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# Minority Rights under International Law towards Participatory Equality

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## ABSTRACT

*Over the last several decades, the question of the principles and practices required to accommodate minority groups in national systems has become a focal point in international discourse. This phenomenon should come as no surprise, given that ethnic homogeneity within a state is becoming a rarity. The protection of minorities is one of the oldest concerns of international law. The root of the minority problem lies in discrimination, oppression, exclusion and denial of identity. These issues pertaining to minorities have been addressed by states individually and as part of larger international society by devising different systems. The protection of minority rights has perhaps never been as relevant as today. This paper thus, seeks to understand the present state of minority rights in international law.*

*The paper addresses the central question of minority rights discourse as to who is a minority and why it is important to arrive at a consensus for the definition of the term. It then seeks to explore the need of minority rights. It also briefly traces the development of minority rights in international law and outlines its main content in detail. Given the ultimate goals of justice, equality and well-being for all human beings, developing a favourable and constructive legal system for the accommodation of racial, ethnic, religious, cultural and linguistic minorities in national and international systems is indispensable. The paper further reviews existing international law and other legal frameworks regarding national minority rights, including discussions of the specific case of indigenous peoples' rights.*

*Creating a system of participatory equality entails, for most states, making drastic and fundamental changes to the state's legal system, public spaces, social and economic structures. Thus, the paper tends to put light on the fact that the realization of full and effective equality for all citizens and residents within a multi-ethnic state requires "participatory equality." Only when a nation's legal system secures the rights of all citizens to share equally in all of these domains can that nation fulfil the purpose of international minority rights legal bodies and deliver substantive equality to majority and minority concerns, both in law and practice.*

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**Objective of the Study:** *The main objective of the study is to make an attempt to analyse how the minority rights has been recognised under the international law to achieve the equal participation.*

**Survey of Literature:** *The research is purely doctrinal, which is based on various sources like text books, articles, internet resources, etc.*

## I. INTRODUCTION

There is hardly any country in the world that does not have minorities within its territory characterised by their ethnic, religious or linguistic identity difference from that of the majority population. Although there are no accurate statistics, the United Nations (UN) estimates suggest that 10 to 20 percent of the world's population belongs to minority groups. In most cases minorities are among the most disadvantaged groups in society and their members are often subjected to injustice and socio-economic discrimination. Their exclusion from power is often combined with the denial of dignity, identities and cultures. They are also excluded from meaningful participation in public and political life.<sup>2</sup> Even in this modern age, cases of genocide of minorities are being reported.<sup>3</sup> Although protection of minorities has been one of the oldest concerns of international law<sup>4</sup> but the need for their protection has perhaps never been as urgent as it is in our time.

The protection of minorities is one of the oldest concerns of international law. In fact, of the more than 191 officially defined states around the globe, over 175 are multi-ethnic.<sup>5</sup> What is more, internal tensions have escalated within nation states worldwide, threatening to endanger stability and peaceful coexistence. In many instances, if not already the case, it may be only a matter of time before these tensions erupt into violent conflicts. However, the focus on accommodating minority interests has developed not merely from a desire for peace and stability. Universal morals and values grant rights to minority groups that require active protection. Given the ultimate goals of justice, equality and well-being for all human beings, developing a favourable and constructive legal system for the accommodation of racial, ethnic, religious, cultural and linguistic minorities in national and international systems is indispensable.<sup>6</sup>

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<sup>2</sup> Li-ann Thio, "Battling Balkanization: Regional Approaches toward Minority Protection beyond Europe" 43 Harvard International Law Journal 410 (2002).

<sup>3</sup> G. Alfredsson, "Minority Rights and Peace" in Snezna Trifunovska (ed.), *Minorities in Europe 3* (TMC Asser, The Hague, 1999).

<sup>4</sup> Patrick Thornberry, *International Law and the Rights of Minorities 1* (Clarendon Press, Oxford, 1991); Andre L., "Minority as inferiority: minority rights in historical perspective" 34 Rev. of Int. St 243 (2008).

<sup>5</sup> Abdulrahim P. Vijapur, *International Protection of Minority Rights*, 43 INT'L STUD. 43, 4 1-2 (2006).

<sup>6</sup> United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic

Arguably, one of the main sources of tension between majority and minority groups the world over is the exclusion, both *de jure* and *de facto*, of minority groups from the centres of power and the public decision-making processes that directly determines their fates. Contemporary political and legal order does not allow, at least as a practical matter, for complete political self-determination for every racial, ethnic or other minority. At the same time, the legitimate interests of minority groups must not be overshadowed by the will of dominant majority groups. Thus, whereas the majority in a democratic state is typically able to freely influence its collective political, social and cultural development, a fair balance must be attained in order to protect the less advantaged group's interests and identity and, ultimately, avoid intergroup hostility.<sup>7</sup>

Creating a system of participatory equality requires, for most states, making drastic and fundamental changes to the state's legal system, public spaces, social and economic structures, and funding and space provided for cultural and religious institutions; however, this type of "transformation" is the only means of respecting human dignity and delivering peace.<sup>8</sup> The need for such change is all the more so for indigenous groups and minority groups of substantial size living under systems that cater to the majority ethnicity, religion, race or other dominant traits.

## II. WHO ARE MINORITIES?

Surprisingly, until the present day, despite various attempts, there is no generally agreed definition of the term 'minority' in international law. There are also no settled criteria for determining a minority. This situation has arisen due to a number of factors. There are strong conceptual differences and states often hold extremely politicised and uncompromising standpoints. The difficulty is also because of its inherent ambiguous nature. In fact each and every individual, in one form or other belongs to a minority.<sup>9</sup> The failure to arrive at a consensus definition of the term minority certainly impinges on the substantive rights of minorities.

Interestingly, however, the absence of a general definition of the term minority has not weighed on the standard-setting processes within the UN or at European level. One of the first 'official' attempts to define 'minority' was undertaken by the Permanent Court of

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Minorities, United Nations, G.A. Res. 47/135, U.N. Doc. A/RES/47/135 (Dec. 18, 1992).

<sup>7</sup> WILL KYMLICKA, *POLITICS IN THE VERNACULAR: NATIONALISM, MULTICULTURALISM, AND CITIZENSHIP* (2001)

<sup>8</sup> Minority Rights Group International Report: CLIVE BALDWIN, CHRIS CHAPMAN, & ZOË GRAY, *MINORITY RIGHTS: THE KEY TO CONFLICT PREVENTION 2* (2007).

<sup>9</sup> Javaid Rehman, *The Weaknesses in the International Protection of Minority Rights* 14 (Kluwer Law International, The Hague, 2000).

International Justice (PCIJ) in its advisory opinion in connection with the immigration of the Greco-Bulgarian Communities.<sup>10</sup> The definition by the PCIJ refers to minority in the context of community as a “group of persons living in a given country or locality, having a race, religion, language and traditions of their own, and united by the identity of such race, religion, language and traditions in a sentiment of solidarity, with a view to preserving their traditions, maintaining their form of worship, securing the instruction and upbringing of their children in accordance with the spirit and traditions of their race and mutually assisting one another.”<sup>11</sup> The PCIJ definition employed two tests to determine minority status. First, the objective test, the existence of facts like race, religion, language and tradition. Second, the subjective test, the ‘sentiment of solidarity’ and ‘the desire to preserve traditions’. The PCIJ elaboration of the ‘minority’ concept did not contain a single reference to numerical factor, a requirement of non-dominance or a nationality requirement.

The most extensively cited definition of ‘minority’ is probably the one proposed by Francesco Capotorti who had carried out the most prestigious study for the UN on the question of minority.<sup>12</sup> 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, 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.”

In 1984 the Commission on Human Rights (CHR) requested the sub-commission to explore once again the issue of defining ‘minority’ and the task was handed over to Jules Deschenes. According to him, a minority is “a group of citizens of a state, constituting a numerical minority and in a non-dominant 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 another, motivated, if only implicitly, by a collective will to survive and whose aim is to achieve equality with the majority in fact and law.” There was nothing novel in the definition of minorities provided by Deschenes.

The above definitions clarify that despite attempts from different corners in different phases of the history, an exhaustive and universally accepted definition of the term ‘minority’ is still eluding. While analysing the different definitions proposed by academia and international

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<sup>10</sup> Greco-Bulgarian Communities, Advisory Opinion, 1930 PCIJ (ser. B). Available at: [http://www.worldcourts.com/pcij/eng/decisions/1930.07.31\\_greco-bulgarian.htm](http://www.worldcourts.com/pcij/eng/decisions/1930.07.31_greco-bulgarian.htm) (last visited on March 26, 2017).

<sup>11</sup> *Ibid.*

<sup>12</sup> Sub-Commission on Prevention of Discrimination and Protection of Minorities, Study on the Rights of Persons belonging to Ethnic, Religious and Linguistic Minorities, UN Doc E/CN.4/Sub.2/384/Rev.1 (1979).

organisations one can easily deduce certain objective and subjective elements for a possible agreed definition as most of the definition proposals have common components. While it may seem patently clear that a minority is a percentage of a nation that constitutes less than half of its population, the term raises far more complex issues. Thus it can be questioned that does “minority” refer to a numerical weakness within a state alone, or does it extend to minorities within sub national regions (i.e. internal states and provinces), and within international regions?

### III. THE NEED FOR MINORITY RIGHTS PROTECTIONS

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. Minorities are often excluded from the decision making processes and power centres endangering their collective identity and the rights of their members. The non-dominant and inferior status of minorities renders them subject to discrimination at different stages by both state and private actors. The threat to minorities’ distinct identities is also a reality of the day. Thornberry remarks that in many states, the culture, history, and traditions of minority groups are subject to “distorted representations, producing low self-esteem in the groups and negative stereotypes in the wider community.”<sup>13</sup>

In multi-ethnic societies, according to Kymlicka, states face a choice of pursuing either “integration” or “accommodation” while dealing with the question of minority rights.<sup>14</sup> This leaves the choice of either encouraging assimilation of minority groups to the mainstream culture or allowing minority groups to preserve their distinctiveness through separate institutions.<sup>15</sup> It is widely acknowledged that policy of accommodation can only help preserve the distinct identity of minorities. The policy of assimilation will destroy the identity and culture of minorities leading to their exclusion from the mainstream. Pursuant to the policy of accommodation, the need of a legal framework is always emphasised to protect the distinct identities of minority groups. It is because of their vulnerability in any given society that 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 that a consensus has been arrived both at international and national levels that minority groups need

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<sup>13</sup> Patrick Thornberry, “The UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities: Background, Analysis, Observations, and an Update” in A. Phillips and A. Rosas (eds.) *Universal Minority Rights* 49 (Minority Rights Group and Abo Akademi University, London, 1995).

<sup>14</sup> Will Kymlicka, “The Internationalization of Minority Rights” 6 *International Journal of Constitutional Law* 1-32 (2008).

<sup>15</sup> *Ibid.*

special rights and protections to save them from oppression, persecution and forceful assimilation, and special affirmative actions are also needed in their favour to achieve real and substantial equality in the society.<sup>16</sup>

The failure of the integrative approach can be seen in the situation of the AfricanAmerican minority within the United States. The United States has famously taken a “melting pot” approach that attempts to integrate all members of its society into a single culture. But the case of African-Americans shows that the state’s official commitment to integration can cover over deeper forms of exclusion and denial of identity, or what is known as “institutionalized racism.” As Kymlicka writes, rather than an integrative approach, “a new and more complex model of accommodation will be required for African-Americans.”<sup>17</sup>

The majority’s right to use its language, as a substantial segment of the state’s population, must be protected, just as all individual and group rights to cultural, political, and social expression and inclusion must be defended. However, as long as the majority is in an economically, politically and social advantaged position, it will enjoy absolute protection of its language rights because there is a majority consensus over the dominance of its language. In fact, the majority will enjoy its rights in all spheres of public life automatically, by virtue of the fact that its desires are represented by the will of the majority.<sup>18</sup> Thus, in order to fully express the minority group’s desire for substantial equality, and to anchor its equal status in law and practice, a principal question that arises is whether the state intends to formulate a legal foundation that is unifying, collaborative and mutual in nature?

It is in light of these realities and aspirations that international discourse has arrived at a consensus that minorities necessitate special legal protections in order to avoid oppression, as well as special positive action to allow minorities, as groups and as individuals, to resist pressures to dissolve their unique identities and to achieve substantial, participatory equality.

#### **IV. DEVELOPMENT OF MINORITY RIGHTS**

The protection of minorities under international law is relatively new, although its origin can be traced back to the 17th century reforms regarding protection of religious minorities. One of the early attempts at protecting minorities was the Treaty of Westphalia, 1648 wherein state parties agreed to respect the rights of certain (not all) religious minorities within their jurisdiction. The Congress of Vienna of 1815 also dealt with the rights of minorities to some

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<sup>16</sup> Natan Lerner, “The Evolution of Minority Rights in International Law” in Catherine Brolmann et al. (eds.), *Peoples and Minorities in International Law* 77 (Martinus Nijhoff, Dordrecht, 1993).

<sup>17</sup> *Supra* note 6.

<sup>18</sup> R. Stavenhagen, *Cultural Rights and Universal Human Rights*, in *ECONOMIC, SOCIAL AND CULTURAL RIGHTS* 63 (A. Eide, C. Krause, & A. Rosas, eds., 1995).

extent. The Treaty of Berlin, 1876 recognised the “traditional rights and liberties” of religious minority community of Mount Athos in Greece. In addition, the first Bulgarian Constitution of 1879 contained safeguards for its Greek and Turkish minorities.<sup>19</sup> The minority protection system developed by the League of Nations through peace treaties adopted at the end of the First World War was the first remarkable, systematic and comprehensive attempt to offer legal protection to minorities at international level.

There were three categories of minority treaties, although substantive provisions in each were almost identical. The first one included those treaties which were imposed upon the defeated states of Austria, Hungary, Bulgaria, and Turkey. The second group of treaties included those imposed upon states like Czechoslovakia, Greece, Poland, Romania and Yugoslavia whose boundaries were altered under the self-determination principle. The third dealt with special internationalised regimes established in Aland, Danzig, the Memel Territory and Upper Silesia relating to their minorities.

The UN succeeded the League of Nations as a new world organization immediately after the Second World War. Unlike its predecessor, however, it took a completely different approach to the issue of the minority rights. The UN, instead of further developing, internationalising and strengthening the existing system of protection of minorities, preferred to develop a universal system of protection of human rights for all. It was argued that a broad system of human rights supported by strong prohibition on discrimination based on race, ethnicity, language or religion would suffice to protect the legitimate interests of members of national minorities and no special measures for the rights of minorities would be required.<sup>20</sup> It was against this backdrop that the issue of minorities remained excluded from the main agenda of the UN.

The decline in the international concern for the protection of minorities was clearly visible. Neither the UN Charter nor the Universal Declaration of Human Rights (UDHR) did make any reference to minority rights. The demand for the universal respect for human rights and emphasis on non-discrimination remained the dominant discourse of the initial phase of the UN era. Nonetheless, efforts were made by some states to bring the issue of the protection of minorities on the main agenda of the UN. Denmark, the former Yugoslavia and the USSR proposed that a provision concerning minority rights to be included in the UDHR. The majority of member states, however, finally rejected such proposals arguing that recognition

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<sup>19</sup> Natan Lerner, *Group Rights and Discrimination in International Law* 22 (Martinus Nijhoff Publishers, Dordrecht/ Boston/London, 1991).

<sup>20</sup> David Wippman, “The Evolution and Implementation of Minority Rights” 66 (2) *Fordham Law Rev.* 597-603 (1997).

of minority rights will encourage fragmentation or separatism and undermine national unity.<sup>21</sup>

The UN Convention on the Prevention and Punishment of the Crime of Genocide, 1948 (hereinafter, Genocide Convention), seemed to be the only exception of the post World War II trend of subsuming minority rights within the broader framework of human rights. Genocide Convention was directed against the destruction of national, racial, ethnic, and religious groups as such and accordingly guaranteed the most basic group right, the right to physical existence. Although no direct provision concerning protection of minority rights was inserted in the UDHR, soon the UN general assembly passed a resolution declaring that “the UN could not remain indifferent to the fate of minorities.”<sup>22</sup>

The major UN breakthrough was the insertion of Article 27 in the ICCPR. Today, in international law, Article 27 is the most widely acknowledged provision affording protection to minorities. This is the first international norm that has universalized the concept of minority rights, which states:<sup>23</sup>

*“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.”*

Furthermore, despite the negative rights language used in the article, “shall not be denied,” the HRC points to the positive obligations placed on States Parties to actively protect minorities from violations of their rights, both by state and private actors.

#### **U.N. DECLARATION ON MINORITIES**

It was, however, not until the 1980s and early 1990s, with the end of the cold war and with a number of highly visible and violent ethnic conflicts and with the potential for more violence that the UN and other international organizations started paying more serious attention to the fate of minorities. A strong move towards developing comprehensive minority rights regimes was clearly noticed. It was during this time that the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 1992, was adopted by the UN general assembly in 1992. The declaration is the first instrument exclusively addressing minority rights at the

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<sup>21</sup> Hurst Hannum, *Autonomy, Sovereignty, and Self-Determination: The Accommodation of Conflicting Rights* 71 (University of Pennsylvania Press, Philadelphia, 1990).

<sup>22</sup> UN General Assembly Resolution adopted at its 3rd session on Dec. 10, 1948.

<sup>23</sup> Patrick Thornberry “Is there a phoenix in the Ashes? –International Law and Minority Rights” 15 *Texas Int’l L. J.* 443 (1980).

international level. The declaration reflects, although not fully, an acknowledgement by the international community of the need to recognize the rights of minorities and provide for normative frameworks. It can be said that the adoption of the declaration marked the beginning of a new era in the development of international norms on minority issues, although the instrument still reflects the individualist orientation of the UN.

One of the primary ways that the Declaration on Minorities may be distinguished from previous documents is that it explicitly addresses both collective and individual minority rights. The majority of the rights enshrined by the Declaration are individual rights held by members of minority groups by virtue of their membership, but the paramount rights to exist and to preserve and develop a minority's identity are held by the group as a collective.<sup>24</sup> The Declaration also provides a positive articulation of the rights granted—an innovation in international rights documents that perhaps demonstrates a lesson learned from previous documents.

#### **THE EUROPEAN FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES**

The ECHR of 1950 did not differentiate minority rights from individual human rights granted to all, a minority rights protocol was added to the ECHR and opened to signature by the Committee of Ministers in 1995. Like the Declaration on Minorities, the Framework Convention's mandate consists solely of preserving minority rights and establishing special measures to “promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage.”<sup>25</sup> Of course, unlike the Declaration on Minorities, the Framework Convention is a regional, rather than international, body of minority rights protections. Nonetheless, it serves as a source of reference and influence on international minority rights questions and the interpretation of Article 27 of the ICCPR.

### **V. THE FOUNDATION OF PARTICIPATORY EQUALITY**

Participatory equality is defined as equality of participation in a country's political, social, and cultural life. It includes particular types of equality like the equal enjoyment of rights, the equal distribution of resources, and equal status overall in a country. Rightly

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<sup>24</sup> United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, United Nations, 18 Dec, 1992.

<sup>25</sup> The European Framework Convention for the Protection of National Minorities, Feb. 1995, E.T.S. 157, entered into force Jan. 2, 1998

understood, these rights are founded in equality of participation, since minority rights protections remain inadequate as long as they are designed and implemented solely “from above” rather than with the full inclusion of the minority groups themselves. At the core of the theory, as scholars and jurists are coming to recognize, is the notion that “effective participation” rather than “token participation”, is not only a right borne by minorities but also the only means of guaranteeing true stability within multi-ethnic societies. Some of these rights that are internationally recognised includes:

**1. The Right to Physical Existence:** In any deliberation on the rights of minorities under international law, the right to physical existence is considered a necessary pre-requisite, and paramount to all other rights as it is only the living who could lay claim to other rights.<sup>26</sup> The right to existence of minorities was first recognised in the Genocide Convention which prohibits the physical or biological destruction of national, ethnic, religious or racial group. The convention formally recognised the right of minority groups to exist as group by outlawing such destruction. The adoption of the 1992 Declaration was yet another important development explicitly recognising the right to existence of minorities. The declaration obliges the states to protect the ‘existence’ and ‘identity’ of minorities within their respective territories.

**2. The Right to Enjoy One’s Own Culture:** Culture is a complex concept. The UNESCO Universal Declaration on Cultural Diversity of November 2, 2001 declares that culture encompasses: “the set of distinctive spiritual, material, intellectual and emotional features of society or a social group, and that it encompasses, in addition to art and literature, lifestyles, ways of living together, value systems, traditions and beliefs.”<sup>27</sup> The UNESCO, thus, views the notion of culture from a broader perspective, considering it as a way of life. The reference to cultural rights is found in almost all international human rights instruments in at least some of their aspects. “Everyone has the right freely to participate in the cultural life of the Community”, states the UDHR.<sup>28</sup> The same has been also recognised in article 15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). It provides for the right of everyone “to take part in cultural life”, and “to enjoy the benefits of scientific progress and its applications”. Furthermore, article 15(2) provides that steps are to be taken by states to promote “the preservation, the

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<sup>26</sup> Javaid Rehman, *The Weaknesses in the International Protection of Minority Rights* 14 (Kluwer Law International, The Hague, 2000).

<sup>27</sup> UNESCO, *Universal Declaration on Cultural Diversity*, 41 *International Legal Materials* 57 (2002).

<sup>28</sup> UDHR, art. 27.

development and the diffusion of science and culture.” More specifically article 27 of the ICCPR recognizes the rights of people belonging to minorities to enjoy their own culture.

**3. The Right to Profess and Practice Religion:** The UDHR was the first UN instrument to address the subject of religious freedom. Article 18 of the UDHR recognises that “everyone shall have the right to freedom of thought, conscience and religion.” This right also 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. This provision basically promotes the democratic principle that individual religious differences must be respected.<sup>29</sup> The ICCPR recognised the religious rights without “distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” Several provisions of the covenant are relevant to religious rights. Article 18, for example, guarantees the same rights listed in article 18 of the UDHR, further including the right of parents “to ensure the religious and moral education of their children in conformity with their own convictions.” The UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, 1981 is another important international instrument protecting religious rights and prohibiting intolerance or discrimination based on religion or belief.<sup>30</sup> The declaration provides a comprehensive catalogue of rights which include the right to have a religion or belief of his choice and manifest the same in worship, observance, practice and teaching.

**4. The Right to Use One’s Own Language:** A major aspect of minority rights has been the right of minority groups to use their own language. In many states minorities speak languages different from that of the dominant group and they often face difficulties in using their language in the public sphere. The language occupies such an important place in human life as self-expression by an individual in his or her own language is considered as an essential element to the human personality. The language is also perceived as an essential marker of identity which is intrinsically related to culture and ethnicity and is also considered very vital for the survival of the minority as a cultural group. The European Framework Convention for the Protection of National Minorities, 1995 also sets forth a number of significant principles relating to protection of linguistic

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<sup>29</sup> Bahiyih G. Tahzib, *Freedom of Religion or Belief: Ensuring Effective International Legal Protection* (Martinus Nijhoff Publishers, The Hague, 1996).

<sup>30</sup> Natan Lerner, “Religious Human Rights Under the United Nations”, in Johan D. van der Vyver & John Witte, Jr. (eds.), *Religious Human Rights in Global Perspective: Legal Perspectives* 114-127 (1988).

minorities. It recognizes the right of individuals belonging to a linguistic minority to use their language among themselves, in private as well as in public. It also acknowledges the importance of the use of minority languages before public authorities particularly in areas where minorities traditionally reside, or are otherwise present in substantial number.<sup>31</sup>

## **VI. DIFFERENTIATED RIGHTS FOR INDIGENOUS GROUPS AND OTHER MINORITIES**

Indigenous minority communities are prime examples of minorities that “lack power.” Today, the most widely accepted definition of an indigenous people is the one given by Jose Martinez-Cobo. His definition is based on four criteria: First, priority in time; second, voluntary perpetuation of cultural uniqueness; third, self identification as indigenous; and fourth, the experience of subjugation, marginalization, dispossession, exclusion, and discrimination by the dominant population in a society. Indigenous communities are especially entitled to both individual and collective rights: they are protected from discrimination on the basis of their membership in the indigenous group, and must also be allowed to express, preserve and develop their identity, culture, religion, language and other aspects of their unique experience both as individuals and as a group.

Although indigenous rights are often included under the umbrella of minority rights law, separate documents acknowledging the distinct rights of indigenous minorities emerged as early as 1957, when the International Labor Organization (ILO) adopted the first international convention on the rights of indigenous peoples, affirming states’ obligation to respect the indigenous way of life.<sup>32</sup> Later, in 1989 the ILO reconvened to enact Convention 169 on Indigenous and Tribal Peoples in Independent Countries,<sup>75</sup> which reinforced the previous convention, but, most significantly, stipulated that states must involve indigenous populations in the official decisions affecting them and their preserved way of life. Finally, in 1982, the Sub-Commission on Human Rights created the Working Group on Indigenous Populations.

International law treats indigenous groups and national minorities as two distinct groups with distinct sets of legal protections but in general, indigenous groups are accorded accommodation rights while national minorities are treated with integrationist strategies. But there are groups that fall under the legal definitions of both categories, and for these groups the protections of both categories are most relevant.

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<sup>31</sup> The European Framework Convention for the Protection of National Minorities, art. 10.

<sup>32</sup> Abolition of Forced Labour Convention (ILO No. 105), June 25, 1957, 320 U.N.T.S. 291

## VII. CONCLUSION AND SUGGESTIONS

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 stark fact that minorities have suffered discrimination, deprivation, and forced assimilation. It is also 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. 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. Therefore, states are required to take special measures to preserve the existence and identity of minorities. In most democratic states the protection of minority rights has emerged as an important and effective legal and policy instrument in accommodating ethnic, religious and linguistic diversity.

In the meantime, the international community must refuse to support any state that attempts to accommodate minority rights under a strict reading of the laws alone, without restructuring its institutions and legal framework on equal, participatory, and collective grounds. If a legal system does not meet this standard, the international legal community should put pressure to change on it. Though the process of reaching the optimal level of participation and inclusion might necessitate some painful concessions for majority populations, particularly those deeply invested in preserving their own unique identity, the end results will positively impact the entire state, as the state will benefit from the full realization of its social and human capital.

Thus, States must be encouraged to look not to the letter of the law in deciding whether it is satisfied, but rather to the spirit, or “object and purpose,” of accommodating minorities in divided societies: the stability of nations, and the realization of a just, fair, equal and civil society. 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.

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