

Understanding the Origin of the Problem of Minorities

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Abstract

The protection of minority rights has never been as relevant as it is today. The protection of minorities has been one of the oldest concerns in international law as well as national laws of various countries. The rationale of minority rights is not to create a special group, but to safeguard special needs of minority groups, preserve their distinct identity and culture and to achieve the goal of substantive equality as opposed to formal equality. The root cause of minority problem lies in discrimination, oppression, exclusion and denial of identity. The issues concerning minorities have been addressed by states individually and as part of larger international society by devising different systems, but the threat to minorities' distinct identities is a reality of the day. It is in this context, the paper seeks to understand the problem of minorities historically and in contemporary times. It begins by addressing the central questions on what basis people can be identified. It also addresses the issue of minority rights discourse and seeks to explore the need of minority rights. It highlights that special affirmative actions are needed in their favour of minority communities to achieve real and substantial equality in the society.

Key Words: Minority Rights, Identity, Diversity, International Law, Human Rights

1.1 Introduction

The Problem of Minorities is both intellectually created and historically situated (Preece, 2015:3). In its current form, it is a consequence of the fundamental shift in political thinking with regard to the appropriate relationship between legitimacy and community which took place in Europe from the eighteenth century to the mid-nineteenth century and by 1945 had become the basis of a global international order (Ibid). It was previously believed that the authority to govern came from above i.e. the ruler but today this perception has totally changed, it is now believed, that it originates from below. "But, as Ivor Jennings famously remarked,

while on the surface it seemed reasonable: let the people decide. It was in fact ridiculous because the people cannot decide until someone decides who are the people" (Preece, 2015: 3).

The question, therefore, which springs to one's mind are-

- a) Then, on what basis shall the people be identified?
- b) Shall they be identified on the basis of sociological criteria such as religion, race, language or ethnicity?
- c) Shall they be identified on the basis of juridical criteria such as belonging to political communities like colonies or constituent units of federation?
- d) Which people shall rule and on what basis?

It is precisely, at this point that the existence of religious, racial, linguistic and ethnic diversity emerges and hence minorities within contemporary states becomes controversial. Minority questions are among the most contested issues in political life because they speak to an inherent tension in human affairs between competing desires of freedom and belonging (Preece, 2015: 5). Human beings since their birth have not existed as atomistic individuals but rather as socialized individuals embedded within a well defined social and political order. This is the reason, why the most contemporary political theorist, John Rawls, assume that people are born into and lead a complete life within the same society and culture such that this context delineates the scope within which people must be free and equal (Rawls, 1993:277). The desire for social belonging is an essential human characteristic and is a prerequisite condition under which the human personality flourishes. Freedom and belonging are two equally important characteristics for human flourishing. Freedom requires autonomy of action while belonging requires coordination; and at times subordination of autonomous action to preserve the social relationship on which it is based. Freedom necessitates and perpetuates diversity of choices; and promotes a variety of values, beliefs and identities while belonging necessitates and perpetuates social cohesion and constrains choices to preserve a common identity and its concomitant values and beliefs. Freedom encourages innovation while belonging encourages orthodoxy. Freedom creates diversity while belonging creates uniformity. At a point of time, these values collide and the collision fosters an environment of uncertainty, suspicion, fear and even conflict. It is precisely this

collision of values that makes the existence of diversity within human kind a potential source of insecurity and conflict especially among the religious, racial, linguistic and ethnic diversities which is a hallmark of distinct human communities. It is this diversity which is understood by many scholars to contradict, weaken or destroy collective belonging and social consensus. This also becomes a subject of policies to design and ameliorate the socially and politically destructive effects. History has demonstrated time and again that once homogeneity is accepted as the ideal basis of political organization, the individual liberty of members of minority groups becomes precarious (Preece, 2015: 8). In such circumstances, the political community tends to act as if it is single and unitary, and if in practice this is not the case, it must endeavour to make the facts correspond to the ideal regardless of the rights and interests of those among its population who don't conform to the official public identity- and discrimination, assimilation, persecution, forced expulsion may follow from this imperative (Ibid).

On the other hand when we look from the angle of minority rights approach; the approach has taken a different view of diversity. One of the central premises of this approach is that minorities who are recognised and supported by the State are less likely to challenge its authority. It does not consider the existence of minorities as a threat to political order. Consequently, the proponents of minority rights seek to justify not only government toleration but also positive government action to promote diversity and to affirm the dignity, esteem and mutual respect to all citizens whatever their religious, racial, linguistic or ethnic identities are. It aims to promote that majority are required to respect minorities desire to preserve their

own way of life. The promotion and protection of the rights of minorities require particular attention to be paid to the issues of recognising their existence, guaranteeing their rights to non discrimination and equality, promoting multicultural , intercultural education nationally & locally, promoting their participation in all aspects of public life, the inclusion of their concerns in development and poverty reduction processes, recognising their disparities in social indicators such as education, employment, health, housing etc , analyzing the situation of women & the special concerns of children belonging to minorities. The minority provisions of various kinds is evident in government arrangements of many countries like India, Austria, Canada, Denmark, Italy, Belgium, Germany, Spain, Switzerland , United Kingdom etc. There is a clear indication that these countries have made their step forward in this direction and that more states should adopt such practices. Although, the United Nations Minorities Declaration is a non binding agreement, but the standards it endorses must be taken seriously. Accordingly, state compliance in this area is monitored by the United Nations Working Group on Minorities and the United Nations Sub-Commission on the promotion and protection of Human Rights to which it reports. The presumption in favour of minority rights is even stronger in European countries. The European Union's accession criteria for prospective members as stipulated in the Copenhagen criteria of 1993 includes 'respect for and protection of minorities'. Taking a further step in this direction, the Council of Europe and the Organization for security and co-operation in Europe have dedicated monitoring mechanisms that ensures that every member States give

effect to their minority rights undertakings. Minority rights, therefore, aim to prevent conflict by encouraging domestic circumstances in which the religion, race, language and ethnicity of all peoples can be preserved and promoted within existing borders. Majorities should respect minorities desire to preserve their own way of life while minorities are also required to respect the majority's right to do the same.

1.2 Historical 'problem of minorities'

There is no universally agreed definition of minorities perhaps because 'the problem of minorities' often manifests in efforts; distinguishing amongst people who belong to a political community and who doesn't. Historically, the minorities are considered as political outsiders because their identities do not fit in the criteria which define legitimacy and the criteria required to be members of political community on whose territory they reside. For e.g. in the medieval Catholic universities, the individuals whose views & beliefs did not match with the views and beliefs of the Catholic Church constituted minorities. In the similar manner, in dynastic states; people who did not comply with the religious predilections of the sovereign prince are considered as minorities; in the same way in European overseas empires, minorities are those people who did not possess the defining characteristics of European civilization; whereas in nation states, minorities are those who did not possess the characteristics which are required for national identity and so forth. Because the exact identity of a minority changes according to the prevailing definition of political community, the concept 'minority' is difficult to generalize. Common usage defines a minority as a smaller number or part, especially within a political party or

structure. The assumption here is whether an inferior numeric status presupposes an inferior political status, but this is not always the case. For instance, a memorandum prepared by the UN Secretary General in 1950, highlights the inadequacy of using a definition based upon a group's demographic size within a state's population: 'The term minority cannot for practical purposes be defined simply by interpreting the word in its literal sense. If this were the case, nearly all the communities existing within the state would be styled minorities, including families, social classes, cultural groups, speaker of dialects, etc. Such a definition would be useless' (Preece, 2015:10). Ultimately, what matters is not size, but belonging. Minorities are therefore those people who are denied or prevented from enjoying full rights of membership within a political community because of their religion, race, language or ethnicity which differs from that of official public identity. For example, when we look in the situation of colonial Kenya, therein the political community was defined by the British Imperial Government and the White European settlers who constituted a tiny percentage of the total population. Thereby, Africans comprised the vast numerical majority but were nevertheless excluded from the body politic because they failed to satisfy the prevailing 'standard of civilization'. Because of the situation like in colonial Kenya, minorities are often described as 'non-dominant' who do not have authority within a political community but excludes those groups who exercise control or authority within a political community; even if in strict demographic terms such ruling communities are outnumbered.

1.3 Contemporary 'problem of minorities'

In the eighteenth and nineteenth centuries, when the new nation states were created, efforts were made by the non dominant groups to preserve their cultural, religious or ethnic inheritance. The concept minority, as applied to religious, racial, linguistic or ethnic groups is of recent origin. It dates from the 1919 Paris Peace Conference when the term 'minority' was included in the peace treaties with the successor states of the Habsburg Empire, Ottoman Empire and Prussian Kingdom (Preece, 2015:11). Since this time 'minority' has come to refer mainly to a particular kind of community, and especially to a national or similar community which differs from the predominant group in the state (Ibid). The year 1919 is of much significance as during this time, Woodrow Wilson who came to be known as the Father of Public Administration, puts his new principle of legitimacy- Self determination to work in the hope of creating a more just and lasting international order.

The contemporary 'problem of minorities' thus, emerges due to lack of consent or entitlement to full participation of people in political life .In such a way, that the principle of self-determination is compromised in some way. Minority status is generally restricted to citizens of a state – and therefore, it excludes refugees, resident aliens or migrant workers to underscore the significance of their membership in a political community and the presumption in favour of full incorporation within it. The same rationale applies to questions of gender, sexual orientation and people with physical disability, problems of discrimination against women. Accordingly, separate areas of law and policy have emerged to address these issues. For example, at the United Nations, problems of

discrimination against women is dealt by a separate committee called the Committee on the Elimination of Discrimination against Women (CEDAW). Minorities are, therefore, in a position to claim special treatment in the form of minority rights precisely because they are not fully integrated into or do not exercise control over their own political community. Thus, they are 'imperfectly' or 'incompletely' self-determined. This raises an important question of whether or not special provisions for minorities are transitional arrangements designed to integrate such groups and the persons belonging to them into a larger body of politics, thereby transforming 'outsiders' into 'insiders'. For those who take up this view, once self-determination has been realized, minority status can no longer be applicable and any special arrangements deriving from such status may be reasonably terminated. Similar claims have been put forward by the critics of affirmative action policy who argue that the original rationale for such measures no longer pertains.

Alternatively, it can be well thought that the idea of providing separate arrangements to particular groups or persons belonging to them has become a part of the way we think about self-determination and democratic governance and the way we practice it. Recent new developments aiming at minorities may be modifying the substance of self-determination to include internal arrangements for autonomy or self-government. These new developments seem to offer a new perspective on the traditional understanding of relationship between self-determination and democracy. John Stuart Mill famously remarked in his treatise *On Representative Government* that 'free institutions are next to impossible in a country made up of

different nationalities' (Preece, 2015:13). For more than a century, this presumption worked against the recognition of minority rights, but, now the idea of democracy has redefined and recognised the need for a social consensus which is more than just 'majoritarian'. It is now assumed that a minority who is fully integrated into the political community will nevertheless remain identifiable as a distinct group. The minority rights will be of continuing significance for the members of such groups not only because of the cultural, economic or political advantages that they confer but also because of their symbolic value. Minority rights, therefore, would be emerging as a permanent attribute of political membership in democratic states.

1.4 The 'Minority Rights' discourse

The need & idea of providing special rights to minorities is no recent innovation. Historically, Europe has been practising the idea of linking boundary changes with respect to the special provisions created for minority as a result of territorial readjustment. Such evidences can be seen in the major treaties of seventeenth, eighteenth and nineteenth centuries. Eventually, such practise culminated into League of Nations System of Minority Guarantees, which sought to preserve the 1919 territorial settlement in Central and Eastern Europe. When that system failed to prevent the events leading up to World War II (many of which, like the Sudeten Crisis of 1938, Concerned minorities), the international protection of minorities was discredited and largely abandoned for much of the Cold War (Preece, 2015:13). It is to be noted that the older discourse on minorities was not articulated in the language of 'rights' but as of 'guarantees'. 'Minority guarantees' were therefore assumed as state obligations of goodwill

towards a particular group or state (usually kin-states of the minority in question) or externally imposed upon new or weak states by the great powers in the interests of international peace and stability. Such arrangements were intended only to preserve the territorial integrity of existing states but not to satisfy the moral claims or any grievances of the minorities. Accordingly, these 'minority guarantees' were relatively easy to repudiate when it was in the state's interest to do so (Preece, 2015: 14). Normative priority was therefore accorded to the state and, by extension the society of states to which it belonged rather than to the minority individual or group (Ibid). With the emergence of the human rights discourse since 1945, special provisions for minorities became 'minority rights' rather than 'minority guarantees'. It is to be kept in mind that 'guarantees' exist at the discretion of the guarantor, 'rights' are more normative entitlements which adhere to the rights holder. Today, minority rights discourse has become an important feature of contemporary politics. At the domestic and at international level, there is a growing recognition about rights. States, international, non-governmental organizations, individuals and groups all are increasingly speaking in the language of rights. Rights compared to guarantees are more difficult to limit, repeal or abolish and afford possibility of greater protection. It is because of these reason minorities and those who advocate recognition of their claims have chosen to express themselves in a new 'minority rights' discourse rather than the older language of 'minority guarantees'. In fact, 'rights are conduct that one may legally or morally claim which gives rise to normative circumstances of being entitled to a privilege or immunity or authority to act in

a certain way'. Rights may be held by individuals or by groups. Individual rights are held by individuals either as humans or as members of specific groups (for example citizen's of a particular state or members of minority communities). Individual rights are designed to preserve and protect the autonomy of persons as individuals whereas group rights are designed to preserve and protect the individual's propensity for communal attachments and associations. In international law, group rights are the right of sovereignty held by states and the right of self-determination held by peoples. Yet, the current practice recognizes only individual rights which adhere to persons belonging to minorities and not the rights of minority groups themselves.

Another point of controversy within the 'rights literature' is that are 'minority rights' a subset of 'human rights'? Human rights are commonly classified as civil, political, economic, social and cultural rights according to the substance of their provisions. And, since minorities are groups who frequently wish to preserve and promote their cultural distinctiveness, 'minority rights' are sometimes viewed as synonyms for 'cultural rights'. However, critics point out that such characterisation not only fails to recognize the political and economic claims of minorities but may legitimize or perpetuate the majoritarian policies and institutions that minorities themselves regard as 'unjust' or 'oppressive'. The debate therefore is not merely about what rights minorities should have but also, what those rights should be.

Conclusion

Although, the protection of minorities has been one of the oldest concerns of international as well as national laws of

various countries, but the need for their protection has perhaps never been as urgent as it is in our times. Any discussion on the current state of minority rights must precede a general understanding of the term 'minority'. Despite various attempts, until the present day, there is no generally agreed definition of the term 'minority' in international as well as national law. This failure to arrive at a consensus definition of the term 'minority' certainly impinges on the substantive rights of minorities. In most multi-ethnic societies, the majority communities tend to enjoy inherently dominant socio-economic and political position as compared to that of 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, subjects them to discrimination at different stages by both state and private actors. The threat to minorities' distinct identities is also a reality of the day.

In such societies, states face a choice of either integrating or accommodating while dealing with the question of minorities. This leaves the choice of either encouraging assimilation of minority

groups to the mainstream or allowing minority groups to preserve their distinctiveness through separate institutions. It is widely acknowledged that the policy of accommodation can only preserve the distinct identity of minorities while 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 (Alam, 2015:381). Often minority rights are wrongly projected as special privileges for the minority groups. The rationale of minority rights is not to create a special group, but to safeguard special needs of minority groups, preserve their distinct identity and culture and to achieve the goal of substantive equality as opposed to formal equality. It is in the light of these facts that a consensus has been arrived both at the international and national levels that minority groups need special rights and protections to save them from oppression, persecution and forceful assimilation. Therefore, special affirmative actions are also needed in their favour to achieve real and substantial equality in the society.

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