic characters as it consists of several ethnic groups. In 1948, British left Sri Lanka and thus they gained their independence. After that, the spark between the majority Sinhalese group and the minority Tamil group started, which resulted in loss of several lives in the future.

The issue started when the Sri Lankan government failed to recognize the Tamil people in their territory. The minority Tamil groups followed non-violent protest for more than the period of two decades, however, the solution could not be achieved by those protests. Then, the peaceful civil protest was transformed to violent rebellion protest in mid 1970s. This lead to the initiation of civil war between Sri Lankan government and Liberation Tigers of Tamil Eelam. There was huge lose on the human lives, specifically among the minority group of Tamil civilians.

There were several demand by Tamil minorities which leads to the outbreak of civil war in Sri Lanka. The minority Tamil group demanded the independent state named 'Tamil Eelam' in the Northeast region of Sri Lanka. The representatives of the parliament of Sri Lanka was dominated by the Sinhalese majority. There was no protection for the minority which had to be provided by the Sri Lankan constitution. They demanded the recognition of Tamil minority as the distinct nationality, recognition of self-determination right of Tamil homeland, recognition of Tamil as an official language, termination of Sinhalese colonies in Tamil areas.

The major causes for the initiation of civil war includes – (1) the declaration of Sinhala as the only official language of Ceylon by the Official Language Act. No. 33 of 1956. This act ended the status of quality enjoyed by the Tamil language and refused the right of their own language to Tamil people[40], (2) the adoption of standardization scheme of 1973 and the system of district quota restricted the entry of number of Tamil students in universities specifically in science. This system demanded students of Tamil medium to get more marks than students of Sinhala medium to join national universities[41], (3) the government of Sri Lanka ignored the area of North East provinces in the national developments and investments, prioritizing the western province, (4) the Citizenship Act, 18 of 1948 made a million of Tamils stateless situation. The plantation Tamils had the fate to live without even the basic civil or human rights. The people with the

[40] DEALING WITH DIVERSITY: SRI LANKAN DISCOURSES ON PEACE AND CONFLICT, (Georg Frerks et al. eds., 2. Aufl ed. 2005).
[41] *Id.*

names of Tamil or Muslim names had to prove their citizenship regarding to matters in connection with the government like public employment etc.[42]

There were several outright abuses of human rights violations during this ethnic conflict. There were abductions and involuntary disappearances of the people of minority civilian population, the people underwent torture in the background of the armed conflict in the name of police investigations, in the prisons and by the other armed groups. There are several evidence which proved the extra judicial killings of the minority population who supported LTTE and even some innocent civilians also. This shows the impact of refusal of self-determination right of minority people and what they had to gone through without that right.

2. VIOLATION OF ROHINGYA MUSLIMS' HUMAN RIGHTS IN MYANMAR

There is a continuous conflict between the Rohingya Muslims, a minority group in Myanmar and Buddhist group, majority group of Myanmar. The extremist Buddhist group claimed that the Rohingyas do not have their origin in Myanmar, they are just an immigrants who settled in Arakan state of Myanmar. These is one of the unsolvable conflict for several decades. However, the conflict escalates when the Buddhist group alleged that some of the men belonging to Rohingya raped a Buddhist woman and killed her in Arakan state. The Buddhists group killed 10 Muslims and this subsequently leads to the communal war between both of them. The government of Myanmar also involved in several atrocities against Rohingyas including major crimes like ethnic cleansing.

After this violence in 2012, Rohingya revolutionaries founded Arakan Rohingya Salvation Army in 2013[43]. This was headed by Bangladeshis and Pakistanis and trained by veterans of Afghan war. Both sides involved in major human rights atrocities. Several houses were burned and whole village was destroyed in Rakhine state[44]. But, when compared to the atrocities done by Myanmar government, the violence by the Salvation Army gained least attention[45]. The situation was also misled by the Buddhist extremists by promoting the ideologies of majoritarian and exclusivist principles among the affected people of majority. This increased the violence across

[42] Memorandum from the Tamils of Ceylon to All Delegates Attending the 20th Commonwealth Conference in Sri Lanka First September 1974 by SJV Chelvanayagam, https://sangam.org/2008/04/Memorandum_Commonwealth.php?uid=2861 (last visited Feb 18, 2025).

[43] Mike Winchester, *Birth of an Ethnic Insurgency in Myanmar*, ASIA TIMES (2017), http://asiatimes.com/2017/08/birth-ethnic-insurgency-myanmar/ (last visited Feb 18, 2025).

[44] MUHAMMAD ABDUL BARI, THE ROHINGYA CRISIS: A PEOPLE FACING EXTINCTION (2018).

[45] REPORT OF INDEPENDENT INTERNATIONAL FACT-FINDING MISSION ON MYANMAR (27 AUGUST 2018), https://www.ohchr.org/en/hr-bodies/hrc/myanmar-ffm/reportofthe-myanmar-ffm (last visited Feb 15, 2025).

the state. Buddhist leaders induced people indirectly to involve in violence against the minority Rohingya people.

This subsequently resulted in the situation where majority of Rohingya people had to flee their birth state as refugees[46]. This conflict cause the serious human rights violation of millions of Rohingya civilians. They were raped, killed, abducted, abused sexually which leads to the threshold of reaching ethnic cleansing. The Rohingyas were not recognized as the citizens of their own state, this made them one of the biggest stateless population in the world. They were treated just as the immigrants who came from another state. By declining the citizenship itself, most of their basic right was violated and refused by government.

Actually the crime of genocide took place in Myanmar which did not get proper attention among the International community at the initial point of time. ICJ itself observed in the proceedings brought by The Gambia against Myanmar, that the crime of genocide took place against Rohingyas in Myanmar and the government failed to prevent such crime. The Rohingyas right to freedom of movement, right to health, religious freedom got violated. They even lived with the fear for their life, liberty and security. Many provisions of UDHR also violated in Myanmar such as Article 5 which restricts torture, cruel or inhuman treatment etc. Then Article 9 which prohibits arbitrary arrest, Article 15 which ensures right to nationality, etc. This inhumane incident clearly shows that the self-determination right of Rohingyas was not recognized and this leads to the subsequent violations of other basic rights to live.

CONCLUSION

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Self-determination right is one of the inherent right guaranteed under International Human Rights law. But several states show unwillingness in promoting the RSD to the minorities including ethnic, religious, cultural, linguistic, etc. When a right is observed as the inherent right of the people, then states have obviously no say in that like whether those people have the right to exercise that right or not, however, they have to assist and promote this right while they are exercising this right. Still in many states, the minorities are being oppressed by the dominant population of that state as well as that sovereign power itself, especially in the situation where the government shares the same cultural or ethnic or religious characteristic with the dominant population. The state, by violating the basic criteria like citizenship, the government can

[46] Buddhism and State Power in Myanmar | Crisis Group, (2017), https://www.crisisgroup.org/asia/south-east-asia/myanmar/290-buddhism-and-state-power-myanmar (last visited Feb 15, 2025).

eliminate those minority people from any official matter of that state including their representation in parliament. This leads to the situation where the minority groups are deprived of both the social support and political support. They will have no say in laws and policies which govern them as they have no control over the governing body and that governing party itself is against their existence.

In this article, as demonstrated above, the minority is deprived of various rights including basic rights. However, the initiation of violation of these violations rooted from their non-recognition and refusal of their RSD. The internal self-determination which can be exercised by the minority people should be treated with much importance as same as the external self-determination which can be exercised by the states in the International forum. The states have the responsibility in common, *erga omnes*, towards certain matters including the protection of human rights irrespective of the national boundary. Thus, the states and the International community have to involve effectively and provide support to implementation mechanism such as sanctions against the violating state or even use of force (Humanitarian Intervention) under chapter VII of the charter against these kinds of human rights violations. These kind of violation of oppressed people rights take place every nook and corner of our world. This can be overcome only by the broader thought process of people which respects the concept of humanity and the proper implementation mechanism which helps in better application of existing significant laws with regards to the recognition and protection of the rights of the minority group.

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