MINORITY RIGHTS IN INTERNATIONAL LAW: A CRITICAL STUDY

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DECLARATION

I declare that the dissertation entitled **"MINORITY RIGHTS IN INTERNATIONAL LAW: A CRITICAL STUDY"** submitted by me in partial fulfilment of the requirements for the award of the degree of **Master of Philosophy** of Jawaharlal Nehru University is my own work. The dissertation has not been submitted for any other degree of this University or any other university.

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CERTIFICATE

We recommend that this dissertation be placed before the examiners for evaluation.

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LIST OF ABBREVIATIONS

AIR	All India Reporter
CAHMIN	Ad Hoc Committee for the Protection of National Minorities
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
COE	Council of Europe
Doc.	Document
E.T.S	European Treaty Series
Ed(s).	Editor(s)
HCNM	High Commissioner on National Minorities
HRC	Human Rights Committee
i.e.	That is
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
No.	Number
OSCE	Organization for Security and Co-operation in Europe |
Para.	Paragraph
PCIJ	Permanent Court of International Justice
U.N.T.S	United Nations Treaty Series
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNGA	United Nations General Assembly

USA	United States of America
USSR	Union of Soviet Socialist Republics
v.	Versus

CHAPTER 1
INTRODUCTION

INTRODUCTION

"The existence of a majority logically implies a corresponding minority."

— Philip K. Dick, The Minority Report, 1987

The question of minorities and their rights have long been at the centre of academic, social and political debates and issues concerning them have witnessed cyclical resurgence. States have long held the view of minority groups as an anomaly, a divisive force within the State and there is a looming fear that minority-related problems could destabilise the entire State or region. Circumstances that occasioned for the idea of a '*minority*' to become closely tied to the ethnic conception of the '*nation*' and nationalism drove forward the opinions of minorities as anomalies. Minorities began to be regarded as portions of a '*nation*' that found themselves in a State which represented a nation other than their own at best or as a group incapable of even forming a nation of their own at worst. It has been these fears which have resulted in the persecution or enactment of oppressive policies for minorities. However, these very same conditions in the course of time resulted in moves to protect minorities and to accord them with rights and guarantees. These moves were however, not always altruistic in nature. They were not done for pure selfless reasons for the benefit of minorities alone, but, for the most part were politically motivated to bring in a sense of peace and stability and to further an end to violence.

Historically, there are two main theories pertaining to the origin of minority protection. One theory implies that the roots of minority rights may be traced back to the seventeenth century reforms regarding protection of religious minorities. The other theory States that the current issues of minority rights can be traced not further than the nineteenth century. It has been accepted that contemporary minority rights under international law was first systematically put into place following the First World War within the League of Nations framework. The League was able to make minority rights an area of international concern. It, however, failed in making them universal. As such after this initial concern over minority rights they did not feature in the *Universal Declaration of Human Rights* post Second World War which placed a greater focus upon individual rights. This caused a discontinuity of the minority rights regime under the newly established human rights system post Second World War.

Events such as the fall of the Berlin Wall and the re-emergence of ethnic tensions in Central and Eastern Europe that spearheaded the violent break-up of Yugoslavia drastically altered attitudes. It led to States and International Organisations renewing their focus on the question of minorities.

The United Nations has since then gradually made headway into minority issues and the major landmarks include the drafting of *Article 27 of the International Covenant on Civil and Political Rights*, a provision that for the first time specifically mentioned minority rights. The other has been the *UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 1992* that not only includes a list of rights that minorities are entitled to but also duties for States to ensure their rights. At a regional level Europe has seen the most development in this field and the drafting and adoption of the *Framework Convention on National Minorities, 1995* is considered to be a great step in the progress of minority rights.

Though much development has taken place in the field of minority rights a range of debates, questions, and concerns continue to surround the issue. The present work is an attempt at critically studying minority rights in international law and has been undertaken because there has been a variety of events of both national and international significance, that have taken place which revolve around minority issues. In many instances there has been a failure to sufficiently respect the rights of the minority and many of the major conflicts in the world today are due to discrimination faced by minorities and the disregard for their aspirations. Religious intolerance and denial of linguistic rights are prime examples of discrimination against minorities. Racial discrimination and problems associated with the indigenous communities in the United States, communal tensions based on religion in India, discrimination faced by the Roma Community in large parts of Europe, the horrific incident of the Rwandan Genocide, the conflicts between the Sinhalese majority and Ceylon Tamil minority in Sri Lanka are some of the leading instances of the problems associated and faced by the minorities.

Any deliberation upon minority rights necessarily pose a question on a definition of the term '*minority*'. Further questions arise as to whether minority rights belong to the individual of the minority group or to the group as a whole; and whether minority rights are a different category or sub-category of Human Rights. As such this work has

addressed and reflected upon these questions and hence the nature, scope and content of minority rights have been examined. In addition other significant issues about the move to include various different communities like women and sexual minorities under the aegis of minority rights and the interrelationship of minority rights and refugees, immigrants and Stateless persons have also been discussed. On analysis and reflection of the various issues, it is suggested that there is a need of building up a distinct theory on minority rights which at present seems to be subsumed under the cannon of human rights law.

1.2 LITERATURE REVIEW

1.2.1 Historical Trajectory of Minority Rights

Most trace the oldest roots for minority protection to the reforms made regarding religious protection of minorities as far back as the Treaty of Westphalia, 1648 wherein the Protestant German population were granted religious rights. (Lerner, 1991).

However, a second narrative traces the international concern for minority protection to a time that predates the modern State system and goes back to the Middle Ages and perhaps even earlier still. For example, in 1250 St Louis pledged to protect the Maronite Christians in the Holy Land, a promise which was then periodically renewed by the French monarchs (Sigler, 1983).

Another example is the situation which was prevalent in the Ottoman Empire, where the empire categorized each religious community as a separate nation, a system that was referred to as the 'millet system'. This system was first implemented in the year 1453 after the Ottomans took over Istanbul. (Kucukcan, 2003 and Yildiz 2007).

Most of these earlier protections had their basis on religion and not ethnicity. The current minority issues that we are more familiar with find their roots in the nineteenth century and may be traced back to the three great congresses of Vienna (1814-15), Paris (1856), and Berlin (1878). These congresses led to the encompassing of minority protection provisions in treaties establishing rights and security of populations that were to be transferred to a foreign sovereignty (Sigler, 1983).

The first time that minority protection took the form of ethnic rather than religious protection was at the Congress of Vienna in 1815. For example, the Polish treaty

recognised the right of Poles to preserve their own culture and institutions (Oestreich, 1999). Regardless of the fact that such provisions did not provide any international supervision, they did express international concern for minorities (Macartney, 1934).

Today's contemporary conception of minority rights as we know of it under International Law was first systematically put into place following a series of treaties that were drafted at the end of the First World War within the League of Nations framework (Petričušić, 2005).

The League of Nations system for the protection of minorities originated from the Paris Peace Conference held in 1919. Though the Pact contained no provisions regarding Human Rights, it incorporated two relating systems of mandates and of minorities. The League System recognised that fairness would not be possible when and if minorities were forced to renounce their cultural identity (Petričušić, 2005 and Oestreich, 1999).

The minority treaties of the League of Nations are of significance since it was the forerunner to all the efforts made and envisaged to guarantee minority rights post-World War II. It is also important from the perspective of understanding the efforts made to renounce the system of minority rights and a move towards the human rights system centred upon individual rights.

1.2.2 Legal Regime Post World War II

The League of Nations had introduced the system of minority protection based upon earlier occasional protection of religious minorities and not on any established human rights regime (Gilbert, 1999).

Post Second World War the earlier system was viewed as flawed. It was felt that the emphasis given on minority protection encouraged groups to define themselves in opposition to others (Oestreich, 1999 and Gilbert, 1999). The alternative was hence to establish a set of international human rights norms which emphasised the political over the social, cultural and economic rights, focusing itself on individuals and not groups (Kunz, 1954). This alternative system was primarily based upon western and liberal philosophy.

The *Charter of the United Nations* as well as the *Universal Declaration of Human Rights* has been silent on the issue of minority rights and their protection (Sigler, 1983;

Oestreich, 1999 and Pentassuglia, 2009). The preliminary draft of the Universal Declaration of Human Rights had in fact proposed the enshrining of minority rights in educational, religious and cultural institutions. But due to political opposition from many States these provisions were omitted from the final version that came to be adopted by the UN General Assembly in 1948 (Morsink, 1999 and Macklem, 2008).

Early human rights approach of that time was to remove 'ethnic particularism' from the cannon of rights language that was meant to be available for all (Claude, 1955). Thus, post-World War II the minority protection system nearly became obsolete (Kunz, 1954). This situation nevertheless presently changed and the discourse on minority rights issues gained ground.

1.2.2.1 Minority Rights under the Aegis of the United Nations

The newly founded United Nations declared its faith in the respect for human rights and fundamental freedom. States collectively resolving to learn from the dreadful experience of the holocaust adopted the Genocide Convention in 1948. It has been argued that this adoption of the Genocide Convention was a step forward in widening the discussion space for minority groups and rights generally (Pentassuglia, 2009).

Further, though the Universal Declaration of Human Rights was silent on the matter of minority rights the General Assembly had in 1946 established a Sub-Commission as a subsidiary to the Commission on Human Rights to deal with the matter on Minority Protection (Hipold, 2007; Macklem, 2008 and Pentassuglia, 2009). The work of the Sub-Commission during the 1950s and 1960s proved to be of great consequence for the drafting of Article 27 of the *International Covenant on Civil and Political Rights* (Pentassuglia, 2009).

<u>Article 27 ICCPR</u>

The International Covenant on Civil and Political Rights (ICCPR) that came into force in 1976 makes explicit mention to minorities (Oestreich, 1999; Macklem, 2008; Pentassuglia, 2009 and Papoutsi, 2014). The drafting of Article 27, ICCPR at last lead to the inclusion of a minority rights provision into the classical human rights cannon. The significance of this provision is that it is a legally binding provision and affords minorities with the avenue of legal redress (Macklem, 2008 and Pentassuglia, 2009).

The article recognises the right of persons belonging to "*ethnic, religious or linguistic minorities*" to profess their own religion, use their language and to revel in their own culture (Pentassuglia, 2009).

Article 27 places a positive duty on States to support minority rights (Oestreich, 1999). The language of the article also suggests that the rights are individualistic in nature. This means that they are individual rights that allows a person to engage in particular activities in community with others. They are not collective rights of a minority group (Macklem, 2008). This particular framing of rights in terms of them being individual rights has sparked an assortment of scholarly debates.

The manner of the article's formulation has also created questions over the absence of clear indications of the kind of actions States are supposed to take in pursuance of their obligations assumed under the treaty (Strydom, 1998). The article has also been critiqued because the decision of whether or not a minority exists has been left to the judgement of the States (Papoutsi, 2014). Opinions over these questions and ambiguities have been varied and certain clarifications have been provided by the Human Rights Committee (Strydom, 1998). The interpretations made have also lead to an expanded understanding of the Article.

UN Declaration on Minorities

The discourse on minority rights grew at the end of Cold War and considerable progress was made in this field. The most cited rational for this interest was said to be the result of a variety of minority related disputes that emerged in Central and Eastern Europe (Pejic, 1997 and Pentassuglia, 2009).

The General Assembly in 1992 adopted the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. The drafting process of the Declaration spanned more than a decade. This declaration succeeded in drawing support from a large and diverse group of States which enhances the importance of the Declaration as a standard-setting instrument (Strydom, 1998).

Though non-binding in nature this declaration is of importance for being the only United Nations instrument that specifically addresses the special rights of minorities (Macklem, 2008).

The declaration includes a list of rights that minorities are entitled to, like the right to enjoy their own culture without interference, the right to effectively participate in decisions at the national level. States have also been asked to implement national policies and programmes with due regard for minority interests.

1.2.3 Concerns over the Definition of the term 'Minority'

The question of who are minorities under International Law has been asked a myriad of times. During the era of the League the expression "*minorite de race, de langue et de religion*", as well as the term "*minorities nationales*" became part of international law terminology. However attempts to define it were not made at that point in time (Pejic, 1997). With the establishment of The United Nations efforts to define it proved unsuccessful and there appears to be no internationally agreed upon definition of minorities.

Article 27 of ICCPR the solitary legally binding text of a universal nature which makes specific mention of minorities also does not define it. Deducing from the title of the UN Declaration on Minorities, the United Nations human rights system usually refers to "*national or ethnic, religious and linguistic minorities*", thereby implying the title to be the definition.

One of the most widely recognised definition has been the one suggested by Special Rapporteur Francesco Capotorti in 1977. This definition States that a minority is a group statistically inferior to the rest of the population of a State and that it exists in a non-dominant position. Further, its members are nationals of the State who possess ethnic, religious or linguistic characteristics which is different from the rest of the population exhibiting a sense of solidarity directed towards preserving their culture, traditions, religion or language.

This definition has been categorised on the basis of objective and subjective criteria (Nowak, 2005). The definition has had its fair share of censure especially with respect to the nationality criterion but the requirement to be in a non-dominant position remains an important objective criteria. The definition has gone a long way in clarifying aspects of what constitute minority (Pejic, 1997).

Scholars have put forward a variety of reasons as to the absence of a precise definition. They include arguments that the term itself is obsolete due to its close ties with the

League days, whilst others argue that attempting to provide an exact Statement would deny certain rights to certain groups of people in some countries (Petričušić, 2005).

The lack of a precise Statement on the term minority has however led to a multiplicity of problems. For instance the issue of whether non-citizens of a State are included in the term minority as provided under Article 27 has generated debate (Pejic, 1997). Further, in the absence of a definition in the international level it is now up to each individual State to recognise minority groups and provide for their protection.

1.2.4 Central Debates over Minority Rights Issues

The issue of minority rights has prompted a countless debates amongst scholars coming from different fields like politics, philosophy to law. The debates range over question of the scope content and nature of minority rights to the legitimacy of minority rights regime itself (Baylis, 2005).

1.2.4.1 The Liberal v Communitarian Debate

The discussion over the conception of minority rights based on the liberal and communitarian philosophies has been one of the earliest debates. The academics that discussed this issue in 1970s and 1980s assumed that a person's position over the understanding of minority rights was dependent on their position on the liberal-communitarian debate. If you were a communitarian then you would prioritise the group conception and if a liberal then individual freedom would be prioritised (Kymlicka, 2001).

Today, the debate over this issue has moved past the liberal versus communitarian perspective and has developed on to other perspectives. For example questions of whether to recognize the protection of minorities to mean their right to a certain amount of autonomy as a group or does one simply confine recognition to their individual members as having the right to share in the group culture? (Pestieau, 1991)

1.2.4.2 Minority Rights within a Liberal Framework

The justification of having minority rights within a liberal framework has been very controversial (Kymlicka, 2001). The debatable nature emanates from questions pertaining to whether minorities that share basic liberal principles even need minority

specific rights. Liberal thinkers argue that the core of a legitimate democracy is individual liberal rights. They contend that such rights adequately protect minority cultures and that minority group claims that cannot be characterised as classic liberal individual rights will inevitably conflict with those individual rights (Baylis, 2005).

1.2.4.3 Human Rights and Minority Specific Rights

The debate about the relative importance of general human rights, on the one hand, and minority specific rights, on the other is another noteworthy discourse. It has been argued that though minority rights and human rights are two different notions, the human rights norms may be used as a context within which to evaluate the definition, scope and protection of minority rights in international law (Pentassuglia, 2002).

1.2.4.4 Self-Determination and Minority Rights

The right to self-determination has been generally held to belong to 'people' and not to 'minorities'. (Saladin, 1991-1992). This broaches the question of whether a group is to be considered as people. The debate over the concept of the rights of minorities to be recognised as groups has importantly affected the debate over the right to self-determination for minorities. This debate has also been affected by political undercurrents that highlight the fear of States that the recognition of minority rights will encourage separatism.

On the perusal of the literature pertaining to Minority Rights we can see that it is immense but, the existing literature is to a large extent euro-centric especially the discourse over minority rights in the context of liberal democracies. There is a dearth of literature which encapsulates the view-points of Asian and African nations. This is highlighted by the fact that a myriad of minority related problems exist in many of these countries like the African Region for examples where boundaries were drawn by the colonial powers with a total disregard for ethnic, religious or linguistic realities. Additionally, the existing literature has been to an extent fragmented and not many recent academic works have tried to systematically map out the minority regime whilst also critically engaging with it.

1.3 Objective and Scope of Study

The objective of the study has been to critically engage in understanding the concept and scope of minority rights and its significance and importance in the field of international law whilst engaging with prevalent academic debates. The study has made an attempt to analyse the present legal regime of minority rights which include both legal instruments and institutional mechanisms. The effort has been to critically evaluate the status of minority rights in international law.

The subject-matters revolving around minority rights is vast and the current study would not be able to do justice for the entire field. Hence, the present study will be limiting itself to presenting a comprehensive overview of the status of minority rights in international law. This study has thus not dealt with the issue of rights of indigenous peoples due to the fact that it has had its own unique course and a parallel legal framework has developed around it.

1.4 Research Questions

1. What has been the history and trajectory of minority rights under international law?
2. Do minority rights possess international significance?
3. What are the different approaches toward understanding the concept of minority rights?
4. What is the present legal status of minority rights under international law?
5. Does the present legal regime deal adequately with minority rights?
6. What are the legal issues and challenges that surround the implementation of minority rights?

1.5 Hypotheses

1. A comprehensive understanding of minority rights in international law is necessary for peace and stability.
2. Sociological and political realities have contributed to the difficulties of having a precise definition for the term ‘minority’.

1.6 RESEARCH METHODOLOGY

The present study has been conducted via the doctrinal research method and has utilised historical, analytical and deductive approaches. The study has primarily relied upon secondary source materials such as books, journals as well as commentaries. Primary resources such as legal instruments and case laws have also been included.

1.7 CHAPTERIZATION

Chapter 2: Progression of Minority Rights: A Historical Overview

Chapter 2 traces the history of the minority rights regime under international law. It has also critically analysed the rational for the breakdown of the system of minority protection established by the League of Nations post Second World War.

Chapter 3: Normative Approaches to Minority Rights

Chapter 3 outlines the scope and content of minority rights and examines the definitional concerns regarding the term 'minority'. It also discusses the various academic debates pertaining to minority rights and addresses the issues over questions relating to the character and nature of minority rights, the social and political basis of minority issues, policies etc.

Chapter 4: Current Legal Regime of Minority Rights

Chapter 4 offers a comprehensive and analytical knowledge of the legal instruments relating to minority rights. The chapter has charted out the development of the legal regime on minority rights and discussed its advantages and limitations. A discussion over some of the institutional minority rights mechanisms has also been made.

Chapter 5: Minority Rights: Contemporary Issues and Challenges

Chapter 5 explores the legal issues and challenges that surround minority rights, like the questions of its beneficiaries, 'new minority', and the relationship between minority rights and non-citizens, immigrants, refugees and Stateless persons. A section of the chapter has also been devoted to the position of minority rights in different regions and countries with special reference to India.

Chapter 6: Conclusion

This chapter encompasses the findings of the study.

CHAPTER 2
PROGRESSION OF MINORITY RIGHTS: A HISTORICAL OVERVIEW

PROGRESSION OF MINORITY RIGHTS: A HISTORICAL OVERVIEW

"If civilization is to survive, we must cultivate the science of human relationships—the ability of all peoples, of all kinds, to live together and work together, in the same world, at peace."

Franklin D. Roosevelt, 1945

2.1 INTRODUCTION

A profound comprehension of history and historical facts proves beneficial in understanding the present, i.e. how we have come to be what we are today and enables us to link events through time. From a legal perspective it is essential to trace legal history to gain perspective into the origins and evolution of laws and the forces behind their adoption. It helps us to better grasp the legal environment in which we live in.

This chapter is a historical account of minority rights protection. It traces the history of minority protection up till the League of Nations minority system, as well as analyses the political and social forces which were incidental to minority concerns and disputes. The chapter takes an in depth look into the League of Nations' mechanism for minority protection and at some of the cases concerning minority issues which were brought in front of the Permanent Court of International Justice. A section of the chapter is also devoted to addressing the discontinuity of the League's system of minority protection after the Second World War.

2.2 MINORITY RIGHTS PROTECTION IN HISTORY

The earliest examples of minority rights protection were based on religion. The questions of ethnic minorities came into the picture much later, whereas the question of religious minorities is "as old as history itself"[1].

Religion has been the oldest source of collective identity and belonging and the exercise of religious beliefs are to a large extent social practices. It is this social dimension of religion that determine food habits, dress codes, language, working days, etc. which

[1] Rosting, Helmer (1923) "Protection of Minorities By The League of Nations", The American Journal of International Law, 17 (4): 641-660, p 642

gives it the potential for diversity dilemmas. In a historical context the conflicts and diversity dilemmas based on religion have included the persecution of early Christians by Romans which continued until Christianity itself became the official religion of the Roman Empire in 380 AD[2]. Both the Catholics and Muslim communities of the medieval times offer us with some of the most telling instances of what happens to religious minorities when the political community is simultaneously also a religious community. Both of these religions have sought ways to unite everyone under one religion and worship their understanding of God. For individuals professing these religions, their religious identity stood out against their identity as Egyptian, French, Turk, etc. Consequently, for example religious minorities that lived in European territories during the medieval period like the Jews were placed under a variety of restrictions and excluded from many systems[3]. The attempts to root out heresy correspondingly often resulted in the prosecution of religious minorities[4].

Two events during the sixteenth century had an important impact on the relationship between minority groups as against the larger society[5] (these events were not directly linked to minority issues but had an impact on them). The first was the Protestant Reformation which put an end to the Roman Catholic Church's monopoly on religion. This event's inadvertent consequence was that it made the way for limited toleration of minority religions. The various religious wars that took place due to religious conflicts between Catholics and Protestants in Christian Europe paved the way for the first efforts to use religious toleration to resolve the conflict. The religious civil war that broke out in Germany during the 1520s was the first time that such an attempt towards religious tolerance was made[6]. The second event was the encounter with the non-European world resulting in the rights discourse for the indigenous people who could potentially come under the conquest of the Europeans.

As different States started to have their own established religions post reformation, guarantees of religious freedom were given when territories were ceded from one to

[2] The Edict of Thessalonica which was issued on 27 February 380 AD made Nicene Christianity the only authorized State religion of the Roman Empire
[3] For further reading see Nirenberg, David (1996), *Communities of Violence: Persecution of Minorities in the Middle Ages*, 41 William Street Princeton, New Jersey: Princeton University Press
[4] Sigler, J.A. (1983), *Minority Rights: A Comparative Analysis*, Westport, Connecticut. London, England: Greenwood Press, p 71
[5] Id. at pp. 41-62
[6] Id. at p 54

another[7]. These guarantees also extended to maintenance of their schools[8]. Most would trace these earliest roots for minority protection to as far back as the Seventeenth Century reforms which were made as a response to protect of religious minorities. For examples, the Treaty of Westphalia, 1648, wherein the Protestant German population were granted religious rights, The Treaty of Paris, 1763, that was signed by France, Great Britain and Spain, in the favour of Roman Catholics in the Canadian territories ceded by France[9], The Conference of London, 1830, (the formation of the Kingdom of Greece took place at this time) where France claimed guarantees for Catholics and Greece undertook to grant equal political rights without distinction of religion to her subjects[10]. However, a second narrative traces the international concern for minority protection to a time that precedes the modern State system and goes back to the middle ages and possibly even prior to it[11]. A case in point, is that in 1250 St Louis pledged to protect the Maronite Christians in the Holy Land, a promise which was then periodically renewed by the French monarchs[12]. An additional example is the situation that was prevalent in the Ottoman Empire where non-Muslims (numerical majority but effectually status minorities) were allowed their own religious laws[13]. The empire categorized each religious community as a separate nation, each person was required to belong to a community or millet (nation) that represented his religious group. The system referred to as the '*millet system*' was implemented in the year 1453 by Sultan Mehmet II after the Ottomans took over Istanbul[14]. This system which was at first established in order to gain the support of Christian religious leaders in conquered territories was gradually extended to the Armenians, the Jews and other non-Muslim minorities.

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[7] Rosting, *supra* note 1, at p 643

[8] Treaty of Olivia Signed between Sweden and Poland, 3 May, 1660

[9] Petričušić, Antonija (2005), "The Rights of Minorities in International Law: Tracing Developments in Normative Arrangements of International Organizations", *Croatian International Relations Review*, 11(38/39): 47-57; See also Lerner, Natan (1991), *Group Rights and Discrimination in International Law*, Dordrecht/Boston/London: Martinus Nijhoff Publishers

[10] Rosting, *supra* note 1, at p 644

[11] Oestreich, Joel E.(1999), "Liberal Theory and Minority Group Rights", Human Rights Quarterly, 21(1):108-132, p 110

[12] Id. at p 110

[13] Sigler, supra note 4, p 70

[14] Kucukcan, Talip (2003), "State, Islam, and Religious Liberty in Modern Turkey: Reconfiguration of Religion in the Public Sphere", *Brigham Young University Law Review*, 2003(2); 475-506, pp 480-481; See also Yildiz, Ilhan (2007), "Minority Rights in Turkey", *Brigham Young University Law Review*, 2007(3): 791-812, p 793

With respect to issues of ethnicity and language we see that it was only towards the latter half of the eighteenth century when the concept of popular sovereignty emerged that ethnic attachments became important. These identities had mattered in the past but not to the same degree of import as it came to be during the eighteenth century. The reason for this change was because political authority in the past had not necessarily vested upon an idea of shared ethnicity, but by the eighteenth and early nineteenth century authority became located in the people. Earlier the political authority's claim to rule was based on the idea of *divine right* but now it became necessary to have a bond between the political rulers and with the people[15]. As such, ethnic characteristics gained prominence and with it came ethnic diversities. These ethnic diversities were seen as potential problems towards the unity of a State. The State responded to this perceived problem with various minority policies ranging from recognition to elimination so as to ensure territorial integrity[16]. In this manner minority protection started to also take the form of ethnic rather than religious protection and was seen for the first time at the Congress of Vienna in 1815. For instance, the Polish treaty recognised the right of Poles to retain their own culture and institutions[17].

The current minority issues that we are most familiar with find their roots in the nineteenth century and may be traced back to the three great congresses of Vienna (1814-15), Paris (1856), and Berlin (1878)[18], which encompassed minority protection provisions in treaties establishing rights and security of populaces that were to be transferred to a foreign sovereignty[19]. Though such provisions did not provide any sort of international supervision, they did express international concern for minorities.

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[15] Preece, Jennifer Jackson (2005), *Minority Rights: Between Diversity and Community*, Cambridge, UK/Malden/USA: Polity Press, p 137

[16] Id

[17] Oestreich, *supra* note 11, at 111; See also Rosting, *supra* note 1, at p 644

[18] The Berlin Congress discussed the question of religious liberty in great detail. Five Article (5, 27, 35, 44 and 62) of the treaty of Berlin provided that a difference of religious belief could not be used as a reason to disqualify a person from the enjoyment of their civil or political rights; See Rosting, *supra* note 1, at p 645

[19] Fink, Carol (1995), "The League of Nations and the Minorities Question", *World Affairs*, 157(4), Woodrow Wilson and the League of Nations: Part One:197-205, p 197; See generally Petričušić, *supra* note 9

2.3 MODERN MINORITY RIGHTS PROTECTION

To better trace the origin of modern minority protection we need to look into the growth of Nationalism in nineteenth century Europe and then move on towards the post-World War I situation[20].

Nationalism has been considered by many to be the foundation of modern minority rights[21]. Through the ages human beings have formed groups to be able to distinguish between the 'us' and 'them'. The 'nation' is one such grouping. Though many use the terms 'nation' and 'nationalism' synonymously there is a distinction between them. Nationalism refers to a set of beliefs about the nation[22] and a distinctive character of nationalism is the belief that the nation is the only goal worth pursuing.

The latter half of the eighteenth and the early nineteenth century saw increased scholarly attention given to the idea of nationalism in Europe. Nationalism was enflamed by the writings and speeches of intellectuals[23] who emphasized upon the importance of language and cultural heritage[24]. Various scholars in Germany like *Gottfried von Herder, Johann Gottlieb Fichte, Friedrich Jahn* etc. began to stress upon the importance of ethnic and cultural factors in the determination of identity. Likewise in Italy there was *Giuseppe Mazzini* who was a proponent of similar ideas. Herder (1744-1803) was the one who first voiced these matters and his theory would later be taken up by other scholars. He is credited with the development of the idea of '*Volk*' which means 'people' or 'nation'. His theory of *Volk* meant a community which was bound together through blood-ties and was characterised by a particular culture, religion, language and customs. According to him a community with its own national character was the most natural State, whereas multinational States were simply mock reproductions that was devoid of inner life[25]. This theory of Herder gained prominence

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[20] See generally Heyking, Baron (1927), "The International Protection of Minorities. The Achilles' Heel of the League of Nations", *Transactions of the Grotius Society*, 13, Problems of Peace and War, Papers Read before the Society: 31-51, Cambridge University Press

[21] Sigler, *supra* note 4, at p 72

[22] See generally Grosby, Steven (2005), *Nationalism: A Very Short Introduction*, New York, USA/Oxford, UK: Oxford University Press, p 1-6; Nations have different views about its character like the views on issues like individual liberty, questions on the sacrifice of liberty for security, its view on immigrants etc.

[23] Sigler, *supra* note 4, at p 71

[24] See Heyking, *supra* note 20, at p 31

[25] Musgrave, Thomas D (1997), *Self-Determination and National Minorities*, Oxford: Clarendon Press, p 5; See also Sigler, *supra* note 4, at p 71

and by nineteenth century the notion of nations being defined by ethnic and linguistic character and the supposition that each nation should govern itself (nation-State) spread throughout Central and Eastern Europe. This in turn spearheaded a condition which saw the international community become progressively susceptible to outbreaks of internal violence that threatened to spread beyond State borders by the end of the nineteenth century[26]. The minority groups in this situation were seen as anomalies incapable to have a nation of their own or be able to join the dominant majority in building their national character. These factors resulted in efforts to assimilate such minorities through various measures, like in Russia through the program of '*russification*' by which attempts were made to assimilate the ethnic minorities present in the State. In this case the ethnic minorities were deprived of the use of their language, were unable to hold public office and had Russian Orthodoxy imposed upon them. These coercive attempts proved unsuccessful in most cases and instead fuelled the aspirations of minorities for their own nation-States. These events saw minorities starting to play a bigger role in the international political scene. Minority discontent and dissatisfaction became one of the most unsettling forces in international relations especially in the context of minority claims in Eastern Europe. In June 1914, the shots which were fired at Sarajevo (fired by an advocate of a minority group[27]) characterised the conclusion of a wave of radical nationalism that challenged the existing political order[28]. As most efforts to deal with these minority issues prior to World War I failed they would prove to become a matter of prime importance post World War I.

Post-World War I a kaleidoscopic redistribution of sovereign power took place. The near concurrent disintegration of the Ottoman, Habsburg, Hohen-zollern and Romanov Empires coupled with Woodrow Wilson's[29] rhetoric of self-determination established the platform for creation of new States and the formation of national, cultural, religious, and linguistic minority communities and subsequent minority related problems[30]. The aftermath of World War I saw the international legal agenda accordingly dominated by national minority groups. There claims ranged from demands for equal treatment with

[26] Fink, *supra* note 19, at p 197
[27] Sigler, *supra* note 4, at p 72
[28] Fink, *supra* note 19, at p 197
[29] Woodrow Wilson was the President of the United States of America (1913 to 1921). He led the United States during World War I and was a major leader at the Paris Peace Conference, 1919 and one of the architects of the League of Nations
[30] See Fink, *supra* note 19, at p 197; Sigler, *supra* note 4, a p 72

majority populations to independent Statehood. The insistence of nationalists was that every nation must have their own States[31]. These sentiments was profoundly seen in the regions of eastern, central and southern Europe. The Slavic minorities, the Irish, Jews etc. were amongst a few of the many groups who were asking for their own State or to join their brethren in already established States[32]. This notion of nationalism which conditions that the boundaries of the nation and the State should coincide was the most dominant and prevailing understanding and was largely accepted by the post-war decision makers headed by Woodrow Wilson[33]. These circumstances helped by nationalist sentiments, marshalled the minorities and minority issues to gain ground in the area of international relations.

The Paris Peace Conference of 1919[34] to a large extent was able to re-arrange and redraw State boundaries in Eastern and Central Europe. This resulted in many national groups coming together within States dominated by their co-nationals. Nonetheless it was not possible to ensure every nation a State of their own due to a variety of historical, geographical and political reasons. The result was that abut 20-30 million people found themselves continuing in, or cast anew in the role of national minorities[35]. The victorious States of World War I who met at the conference were thus particularly concerned about the treatment of minorities. This case of concern stemmed from the apprehension that their newly drawn boundaries might perpetuate-or even accentuate-tensions between majorities and minorities. This apprehension got further accentuated by the fact that the Paris Peace Conference created a quandary by on one hand proclaiming ethnic and racial nationalism as an underlying principle of the State and on the other assigning to States a heterogeneous nationality[36]. The parties to the conference feared political instability particularly in those States in which members of previously separate ethnic groups were joined together in a new or reconfigured State. Woodrow Wilson Stated "*nothing, I venture to say, is more likely to disturb the peace of the world than the treatment which might, in certain circumstances, be meted out to minorities*.[37]" This anxiety over the minority situation was hence sought to be addressed by putting in

[31] Sigler, *supra* note 4, at p 71
[32] Fink, *supra* note 19, at 197
[33] Wippman, David (1997), "The Evolution and Implementation of Minority Rights", *Fordham Law Review*, 66(2):597-626, p 599
[34] The Paris Peace Conference, 1919 is also known as The Versailles Peace Conference, 1919
[35] Wippman, *supra* note 33, at p 599
[36] Heyking, *supra* note 20, at p 34
[37] Sigler, *supra* note 4, at p 72

place a minority protection mechanism[38] which took the form of minority treaties under the League of Nations.

2.4 THE LEAGUE OF NATIONS MECHANISM FOR MINORITY PROTECTION

The League of Nations Framework for Minority Protection was a product of the Paris Peace Conference. Early in the deliberations Wilson made efforts to place a clause in the League Covenant itself for the protection of minorities, however these efforts failed[39]. The protection of minorities were then instead placed in a number of minority treaties. These Minority Treaties which were written created legal obligations upon the signatory States on behalf of racial, linguistic, ethnic and religious minorities.

At the Paris Peace Conference a commission was set up on May 1, 1919, called the Commission on New States[40]. The countries France, Great Britain and the United States collectively referred to as the 'Big Three' and later Italy and Japan were represented on this Commission. This Commission entrusted by President Wilson, M. Clemenceau and Mr. Lloyd George created the first minority treaties[41].

The defeated States, the new States like Poland, Czechoslovakia and Yugoslavia and the States that had increased their territories like Romania and Greece were compelled to sign agreements that contained several provisions dealing with the protection of minorities[42]. What must be noted is that the system of minority protection during the League was in the form of guarantees and not rights. The League of Nations acted as

[38] Heyking, *supra* note 20, at p 34
[39] See for details, Fink, *supra* note 19, at p 198
[40] The Committee on New States met sixty-four times between May and December. Its members negotiated with minority representatives, the leaders of the new States and the Great Powers; See Fink, *supra* note 19, at p 198
[41] Rosting, *supra* note 1, at p 646
[42] Letschert, R.M. (2005), *The Impact of Minority Rights Mechanisms*, The Hague, Netherlands: T.M.C Asser Press, p 11

the guarantor and its functioning was through the Council[43] and when necessary through the Permanent Court of International Justice[44] (PCIJ).

The League's minority's regime with the Council of the League of Nations acting as the guarantor[45] included[46]:

a) The five special minorities treaties that bound Poland, the Serbo-Croat-Slovene State, Romania, Greece and Czechoslovakia;
b) Special minorities clauses in the treaties of peace with four of the defeated central powers: Austria, Turkey, Hungary and Bulgaria;
c) Five general declarations made by Albania, Lithunia, Latvia, Estonia and Iraq on their admission to the League;
d) The special declaration made by Finland in relation to the Aland Islands after it had been admitted to the League;
e) Treaties relating to the territories of Danzig, Memmel and Upper Silesia[47].

The Peace Conference insisted that the defeated or newly reconfigured States accept a set of treaty obligations designed to protect the interests of minority group members. The intention to protect the minorities was however far less in comparison to the pre-dominant purpose which was to preserve international peace. They hoped that this step would help minimize the significance of territorial boundaries for the individuals and groups concerned[48].

2.4.1. The Minority Treaties

The Minority treaties granted religious and political equality to minorities as well as some special rights to minority groups[49]. Consequently the minority treaties of the

[43] The League of Nations was primarily comprised of three constitutional organs, the Assembly (comprising of representatives from all Members of the League), the Permanent Secretariat (it comprised of a body of experts from various spheres placed under the direction of the General Secretary) and the Council. The Council had four permanent members which were The United Kingdom, Italy France and Japan and four non-permanent members who were elected for a three year period by the Assembly. The United States was meant to be the fifth permanent member, however the US Senate's vote against the ratification of the Treaty of Versailles on 19 March 1920 prevented their participation in the League. The League Council acted as a type of executive body directing the Assembly's business.
[44] Meyer, H.N. (1997), "The World Court, Minorities Treaties, And Human Rights", *International Journal on World Peace*, 14(3): 71-81, p 73; See also Fink, *supra* note 19, at p 199
[45] Sigler, *supra note 4*, at p 73
[46] See Annexure-II for list of minority treaties
[47] Letschert, *supra* note 42, at p 11
[48] Wippman, *supra* note 33, at p 600
[49] Fink, *supra* note 19, at p 197

League of Nations are of significance as it was the forerunner to all efforts made and envisaged towards guarantying minority rights post-World War II. It is also important from the perspective of comprehending the efforts made to renounce the system of minority rights and move towards the human rights system which is centred upon individual rights.

As mentioned previously these treaties as well as the minority provisions in the Peace Treaties and the special declarations constituted the League System on protection of minorities. But, many of the world's minority groups were not involved in the system and the League minority system protected National Minorities and not all racial and linguistic minorities.

These minority treaties were different in form from the earlier treaties which were associated with questions on minority issues. The primary difference was based on the enforcement procedure[50]. The guarantee for the minority protection provisions which earlier had been vested on the Great Powers were now entrusted to the League of Nations[51]. Further, a clause was included in all the treaties which provided that in the case of disputes arising in connection to the minority provisions they may be submitted to the Court of International Justice[52]. The rational for this move was to ensure that disputes were removed from the political arena to the legal.

The Polish Minority Treaty[53] was the first of the Minority Treaties and was signed on June 28, 1919, simultaneously with the Treaty of Versailles. This treaty formed the prototype and basis for all subsequent agreements[54] and the foundation for the international minority protection system. The principle provisions of the Polish Treaty regarding minority protection were provided in Articles 1 through 8. These Articles were deemed as "fundamental laws"[55] which overrode any form of law, legislation or edict. It assured "full and complete protection of life ...without distinction of birth, nationality, language, race or religion"[56]. Article 12 of the Polish Treaty provided that "obligations of international concern" could not be modified without the majority of

[50] See generally, Fink, *supra* note 19
[51] Rosting, *supra* note 1, at p 647
[52] Rosting, *supra* note 1, at p 647
[53] The Treaty of June 28,1919, between the Principal Allied and Associated Powers and Poland, placed under the guarantee of the League of Nations, February 13, 1920
[54] Fink, *supra* note 19, at p 198
[55] Article 1, The Polish Treaty
[56] Article 2, The Polish Treaty; See also Fink, *supra* note 19

the League of Nations Council. This provision was a noteworthy innovation of the Paris Peace Conference[57].

The treaty provisions as they appear in the treaties concluded by the League can be divided into five parts. Part one include provisions of freedom of life and liberty and to be able to profess one's own religion which are common to all the inhabitants of the country. As such even appointments to State and municipal offices were to be made solely on grounds of personal merit and qualifications[58].

Part two involve provisions relating to the acquisition of the nationality of the country. The conditions relating to acquisition of nationality vary from treaty to treaty with the exception of two which are found in all the treaties[59]. These include a) being born in the country and b) being a domicile of the country or possessing '*Indigénat*' there at the time of the entry into force of the treaty.

Part three includes the specific rights to nationals of the country belonging to racial, religious or linguistic minorities. These ranged over rights involving personal safety to liberty[60]; freedom of Press and association and political discourse, that the political offences are to be dealt with by the ordinary Courts[61]; freedom of religion and right to language including the use of their own language in the Courts[62]; the right of changing allegiance without incurring penalty, adequate facilities being given for the transference of property where such right was present[63]; freedom of commerce and industry[64] and the right of property[65]. The Committee on New States which reflected the will of the

[57] Fink, *supra* note 19, at p 199
[58] See Articles 7 and 8, Treaty with Poland; Articles 40, 51, 53, Treaty with Bulgaria; Article 8, Treaty with Romania; Article. 7, Treaty with Czecho-Slovakia; Article 7, Treaty with Yugo-Slavia; Article 147, Treaty with Turkey
[59] Rosting, *supra* note 1, at p 648
[60] See Article 2, Treaty with Poland; Article 2, Treaty with Greece; Article 55, Treaty with Hungary; Article 2, Treaty with Romania; Article 7, Treaty with Czecho-Slovakia; Article 7, Treaty with Yugo-Slavia; Article 141, Treaty with Turkey
[61] Article 7, Treaty with Poland; Article 145, Treaty with Turkey; Article 66, Treaty with Austria; Article 53, Treaty with Bulgaria; Article 7, Treaty with Greece; Article 58, Treaty with Hungary; Article 8, Treaty with Romania; Article 7, Treaty with Czecho-Slovakia
[62] Articles 8 and 9, Treaty with Czecho-Slovakia; Article 10, Treaty with Romania; Article 8 and 9, Treaty with Yugo-Slavia; Articles. 55 and 59, Treaty with Hungary; Articles. 148 and 149, Treaty with Turkey; Articles. 50 and 55, Treaty with Bulgaria; Articles. 8, 9, 10 and 12, Treaty with Greece
[63] Articles 3, 4 and 5, Treaty with Poland; Articles 78-82, Treaty with Austria; Articles 3 and 5, Treaty with Romania; Articles 124, 125 and 143, Treaty with Turkey
[64] Article 7, Treaty with Poland; Articles 145 and 281, Treaty with Turkey; Article 66, Treaty with Austria; Article 53, Treaty with Bulgaria; Article 7, Treaty with Greece; Article 58, Treaty with Hungary; Article 8, Treaty with Romania
[65] Articles 126, 128, 144, 251, 287 and 288, Treaty with Turkey; Article 3, Treaty with Poland; Articles. 78, 250, 259 and 264; Article 14, Treaty with Greece; Austria, Article 75.

Great Powers however did not sanction the minorities' treaties to have any special mention of cultural or national autonomy[66]. This was done to anticipate and stop situations that may arise which could envisage the creation of "State within a State"[67].

Part four consist of the provisions which dealt with the juridical character of these obligations. For instance Article 1 of the treaties provided that the provisions in the treaty are "fundamental laws"[68]. Further, the treaties have provisions that State persons belonging to minorities are recognised as constituting international obligations which shall be placed under the guarantee of the League of Nations. For example Article 12 of the Polish treaty provides:

> "Poland agrees that the stipulations in the foregoing articles, so far as they affect persons belonging to racial, religious or linguistic minorities, constitute obligations of international concern and shall be placed under the guarantee of the League of Nations. They shall not be modified without the assent of a majority of the Council of the League of Nations. The United States, the British Empire, France, Italy and Japan hereby agree not to withhold their assent from any modification in these Articles which is in due form assented to by majority of the Council of the League of Nations."

However, as only Council members had the right to call attention of the Council to violations of the treaty provisions these provision although ground-breaking were seen as a setback for minorities who had hoped to be able to directly access the League.

Part five include the special provisions dealing with local and particular conditions. For instance, the treaties with Yugoslavia and Greece have provisions which safeguard the rights of the Islamic minority, the charter for the autonomy of the Ruthenians south of the Carpathians incorporated into the Czescho-Slovak treaty[69] and the Polish treaty contains special provisions in regard to Jews[70].

The minorities treaties barring a few exceptions[71] did not formally establish collective rights. The protection offered under the treaties was to members of minorities as

[66] Exception to this was the political autonomy in respect of the Ruthenes south of the Carpathian Mountains (which is provided for in the provisions of Article 10-13, Treaty with Czecho-Slovakia) and religious and scholastic autonomy for the Saxons and Czechs in Transyl- vania (established by the treaty with Romania (Art. 11))
[67] Fink, *supra* note 19, at p 199
[68] Article 1, The Polish Treaty
[69] Rosting, *supra* note 1, at p 649
[70] Article 11, Polish Treaty
[71] See Positive Rights in Sigler, *supra* note 4, at p 73

individuals[72]. This was mainly because the League system was infused with the notion of individual rights as its draftsmen like Wilson avowed to the liberal traditions which gave primacy to individual identity[73]. However, in practice the special measures which were intended to enhance the ability of minorities to enjoy group-specific interests, including language, religion, and culture advanced the interests of minorities as collectives for they promised minority distinctiveness[74]. Further, "associations formed by minorities were on many occasions declared capable of exercising the right of petition.[75]" In this manner the League of Nations framework overlaid certain elements of collective rights on a formally individual rights approach[76].

2.4.2 The Procedural Mechanism

The procedure with regards to the minority complaints as provided for in the treaties is as follows: a) the petitions concerning minority issues being sent to the League could come from any source. However, only individual Council members had the right to place a complaint calling attention to any infraction or possible danger of infraction on the agenda[77]. In this way Minorities did have a right of petition, but could only present information to the League Council. They did not have standing to appear before the Council to argue their case[78]; b) any difference of opinion to questions of law or fact that may arise out of the articles of the treaties between the Contracting Powers and one of the Members of the Council, were to be held to be a dispute of an international character under Art. 14 of the Covenant of the League Nations[79].

Apart from the treaty obligations a succession of Council Resolutions were also adopted by the League Council so as to establish a detailed procedure which was to be followed while dealing with petitions to the Council on the question of the minority guarantees

[72] Capotorti, Francesco (1979), "Study of the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities, Sub-Commission on Prevention of Discrimination and Protection of Minorities", U.N. ESCOR, 30th Session, U.N. Doc. EJCN.41Sub. 2/3841 REV., paragraph 101, cited in Wippman, *supra* note 33, at p 600
[73] Sigler, *supra* note 4, at p73
[74] Sigler, *supra* note 4, at p 73
[75] Capotorti, Francesco (1979), "Study of the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities, Sub-Commission on Prevention of Discrimination and Protection of Minorities", U.N. ESCOR, 30th Session, U.N. Doc. EJCN.41Sub. 2/3841 REV., paragraph 101, cited in Wippman, *supra* note 33, at p 600
[76] Wippman, *supra* note 33, at p 600
[77] Fink, *supra* note 19, at p 200; See also Rosting, supra note 1, at p 653
[78] Wippman, *supra* note 33, at p 601
[79] Heyking, *supra* note 20, at p 38

provided in the treaties[80]. According to *Heyking* these resolutions had the unfortunate consequence of weakening the protection accorded to minorities[81]. Some of the resolutions taken are discussed below.

The resolution of 22 October, 1920 wherein it was decided that the grievances of minorities which were addressed to the Council should not have the legal effect of apprising the Council of the question at issue and could only take the form of a petition or as a communication of information[82].

The resolution of 25 October, 1920 defined the situations under which members of the Council shall exercise their powers with respect to the protection of minorities. The resolution also laid down that the petitions would be considered by the President of the Council and two members who have been appointed by him in each case[83]. This resolution also set up a committee called 'The Committee of Three'. This Committee of Three which was an ad-hoc council panel was created to reduce the burden of handling petitions by the League[84]. The primary objective of the committee was to decide which complaints merited the attention of the Council. The League in this manner restricted the terms of receiving and distribution of petitions and observations to the Council. The accused States were allowed to respond and unless a case was brought to the Council documents were not made public[85]. The Committee of Three during regular sessions studied the documentation from the minorities, accused State and the League and came to one of three decisions. In the majority of cases the League's minorities director commenced negotiations aimed at coming up with at least a minimum amount of concession or reforms that wold allow for the resolution of the question satisfactorily[86]. If an amicable settlement was reached in the course of the negotiations, the case was closed and no report was made. The Committee of Three thus fast turned into an agency for the settling of minority cases outside the Court. The second decision that could be made in a rare case would be an appeal would be dropped without any information to the parties concerned even the Council. The third decision that the committee could reach in the rarest of scenarios was bringing the case in front

[80] Rosting, *supra* note 1, at p 654
[81] Heyking, *supra* note 20, at p 38
[82] Heyking, *supra* note 20, at p 38
[83] Rosting, *supra* note 1, at p 654
[84] Fink, *supra* note 19, at p 200
[85] Fink, *supra* note 19, at p 200
[86] Fink, *supra* note 19, at p 200

of the League Council[87]. This happened only when a clear indication of an infraction existed.

The resolution of 27 June, 1921 made it mandatory to communicate to the State concerned any petition regarding the protection of minorities, if the communication came from a source other than a Member of the League of Nations[88]. Only after this would it be transmitted to other Members of the League.

The resolution of 5 September, 1923 changed the manner in which petitions were to be communicated. It no longer was a requirement to communicate it to all the members of the League but only to the Members of the Council[89]. It was pointed out here that this change in the manner of communication would make it impossible to use the system of petitions for the sole purpose of malevolent publicity against a State[90].

Another resolution of 5 September, 1923 required that petitions of minorities should conform to the object of the treaties i.e. *respect the inviolability of the State of which the minority in question is a part of* (emphasis added), that the petitions are not anonymous and that they must cover new facts or facts which have yet to be mentioned in any other petition submitted[91].

The resolution of 10 June, 1925 through which it was laid down that neither the President, the two Members appointed by him or the Committee of Three should belong to a State to which the minority in question belongs to, or is neighbour to such a State, or where the majority of the population is of the same race as that of the petitioning minority[92].

Based on these resolutions, the procedure to be followed as to the admissibility of petitions include criteria such as: the petitions must be in accordance to the treaties, must not be from an unidentified or unspecified source, must not be framed in a manner that would request the division or severance of the minority from the State of which it forms a part and must not be communicated in violent language[93]. The admissibility

[87] Fink, *supra* note 19, at p 200.
[88] Heyking, *supra* note 20, at p 38
[89]Heyking, *supra* note 20, at p 38
[90] See the Report of the Brazilian representative in Heyking, *supra* note 20, at p 40
[91] Heyking, *supra* note 20, at p 40
[92] Heyking, supra note 20, at p 40
[93] Rosting, supra note 1, at p 655

terms of petitions were restricted so as to assuage the fears that the complaints procedure might encourage numerous petitions[94].

The mechanism which was followed after the receipt of the petition in brief is as under:

1. Once the petitions have been received by the Secretary General of the League the acceptability of the petitions was looked into[95].
2. If the petition was found to be admissible, it was communicated to the State concerned who in turn could submit its comments within a period of two months if it thought fit to do so.
3. The petition along with the government's reply is then communicated to all the members of the League and later in pursuance to the resolution of 5 September, 1923 only to the members of the Council for information. A special copy is sent to the Council President
4. The petition is then examined by the Council President and two members of the Council appointed by him. If an infraction or danger of an infraction to a clause of a minority treaty it can be brought to the notice of the Council.
5. Once a petition is brought to the notice of the Council may take action or give directions which they deem fit and which would be effective under the circumstances.
6. In the case of any differences arising on points of law or fact between the State concerned and a member of the Council, the difference would be considered as a dispute of an international character under Article 14 of the Covenant of the League of Nations and could be referred to the Permanent Court of Justice.

2.4.3 Controversies and Failure of the League

The League's Minority Regime had garnered criticism from the very outset itself. One of the major criticism was that the Minorities and their advocates regretted their exclusion to have a direct access to the league system[96]. The League system had a set of cautiously bounded rights to a small number of States[97]and did not establish any form of "general jurisprudence applicable wherever racial, linguistic or religious

[94] Fink, *supra* note 19, at p 200
[95] Rosting, *supra* note 1 at p 655
[96] Fink, *supra* note 19, at p199, Sigler, *supra* note 4, at p 74
[97] Wippman, *supra* note 33, at p 601

minorities existed"[98]. The States that were bound by the minority treaties felt that it was an infringement of their sovereignty especially considering the fact that the victorious States were not similarly bound by minority rights provisions. The treaties were country-specific intended to "facilitate the solution of minority problems in countries where 'owing to special circumstances, these problems might present particular difficulties'.[99]" The element of discontent was also grounded on the fact that the treaties satisfied neither the States that were signatories to them nor the minority groups. The minority groups viewed the protections as derisory and inadequate, and begrudged the fact that they lacked legal standing as corporate entities to directly challenge the League when there were treaty violations[100]. The minority States viewed the protections to be an inhibition toward the process of natural assimilation and instead considered them to be the creator of internal disunity and discord[101]. The refusal to develop a Universal system for the protection of minorities furthered the discontent amongst both States and minority Groups. The League's minorities system for the aggrieved minorities was also cumbersome[102] and was fundamentally a peace-making and conciliatory process[103]. Any Council member could approach the Court of International Justice for an advisory opinion while the minority could not appeal at all[104]. The League System was further riddled with enormous problems as it was unable to become a powerful agency without the membership of countries like the United States, Soviet Russia[105] or Germany[106].

Nevertheless, even in the face of all these criticisms the League can be credited for having been able to develop a system of minority protection that would later form the basis for contemporary minority rights. It not only tried to protect individuals of minority groups but also the group associated rights of minority communities to profess their religion and to live as distinct cultural and linguistic entities[107]. Though the non-

[98] Claude, Inis Lothair Jr.(1955), National Minorities: An International Problem, USA: Harvard University Press, pp 16-17 quoted in Wippman, *supra* note 33, at p 601; See further the Justification given by M. Mello Franco as to the limitation of the minority protection to a few States even after various representation made to the contrary in Heyking, *supra* note 20, at pp 40-41

[99] Claude, Inis Lothair Jr.(1955), National Minorities: An International Problem, USA: Harvard University Press, pp 16-17 quoted in Wippman, *supra* note 33, at p 601

[100] Wippman, *supra* note 33, at p 601, Sigler, *supra* note 4, at p 73, Fink, *supra* note 19, at p 199

[101] Wippman, *supra* note 33, at p 602

[102] Sigler, *supra* note 4, at p 74

[103] Fink, *supra* note 19, at p 200

[104] Fink, *supra* note 19, at p 200

[105] Fink, *supra* note 19, at p 199

[106] Germany left the League in 1933; See also Sigler, *supra* note 4, at p 75

[107] Letschert, *supra* note 42, at p 11

inclusion of provisions of minority protection in League Covenant itself led to the loss of their potential to attain universal significance[108] the League system at least ensured that its member States took a step forward in the direction of protection of minorities.

2.5 CASES ON MINORITY ISSUES AT THE PCIJ

Several disputes concerning minorities and the minority treaties were as Stated above brought before the Council of the League of Nations and a few even went on to be brought up before Permanent Court of International Justice (PCIJ) or the World Court. Amongst such disputes a number of the disputes which reached the PCIJ concerned the German minorities in Poland.

2.5.1 German Settlers in Poland (Advisory Opinion)[109]

The facts of this case were regarding the situation of persons belonging to the German Race who had under the Prussian Law of 1886 and subsequent legislation, settled under contracts made with the Prussian Government in the territories which, under the Treaty of Versailles, were to form part of a newly reconstituted State of Poland. Problems arose when the Polish Government considered itself entitled simply to evict, these German settlers from their lands. These evictions and the subsequent protests were brought before the League of Nations by a telegram from the German League for the Protection of the Rights of Minorities in Poland to the Secretary-General, dated November 8th, 1921. It must be noted that when the question was before the Council the Polish Government disputed the soundness of the conclusions of the Council. This dispute was thus brought before the court, and it delivered its Opinion on September 10th, 1923.

One of the questions that was before the Court dealt with the competence of the Council. The Court considered that the question was duly brought to the notice of the Council in accordance with the terms of the Treaty of Minorities. The argument that the Polish Government's actions with regards the eviction of the settlers was under the Peace Treaty, did not remove the case from the competence of the Council. The rational for was that if the Council ceased to be competent whenever a subject before it involved the interpretation of an international engagement, the Minorities Treaty would lose a

[108] Fink, *supra* note 19, at p 198
[109] *German Settlers in Poland, Advisory Opinion*, (1923), P.C.I.J. (series B) No. 6 (September 10)

great part of its value. In the present case the interpretation of the Treaty of Peace was considered to be incidental to the decision on questions which were under the Minorities Treaty. The second question which related directly to the eviction of German Settlers the Court held that the position adopted by Poland was not in conformity with her international obligations. That Poland had to respect land contracts that the settlers had concluded with the Prussian government before the war.

This advisory opinion has been considered to be one of the few successful cases involving the minority treaties[110].

2.5.2 Access to German Minority School in Upper Silesia (Advisory Opinion)[111],

In this case the facts of the dispute revolved around the educational system and admission to minority schools which were to be done on the basis of language tests. In 1926, difficulties arose between the Polish authorities and the *Deutscher Volksbund* who represented the German minority. This difficulty arose due to an administrative enquiry held by the Polish authorities with respect to the applications for the admission of children to the German schools for the school year 1926–1927 when a large number of the applications were rejected by those authorities on the ground that they were irregular or that the children did not belong to the German minority. Consequently the *Deutscher Volksbund* appealed to the Council of the League of Nations on the subject, and the latter, by a Resolution of March 12th, 1927, whilst reserving the question of law—which was a question of the interpretation of Articles 74 and 131 of the Geneva Convention of May 15th, 1922, between Germany and Poland—instituted for the school year in question a language test designed to ascertain whether the children could usefully receive instruction imparted in German. As a result of similar situations arising again a fresh appeal was made and a similar decision was given by the Council on December 8th, 1927, for the school year 1927–1928.

On April 26th, 1928, the Court gave a judgment on the question of law determining the interpretation of the provisions of the Geneva Convention governing admission to Minority schools. According to this judgment, the declarations mentioned in Article 131 of the Convention must be in accordance with the facts, but they may not be

[110] Sigler, *supra* note 4, at p 75
[111] *Access to German Minority Schools in Upper Silesia, Advisory Opinion*, (1931), P.C.I.J. (series A/B) No. 40 (May 15)

subjected to any form of verification, dispute, pressure or hindrance on the part of the authorities, this prohibition also applying to declarations regarding membership of the minority. In May, 1928, requests for admission to the German Minority schools were submitted on behalf of 172 children who, at the time when entries for the minority schools were being made for the year 1928–1929, had undergone the language test provided for by the Council's resolutions and had been found not to possess an adequate knowledge of German. These applications, like the preceding ones, were rejected by the Polish authorities. Once more, in November-December 1929, this time with reference to the school year 1929–1930, the same questions were raised in regard to sixty children who had been excluded as a result of the language tests of 1927–1928. When these facts were brought before the Court, it held that system of language tests which had been instituted by the Council's Resolution of March 12th, 1927 was a measure, solely intended to meet a temporary situation, of the existence of a large number of children whose admission to the German minority school had been applied for but had been refused and was in no way meant to modify the Geneva Convention. The only object of the language tests and its only consequence was to ascertain whether children could usefully attend schools in which literary German was the language of instruction. The Court thus held that the Council did not create a special and permanent situation for the children in question; it simply adopted a measure intended to disappear when the interpretation of the Convention was determined by the solution of the questions of law left open which had been done by the courts judgement of April 26th, 1928. As such the language tests held by Polish authorities for the purpose of school admissions were considered incompatible with the convention of 1922.

2.5.3 Acquisition of Polish Nationality[112]

This case involved the acquisition of Polish nationality where the Polish Government considered itself entitled, to not recognize as Polish nationals certain persons who were formerly German nationals and refused to allow them to enjoy the guarantees granted by the Treaty of Minorities signed at Versailles on June 28th, 1919, between the Principal Allied and Associated Powers and Poland. The PCIJ in its advisory opinion on the merits of the case found that persons should obtain Polish nationality if their parents had habitually resided in the territory which was ceded to Poland when these

[112] *Acquisition of Polish Nationality, Advisory Opinion,* (1923) P.C.I.J. (series B) No. 7 (September 15)

persons were born. The Court in this case rejected arguments that would make it apply a narrow construction. The Court was of the opinion that the provisions of the Minorities Treaty do not refer restrictively to Polish 'nationals', but considerably extend the conceptions of 'minority' and 'population', since they refer on the one hand to the 'inhabitants' of the territories over which Poland has assumed sovereignty, and, on the other hand, to 'inhabitants' differing from the majority of the population. Thus the Polish Government is placed under an obligation to protect the inhabitants of Poland without distinction of nationality. The persons whose nationality is in dispute in this case may still claim the benefit of the guarantee provided for minorities under the Treaty. In this case as well the Court said that having a contrary interpretation would make the Minorities Treaty lose its value.

Apart from these cases involving German Minorities in Poland there were a number of other cases involving other minority groups.

2.5.4 Minority Schools in Albania (Advisory Opinion) [113]

This was one of the last cases that came up before the PCIJ involving minority protection. In this case the difficulties involving minority protection arose when in 1923 the Albanian Government started to have intentions to abolish the right to maintain and establish private schools. Following such intentions, in 1930, steps were taken to secularize education which ultimately in the year 1933 resulted in the amendment to the Constitution of 1928, by which private schools were abolished. This situation resulted in petitions to the League of Nations on behalf of the minorities. Greece for instance protested on behalf of the Greek Catholic religion to continue to have their church schools. The case was then brought to the PCIJ for its opinion. The Albanian government stated that the abolition of the private schools in Albania was a general measure applicable to the majority as well as to the minority. They further argued that as the ethnic Albanian majority was also deprived of the right to attend private schools the other ethnic minorities were not deprived of 'equality'. They contended that in fact compelling Albania to respect the private minority schools would create a privilege in favour of the minority. The Court responded to these contentions by holding that equality in law does prohibit discrimination of any kind nevertheless equality in fact may encompass the necessity of different treatment. The equality between the members

[113] *Minority Schools in Albania, Advisory Opinion*, (1935) P.C.I.J. (series A/B) No. 64 (April 6)

of the majority and minority needs to be effective and genuine equality. The Court also highlighted the object of the Minority Treaty to include the preserving of characteristics which distinguish a minority from the majority and satisfying any special needs of the minorities in their efforts to preserve their characteristics. The Court also made mention of the two interlocking principles laid down in the Treaties. The first being equality between nationals belonging to the minority and other nationals and the second the grant to minorities suitable means for the preservation of their racial peculiarities, their traditions and their characteristics. As such the Court's opinion was that there could exist no true equality between the majority and minority if the minorities were dispossessed of their own institutions and forced to forsake that which establishes the very essence of their being as a minority. The Court held that the contention of the Albanian Government was thus not well-founded[114]

2.5.5 Assessment of the Cases and their Continued Relevance

An assessment of the cases involving the minority treaties and minority issues decided by PCIJ we see that they were quite impressive. The PCIJ whilst interpreting the Minority Treaties interpreted them in a broad sense and rejected narrow constructions and gave due regard to the underlying intent of the treaties. The Court was against any interpretation which might in any way reduce or weaken the protection for minorities guaranteed under them. We also find that through its opinions it tried to ensure equality to minorities which was not limited to equality in law but also to equality in fact. These decisions of the PCIJ are still very much relevant today though the minority treaties are no longer applied. This is because many of these cases like the *Minority Schools in Albania* are still widely quoted not only for their ideas but also general principles of law. They present us with an understanding of how to deal with minority rights issues today and contribute greatly to the better understanding of minority issues some of which are very similar to what we are facing in present times.

[114] For different views read Dissenting opinion by Sir Cecil Hurst, Count Rostworowski and M. Negulesco

2.6 POST SECOND WORLD WAR SITUATION

Post-World War II there were a number of proposals for the inclusion of some version of the minority protection system[115], the framers of the United Nations however would chose not to do so. One of the reasons not to have a minority protection system was the perception of failure of the League and abuse of the minority protection system by some. The second and more overpowering reason was the perceived threat to the integrity and national sovereignty of the State if minority protections were given[116]. Minority groups were seen as forces of destabilization. Also people like Roosevelt and other American leaders who had a prominent say felt that there was no requirement for special protection of minority groups[117]. The reasoning behind this viewpoint was that they were familiar only with situations of discrimination against groups (like the Blacks) who sought integration into society[118]. They hence could not fathom groups who might want to protect and preserve their distinctive identity, culture, language, etc.

The post second world war approach therefore came to be based on individual rights. The argument was that the broad spectrum of individual rights would by itself protect the minority interests. There was also the philosophical argument for having individual rights as the notion of minority rights ran counter to Liberal Theory[119]. Both the United Nations Charter and the Universal Declaration of Human Rights did not make any mention of minority rights. Though there was not a complete neglect of minority concerns, it simply was no longer considered high on the international agenda[120]. After a certain lapse in time, however, minority issues would again start to feature in legal instruments like the International Covenant on Civil and Political Rights. But the individual rights focus would become a pre-dominant feature of minority rights provisions.

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[115] Wippman, *supra* note 33, at p 602
[116] Sigler, *supra* note 4, at p 75
[117] Sigler, *supra* note 4, at p 77
[118] Sigler, *supra* note 4, at p 77
[119] See *supra* Chapter 3, Section on Central Debates
[120] Sigler, *supra* note 4, at p 77

2.7 CONCLUDING REMARKS

The problems associated with minorities and questions regarding their protection have had their presence as far back to at least the Middle Ages, but contemporary minority rights find their roots in the League of Nations mechanism for minority protection. The League System has received both praise for the establishment of minority protection as well as criticism for not being effective enough to solving minority issues. What is important to note from the analysis of the historical account is the continued and underlying sentiment of States that minority groups are forces of subversion and disunity. For instance, the loyalty of minority groups towards their States was a requirement during the League System of minority protection.

The move away from the minority protection system has also been in part attributed to this sentiment of minority groups being a threat the unity of the State. The other reasons for the move has its basis on the Liberal Theory that esteems the individual over the group. In light of this the next chapter engages with the normative understating of minority rights and claims.

CHAPTER 3
NORMATIVE APPROACHES TO MINORITY RIGHTS

NORMATIVE APPROACHES TO MINORITY RIGHTS

"Diversity is not about how we differ. Diversity is about embracing one another's uniqueness."

- Ola Joseph

3.1 INTRODUCTION

To date there has been no acceptable definition of the term 'minority' as the concept is fluid depending on different social and political factors in different historical contexts. Hence, this chapter will deal with the problems of defining 'minority' and the principles on which the rights are based on. The question of minority rights are to a large extent hinged upon States and their various policies which are adopted by them pursuant to their specific philosophical and moral foundations and ideologies. The chapter will therefore be examining the issue of minority rights based on the different policies that have been adopted by them in the past and the present.

A section of this chapter also looks into understanding the scope and content of minority rights. This is important for the reason that even the people who would in principle agree that minorities have rights may differ on the question of what should the contents of such rights be. Minority rights may be viewed from a variety of perspectives like the individual versus collective rights debate to questions of self-determination. This chapter thus makes an attempt to gain a better viewpoint into the entire discourse on minority rights and understand its moral, political and philosophical foundations by studying the scholarly debates on the issues.

3.2 DEFINING MINORITY

A definition can be considered to be the first step towards the precise and better understanding of a term or concept. Therefore, for a satisfactory understanding of minority rights it is vital to have a good definition of the term '*minority*'. There has been no adequate definition that has been agreed upon either at the international or regional level till the present. It is significant to note that agreement has not been reached even in international documents that deal with the issue of minority

protection[121]. Hence, the aim of this section is to make an overview and critically analyse the various proposed definitions. Before addressing some of the prevalent and recommended definitions it must be pointed out that there will not be an attempt to choose any one definition or propose a working definition as the focus of this dissertation is to understand and critically examine Minority Rights under international law.

A variety of reasons have been attributed to the inability to arrive at an acceptable definition. The word itself is understood differently amongst different societies and some are unwilling to even use the term due to its link to the post world war I regime finding it obsolete. The difficulty also arises due to the variety of ways in which minorities exist. Some are scattered whilst some live in well- defined territories, some have a deep-rooted sense of identity whilst others retain only disjointed ideas of a shared heritage. In addition to this experts are now of the view that a continued search for a widely accepted definition hinders the work on the documents regarding minority issues and the content of rights which is significantly more important. Another important reason has been the political scenario of the world. Most States at some point or the other have been reluctant to recognise minority groups for fear of destabilizing the State[122].

This is not to say that efforts have not been made to arrive at an acceptable definition. Many scholars from a variety of fields as well as organisations like the United Nations[123] and the Organization for Security and Co-operation in Europe[124] have attempted to arrive at a suitable and widely accepted definition. Many working definitions have been suggested over the years but have for the most failed to achieve success or wide acceptance.

The UN for example having attempted to arrive at a definition and failing to agree upon one have instead qualified the term '*minority*'. As such we find that the UN documents dealing with Minority Rights or having provisions on Minorities have qualified the term

[121] Sigler, *supra* note 4, at p 3
[122] Letschert, *supra* note 42, at p 28; See also Shaw, M.N. (1992), "The Definition of Minorities in International Law, in Dinstein, Y and Tabory, M. (eds.), *The Protection of Minorities and Human Rights*, Netherlands: Martinus Nijhoff Publishers, pp. 1-31, p 30
[123] Hereinafter Referred to as UN
[124] Hereinafter Referred to as OSCE

minority with words like '*religious*', '*ethnic*' and '*linguistic*' minority[125]. The UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 1992[126] in its title, unlike Article 27 of the International Covenant on Civil and Political Rights, 1966[127] has added the term National Minority as well. It is to be noted here that unlike the Universal Declaration of Human Rights, 1948[128] the term minority has not been qualified by race, colour and sex which are also considered to be impermissible grounds for unfavourable treatment.

The United Nations Sub- Commission on Prevention of Discrimination and Protection of Minorities in its initial years had also made attempts to agree upon a definition but was unsuccessful. The Sub-Commission's recommended definition in the year 1950 was:

> "I -the term minority includes only those non-dominant groups in a population which possess and wish to preserve stable ethnic, religious or linguistic traditions or characteristics markedly different from those of the rest of the population;
>
> II -such minorities should properly include a number of persons sufficient by themselves to preserve such traditions or characteristics; and
>
> III -such minorities must be loyal to the State of which they are nationals."[129]

The most widely accepted theoretical definition of the term minority however is perhaps the one provided by Francesco Capotorti. Capotorti, was a special Rapporteur of the United Nations Sub- Commission on Prevention of Discrimination and Protection of Minorities. He did so in accordance with the Article 27 of the Covenant on Civil and Political Rights and defined a Minority Group as[130]:

> "a group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members- being nationals of the State- posses

[125] Article 27, ICCPR
[126] *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*, 1992, UNGA, A/RES/47/135, [Hereinafter referred to as UN Declaration on Minorities]
[127] *International Covenant on Civil and Political Rights*, 1966, UNGA, U.N.T.S 999, [Hereinafter referred to as ICCPR]
[128] *Universal Declaration of Human Rights*, 1948, UNGA Resolution 217 A (III), [Hereinafter referred to as UDHR]
[129] *United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities*, (1950), UN Doc. E/CN. 4/641 Annex I, Resolution II; See also Thornberry, Patrick (1991) *Minorities and Human Rights Law*, London: Minority Rights Group, pp 6-7
[130] Francesco Capotorti, *Study on the Rights of persons Belonging to Ethnic, Religious and Linguistic Minorities*, (1979), UN Doc. E/CN.4/Sub.2/384/Rev. I, p. 96, cited in Sigler, *supra* note 4, at p 4

> ethnic, religious or linguistic characteristics differing from the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language.''

This definition was intended not to go beyond the scope of Article 27 of the ICCPR and consequently is narrow. The definition due to the limitation to "nationals of the State" does not include aliens, refugees or immigrants and also due to the constraints on numbers excludes numerically larger but non-dominant groups[131].

The definition by Capotorti also includes a subjective element. This element covered in the definition pertains to the wish of a minority to preserve its individuality. This subjective element possess a danger as it is difficult to establish the will of the group to preserve its identity thereby opening the way for States not wishing to protect minorities to evade responsibility by claiming that the minority themselves had no wish to preserve their individual identity. This danger occurring due to the definition's subjective element has been admitted by Capotorti himself[132].

Canada's Jules Deschenes later submitted to the Sub-Commission in 1985 a revised version of Capotorti[133]:

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

There is not much of a difference between the two definitions as Deschenes did not in any way substantially change or add to the definition. Thus, both definitions confine minorities to nationals or citizens respectively. They both emphasise upon non-dominance and contain a subjective criteria along with the objective criteria.

At this stage it is important to address the question of '*national minority*'. As previously mentioned that though Article 27 of the ICCPR does not mention this term the UN Declaration on Minorities does so. However, it fails to give us any adequate understanding of it. '*National Minority*' is primarily a European Concept and most of

[131] For example the situation of the numerically large but non-dominant black population in Apartheid South Africa.
[132] Sigler, *supra* note 4, p 4
[133] Deschênes, Jules (1985), *Proposals Concerning a Definition of The Term Minority*, UN Doc. E/CN.4/Sub.2/1985/31

the regional documents and minority protection in Europe is intended towards national minorities. However this term is also left undefined. The term however generally refers to a) minority groups who are the nationals of one State but have ethnic ties to another or a so called 'kin State' and b) minorities that reside on the territory of a State and who are also citizens of the State maintaining long standing and lasting ties to the State.

The Proposal for an Additional Protocol on the Rights of National Minorities to the European Convention on Human Rights and Fundamental Freedoms did contain a definition of a "national minority group." It reads:

> "group of persons in a State who reside on the territory of the State and are citizens thereof; mainly longstanding, firm and longlasting ties with a State; display distinctive ethnic, cultural, religious or linguistic characteristics; are sufficiently representative, although smaller in number than the rest of the population of the State or of a region of the State."[134]

Almost all of the working and suggested definitions varying though they may be put forward some characteristic traits of a minority group. Groups which are ethnically, religiously and linguistically different from the rest of the society in which they live in, are non-dominant can be said to be a minority. The subjective element of a minority group to wish to preserve their own identity is also considered an important criteria.

The lack of an accepted definition on minority has been claimed to not being a big obstacle for the progress of minority rights. Scholars like Thornberry argues that the lack of a definition is "not a fatal obstacle to progress". The qualifying of the word minority with terms like *'ethnic', 'national', 'linguistic' and 'religious'* constitute as a satisfactory definition in themselves[135]. Andrysek has stated that the lack of a definition has never proved to be an absolute obstacle towards the drawing up of instruments that contain minority provisions as the essential elements are well known[136].

Conversely it can be argued that the lack of a definition does and has proved to be of substantial concern. Not having a definition leads to uncertainty as to who can be considered as a minority. Some definitions are narrow while some broad. This has led to multiple claims of groups to be categorized as minority. Apart from 'ethnic',

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[134] Petričušić, *supra* note 9, at p 4

[135] Thornberry, Patrick (1991) *Minorities and Human Rights Law*, London: Minority Rights Group, at p 7

[136] Andrysek, O.(1989), *Report on the Definition of Minorities*, A Study Commissioned by the Netherlands Centre for Humanistic Studies, SIM, Special No. 8, p 14, cited in Letschert, *supra* note 42, at p 28

'religious', and 'linguistic' minorities claims have been made by women, the disabled communities etc. to also be considered to be minority groups. The situation of Roma communities who have long been a marginalised and exploited group also face problems as most present understanding of minority groups do not extend to the Roma[137]. This is mainly due to the fact that the Roma lead a nomadic way of life and in most cases a minority group is supposed to at least be nationals of a State. Not having a definition has also been a cause of concern in the process of implementation and is cause for much frustration to advocates and the intended beneficiaries[138].The other problem arising out of a lack of definition is that it leaves a large scope for States to interpret the term minority in a variety of ways and to also absolutely deny recognition to minority groups.

3.3 PRINCIPLE, POLICIES, SCOPE AND CONTENT

To better understand the concept of minorities' rights it is essential to delve into the principle or values that supports it as well as the various policies that have been envisaged by States for minorities and the content of minority rights.

Prior to engaging with the principle, policies and content mention must be made of Why Minority Rights? – What is its justification and international significance? There are two traditional justifications into the rational for minority rights.

The first justification is rooted in the concept of human dignity. The claims made by minority groups are seen as identity claims which in turn can be seen to constitute an integral part of human personality. As such these claims are worthy of protection. Minority claims under this theory function on the postulation that religious, cultural, and linguistic associations are indispensable features of what it means to be human. The second justification is premised on the discourse of equality. The constitutional recognition of minorities may be argued on equality-based arguments. An example of this is the equal protection jurisprudence of America.

[137] Tsekos, Mary Ellen (2002), "Minority Rights: The Failure of International Law to Protect the Roma", *Human Rights Brief*, 9(3):26-29
[138] Letschert, supra note 42, at p 28

Patrick Macklem in his article 'Minority Rights in International Law'[139] has however offered an alternative account as to why minority rights possess international significance. In his approach he feels that ascribing universal values to cultural, religious and linguistic affiliations create normative instabilities. Thus, his approach instead speaks more on the concept of international distributive practice rather than the attachment of universal value. His theory suggests that the international minority rights speak to wrongs that international law itself produces through "organizing global political realities into a legal order". The approach focuses on the injustices that have been created by the structure and operation of the international legal order to attain a more nuanced understanding of minority protection. This alternative account has tried to show the importance of minority rights irrespective of the political conditions that may have led to their official legal entrenchment.

3.3.1 Principle of Non-Discrimination

The principles that are important and re-inforce minority rights are those of tolerance, acceptance and co-existence which underpins most human rights instruments. However, the principle of Non-discrimination which is a central principle of Human Rights Law and is consistent with the values of tolerance and co-existence has come to be considered as the first pillar of the protection of minorities. This principle is of paramount significance to minorities in the face of direct or indirect discrimination that minorities experience in their day to day lives.

This principle which means the equal protection of the law for all is a manifestation of the principle of equality. The principle of non-discrimination sets forth that any right made by legislation shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. Basically, this principle means that there should be no unreasonable differentiation or limitation. This principle has been contained in the majority of the Human Rights Instruments (See table

[139] Macklem, Patrick (2008), "Minority Rights in International Law", *International Journal of Constitutional Law*, 6(3-4): 531-552

below) as well as regional human rights documents such as the Framework Convention on National Minorities. 1995[140].

HUMAN RIGHTS INSTRUMENTS	PROVISIONS
1) United Nations Charter of 1945	Articles 1 and 50
2) Universal Declaration of Human Rights, 1948	Article 2
3) International Covenant on Civil and Political Rights, 1966	Article 2
4) International Covenant on Economic, Social and Cultural Rights,1966	Article 2
5) International Convention on the Elimination of All Forms of Racial Discrimination,1965	Article 1
6) Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief, 1981	Article 2
7) ILO Convention concerning Discrimination in Respect of Employment and Occupation No. 111,1958	Article 1
8) UNESCO Convention against Discrimination in Education,1960	Article 1
9) UNESCO Declaration on Race and Racial Prejudice,1978	Articles 1,2 and 3
10) Convention on the Rights of the Child, 1989	Article 2

Table: Provisions of Non-Discrimination in Chief Human Rights Instruments

The principle of non-discrimination the first pillar of minority rights is however only the first step towards minority protection. The end aim would be to ensure that minorities are ensured the right to develop their own culture, practice their own religion and use their own language, to be able to enjoy their own identity. Therefore, in relation to minority rights the simple application of the principle of non-discrimination may not be adequate enough to achieve equality in fact. Thus in pursuance of this principle States may be obligated to take positive actions, or special measures to preserve

[140] *Framework Convention for the Protection of National Minorities*, 1995, COE, ETS 157, [Hereinafter referred to as FCNM]

minority existence. The policy of Affirmative Action is one such special measure States may take to preserve and protect minorities. This policy has been considered to be permissible in many human rights treaties like the Convention on the Elimination of All Forms of Discrimination against Women. The Human Rights Committee, in General Comment No 18[141] on non-discrimination, provides that "*the principle of equality sometimes requires States parties to take affirmative action in order to diminish or eliminate conditions which cause or help to perpetuate discrimination prohibited by the Covenant*"[142] (Covenant here means the ICCPR)

The principle of non-discrimination in the context of minorities also assumes great import in a variety of other ways like its actualization during constitutional drafting process by resulting in drafting national constitutions that are based on the 'equality approach' leading to the inclusion of provisions of equality and non-discrimination. The other instance is with regards to arguments for and against provisions of minority protection and rights.

A standard argument against minority rights has been the belief that minority specific rights creates a category of 'privileged' right-holders who would have rights that other groups would not, thereby going against the principles of non-discrimination and equality. However, the essence of minority protection is based on establishing equality vis-à-vis members of the dominant groups and does not mean the establishment of 'privileged' rights.

The principle of non-discrimination plays a substantial role in the area of minorities to be able to use their own distinct language[143], preserve their culture and significantly so in the arena of politics. The principle of non-discrimination in the right of political participation is central to liberal democratic thought. The political participation of minority groups is an important minority right. This point of equality of political participation has been made clear in a variety of international instruments[144] including

[141] General Comment No. 18 (1989), *Non-discrimination*, HRI/GEN/1/Rev.9 (Vol. I), Human Rights Committee, Thirty-Seventh session
[142] Id. Para 10
[143] The denial of persons belonging to minorities the access to benefits, or to disadvantage them because of their religious beliefs or the language they use is in accordance to the principle of non-discrimination not permissible; See Varennes, F. (1989-1999), "Equality and Non-discrimination: Fundamental Principles of Minority Language Rights", *International Journal on Minority and Group Rights*, 6:307-318
[144] Article 25, of the ICCPR; Article 3 of first Protocol of the European Convention on Human Rights invoked in conjunction with Article 14 European Convention for the Protection of Human Rights and

the United Nations Declaration on Minorities and the Framework Convention on National Minorities.

Political participation is not limited to the simple voting at elections but to be able to have a say, deliberate and be heard. Citizens irrespective of their ethnic, cultural, religious or linguistic groups should have an equal right to political participation where an individual's voice is not left un-heard due to their status as a minority. *The United Communist Party of Turkey and others* v *Turkey*[145] and *Socialist Party and others* v *Turkey*[146] have been two cases decided by the European Court of Human Rights. Both these cases involved Turkish political parties having pro-Kurdish agendas. The court in these cases determined that political parties in Turkey could not be proscribed because they advocated autonomy for the Kurdish population within a federal State. The European Court of Human Rights has further in the case of *Stankov and the United Macedonian Organisation Ilinden* v *Bulgaria*[147] held that a call for autonomy or even secession of part of the country's territory by a group of freely associated persons cannot automatically justify a prohibition of their assemblies. In the case of the electoral process itself the membership of a minority group is not considered to be a reasonable ground for exclusion either as a voter or a candidate. The identity of an individual can never be grounds for their exclusion from effective political participation.

3.3.2 Policies

States have at various points of time come up with policies directed towards dealing with the so called minority situation in their respective territories. Some of the most notable policies include Assimilation, Pluralism, Integration[148] and most recently that of multiculturalism.

Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, (1950), ETS 5 [Hereinafter referred to as ECHR)

[145] *The United Communist Party of Turkey and others v Turkey*, European Court of Human Rights, Judgement of 30 January 1998, Application No. 19392/92

[146] *Socialist Party and others v Turkey*, European Court of Human Rights, Judgement of 25 May 1998, Application No. 21237/93

[147] *Stankov and the United Macedonian Organisation Ilinden v Bulgaria*, European Court of Human Rights, Judgement of 2 October 2001, Applications nos. 29221/95 and 29225/95

[148] See further the range of minority policies in, UN. Economic and Social Council (1971), *Special study of racial discrimination in the political, economic, social and cultural spheres*, E/RES/1587(L), New York: Economic and Social Council

3.3.2.1 Assimilation

The policy of assimilation was (to some extent still is) one of the most favoured policies directed towards minority groups. The primary aim of this policy is the achievement of homogeneity within the territory of a State and establish a solid sense of unity. The rational of the policy of assimilation was that minorities were seen as incongruities within the nation-State, elements that enfeebled and divided the State. By ensuring that groups discard their cultures and distinct identity in favour of the State's dominant culture, the entire population could then belong to one culture and one language. For example, the policy of Germany in 1886 to '*germanize*' the Poles through measures which included the prohibition of the Polish language;[149] similar policies were adopted towards the French in Alsace-Lorraine. Additional examples include the States of USA and Canada. Historically prior to the 1960's when immigrants came to countries like the USA and Canada they were expected to shed their distinctiveness and assimilate entirely to the existing cultural norms[150]. This model of immigration is termed as the 'Anglo-conformity model. The policy of assimilation has been deemed to be based upon the idea of the superiority of the dominant culture[151]. The saliency of this policy was due to the belief of policy-makers that assimilation of ethnic groups had already happened or was in progress, that it was inevitable in the end. Today, this policy has largely been viewed as discriminatory towards minorities and been rejected by most States and other policies have been adopted in its stead.

3.3.2.2 Pluralism

With the rejection of the policy of assimilation States instead moved on to the much more tolerant policy of pluralism. This concept has a more democratic face. It seeks to unite different minority groups by propagating the values of respect, equality and establishing a relationship of mutual inter-dependence whilst also retaining the various aspects of their distinct identity. This policy encouraged the view that retaining a culture

[149] Musgrave, *supra* note 25, at p 10
[150] Kymlicka, Will (1995), *Multicultural Citizenship: A Liberal Theory of Minority Rights*, Oxford: Clarendon Press, p 14
[151] Thornberry, *supra* note 135, at p 8

or language distinct from the majority did not automatically mean that it was unpatriotic.

3.3.2.3 Integration

This policy is today a favoured term used in modern human rights law. It advances a method by which diverse groups are combined into a unity whilst holding on to their fundamental identity. Unlike assimilation there is no insistence of complete homogeneity or the elimination of differences but only those which would lead to the disturbance of the unity as a whole. It seeks to integrate all citizens on a non-discriminatory foundation into shared national institutions. This policy however is problematic as it can easily turn into assimilation in a bid for the removal of all lines of perceived cleavage. The policy in theory would imply tolerance but could easily in fact turn into a policy of intolerance.

3.3.2.4 Multiculturalism

The concept of Multiculturalism is considered to be one of the more democratic public policy measures which is a comprehensive response towards responding to the cultural, ethnic, religious and linguistic diversity that is found in States. It has come to be understood to exemplify the ideal of merging diversity together with the concerns of social cohesion. This policy's emphasis is upon firstly acknowledging the existence of diversity and moves forward towards ensuring this diversity and that it goes together with access to participation and adherence to constitutional principles and shared values of the society at large[152]. This policy is seen by some as a way forward in dealing with the challenges posed by minority groups while other have critiqued it to be a way in which divisiveness will perpetuate posing as a perilous situation for the unity of the State.

3.3.3 Scope and Content

The experiences of minorities and the contents of international legal instruments give us an understanding of the major concerns of minorities. These include mainly the

[152] Inglis, Christine (1996), *Multiculturalism: New Policy Responses To Diversity*, MOST Policy Papers, 4, Paris: UNESCO

concern over the protection of their distinctive identity. The preservation of their cultural practices and the usage of their language which may get subsumed under the dominant prevalent culture and language. Taking this into account the scope of the minority protection extends to seeing to the survival and the existence of the minority group, this would entail the physical existence[153] of persons belonging to minorities like protecting them from genocide; the actualization of the protection and the promotion of their distinct identities, this would entail protecting minorities from policies like that of assimilation which could lead to their loss of cultural heritage, their language and religious practices. It would mean that values of tolerance and co-existence are practiced and if need be positive action be taken and adapting Nathan Glazer's expression not mere 'benign' neglect; but to see that the minorities are able to fully and effectively participate in decision making processes, which is not limited to mere participation of minorities in public affairs but in all aspects of economic, cultural and political life.

What should be the substantive provisions or content of minority rights is a frequently asked and debated question. Even the people who agree in principle that minorities should have rights argue over what those substantive rights should be and how they ought to be framed. From understanding the scope of minority rights and the contents of various legal instruments on minorities the following can be listed as some of the basic substantive provisions required for minority protection:

1) Principle of Non-Discrimination and Equality
2) Cultural Rights: The right to enjoy their own culture as culture has today come to be understood as a way of life and is no longer simply associated with the concept of commercial exchange. Culture is related to language, literature, philosophy, religion, science and technology as well as 'ideological systems'[154]. Cultural rights would thus incorporate protection for knowledge, belief, art, morals, law, customs, and the right to pursue cultural activities, to express and

[153] *Convention on the Prevention and Punishment of the Crime of Genocide*,1951, UNGA, 78 U.N.T.S. 277 [hereinafter Genocide Convention];
[154] Thornberry, Patrick (1991), *International Law and the Rights of Minorities*, Oxford: Clarendon Press, p188

develop language and other capacities and habits. These rights would mean the preservation of a worldview, a history as peoples, a group and individuals [155].

3) Religious Rights: Religion holds the position of being one of the oldest sources of collective or group identity. Religion exerts powerful influence upon human conduct and value systems and is of great significance in the political arena as well. For minority protection the religious rights include the right to profess and practice their own religion without any fear of being persecuted or discriminated against or for it. The principle of religious tolerance as well as acceptance[156] is of paramount significance in this aspect.
4) Language Rights: The Oxford English Dictionary (1989) defines language to be 'the method of human communication, either spoken or written, consisting of the use of words in an agreed way'. The definition unveils the central social perspective of language and its collective element. Language is integral to communities as it is a medium of communication. But apart from being a mode of communication it also embodies a particular conception of community, territorial extent and belongingness[157]. In the context of rights of linguistic minorities' language rights assumes importance. Unlike religion which could still be kept in the personal sphere a State cannot remain absolutely neutral towards language. The government of a State must at least use one language as an official language for the conducting of State affairs. The problem here is of privileging a language over others leading to it dominating the public as well as social life. There have been instances where States have tried to eliminate such linguistic differences[158]. Therefore a response to this from the perspective of minority rights is to ensure that having an official language does not impede the protection and preservation of minority language and in regions where a linguistic minority population is significant to even allow for the usage of minority language in an official capacity.

[155] See generally Yupsanis, Athanasios (2013), "Article 27 of the ICCPR Revisited – The Right to Culture as a Normative Source for Minority / Indigenous Participatory Claims in the Case Law of the Human Rights Committee", in Lavranos, Nikos et al. (eds.), *Hague Yearbook of International Law*, Vol. 26, Leiden/Boston: Brill Nijhoff

[156] Tolerance means to 'endure or forebear' and as such is a negative policy of restraint. Whereas acceptance means to 'regard favourably' or even 'to welcome' and as such is a positive policy of support; See Simpson, J.A. et al. (1989), *The Oxford English Dictionary*, Oxford: Clarendon Press.

[157] Preece, *supra* note 15, at p 126

[158] The outlawing of the Kurdish Language in Turkey for instance.

5) Ethnicity: For the most part as already seen in chapter two, up till the late 18th Century ethnic identity had not garnered much consequence. This situation however changed when the concept of 'nation' came to be understood as an aggregate of persons closely associated with each other either through common descent, language or history so as to form a distinct group or people. Subsequently most of the current debates and conflicts over ethnicity is closely associated with nations and nationalism. This association possess one of the most crucial challenges for advocates of minority rights in dealing with such ethnic diversity due to its strong political underpinnings. State and critiques of minority rights have viewed ethnicity as a threat to the stability of a State's unity. The rights advocated for by ethnic minorities include their assertions of ethnic distinctiveness, claims of identity, equality and political rights. The most challenging claim however has been that of self-determination.
6) Domestic Legislations and Policies: States are required to ensure that in the domestic sphere policies and legislations are made that ensure favourable conditions that enable minorities to enjoy their own culture, language, religion etc. To also ensure that no law or policy is passed which violates minority rights or discriminates against them.
7) Political Rights: These entail the ensuring of minorities to be able to enjoy full and fruitful participation in the political arena. To be able to freely associate in political groups and voice opinions. This may also include special representation of minority groups in political platforms.

These rights have largely been seen to be the rights of individuals from minority groups however, certain rights have been advocated for from a group rights perspective specially rights concerning self-government and autonomy.

3.4 CENTRAL DEBATES

Minority protection and rights have evoked a varied reaction from States and academics ranging from the question of whether they are even required to their normative status, nature and content. These reactions in turn have sparked passionate debates over such questions. This section aims at looking into a few of the major debates that the question of Minority Rights evoke.

3.4.1 Minority Rights: The Liberal v Communitarian Debate

The debates over a person's response to the question of Minority Rights was derived on the basis of a person's position on the liberal v communitarian debate. The liberal-communitarian debate has been one of the oldest debates in political philosophy. This debate revolved around the question of individual freedom. Liberals argued that an individuals had autonomy to decide on their own notion of what life to lead and the community was significant only to the extent that it contributed to the well-being of the individuals composing it. They applauded individual liberation[159]. Therefore if the individuals no longer found it worthwhile to maintain existing cultural practices, then the community could have no independent interest in preserving them. On the other hand the communitarians disagreed over the concept of individual autonomy. They argued that people were entrenched in particular social roles and relationships. Their view was that individuals were the product of social practices and not vice-versa as thought by the liberals. The interests of the community could not be simply reduced to their individual members. Thus if one was a liberal he would automatically oppose the conception of minority rights as he highly cherished individual autonomy and if one were a communitarian he would be for minority rights as it paved the way for the protection of communities and their way of life, their ethnicity, cultural practise and characteristic identity.

3.4.2 Minority Rights under a Liberal Conception

Under liberal theory the primary importance of the individual is a given and it is premised on the moral requirement of preserving individual freedom and autonomy. Liberalism evokes that rights belong solely to individuals and it outplays over the power of the group. Therefore any theory that suggests that the group or a collective may itself be a holder of rights appears inherently anti-liberal[160]. The issue of Minority Rights thus posed the question as to whether there could be a place for it under a liberal theory. If individuals are liberal why would they require minority specific rights? Should they not be satisfied with the traditional spectrum of common fundamental or human rights[161]?

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[159] Kymlicka, Will (2001), "The New Debate Over Minority Rights", in *Politics in the Vernacular: Nationalism, Multiculturalism, and Citizenship*, Oxford: Oxford University Press, p 18
[160] Oestreich, *supra* note 11, at p 116
[161] Kymlicka, *supra* note 159, at p 21

Certain scholars like Will Kymlicka, David Miller, Yael Tamir and others have advocated that providing minority rights does not necessarily go against liberalism and liberal theory. Joseph Raz has for instance argued that an individual's ability to make good choices in life is tied with their access to culture which in turn would require the flourishing of that culture and minority rights would ensure the culture thrive and garner mutual respect[162]. The other scholars who advocate minority rights within a liberal framework also essentially argue in a similar vein that there are considerable interests related to culture and identity which does not go against liberal principles but are in fact consistent with principles of freedom and equality. Will Kymlicka argues that "*a liberal conception of multiculturalism can accord groups various rights against the larger society, in order to reduce the group's vulnerability to the economic or political power of the majority*.[163]" The critiques of this conception of minority rights being in conformity of liberal theory hold the belief that there are no reasons to think that the wellbeing of an individual is in anyway connected to the flourishing of culture and that it is possible to distinguish 'culture' or 'cultural groups'.

3.4.3 Individual v Collective Rights

The overall perception of rights is that they are possessed by individuals. They are considered to be permissions and entitlements to do things which other individuals, or governments or authorities, cannot infringe. This robust focus on individualism is represented in the writing of various political theorists like Thomas Hobbes and John Locke. Hobbes offered the decisive belief of the political obligation towards an individual's natural claim to the right to life. Locke expanded the rights of individual to liberty, both political and religious, property as well as life. It has constantly been the individual who has been considered to be the 'right bearer' against any form of conceivable intrusion of either the State or other individuals. It is the State's obligation to restrain itself from infringing individual rights and to protect individuals within its domain from such infringement by others. Conversely, this strong individualistic approach was not left unopposed. For instance, Jean-Jacques Rousseau held that citizens were not just concerned with guarding themselves from the threat of other

[162] Raz, Joseph (1994) "Multiculturalism: A Liberal Perspective", *Dissent*, pp. 67-79, cited in Kymlicka *supra* note 159, at pp 21-22
[163] Kymlicka, *supra* note 159, at p 22

people (Hobbes) or pursuing their own property or spiritual interests (Locke), they were by nature able and morally obliged to seek a collective public good that transcends their own individual personal welfare. Their rights claims were thus less absolutist as those imagined by Hobbes or Locke[164]. Following these thoughts group rights have been argued to exist when a group is seen as more than a mere composite or assembly of separate individuals but an entity in its own right. In other words, it's possible to see a group as a distinct being in and of itself. It is not just that individuals within such groups have the right to physically survive but that collectively the group has a right to maintain itself and to defend its collective identity from outsiders who would seek to destroy it.

The present international human rights regime is however based on a liberal framework of rights that values individual freedom and autonomy. This conception of human rights has been criticised to be principally Western as it has advanced upon the Western theory of liberalism and individualism. That it has not taken into account non-western insights and ideas of social and group rights. In the face of such criticism there have been certain developments into the field of human rights which has to an extent broadened it to give due importance to social rights and some notions of non-western rights. Nonetheless, human rights documents have continued to mirror the traditional liberal fixation with the individual and the protection of the individual from powers of government and other collectives[165].

In the context of minority rights the query as to the nature of these rights whether- individual or collective- is a major focus. Certain exponents of minority rights claim that these rights have a group or collective character but as seen above most human rights treaties reflect an individualistic concept of rights and rights-holders. This is considered to be at odds with minority groups for whom their identity as an individual is inseparably connected to the community to which that individual belongs be it ethnic, linguistic or cultural. The rights that they claim like those of self-government, autonomy, as well as special representation all include group elements. Thus, the debate in this context lies in the circumstance that whilst the development of human rights has led to the inclusion of minority specific rights these rights are still guaranteed as

[164] See Fields, A.B. (2009), "Collective/Group Rights" in Forysth, D.F (ed.), *Encyclopedia of Human Rights*, Vol-I, Oxford: Oxford University Press
[165] Oestreich, *supra* note 11, at p 108

individual rights whilst many minority groups claim protection as a group or rights that at least involve a group characteristics.

3.4.4 Self-Determination

The concept of self-determination has wielded massive impact upon the international community as a whole. The dissolution and unification of many States especially in Europe has been brought about by this concept of self-determination. It has also been one of the major concepts involved in the dismantling of the colonial powers and the independence of many States in Africa and Asia. Today, self-determination continues to be the objective of many ethnic, cultural, linguistic and religious minorities.

The principle of self-determination by "national" groups advanced as a natural corollary to rising ethnic and linguistic political demands in the eighteenth and nineteenth centuries[166]. This also raised the hopes of various minority groups for a nation of their own which were incompatible with the political and economic realities of that time[167]. President Woodrow Wilson was the most public advocate of national "self-determination" during the post-world war I period even proposing its incorporation into the League Covenant. He put this doctrine forward in the face of the disintegration of the Ottoman Empire and the institution of the League of Nations[168]. The notion of self-determination had by the twentieth century become a widely held conviction. However, the basis of this principle has varied. The concepts embodied in the principle of self-determination as seen by the USA and Western Europe are closely connected with the concept of popular sovereignty that was proclaimed by the French Revolution, individual freedom, and representative government[169]. For Central and Eastern Europe on the other hand the concept grew out of the phenomenon of nationalism. The 'nation' has been understood to mean a composition of those who shared the same ethnic, linguistic and religious attributes. The rise of nationalism in these areas gave rise to the concept of one nation one State- the idea that it was ethnicity which defined (and

[166] Hannum, Hurst, "Rethinking Self-Determination", Virginia Journal of International Law, 34:1-69, p 2
[167] Id. p3
[168] Grosby, *supra* note 22, at p 117
[169] Saladin, Claudia, (1991-1992) "Self-Determination, Minority Rights, And Constitutional Accommodation: The Example Of The Czech And Slovak Federal Republic", *13 Michigan Journal of International Law*, 13:172-217, p 173

limited) the self that was eligible to move toward self-determination[170]. The colonised States on the other hand based the concept of self-determination as the freedom from alien rule. All these varied perspectives on the concept has in turn led to self-determination being referred to as internal self-determination and external self-determination. The international community has acknowledged the external self-determination as one which is concerned with aspects of decolonisation. Therefore the more crucial aspects for international law has been in the context of internal self-determination which is seen as many as a threat to State Sovereignty. This has resulted in many States not recognising the concept of self-determination. For example India has placed a reservation to the common Article 1 of the ICCPR and ICESCR[171] which provides for the principle of self-determination.

In the context of minorities, under international law this right to self-determination has been generally held to belong to "peoples" and not to "minorities." However, the argument that arises in this context is can a minority group be possibly considered as a people? The debate becomes compounded as there is no accepted official definition of either 'minority' or 'people'. Most have seen minorities as a human rights issue rather than self-determination[172]. Professor Ian Brownlie has however asserted that, "*the issues of self-determination, the treatment of minorities and the status of indigenous populations, are the same, and the segregation of topics is an impediment to fruitful work.*"[173] The relationship between self-determination and minority rights is also exasperated by problems like the understanding of self-determination to mean political independence or 'full' external self-determination.

3.4.5 Minority Rights under Human Rights Canon

After the breakdown of the League of Nations Mechanism and the coming up of the human rights regime, minority rights appears to have been brought under the cannon of human rights law. This situation has sparked discussions over the normative status of minority rights. The questions that have arisen is whether minority rights have merely

[170] This also further sealed the tension between the principles of self-determination and territorial integrity.
[171] *International Covenant on Economic, Social and Cultural Rights*,1966, UNGA, U.N.T.S 993
[172] Saladin, *supra* note 169, at p 182
[173] Brownlie, Ian (1988), "The Rights of Peoples in Modern International Law", in Crawford, James (ed.) *The Rights of Peoples*, Oxford: Clarendon Press, pp 5-6

become a subcategory under human rights law? If it has become a subcategory then is such an arrangement good enough to be able to protect minority rights? Whether minority rights should be deliberated within an entirely distinct normative category?

There exists an extensive amount of controversy and disagreement concerning these questions within the literature of rights language[174]. Human Rights has been classified into generations[175] of civil and political, economic and social rights. Under these classifications cultural rights, religious rights etc. feature in the human rights instruments. As such it is increasingly felt that minority rights which frequently claim cultural uniqueness has come to be viewed synonymously as cultural rights. Critiques point out that such understanding fails to look into and recognize the other varied claims of minorities which include the economic as well as political claims. Even with regards to cultural rights, *Kymlicka* argues that minority rights cannot be 'subsumed' under the category of human rights, as traditional human rights standards cannot resolve contentious and provocative questions pertaining to cultural minorities. Examples of such questions include the recognition of languages in parliament and courts, the drawing up of internal boundaries based on the population of cultural minorities or even questions of the degree of integration required of immigrants for them to acquire citizenship[176].

3.5 CONCLUDING REMARKS

The inquiry into a definition of the term 'minority' remains an underlying cause of concern in the discussions pertaining to minority rights till date. The efforts to arrive at a definition has been made by many, yet an acceptable definition has yet to be achieved. Some are also of the view that a satisfactory definition can never be realised. As such the efforts towards finding one is on the decline especially due to the fact that the term 'minority' has been qualified. However, the problems both legal and political associated with the lack of a definition still remain. It is also evident that there exists philosophical underpinnings specifically of the Liberal Traditions that have had and continue to have impact upon the subject matter of minority rights. Another important aspect that has

[174] Preece, *supra* note 15, at p 17
[175] See Vasak, Karel (1977), *Human Rights: A Thirty-Year Struggle: the Sustained Efforts to give Force of law to the Universal Declaration of Human Rights*, UNESCO Courier 30:11, Paris: United Nations Educational, Scientific, and Cultural Organization
[176] Kymlicka, *supra* note 150, at p 4

comes into the picture is that of the discourse over minority rights becoming subsumed under the human rights cannon and the vital questions that arise from this situation.

Having discussed the various aspects of the concept and reviewing the theories of minority rights in the historical and political context; the existing legal regime will be taken up in the next chapter.

CHAPTER 4
CURRENT LEGAL REGIME OF MINORITY RIGHTS

CURRENT LEGAL REGIME OF MINORITY RIGHTS

"If we cannot end now our differences, at least we can make the world safe for diversity"

John F. Kennedy,
Commencement Address at American University, 1963

4.1 INTRODUCTION

The existing legal regime on Minority Rights can be traced to post Second World War. We have already seen in chapter two how post World War II it was decided to move away from the Minority Rights regime that had been prevalent during the League and emphasis was placed on individual human rights.

The Universal Declaration of Human Rights which was adopted by the UN General Assembly in 1948, has contributed greatly towards making Human Rights an enduring condition in a State's performance of its legal affairs. However, the UDHR was markedly silent about the issue of minority rights and the drafting papers show that the decision to do so was taken consciously. A number of suggestions were made to include minorities in the UDHR by States like Denmark, Yugoslavia and the USSR as well as the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities established in 1946[177]. The proposals included the protecting of minority rights in religious, educational and cultural institutions, an emphasis upon both collective as well as individual rights[178] as well as a rejection of the technique of assimilation for the promotion of harmony and stability amongst groups[179]. The various proposals for the inclusion of Minority Rights in the UDHR came under heavy criticism. Mrs. Roosevelt for United States of America (USA) professed that the notion of minority rights was not of universal consequence[180].

[177] Thornberry, *supra* note 135, at p 11
[178] This proposal was made by the Yogoslavia Representative Mr. Radevanovic. See *Draft International Declaration of Human Rights* (E/800), Drafting of the Universal Declaration of Human Rights, UN. Doc. A/C.3/SR.161, General Assembly, 3rd session, Third Committee, 27 November, p.720
[179] This was proposed by the USSR Representative, Thornberry, *supra* note 135, p 11
[180] *Draft International Declaration of Human Rights* (E/800), Drafting of the Universal Declaration of Human Rights, UN. Doc. A/C.3/SR.161, General Assembly, 3rd session, Third Committee, 27 November, 1948, p.726

However, with the increase in minority related conflicts, problems and queries, there was a gradual widening of discussion space for minority issues and rights in general. Scholars like *Pentassuglia* put forth that the silence in the UDHR or UN Charter did not necessarily mean that the question of minorities was not on the agenda of the UN. This is evidenced by the formation of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities and the principle of non-discrimination enshrined in both the UDHR and UN Charter allude to the fact that the minority issue was on the agenda of the UN since its inception[181]. However, what is noticeable is that the question of minority rights was not a point of focus for the international community. But after a brief lapse of time in the wake of several incidents involving minority groups and the 1980's debates on multiculturalism the question of their rights gained prominence again. Events of interethnic violence in former Yugoslavia and the events of the 1990's involving the 'ethnic cleansing' in Bosnia, civil wars in Kosovo and Chechnya, the genocide in Rwanda, indigenous conflicts in the Americas and the on-going issue of religious, caste, racial and communal tensions in Asia and Africa created a dramatic alteration in the attitude of the international community with respect to the question of minority rights.

These changing attitudes have resulted in the formation of several international legal instruments with focus on the international protection of minorities. Three organisations- the United Nations, the OSCE and the Council of Europe[182]- have played a significant role in developing minority rights instruments and mechanisms[183]. The most significant minority provision and instruments developed include Article 27 of the ICCPR, the 1990 Copenhagen Document, the 1992 United Nations Declaration on Minorities and the 1995 Framework Convention for the Protection of National Minorities.

4.2 MINORITY RIGHTS: THE UNITED NATIONS

Within the United Nations the rights of minorities have currently been referred to in a number of instruments like the UNESCO Convention against discrimination in

[181] Pentassuglia, Gaetano (2009), "Evolving Protection of Minority Groups: Global Challenges and the Role of International Jurisprudence", *International Community Law Review*, 11:185-218, p 188
[182] Hereinafter referred to as COE
[183] Letschert, *supra* note 42, at p 4

Education, the International Convention on the Elimination of All Forms of Racial Discrimination[184] etc. In contrast to the UDHR, minority rights have been explicitly referred to in certain instruments, the most significant being Article 27 of the ICCP and the UN Declaration on the protection of minority rights. Further, though the UDHR and the UN Charter does not make explicit mention of minority protection, they by guaranteeing freedom of expression, religion, rights of culture etc., and the principles of equality and non-discrimination have come to be considered to protect minority interests which are shared with the majority. The mechanism of minority protection under the United Nations involve Article 27 of the ICCPR and the right of individual complaints procedure before the Human Rights Committee provided by way of the Optional Protocol to the Covenant[185] and the Forum on Minority issues.

4.2.1 Article 27 ICCPR

The ICCPR which forms a part of the International Bill of Rights is a legally binding international human rights convention. This convention that came into force in 1976 provides for minority rights protection under Article 27. This was a milestone moment for minority rights to finally have a provision explicitly mentioning minorities in one of the most standard general human rights treaty. The UN Sub-Commission on Prevention of Discrimination and Protection of Minorities work during the 1950s and 60s was key towards the drafting of Article 27[186]. The provision has gained prominence as one of the main sources of minority rights protection under international law. The reasoning behind this can be attributed to the fact that it is a provision on minority rights which is legally binding and constitutes applicable hard law. Article 27 provides:

> "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 practise their own religion, or to use their own language".

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[184] *International Convention on the Elimination of All Forms of Racial Discrimination*, 1965, UNGA, U.N.T.S 660

[185] *Optional Protocol to the International Covenant on Civil and Political Rights*, (1966), UNTS, Vol 993, 171; The Protocol entered into forced in 1976 along with the Covenant; See also Heffernan, Liz (1997), "A Comparative View of Individual Petition Procedures under the European Convention on Human Rights and the International Covenant on Civil and Political Rights", *Human Rights Quarterly*, 19(1):78-112; Letschert, *supra* note 42, at p 4

[186] Pentassuglia, *supra* note 181, at p 188

At the very outset Article 27 drew in several criticisms due to the uncertainties it generated in part due to its ambiguous phrasing. It was only at a later date that clarifications were made through *General Comment No 23 on the Rights of Minorities*[187].

The plain reading of Article 27 shows that it recognises language rights, religious and cultural rights of ethnic, religious or linguistic minorities. That the rights enshrined are individual rights and does not have a group or collective rights character[188]. The provision by no means accords singular status to minorities as a group or collective[189].

The ambiguity arises because the Article in its attempt to have a more global application resulted in it being rather general in nature. The criticism raised against the Article by eminent scholars when the Convention came into effect were, that it was declaratory in nature with minimum rights[190], it was insufficient in addressing minority rights[191] and that it was a negative provision[192].

The inference of Article 27 as a negative provision stems from the point that the provision does not State that minorities will have certain rights but that they *"shall not be denied the right"* for example to ""enjoy one's culture" would include only negative rights of non-interference[193]. Further, the provision is seen to provide minimal guarantees and be insufficient as it fails to address positive claims such as the right to use a minority language in courts or local administration or the extent of local or regional autonomy. The provision created uncertainties due to the absence of any clear indications as to the actions that the

[187] United Nations Human Rights Committee (HRC), *CCPR General Comment No 23: Article 27 (Rights of Minorities)* (1994), CCPR/C/21/Rev.1/Add.5, [Hereinafter Referred to as General Comment No 23]
[188] See Macklem, *supra* note 139
[189] Anghie, A. (1992), "Human Rights and Cultural Identity: New Hope for Ethnic Peace?", Harvard International Law Journal, 33(2): 341:352, p. 344
[190] Dinstein, Y. (1976), "Collective Human Rights of Peoples and Minorities", *International and Comparative Law Quarterly*, 25(1): 102-120, p. 118
[191] Kymlicka, W. (2005), "A European Experiment in Protecting Cultural Rights", *Human Rights Dialogue*, 12(2):28-31, p. 28.
[192] Shaw, M.N. (1997), "Peoples, Territorialism and Boundaries", *European Journal of International Law*, 3(1):478-507 p. 485.
[193] Kymlicka, *supra* note 191, at p 28

States were obligated to undertake for the effective accomplishment of the intent of Article 27[194].

Two other criticism of the Article stand out. The first being the absence of a definition of the term 'minority' creating the problems of who could claim to be the beneficiaries of the rights enshrined in the provision. The Article only qualifies the term with adjectives of 'ethnic', 'religious' and 'linguistic'.

The Second is that the words "*In those States in which ethnic, religious or linguistic minorities exist"*[195] would mean that the applicability of the provision is contingent to the existence of minorities in States. This wording encouraged many States to call themselves to be 'unitary' with no minorities present within their borders[196]. France took a step further and to this day insists that it has no minorities and has made a reservation to Article 27 ICCPR. It declared that '*article 27 is not applicable so far as the Republic is concerned'*[197]. Article 1 of the French Constitution prohibits all social distinctions among citizens. On this basis, the government of France justifies it position that no minorities exist in France with the subsequent result of Article 27 of the ICCPR becoming inapplicable to them. French Citizens who are of Breton ethnic origins have submitted a number of cases claiming the right to use their mother tongue in French courts[198], but on account of the reservation of Article 27 by the French Republic they were rejected by the Human Rights Committee as inadmissible on procedural grounds.

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[194] Strydom, HA (1998), "Minority Rights Protection: Implementing International Standards", South African Journal on Human Rights, 14(3):373-387, p 375

[195] The representative of Chile to the UN Human Rights Commission at its 9th Session originally suggested this clause. See Thornberry, *supra* note 135, at p 14

[196] A number of Latin American Countries like Chile had made claims that there were no minorities present within their territory for the applicability of Article 27, ICCPR.

[197] United Nations Treaty Collections, Depository, Status of Treaties, International Covenant on Civil and Political Rights, Human Rights, Chapter 4, https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en#EndDec, (Accessed on 24-04-2017); See also Thornberry, *supra* note 135, at p 14

[198] *T.K v France*, 8 November 1989, HRC, No 220/1987, CCPR/C/37/D/220/1987; *M. K. v. France*, 8 November 1989, HRC, No. 222/1987, CCPR/C/37/D/222/1987

The words of the provision could however also suggest that the protection afforded under Article 27 was to be made to long established minorities and would thus exclude other groups such as immigrants[199].

4.2.1.1 An Expanded Understanding of Article 27: General Comment No 23

An expanded interpretation of Article 27 and clarification towards certain ambiguities has been made with the adoption of the General Comment No 23. The General Comment soon come to be understood as a landmark step forward in minority rights.

The General Comment has paved the way for a more positive understanding of the Article. The Comment at the outset clearly States that it recognises a right to individuals of minority groups "*which is distinct from, and additional to, all the other rights which*", they are as individuals entitled to enjoy in common with everyone else under the covenant. The General Comment further in para 5.1 States that the right provided under article 27 is not restricted to persons who are citizens of the State.

An important elucidation made by the General Comment is that the Article 27 place positive obligations on States in furtherance of protection of minorities. The General Comment in para 6.1 States that though article 27 has been expressed in negative terms it does recognise the existence of a 'right'. Subsequently, to see to it that this 'right' is not denied a State party is under an obligation to ensure its exercise and protect it against violation and as such positive measure will be required. Para 7 of the General Comment also States as to how positive legal measures are necessary for the enjoyment of the right enshrined under the Article with respect to cultural rights.

The ambiguity generated by the terms '"*In those States…minorities exist"* the General Comment in para 5.2 clarifies that this is not dependent upon a State's decision but is required to be established by the usage of an objective criteria. The

[199] Lerner, N. (1991), *Group Rights and Discrimination in International Law*, Dordrecht / Boston / London: Martinus Nijhoff , p. 16.

paragraph also makes a clarification about the term 'exist' and States that it is not pertinent to determine the amount of permanence the term connotes.

The General Comment in para 3.1 makes a distinction between the right to self-determination and the rights enshrined under article 27. It States that the former has been dealt with in a separate part and unlike article 27 is not a right cognizable under the Optional protocol. The right to self-determination is conferred to peoples whilst article 27 confers it on individuals.

4.2.1.2 HRC's Jurisprudence on Article 27

The complaints procedure which is established under the Optional Protocol to the ICCPR is quasi-judicial in nature[200]. The views taken by the HRC while examining the complaints submitted to them under Article 27 has helped in the interpretation and understanding of the provision.

One of the key areas of the HRC's jurisprudence on Article 27 has been the interpretation of the normative content of the concept of culture. For example the cases of *Sandra Lovelace v Canada*[201] and *Ivan Kitok v Sweeden*[202] the HRC held that the way of life such as being able to live in the reserves or to conduct breeding of reindeers is protected under Article 27. In the *Lovelace* case, the challenge was with regards to a Canadian law that denied an Indian woman of her Indian status on marriage to a non-Indian man. The HRC determined that people who are born and raised on a reserve and have maintained and want to further maintain ties to that community, should be considered part of that minority group within the meaning of Article 27. In *Kitok* the HRC held the regulation of an economic activity is normally the matter for the State only. But where that activity is an indispensable element to the culture of an ethnic group, the State's discretion becomes conditioned on respect towards the way of life of persons belonging to that minority and its application to an individual may fall under Article 27[203]. In

[200] Pentassuglia, Gaetano (2003), "Minority Issues as a Challenge in the European Court of Human Rights: A Comparison with the Case Law of the United Nations Human Rights Committee", *German Yearbook of International Law*, 46:401-451 p 403
[201] *Sandra Lovelace v Canada*, 30 July, 1981, HRC, No. 24/1977, UN Doc. CCPR/C/13/D/24/1977.
[202] *Ivan Kitok v Sweden*, 27 July, 1988, HRC, No. 197/1985, CCPR/C/33/D/197/1985
[203] Pentassuglia, *supra* note 200, at p 414

the *Lubicon Lake Band case*[204] that involved claims that industrial exploitation of resources endangered the band's way of life. The HRC broadly interpreted that a minorities' right to 'enjoy their own culture' would even include a particular way of life associated with the use of land resource or an economic activity. In this case it found that the relevant developments did amount to an infringement on their cultural way of life and was in breach of Article 27. The HRC has unswervingly held on to this broad view of the minority way of life. In *I. Lansman v. Finland*[205] also held that the way of life would also qualify for protection although the traditional means of livelihood had been adapted to modem technology[206]. These interpretations of Article 27 have however been for the protection of minority rights as individual rights and the collective element is not introduced[207].

4.2.2 UN Declaration on Minorities

The next significant milestone in the area of Minority Rights after Article 27 of the ICCPR was the adoption of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities by the Un General Assembly during its 47th session on 18 December, 1992.

Though non-binding in nature it nonetheless is significant due to it being the only UN instrument till date that specifically addresses Minority Rights. This declaration which has been the fruit of more than a decade's worth of drafting is noteworthy for having brought forth a diverse and large group of States favouring the declaration[208] and paying specific attention toward minorities.

Unlike article 27 of ICCPR the Declaration is worded more strongly and uses mandatory language. The declaration specifically spells out the positive obligation upon States[209] to protect minorities and also emphasis upon States protecting the 'existence' and 'identity' of these minorities[210]. Scholars like HA

[204] *Lubicon Lake Band v Canada*, 26 March, 1990, HRC, No. 167/1984, U.N. Doc. Supp. No. 40 (A/45/40) at 1
[205] *I. Lansman v. Finland*, 8 November, 1994. HRC, No. 511/1992, U.N. Doc. CCPR/C/52/D/511/1992
[206] Id. paragraph 9.3
[207] See Pentassuglia, *supra* note 200, for further reading on Article 27 Jurisprudence
[208] Strydom, *supra* note 194, at p 376
[209] Article 1, para 2, UN Declaration on Minorities
[210] Article 1, para 1, UN Declaration on Minorities

Strydom argue that this emphasis upon the existence and identity of minorities as against individual rights sets out the more collective dimension of the minority rights under the declaration.

This declaration also does not define the term 'minority', it only mentions the beneficiaries to be national or ethnic, religious and linguistic minority. The declaration in contrast to article 27 has added the term 'national minorities'. The declaration includes a list of rights that the minorities are entitled to. Apart from the conventionally recognised rights like the right to use language, practice religion, etc. it also includes rights to "participate effectively in cultural, religious, social, economic and public life"[211]. It also provides rights for the effective participation in decision concerning them, both in the national and regional levels[212]. It also provides rights to minorities to establish and maintain their own associations[213]. Article 9 of the declaration also provides that specialized agencies and other United Nations organisations shall contribute towards the realisation of the rights of minorities within their own respective fields. The Declaration States that it is through the realisation of rights enjoyed by persons belonging to a minority that a State can achieve political and social stability.

As a guide towards understanding the Declaration a Commentary was prepared[214] by the UN Working Group on Minorities, which was the subsidiary organ of the Sub-Commission on the Promotion and Protection of Human Rights[215]. It was adopted by the Working Group on Minorities at its 10th session in 2001 and finalised by the Secretary–General after a broad discussion which took into account the comments of governments, intergovernmental and non-governmental organisations as well as expert comments.

One of the first clarifications made by the commentary is with respect to the title of the declaration. It States that the addition of the term 'national minorities' does not extend the overall scope beyond that which has been already mentioned in

[211] Article 2, Para 2, UN Declaration on Minorities
[212] Article 2, para 3, UN Declaration on Minorities
[213] Article 2, para 4, UN Declaration on Minorities
[214] Asbjørn Eide as Chairperson-Rapporteur prepared the draft
[215] The United Nations Sub-Commission on the Promotion and Protection of Human Rights (originally the 'Sub Commission on Prevention of Discrimination and Protection of Minorities', renamed in 1999), the main subsidiary body of the former Commission on Human Rights (Now Human Rights Council), was established in 1947 with 12 members;

article 27 ICCPR. This is because there is no national minority which cannot be also defined as ethnic or linguistic minority.

One other significant interpretation of the declaration made by the Commentary is with respect to whether the rights are individual or collective in nature. The Commentary holds in para 15 that minority rights are individual rights. Further, in deference to the fears of States to the right to self-determination, the Commentary States that this right is a group right which is guaranteed under Common Article 1 of ICCPR and ICESCR and hence does not apply to minorities.

4.2.3 Other UN Documents

Apart from Article 27 ICCPR and the UN Declaration Minorities there are other legal instruments that make specific reference to minorities or indirectly refer to them and thus can be interpreted in a manner beneficial for minority rights.

The *Genocide Convention* with 143 State parties has been argued to be a convention responsible for widening up discussion space for minorities rights refers to them indirectly. Minorities in many cases have been known to be victims of genocide[216]. Article 2 of the Convention States that acts committed with an intent to destroy, in whole or in part, a national, ethnical, racial religious groups would amount to genocide. Cultural genocide has not been mentioned except partly if children are forced to transfer from one group to another. It is not considered genocide however if a culture is destroyed but the carriers are spared.

Article 5 of the *UNESCO Convention against Discrimination in Education*[217] which was adopted in 1960 and came into effect in 1962 and has 102 State parties recognises the right of national minorities to carry on their own educational activities including the maintenance of schools and dependent upon the education policy of the State the usage of their own language for teaching.

A significant principle for minority rights protection has been the principle of Non-discrimination. This principle has been strengthened by the *International*

[216] Thornberry, *supra* note 135, at p 13
[217] *UNESCO Convention against Discrimination in Education*, Adopted by the General Conference at its eleventh session, Paris, 14 December 1960

Convention on the Elimination of All Forms of Racial Discrimination of 1965[218] with 177 State Parties. This convention establishes the legal background for special measures. It provides under Article 1 para 4 that special measures may be needed to advance certain racial or ethnic group. That such special measures will not be construed to be discriminatory in nature and will not be continued once the objective of adequate advancement has been achieved[219].

Another noteworthy legal instrument is the *International Convention on the Rights of the Child*, 1989[220] with 196 State Parties (all eligible parties except the US) makes specific mention to minorities in article 30 of the convention which is similar in content to article 27 of the ICCPR.

4.2.3 The Forum on Minority Issues

The Forum on Minority Issues was established pursuant to the Human Rights Council resolution 6/15 of 28 September 2007. This forum replaced the Working Group on Minorities[221] which had been established pursuant to Economic and Social Council resolution 1995/31 of 25 July 1995. This Forum meets annually in Geneva for two working days under the guidance of the Independent Expert on Minority issues. The Forum apart from having participation of State representatives, UN bodies, Civil Society members etc., also endeavours to have the full participation of the minorities so as to ensure that their voices and opinions are heard.

The Forum has been established to better provide a platform for the promotion of dialogue and cooperation on issues pertaining to the minorities. The forum strives to further the implementation of the UN Declaration on Minorities. In pursuance of this objective it identifies and analyses the various challenges, opportunities, best practices and initiatives in the field of minority rights. The recommendations of the Forum are

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[218] *International Convention on the Elimination of All Forms of Racial Discrimination*, 1965, UNGA, U.N.T.S 660

[219] The Committee on the Elimination of Racial Discrimination, *General Recommendation No. 32*, The meaning and scope of special measures in the International Convention on the Elimination of Racial Discrimination (2009), Distr, General CERD/C/GC/32, 75th Session

[220] *Convention on the Rights of the Child*, 1989, UNGA, U.N.T.S 1577

[221] The mandate of the Working Group involved facilitating greater awareness on minority issues and the promotion and practical realisation of the UN Declaration on Minorities. It also acted as a mechanism for recommending further measures for the promotion and protection of minorities and finding solutions to minority problems. The Group held 12 sessions (1995-2006); See Letschert, *supra* note 42, at pp 95-144 for the working of the UN Working Group on Minorities.

grounded on international human rights norms. They also attempt at offering practical solutions applicable to diverse minority specific contexts.

4.3 MINORITY RIGHTS: THE ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE (OSCE)

The origins of the Organisation for Security and Co-operation in Europe may be traced to the early 1970s, when the Conference on Security and Co-operation in Europe (CSCE) was created envisioned to provide a multilateral forum for dialogue and negotiation between East and West. The OSCE is an organisation characterised by the absence of any constituent treaty and a light institutional structure[222]. It addresses a wide range of security-related concerns, including arms control, confidence- and security-building measures, Human Rights, national minorities, policing strategies, counter-terrorism and economic and environmental activities. It has 57 participating States who enjoy equal status. The decisions are taken by consensus on a politically, but not legally binding basis.

In the context of minority rights the OSCE post World War II, like the UN, there was a general aversion to it. However, in 1975 the Helsinki Final Act departed from this general post war avoidance of minority questions and specifically mentioned minorities in three different places namely the Declaration on Principles, Principle VII and the section entitled Co-operation in Humanitarian and Other Fields[223]. However, this interest in minority questions was not followed up by the 'CSCE Follow-up Meetings[224]' which took place in the period 1975-1989. Further even the Helsinki Documents content of the provisions was only confined to anti-discrimination measures and allowed States a wide scope and opportunity for interpretation and actions that could and could not be undertaken in regard to minorities. It was only post-Cold-War that questions regarding minorities dominated again. In this regard the Copenhagen Document is of considerable importance. The mandate of the High Commissioner on National

[222] See Annexure-IV Structure of the OSCE

[223] Preece, Jennifer Jackson (1997), "Minority Rights in Europe: From Westphalia to Helsinki", *Review of International Studies*, 23(1):75-92

[224] The OSCE Process that began in Helsinki in 1975 continued to evolve through a series of "Follow-up Meetings". These meetings were held in different locations and at regular intervals.

Minorities is the other important aspect in relation to a mechanism for minority protection under the OSCE.

4.3.1 The Copenhagen Document

The concluding Document arrived at the conference of the Human Dimension of 1990 at the meeting at Copenhagen is considered as one of the greatest in terms of a standard-setting document in the field of minority rights within the OSCE. The Copenhagen Document established a breakthrough peak in the development of the European minority rights regime[225]. The participating States agree in the preambular paragraph of the Document to respect issues on Human Rights and for the development of societies based upon a pluralist democracy and the rule of law[226].

The Copenhagen Document outlines a number of human rights and fundamental freedoms and introduces far-reaching provisions regarding national minorities[227]. Part IV of the Document regards minority protection as a part of the human rights agenda and contains numerous innovative concepts – such as 'full equality', 'effective participation', 'autonomy arrangements', 'proportionate measures' etc. One of the most influential provision are the ones that relate to political representation and participation in public affairs.

The significance of this document is that it acknowledges that protection of minorities is an essential factor for peace, stability, justice and democracy[228].The provisions regarding minority protections sparked further political and scholarly debates and have since become central for minority protection in the framework of the not only the OSCE but the COE and UN and national legislations in Europe and beyond[229].

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[225] Osipov, Alexander (2016), "Introduction: The 1990 CSCE Copenhagen Document, East-West encounters and evolutions of the minority regime", *Europe Journal on Ethnopolitics and Minority Issues in Europe*, 15(2):1-5

[226] See Preamble, Copenhagen Document, "*The participating States express their conviction that full respect for human rights and fundamental freedoms and the development of societies based on pluralistic democracy and the rule of law are prerequisites for progress in setting up the lasting order of peace, security, justice and co-operation that they seek to establish in Europe."*

[227] For further reading see Wright, Jane (1966), "The OSCE and the Protection of Minority Rights", *Human Rights Quarterly*, 18(1):190-205

[228] Chapter IV, para 30(2), Copenhagen Document

[229] Osipov, *supra* note 225, at p 1

4.3.2 High Commissioner on National Minorities

The High Commissioner on National Minorities[230] was established at the Fourth Follow-up Meeting in 1992 in Helsinki. The High Commissioner on National Minorities is supposed to get involved in a situation if, in her/his judgement, there are tensions involving national minorities which could develop into a conflict. As such the HCNM is, primarily a security instrument to prevent conflict situations at the earliest possible stage rather than a mechanism through which human rights violations may be addressed[231]. Much of the day-to-day work of the High Commissioner involves identification and addressing sources of ethnic tensions and conflicts. The HCNM practices preventive diplomacy and is charged with the promotion of conflict prevention rather than reparation[232]. The High Commissioner looks into both the short-term causes of inter-ethnic tension or conflict and long-term structural concerns. The High Commissioner assists participating States by providing analysis and recommendations as well as provides structural support and also publishes thematic Recommendations and Guidelines on challenges and best practice[233]. The HCNM's role is specifically towards 'national minorities' a mandate which can be clearly gleaned from the title itself.

4.4 MINORITY RIGHTS: COUNCIL OF EUROPE (COE)[234]

The COE like the other two organisations discussed before focussed more on individual rights and withheld from discussing minority rights post World War II. Consequently the European Convention on Human Rights and Fundamental Freedoms (ECHR)[235] (It has 47 Council of Europe members) has no provision directly guaranteeing minority rights. What is provided is the principle of non-discrimination. Article 14 provides that the enjoyment of the rights and freedoms that have been enshrined under the convention will be secured without

[230] Hereinafter referred to as HCNM
[231] Wright, *supra* note 227, at p 201
[232] Wright, *supra* note 227, at p 201
[233] Organisation for Security and Co-operation in Europe, OSCE High Commissioner on National Minorities, http://www.osce.org/hcnm (accessed on 04/03/2017)
[234] Hereinafter referred to as COE
[235] *European Convention for the Protection of Human Rights and Fundamental Freedoms*, 1950, E.T.S. 5, 213 U.N.T.S. 221

discrimination on grounds like race, colour, language, religion, national origin or association with a national minority. As such any protection accorded to minorities has been incidental to some individual claim of right not to be the object of discrimination[236] and the Human Rights Committee has pointed out, that simple non-discrimination is not a true guarantee of minority right[237]. It was post-Cold-War and the 1990's that minority disquiets steered the COE towards the first tangible manifestation of concern towards minority protection in the form of the *Framework Convention on National Minorities*, 1995.

4.4.1 Framework Convention on the Protection of National Minorities (FCNM)

At the Vienna Summit 8-9th October 1993, the Heads of State and Government agreed that 'national minorities' should be protected and that such a step could contribute to stability and peace. They observed that the 1990 OSCE Copenhagen Document and the 1992 UN Minority Declaration be transformed into a legally binding instrument. The Committee of Ministers established an Ad Hoc Committee for the Protection of National Minorities[238]. This Committee was charged with the job to carry out the assignment given at the Vienna Summit. The efforts of CAHMIN resulted in the Draft Framework Convention which went on to be adopted by the Committee of Ministers of the Council of Europe on 10 November 1994 and opened for signature on 1 February 1995. It entered into force on 1 February 1998. This is the first multilateral treaty which is focused on the protection of minorities. It is important to note that the FCNM is open for signatures to States which are not members of the COE. The FCNM therefore, remains of particular importance as far as the codification and development of legally binding minority rights standards are concerned.

The concept of 'Framework Convention' can be understood from International Environmental Law. It basically refers to a normative regime that contains general principles and policy goals. The concrete realization of these principles and goals would

[236] Gilbert, Geoff (1996), " The Council of Europe and Minority Rights", *Human Rights Quarterly*, 18(1):160-189, p 173; For further reading on the jurisprudence of the European Court of Human Rights on minority rights see Pentassuglia, Gaetano (2012), "The Strasbourg Court and Minority Groups: Shooting in the Dark or a New Interpretive Ethos?", *International Journal on Minority and Group Rights*, 19:1-23; Pentassuglia, *supra* note 200

[237] Gilbert, *supra* note 236, at p 173

[238] Hereinafter Referred to as CAHMIN

require further determination at different stages or by agreements.[239] In the specific context of the FCNM it means that the principles set out under it and their further realization and clarifications are to be achieved at a domestic level.[240] The Framework Convention does not contain collective rights as the rights accorded throughout the FCNM are to "persons belonging to national minorities", who may exercise their rights individually and in community with others.

FCNM provides for a range of guarantees to National Minorities. Apart from the Preamble, the Framework Convention has 32 Articles and is divided into 5 sections. Section I sets out some general principles. Section II is the main operative part of the Convention. The principles concluded cover a wide range of issues like non – discrimination, promotion of effective equality, development of the culture and preservation of religion, freedoms of assembly, expression, linguistic freedoms, use of the minority language and Article 15 which provides for participation in public affairs in particular those concerning minority questions etc. Section III contains provisions relating to the interpretation of the Convention. In the exercise of their rights, persons belonging to national minorities also have duties.

The language of the provisions however softens most of the obligations[241]. For example the language of the provisions include terms like 'States undertake to promote the conditions necessary...', 'States undertake to adopt adequate measures...', 'States shall endeavour to ensure...', etc. Further the specific content of the provisions for instance for the provision on linguistic rights include clauses such as 'if those persons so request', 'if there is a sufficient demand', 'as far as possible', 'where appropriate', etc., The provisions in the FCNM are programme-type provisions, leaving the States concerned a margin of discretion in the implementation of the objectives in order to enable them to take particular circumstances into account. The discretionary nature of the obligations has the power to obstruct domestic legislations[242]. This Convention is

[239] Pentassuglia, Gaetano (1999), "Monitoring Minority Rights in Europe: The Implementation Machinery of the Framework Convention for the Protection of National Minorities - With Special Reference to the Role of the Advisory Committee," *International Journal on Minority and Group Rights*, 6:417-461, p. 418

[240] Id. p 418; See also last paragraph of the Preamble of the FCNM

[241] Id p. 419

[242] Article 10 (2), FCNM, is a model example of flexible language used. A number of States have already invoked this Article to submit declarations mainly to exclude certain groups from the protection offered by the Convention (this is possible because the Convention lacks a definition of minorities).

also for the benefit of 'national minorities'[243] thus raising questions about the protection of non-citizens. The Danish authorities, for example, declared that the FCNM shall only apply to the German minority living in South Jutland, the Netherlands announced that the Convention's application shall be restricted to the Frisians[244]. Similar declarations have been issued by Germany, Slovenia, Sweden, etc. The States of Liechtenstein and Malta, have gone a step further by asserting that no 'national minority' at all exists on their territory[245].

The FCNM becomes fruitful only with the satisfactory implementation of its provisions. Though the Convention creates legally binding obligations on States it does not create a supranational enforcement mechanism. The FCNM simply establishes a monitoring system by the Committee of Ministers of the Council of Europe and regular State reports. The rights in the Framework Convention are also not justiciable before the European Commission or the European Court of Human Rights[246].

4.4.2 The Monitoring System of the FCNM

The Framework Convention provides for a monitoring system to evaluate how the treaty is implemented in State Parties and then to make recommendations for improving minority protection for States under review. The Committee responsible for providing a comprehensive analysis on minority legislation and practice is the Advisory Committee. The committee comprises of a minimum of 12 and maximum of 18 independent experts[247] having recognised expertise in the field[248], who are responsible for adopting country-specific opinions. These opinions are meant to advise the Committee of Ministers in the preparation of its

[243] Please note that the Convention does not provide a definition for the term 'national minority'
[244] Ringelheim, Julie (2010), "Minority Rights in a Time of Multiculturalism-The Evolving Scope of the Framework Convention on the Protection of National Minorities", *Human Rights Law Review*, 10(1):99-128, p 113
[245] Some of these States like Sweden have at later points either changed or are contemplating to change their positions but others like Germany have not.
[246] Articles 22 and 23 of the Framework Convention provides that the FCNM is to be interpreted in line with the ECHR.
[247] In accordance with Resolution (97)10, Rules adopted by the Committee of Ministers on the monitoring arrangements under Articles 24 to 26 of the framework Convention for the Protection of National Minorities, Members of the Advisory Committee shall have recognised expertise in the field of the protection of national minorities; The present members include Ms Petra Roter (President) (Slovenia) - term expires in May 2018, Ms Brigitta Busch (First Vice President) (Austria) - term expires in May 2018 and Mr Craig Oliphant (Second Vice-President) (United Kingdom) - term expires in May 2018
[248] Resolution (97) 10 of the Committee of Ministers

Resolutions[249]. The monitoring cycles take place every 5 years. The table below represents the stages[250].

STAGE 1: Submission of a Report by the State	• Each State party submits a first report within one year following the entry into force of the Convention and additional reports every five subsequent years. • The drafting of State Reports (which may involve consultation with minority organisations and NGOs) is based on outlines adopted by the Committee of Ministers and possible specific questionnaires by the Advisory Committee which set out the structure to be followed. Once received by the Council of Europe, the State Report is automatically made public
STAGE 2: Monitoring carried out by the Advisory Committee	• State Reports are examined by the Advisory Committee. The Advisory Committee has also developed the practice of carrying out regular country-visits during which it meets with government officials, parliamentarians, representatives of minorities, non-governmental organisations, Human Rights specialised bodies and other relevant interlocutors. • Following its examination of a State Report, the Advisory Committee adopts an Opinion which is transmitted to the State concerned as well as all States sitting in the Committee of Ministers. This is made public four months after transmission. • States Parties have an opportunity to comment and are to be submitted to the Council of Europe no later than four months after transmission of the Advisory Committee Opinion and can also be made public.
STAGE 3: Committee of Ministers' Resolutions to State Parties	• Following the adoption of an Opinion by the Advisory Committee, the Committee of Ministers adopts a Resolution containing conclusions and recommendations to the State concerned on the implementation of the Framework Convention. • The preparation of this Resolution provides an opportunity for other States, including non-State parties to express themselves on the situation in the State concerned. • This Resolution is made public upon its adoption
STAGE 4: Follow-up dialogue on the results of the monitoring	• For the promotion of discussions on the measures to be taken to improve minority protection, meetings called 'follow up dialogues' have are organised in States parties for which monitoring has been completed. • These meetings examine ways to put into practice the results of the monitoring.

[249] For further reading on the Institutional Setting see Letschert, *supra* note 42, at pp. 153-168

[250] See Council of Europe, Monitoring the implementation of the Framework Convention for the Protection of National Minorities, http://www.coe.int/en/web/minorities/monitoring, (accessed on 03/04/2017)

The Advisory Committee has done some commendable work particularly their opinions are of great value. The opinions of the Advisory Committee include an article by article assessment approach of the adequacy of the implementation of the FCNM[251]. This has led to a more nuanced understanding and scope of application of many issues and has clarified many issues. For example its take on a States discretion regarding which minorities would come under the FCNM. The committee is of the opinion that an assessment of what constitutes a minority under this instrument cannot be left entirely to the discretion of States parties and considers itself entitled to review their determination[252]. It has consistently tried to encourage countries like Denmark and Malta to provide protection to minority groups. The Advisory Committee's position regarding the status of non-citizens is also noteworthy. It breaks away from the traditional international law conception and claims that citizenship should not be an *a priori* requirement for the enjoyment of minority rights[253]. However, the Advisory Committee has limitations and can only use persuasion or advice States to revise their conception of what constitutes a minority.

4.5 Analysis Of Minority Rights Instruments and Mechanisms

One of the first steps towards the analysis of legal instruments is taking the measure of their legal status. In international law understanding the legal status involves distinguishing them as hard law or soft law instruments. There exists substantial disagreement over the definitions of the terms hard law and soft law[254]. Most in general however conclude that an instruments is hard or soft law based on the binary binding/nonbinding divide[255].

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[251] Letschert, *supra* note 42, at p 168
[252] Ringelheim, *supra* note 244, at p 113
[253] Ringelheim, *supra* note 244, at p 114; See also Advisory Committee on Framework Convention, First Opinion on Austria, 16 May 2002, AcFc/INF/OP/I (2002)009 at para. 20; First Opinion on Slovenia, 14 March 2005, AcFc/INF/OP/1(2005)002 at para. 25;
[254] For Further Reading See Klabbers, Jan (1966), "The Redundancy of Soft Law", *Nordic Journal of International Law*, 65(2):167-182, p 168; Snyder, Francis (1994), "Soft Law and International Practice in the European Community", in Martin, Stephen (ed.), *The Construction of Europe: Essays In Honour of Emile Noël*, pp 197-225, p 198
[255] Letschert, *supra* note 42, at p 20; See also Shaffer, Gregory C. and Pollack, Mark A. (2010), " Hard vs. Soft Law: Alternatives, Complements, and Antagonists in International Governance", *Minnesota Law Review*, 94:706-799, p 712

In the present case both the Copenhagen Document and the UN Declaration on Minorities are considered to be soft law. With respect to the Copenhagen Document, the document concluded does not have legally binding force and cannot be enforced through legal mechanisms. However, many have commented that as the OSCE documents are signed at the highest political level and hence can be construed to have authority as great as any legal statute under international law[256]. The fact that its provisions on minority rights have been incorporated into the FCNM for instance give credibility that the document has achieved high standing over the years. The UN Declaration on Minorities which was adopted by a General Assembly Resolution is also considered to be a non-binding document. Its significance lies in the fact that it was voted in without any opposition and for being the only UN document which specifically addresses minority rights. Commentators are also of the view that this declaration may be the catalyst that paves the road towards a possible Minority Convention[257]. The FCNM though, unlike the other two documents is a legally binding minority instrument. However, the language of the convention is weak and the implementation of its provisions require the States to implement national legislations are factors that hamper the framework convention's working. Further its mechanism of monitoring and implementation is decidedly weak.

The recent developments in the field of minority rights that occasioned the minority instruments has also resulted in minority rights mechanisms. As seen previously in the chapter there are quite a number of implementation mechanisms that are in place for the protection of minority rights. These mechanism are of a varied nature. We have the OSCE's High Commissioner on National Minorities, the COE's Monitoring System of the FCNM as well as the complaints procedure which is established under the Optional Protocol to the ICCPR. Regrettably there are quite a number of limitations and obstacles associated with these mechanisms. For example, the monitoring system under the FCNM has been considered to be weak even by the international human rights treaties[258]. One of the primary issues of this mechanism is that it does not provide with any right to petition by individuals or minority groups and has no inter-state complaints procedure. It

[256] Letschert, *supra* note 42, at pp. 21-22
[257] Letschert, *supra* note 42, at p 23
[258] Wippman, *supra* note 33, at p 613

only provides that parties to the convention shall submit periodic reports that are to be monitored by the Council of ministers. Similarly the OSCE's implementation mechanisms are also undeveloped and do not have any judicial enforcement mechanisms and also does not have any individual complaints procedure. However, it does have various means to scrutinise and generate public scrutiny of States, the most promising being the office of the High Commissioner on National Minorities. One of the unique features of this office is the High Commissioner's ability to become involved in possible conflict situations at the earliest stage. The assessment on whether to become involved or not is not dependent on any other body of the OSCE[259].

From an appraisal of the minority rights instruments we can deduce that they have resulted in significant achievements for the protection of minority rights. These instruments as well as the various minority specific provisions in other human rights instruments have created a consensus that the idea of pluralism be affirmatively embraced and a subsequent rejection of the policy of assimilation[260]. For example the preamble of the FCNM specifically States that "the parties shall refrain from policies or practices aimed at assimilation of persons belonging to national minorities against their will". Article 27 ICCPR clearly States that individuals of minority groups have the right to maintain their own language and religion and culture. Another significant area has been the understating that the principle of non-discrimination also includes the obligation on States to take positive measures to promote the ethnic, religious, linguistic and cultural identities of minorities[261]. One of the most important achievements achieved through these instruments have involved the slow slide towards the granting of political rights to minorities. These rights have taken the form of the right to effective participation in public affairs[262].

Unlike the minority treaties of the League System, the present minority instruments are intended for a more general application, either internationally or

[259] Letschert, *supra* note 42, at p 431; Wippman, *supra* note 33, at p 617
[260] Please note that this policy of assimilation has played a major background norm in most countries. In fact an implicit favouring of this policy was what led to the post Second World War focus on individual rights and an avoidance of minority specific rights.
[261] Articles 4-6, UN Declaration on Minorities: Article 4(2), 5(1), 10-12, 14-16, FCNM
[262] Article 2(2), UN Declaration on Minorities; Article 15, FCNM; Para 35 of the Copenhagen Document.

regionally. This general application is consistent with the post Second World War philosophy of universal Human Rights[263]. This general application though suffers from limitations. States which agree on the concept of minority rights disagree on the form and substance of the rights and also argue for individualised treatment of minorities in their own territories. Many feel that these rights impede upon the efforts to have national unity.

4.6 CONCLUDING REMARKS

The current legal regime on minority rights in international law is traced back to post-World War II. Though there was a period of discontinuity after the League system of minority protection came to an end after World War II and the establishment of the UN, minority concerns soon came back into the international picture. The Minority Rights regime has seen a lot of development with regards to the drafting of minority specific provisions and legal instruments at both the international as well as regional level. Minority Rights mechanisms have also been set up whose aims have been to further the cause of minority protection through a variety of monitoring mechanism.

The understanding of minority rights has evolved from being understood as mere negative rights to them being positive rights, and States have been put into a position where they now have duties to not only respect the rights but to also enable them. The content of these rights have also undergone changes, these rights which were initially understood to entail rights focused on the enjoyment of their culture and religious practices have progressed into rights involving the right of political participation at least in areas that concern minorities. With respect to the institutional mechanism we have seen that they have taken the task of monitoring the situation of minority rights and giving recommendations on areas of concern of minorities. In addition court and quasi-judicial bodies have rendered valuable insights and interpretations of the rights of minorities and helped develop a jurisprudential basis of minority rights.

However, paucities remain, chiefly due to the considerably weak language of the provisions relating to minority rights like the FCNM and the wide areas of discretion accorded to individual States. In addition there is still a lack of clarity in the understanding and interpretation of many of the provisions, like that of Article 27

[263] Wippman, *supra* note 33, P 610

ICCPR. The weak monitoring mechanism also poses as a limitation for the implementation of minority rights.

CHAPTER 5
MINORITY RIGHTS: CONTEMPORARY ISSUES AND CHALLENGES

MINORITY RIGHTS: CONTEMPORARY ISSUES AND CHALLENGES

"No democracy can long survive which does not accept as fundamental to its very existence the recognition of the rights of its minorities."

Franklin D. Roosevelt, 1938,
Letter to Walter Francis White

5.1 INTRODUCTION

The vagueness of the definition on '*minority*' has created ambiguity as to who might be the beneficiaries to Minority Rights. This has in turn resulted in various propositions to include gender, persons with disabilities, children, etc., under the umbrella of minority groups. There also exists questions on the extent of application of minority rights to non-citizens and subsequently their inter-relationship with immigrants and refugees. This chapter will attempt to look into these aspects of minority rights and also at the position of minority rights in regions like Europe, Africa and South Asia with a special focus on India.

5.2 MINORITY RIGHTS BENEFICIARIES

The search for a universally accepted definition on the term 'minority' or even 'national minority' has not produced much success till date. The ambiguity revolving around the definition of the term minority has paved the road for the proposals of including various recipients for minority rights. These proposals have been based on the belief that such groups or communities are also discriminated and face prejudice from a dominant majority group. Individuals in modern societies are more and more becoming aware of others who like themselves are discriminated against for being female, physically disabled, gay, etc. These individuals then start to define and identify themselves as members of minority groups.

5.2.1 Gender- Women and LGBT

One of the biggest concerns with respect to minority groups has been whether or not women would be included under its parasol. In most societies women and men are in general numerically equal in number. But the status of women as a subordinate or lesser

group has led most to associate them as a minority group. According to Sigler however, the inquiry is not whether or not women have been objects of prejudices or discrimination but whether they can satisfactorily be characterised as a "group category of people" to constitute a minority group[264]. He argues this point by stating as to how women may share biological similarity, but would this similarity confer to them a group character. He States that greater rights for women should and can be advocated however not by advancing women as a minority group.

There have been many international legal instruments that have advocated for the greater rights of women, significant amongst them is the *Convention on the Elimination of All Forms of Discrimination against Women*, 1979 (CEDAW)[265]. However, proponents continue to argue for women to be categorised as a minority. Currently, in addition to women the case of the LGBT[266] community is also being proffered as a group constituting sexual minorities. By the 19th century especially in Europe an understanding has emerged to consider the LGBT community as minority group. This is mainly as these gender variant people are understood to have an intrinsic characteristics that can be identifiable as a group.

5.2.2 Children

Nowadays Children like women are likewise come to be understood as a minority group. Children are considered to be the most vulnerable, powerless and easily discriminated members of society. They have been labelled as "the most oppressed of all minorities"[267]. In fact it was only towards the late 20th century that the concept of Rights of Child gained any substantial attention[268]. It is generally understood that being a child a minor can lead to being in a State of disempowerment. The situation becomes more worrisome when a child also belongs to a member of other dis-empowered groups. This would lead to them experiencing double discrimination[269]. If for instance

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[264] Sigler, *supra* note 4, at p 5

[265] *Convention on the Elimination of All Forms of Discrimination Against Women*, 1979, UNGA, U.N.T.S 1249

[266] Lesbian, Gay, Bisexual and Transgender People

[267] Gross, Ronald and Gross, Beatrice (eds.) (1977), *The Children's Liberation Movement: Overcoming the Oppression of Young People*, New York: Anchor Press, p 1

[268] Freeman, Michael(1994), "Whither Children: Protection Participation, Autonomy?", *Manitoba Law Journal*, 22:307-324, p 320

[269] Sargsyan, Isabella (2014), *Children and Youth belonging to minority groups and freedom of religion in Armenia*, Council of Europe Publication, p 5; See generally Hegar, R.L. (1989), "Empowerment-based Practice with Children", *Social Service Review*, 63(3): 372-383

they also belonged to an ethnic minority group, they would on one hand be vulnerable and easily discriminated against and stigmatised for being a child and on the other hand, the isolation inherent in the minority groups they belong could lead to the reinforcing of these discriminations

5.2.3 People with Disabilities

There was and still is a distinct lack of interest shown towards individuals with disabilities. These individuals also face discrimination in society and are more likely to leave school early or become unemployed and live in extreme poverty[270]. But society more often do not regard the prejudice people with disabilities face as equivalent to the discrimination faced by other members of minority groups[271]. The Disability rights movement has however contributed to a large extent in bringing light to the problems and discrimination faced by people with disabilities. They have also promoted the view of disabled people as a minority who are deprived by society due to their physical impairments. Activists of disability rights have also started to use a minority rights based approach to further the disability rights movement. For instance, they advocate for the deaf community to be regarded as a linguistic and cultural minority rather than a disabled group[272].

5.3 THE INTER-RELATIONSHIP BETWEEN MINORITY RIGHTS AND NON-CITIZENS, IMMIGRANTS, REFUGEES AND STATELESS PERSONS

Rights have generally been considered to be vested upon individuals who are also the citizens of nation-States. Most human rights instruments nevertheless provide that States have an obligation to protect the rights of all persons subject to or under their jurisdictions, exceptions to this include political rights[273]. It is however seen that though international human rights law envisions rights to all, (migrants, refugees, Stateless

[270] McDonald, Katherine E. et al. (2007), "Disability, race/ethnicity and gender: themes of cultural oppression, acts of individual resistance", American Journal of Community Psychology, 39:145–161, p 146

[271] Schroeder, Fredric K. (2015), "People with Disabilities: The Orphan Minority", Lecture delivered in eighth annual Jacobus Ten Broek Disability Law Symposium, Braille Monitor

[272] See generally, Deaf as a linguistic and cultural group, World Federation of the Deaf, https://wfdeaf.org/human-rights/crpd/deaf-as-a-linguistic-and-cultural-group/, (accessed on 3/june/2017); Mc. Quigg, Karen (2003), "Are the deaf a disabled group, or a linguistic minority? Issues for librarians in Victoria's public libraries", *The Australian Library Journal*, 52(4):367-377

[273] UN Human Rights Office of The High Commissioner (2010), *Minority Rights, International Standards and Guidance for Implementation*, HR/PUB/10/3, Geneva, p 4

persons etc.), but it is usually seen that non-citizens face difficulties in accessing their rights. This can largely be attributed to nation-States and their dependency upon the ideas of nationality and citizenship. In the context of minorities and minority rights this situation gives rise to questions involving the application of minority rights to non-citizens, immigrants, refugees etc.

5.3.1 Non-Citizens

The question over the application of the citizenship criterion as a prerequisite to enjoy minority rights has long been at the forefront of the minority rights debate. This question has sought to be addressed by both the HRC as well as the Commentary on the UN Declaration on Minorities.

The Human Rights Committee in paragraphs 5.1 and 5.2 of its general comment No. 23 observed that State parties were under an obligation to respect and ensure the application of article 27 ICCPR to everyone within its territory and under its jurisdiction, irrespective of whether the person - or group of persons - were citizens of the country or not.

The Commentary on the UN Declaration on Minorities also holds similar views. The Commentary does however go on to observe that "*while citizenship as such should not be a distinguishing criterion that excludes some persons or groups from enjoying minority rights under the Declaration, other factors can be relevant in distinguishing between the rights that can be demanded by different minorities*."[274] For example minorities that have been established for a long time on the territory of a State may have stronger rights than those who have recently arrived.

Apart from the HRC and the Commentary on UN Declaration on Minorities the FCNM also does not have any explicit restrictions placed on non-citizens. Even OSCE High Commissioner on National Minorities' approach has also been that citizenship should not be an important criterion for an entitlement to minority rights and as such States concerned should refrain from using it.

[274] Para 10, *Commentary Of The Working Group On Minorities To The United Nations Declaration On The Rights Of Persons Belonging To National Or Ethnic, Religious And Linguistic Minorities* (2005), E/CN.4/Sub.2/AC.5/2005/2

In practice however, non-citizen minorities may still have problems in accessing their rights. States may in their domestic definitions on minorities place a restrictive citizenship criterion[275]. As Hannah Arendt States that in spite of the impression of universal human rights it is only through the membership of specific political communities built around the Nation-State are rights recognised in any meaningful sense[276].

5.3.2 Immigrants

Traditional international law notion on immigrants and their descendants has been that they be omitted from the protection afforded to minorities. This idea is also an outflow of the characteristic conception of the Nation-State, which theorizes that migrants should abandon their particular cultural identity and conform to the majority culture[277]. But by the 1980s, this notion has been increasingly challenged and the supporters of multiculturalism argue that States should respect cultural differences even of individuals belonging to immigrant populations. But conversely, even Kymlicka one of the most celebrated exponents of multiculturalism contends that the situation of 'national minorities' should be distinguished from that of immigrants. He has differentiated minorities that have historical roots within the territory of a State from those ‘new’ minorities that are shaped through migration. He argues that only ‘national minorities’ are entitled to protection and not immigrants, as the latter have willingly abandoned their 'societal culture' by leaving their country of origin[278]. The sharp distinction drawn by Kymlicka between ‘national minorities’ and ‘immigrants’ has drawn serious criticism from other proponents of multiculturalism[279].

What these diverse views on immigrants and minority rights has resulted in, is that distinctions are being made by States between ‘old’ and ‘new’ minorities. The ‘old’ minority groups are those who have a long association with and establishment on the territory of the State. These minority groups are thus envisaged to have stronger rights

[275] Council of Europe (2006), *Report On Non-Citizens And Minority Rights*, Adopted by the Venice Commission at its 69th plenary session, Venice
[276] Arendt, Hannah (1994), *The Origins of Totalitarianism*, New York: Harcourt Books, pp 269, 270, 276-277, 290-299; See also Kesby, Alison (2012), The Right to Have Rights: Citizenship, Humanity, and International Law, Oxford University Press, p 3
[277] Ringelheim, *supra* note 244, at p 111
[278] See generally Kymlicka, *supra* note 150; Kymlicka, W. (2008), “The Internationalization of Minority Rights”, *International Journal of Constitutional Law*, 6(1):1-32
[279] Ringelheim, *supra* note 244, at p 111

than those recently arrived 'new minorities'. However, it has been argued that the best approach would be not to make a stark distinction between the 'old' and 'new' minorities by including the former and completely excluding the latter[280]. But it could be recognised that 'old' minorities have stronger entitlements than the "new"[281]. The recently arrived immigrants who belong to ethnic, religious or linguistic minority would however under human rights law be entitled to the rights to non-discrimination as well as to rights provided under the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

5.3.3 Refugees

As seen above there has been a move towards extending at least certain minority rights protection to immigrant or 'new' minorities through the principle of non-discrimination enabling these groups to maintain their own distinct identity. However it has been noted that to a large extent refugee communities have not witnessed similar trends. Refugee populations regularly have been victims of discrimination, intolerance and opposition and are seen by citizens of States to be the cause of the States instability[282]. Activists involved in the protection of refugees and reduction of discrimination faced by them advocate that refugees should also be allowed to maintain their distinct identities. Efforts are made to utilise a minority rights based approach towards their protection.

At this juncture it must also be noted that many refugee populations belong to ethnic, religious or linguistic minorities. Also in many cases the discrimination and persecution faced by such minorities have also occasioned to them fleeing their home States and becoming refugees[283]. The conundrum that emerges from this situation is whether or not such refugee population should fall within the minority rights ambit. The fact that there exists an entirely different arena of international law which is present to deal with refugees makes many want to keep these two categories separate and distinct from one

[280] Para 11, *Commentary Of The Working Group On Minorities To The United Nations Declaration On The Rights Of Persons Belonging To National Or Ethnic, Religious And Linguistic Minorities* (2005), E/CN.4/Sub.2/AC.5/2005/2
[281] Id.
[282] Berry, B.E. (2012), "Integrating Refugees: The Case for a Minority Rights Based Approach", *International Journal of Refugee Law*, 24 (1): 1-36; See also Arendt, Hannah (1994), *The Origins of Totalitarianism*, New York: Harcourt Books
[283] For example minority populations fleeing, Sudan and Iraq; See also the Syrian Refugee Situation.

another. But what can be ascertained is that whether we want to or not questions of minority rights and refugees do intersect and traverse over each other.

5.3.4 Stateless Persons

Statelessness refers to a situation where a person has no legal or effective citizenship[284]. A number of situations have been identified that can result in a situation of Statelessness like a conflict of nationality laws for one. The situation of Statelessness has been a cause of grave concern in the international community and numerous efforts have been made to reduce Statelessness. But to a great extent the continued presence of Stateless persons have been largely attributed to States themselves who may for some reason or another deny citizenship rights to certain individuals. Under International law provisions in international legal instruments aimed at reducing Statelessness been included as well as specific conventions that deal with this issue exclusively. For example The Convention on the Reduction of Statelessness[285] and the Convention Relating to the Status of Stateless Persons[286].

The relationship between minorities and Stateless persons relates to a particular problem involving minorities and citizenship. It is most often noticed that there is a denial of citizenship by States to persons belonging to ethnic, religious or linguistic minority[287]. One of the most significant examples of this is the case of the Rohingya. In the year 1982 the Rohingya who are an ethnic minority group of Burma, were stripped of their Burmese citizenship. Other Examples involve the Kurdish population in Syria and the Palestinians. These groups of people are very vulnerable and their status as Stateless to a large extent undermine the exercise of their Human Rights[288].

5.4 Position Of Minority Rights: Region and Country Specific

The Constitutions of States by far have generally been drafted by including chapters that include fundamental rights or freedoms. Minority Rights can be seen

[284] Weis, Paul (1962), "The United Nations Convention on The Reduction of Statelessness, 1961", *International & Comparative Law Quarterly*, 11(4):1073-1096
[285] *Convention on the Reduction of Statelessness*,1961, G.A. Res 896 (IX), 989 U.N.T.S. 175
[286] *Convention relating to the Status of Stateless Persons*, 1951, G.A. Res. 429 (V), 360 U.N.T.S. 117
[287] Examples include the situations of Statelessness that arose in Burma, Syria, Iraq and Kuwait.
[288] UN Human Rights Office of The High Commissioner (2010), *Minority Rights, International Standards and Guidance for Implementation*, HR/PUB/10/3, Geneva, p 6

to have a presence in certain Constitutions as well as other domestic legal arrangements in many States today.

In the Americas and Africa at the outset there was not much scope for minority rights[289]. The non- discrimination formula was the favoured mode and thus there were no special provisions for minorities. The *American Declaration of the Rights and Duties of Man,* 1948 for instance made no reference to minorities and this omission is found in the *American Convention on Human Rights* as well. The Latin American countries like Brazil recognises the rights of man but not of specific groups. However, over the year's Latin American countries have started to an extent begun recognising ethnic minorities. The 1988 constitution of Brazil makes a positive reference to Indian rights. But overall attention is focussed on integration and non-discrimination principles

5.4.1 Europe

Minority related issues has been at the forefront of most European States. As seen in Chapter 2, minority specific issues prevalent in Europe were for a large part responsible for the World Wars. Post-Cold-War the European scene was again dominated by minority matters. Notwithstanding many ongoing difficulties with respect to protection of minorities, a strong overall trend in Europe toward the improvement of minority rights can be noticed. Important moves resulting in the formation of a treaty like the FCNM have proved pivotal towards the promotion of minority rights in Europe.

However, significant concerns remain as key European countries like France and Turkey still stick to the notion of a homogenized State and their refusal to recognise minorities. These States have also refused to become party to the FCNM.

5.4.2 Africa

Africa like the Latin American countries also prohibits discrimination on the basis of race, tribe, colour or creed under constitutional law. But they have also been

[289] Thornberry, *supra* note 135, at p 20

known to report that they have no minorities[290]. But contrary to this opinion the African States have witnessed serious ethnic tensions[291]. These incidents of ethnic violence has made many countries to adopt new constitutions and re-enforce the principles of equality and non-discrimination. But only a few countries have specifically addressed minority concerns in their constitutions.[292]

One of the major reasons for most States refusal to make any mention of ethnicity[293] or minority aspects in their constitutions has been attributed to the notion that any such reference would run counter to the objective of attaining national unity and reconciliation. The other reason is the previous utilisation of ethnicity by the colonial powers to create divisions amongst the people. Disparities were created by colonial powers whilst favouring one ethnic group against another[294].

These factors have culminated into a situation in Africa where the States do have specific protections to ensure equality and non-discrimination but they refuse to adopt minority specific provisions. This refusal as discussed above is brought upon by feelings that mentioning ethnicity may result in more problems and create disability of the State. But gradually it is being recognised that there is significant need to address minority related concerns in these States and the protection of their rights to enjoy their distinct culture and language, which is acutely emphasised by the continued ethnic tensions[295].

5.4.3 South Asia

There has over the years been a lot of strife and minority related conflicts in South Asian Counties, especially with respect to religious minorities. To an extent some of these conflicts are remnants of the Colonial Past. The pitting of one religious

[290] Thornberry, *supra* note 135, at p 21
[291] The Rwandan Genocide, Cases of Ethnic hatred in Burundi.
[292] Article 51, Constitution of Democratic Republic of Congo; Article 36, Constitution of Uganda
[293] The Rwandan Constitution of 2003 for instance, even after the aftermath of the genocide which was a direct result of ethnic differences, the new Constitution makes no mention of ethnicity. In fact Article 9 of the Constitution provides that the State would commit itself towards the eradication of ethnic, regional and other divisions.
[294] Gilbert, Jeremie (2013), "Constitutionalism, ethnicity and minority rights in Africa: A legal appraisal from the Great Lakes region", *International Journal of Constitutional Law*, 11 (2): 414-437
[295] See further, Minority Rights Group International, *World Directory of Minorities and Indigenous Peoples*, Overview of Africa, http://minorityrights.org/minorities/overview-of-africa/, (accessed on 2 June, 2017)

group against another- Hindus against Muslims -by the British still continue to have its impact. South Asia also lacks a regional mechanism on minority rights. The SAARC's[296] focus has for instance been predominantly upon development and economic issues and not the protection of human rights, which is also not included as an aim in the organization's charter. There are at present discussions for SAARC to take up issues on minority rights and possibly set up a minority rights mechanism.

5.4.3.1 Indian Position on Minorities and Minority Rights

India has been a land of diversity and has a population which is diverse ethnically, linguistically, religiously as well as culturally. It also has members of minority groups living within its territory. According to Union Government of India, Six religious communities have been identified to be minorities. They are Muslims, Christians, Sikhs, Buddhists, Zoroastrians (Parsis) and very recently the Jains have been notified. The Indian Constitution has made specific provisions involving the protection of minorities and the government also has a ministry- The Ministry of Minority Affairs, which has been set up in 2006 to deal with regulatory and developmental plans for the minority groups.

5.4.3.1.1 Constitutional Provisions

The framers of the Indian Constitution put in a great deal of thought with regards to the question of minorities, their protection and rights. Both the *Nehru Report* of 1925 and the *Sapru Report* of 1945 dealt with the questions of minority protection and favoured its cause.

Consequently the Indian constitution conferred rights to Minorities. The constitutional safeguards for minorities can be found in a variety of provisions and can be divided into two types. The First type are provisions which provide rights to all and from which minority rights can be attributable and the second type which are provisions which are specifically intended for minorities. The tables below contain examples of the two types of provisions

[296] South Asian Association for Regional Cooperation (SAARC), Established 8 December 1985

ARTICLE NUMBER	PROVISION
Article 14	Equality before law
Article 15	Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.
Article 16	Equality of opportunity in matters of public employment
Article 17	Abolition of Untouchability

Table: General Provisions: Examples of the First Type

ARTICLE NUMBER	PROVISION
Article 29	Protection of interests of cultural and linguistic minorities.
Article 30	Right of minorities to establish and administer educational Institutions

Table: Minority Specific Provisions: Examples of the Second Type

Though the constitution provides for rights to minorities it conspicuously remains silent upon its definition. Even Article 366 which contains most of the definition of the terms found in the constitution does not provide for a definition. The above mentioned two reports also do not define it and nor does the report made by Dr. B.R Ambedkar on States and Minorities[297] which finds no definite definition of the term minorities and remains confined to the scheduled castes.

5.4.3.1. 2 National Commission for Minorities

Apart from the Constitution, The National Commission for Minorities Act, 1992[298], provided for the constitution of a National Commission for Minorities. This Commission is tasked with the protection of minority rights in the country. The functions of Commission include[299] a) evaluating the progress of the

[297] *States and Minorities* is a memorandum on the safeguards for the minorities in general and the Scheduled Castes in particular. It is in the form of draft articles of a constitution, followed by explanatory notes and other statistics. It was submitted to the Constituent Assembly in the year 1946 on behalf of the All-India Scheduled Castes Federation.
[298] The National Commission for Minorities Act, Act No. 19 of 1992
[299] Section 9, The National Commission for Minorities Act, 1992

development of minorities under the Union and States; b) monitoring the working of the safeguards provided in the Constitution and in laws enacted by Parliament and the State Legislatures; c) To make recommendations for effective implementation and d) look into specific complaints regarding deprivation of rights and safeguards of the minorities, etc. The National Commission for Minorities Act too has not given a definition of minorities. It only provides under section 2(c) that 'Minority' for the purposes of the Act would mean "a community notified as such by the Central Government".

5.4.3.1. 3 Jurisprudence on Minority Issues

Over the years there have been a number of case laws addressing minority concerns which forms a good jurisprudential basis on minority rights. These case laws have also endeavoured to try and define the term minority. The first such attempt to define a minority was made in the *Re Kerala Education Bill* case. In *Re Kerala Education Bill*[300] the Supreme Court tried to answer the question on the determination of a minority. In this case the State of Kerala contended that in order to constitute a minority so as to claim the fundamental rights guaranteed to under Articles 29 (1) and 30 (1) of the Constitution, the person must numerically be a minority in the particular region in which the educational institution in question is or intended to be situated. While dealing with this question, the Supreme Court observed:

> "What is a minority? That is a term, which is not defined in the Constitution. It is easy to say that a minority community means community which is numerically less than 50 Percent, but then the question is not fully answered, for part of the question has yet to be answered, namely, 50 percent of what? Is it 50 percent of the population of a State forming a part of the Union?"

It went on to observe on the contention raised by the State of Kerala that if a particular region was to be taken as a unit to determine minority then where the line would be drawn and which would be the unit which will have to be taken? The Court then went on to State that for the present case as the Bill before them extended to the whole State of Kerala then consequently the question of minority must be determined by reference to the entire population of the State.

[300] *Re Kerala Education Bill*, AIR 1958 SC 956

This understanding of determining a minority was similarly taken up by subsequent cases like the *D.A.V. College, Jullundur* Case[301]. In this case, the Supreme Court ruled that a minority has to be determined, in relation to the particular legislation which is sought to be impugned. If it is a State law, the minorities have to be determined in relation to the population of the State. This case further explained the meaning of linguistic minority for the purposes of Article 30(1) of the Constitution, It held that a linguistic minority was one which must at least have a separate spoken language. It was not required that the language should also have distinct script.

From an analysis of these cases we can see that the Court has held that for the determination of a minority it must be done in reference to the particular legislation, which is sought to be enforced. Therefore on account of a State law the entire population of the State shall be taken into consideration. However, it has still left questions and criteria for determination of a minority in relation to a central legislation unanswered. Recent developments in India with respect to the minority status of Sikhs in Punjab for instance has called upon the Court to decide upon this question.

Apart from cases involving the question of determination of a minority there have been a number of other cases involving minority issues as well. Like in Andhra Pradesh *Christian Medical Association* v *Government of Andhra Pradesh*[302], where the court clarified that the protection of Article 30(1) is not available if the institution's real motive was a business venture garbed in the cloak of a minority educational institution. In the case of *Kerala* v *Mother Provincial*[303] the Court held that even a single member of a minority community may establish an institution as long as it is for the benefit of a minority community.

Another noteworthy case that has addressed minority issues has been the *TMA Pai Foundation* Case[304]. This was a case which was decided by a Constitution Bench of the Supreme Court comprising 11 Judges. The case mainly involved the question of the scope of right of minorities to establish and administer educational institutions of their choice under Article 30(1) read with Article 29(2) of the Constitution. The significance of the case lies in the formulation by the Court of a total of eleven questions pertaining

[301] *D.A.V. College, Jullundur v. State of Punjab*, AIR 1971 SC 1737.
[302] *Christian Medical Association v Government of Andhra Pradesh*, AIR 1986 SC 1490.
[303] *Kerala v Mother Provincial*, AIR 1970 SC 2079.
[304] *T. M.A. Pai Foundation and others v State of Karnataka*, (2002) 8 SCC 481

to minorities. However, to the disappointment of many not all of these questions were answered. In this case as well the meaning and content of the expression 'minority' under Article 30 was questioned. To this query as well the Court reiterated its previously held position. In addition to dealing with the question of the term 'minority' the Court dealt with questions of the extent of State control and regulation over minority institutions. The Court held that the government regulations cannot destroy the minority character of the institution and make the right to administer a mere illusion.

5.4.3.1. 3 Existing Challenges Involving Minorities in India: The Case of the Seng Khasi in Meghalaya and the Sikhs in Punjab

There have been two separate but related developments pertaining to minority issues in India recently. The first one relates to the situation of the 'Seng Khasi' in the State of Meghalaya. The 'Seng Khasi' are members of the Khasi and Jaintia scheduled tribe who profess the '*Niam Khasi*' or '*Niam Tre*' religion, alternatively known as the indigenous or tribal religion. The Seng Khasi have recently started the claim for minority status and have also petitioned the Governor of the State of Meghalaya[305]. This claim intensified when it was noticed that students in schools who were Christians were awarded scholarship based on their status as a religious minority whilst the children of the Seng Khasi (who are numerically smaller in a State which is majorly Christian) did not receive any such aid. These claims for minority status has also opened the debate as to whether members of tribal communities in India be also notified as minority groups[306].

The second development has been the question over whether Sikh can claim minority status in Punjab where they are numerically in the majority. This issue came into prominence when on December 17, 2007 the Punjab and Haryana High Court declared that the institutions run by Sikhs in Punjab cannot claim minority status[307]. But later the

[305] See The Shillong Times, "Traditional Faith Followers Demand Minority Status", 4th March, 2017, http://www.theshillongtimes.com/2017/03/04/traditional-faith-followers-demand-minority-status/, (Accessed on 1 March, 2017); Kyndiah, Omarlin, "Who Are Minorities Under Indian Law?," Special Article, *The Shillong Times*, 9 Jan, 2016, http://www.theshillongtimes.com/2016/01/09/who-are-minorities-under-indian-law/, (Accessed on 1 March, 2017); The Telegraph, "Cry for minority status to tribes", March 5 , 2017, https://www.telegraphindia.com/1170305/jsp/northeast/story_138966.jsp, (Accessed on 1 June, 2017)

[306] Pyrtuh, Phrangsni, "Is Indigenous The Same As Minority? The Curious Case of the Seng Khasi/Sein Raij", *Raiot Challenging the Consensus*, February 17, 2016, http://raiot.in/is-indigenous-the-same-as-minority-the-curious-case-of-the-seng-khasisein-raij/ (Accessed on 1 March, 2017)

[307] *Sahil Mittal v State of Punjab and others*, CWP No. 14646 2007

Supreme Court put a stay on the order of the High Court in 2016. The Court has further decided to examine the question of whether a religious community should be granted minority status in a State where they are both numerically strong and suffer no apprehension of being "dominated" by others.

Minority Communities have the tendency to stick together which would invariably lead to them sticking together which would invariably lead to them becoming pre-dominant in a region. So the question would arise should they then be denied minority status benefits in that region? As an illustration: In a State 10% of its population is considered a minority. 9% of this population is residing in one part of the State making them a majority in that specific region. If the State were to then deny hem of minority benefits in that region owing to their majority status there, consequently only 1% of the minority would be benefitting from their status as minority as against 90% of the majority. This denial of benefits might also indirectly result in the scattering of individuals of the minority into other parts of the State to be able to receive benefits from their Minority Status invariably leading to the loss of their feeling of community.

Thus any examination by the Supreme Court into this matter is likely to offer insight into this issue and might also have an effect on Christian communities living in States like Nagaland and Mizoram where Christians are a numeric majority. The scrutiny of the situation of Sikhs and their minority Status in Punjab by the Supreme Court and any decision is sure to be of great significance to the determination of minorities and their rights in India.

5.5 CONCLUDING REMARKS

At the very outset of the chapter one of the present day challenges have involved the claims made by various different groups or communities like Women, Disabled persons etc. to also be identified as a minority. This has mainly been a result of the ambiguous nature of the definition on minority. Whether or not such groups merit to be construed as a minority is debatable (at present under the legal regime recognition has been accorded to only ethnic, religious, cultural and linguistic minorities), but the point of concern revolves around the potential of members of such groups to be doubly disenfranchised if they also are members of ethnic, cultural, religious or linguistic minorities.

With regards to minority rights and their application to non-citizens and immigrants, we find that in theory they too are vested with rights but how far such rights are accessible to them in practice remains a matter of concern. Further there definitely are intersections and inter-relationships between minority rights and refugees and Stateless persons.

We have also seen that gradually minority rights concerns have been generated in most regions and States. However, a number of challenges and questions abound over the issue of protection of minorities and their rights.

CHAPTER 6
CONCLUSION

CONCLUSION

"Our ability to reach unity in diversity will be the beauty and the test of our civilisation."

— *Mahatma Gandhi*

The existing minority rights regime under international law has its beginnings post World War I. However, minority related concerns and their protection has had a longer history which may be traced back to the growth of religious and ethnic tensions during the middle ages and development of the ideas of nation and nationalism in nineteenth century Europe.

The anxiety over the problems of minority situation stemmed from strong antagonism against minority groups which led to their oppression and persecution. But soon attempts were made to address the issue through minority protection mechanisms. These efforts eventually resulted in the establishment of the League of Nations system of protection of minorities post World War I. The League system was however different from the present regime on minority rights as it was in the form of guarantees and not rights. A crucial point that needs to be factored into the discussion is that the League system of protection was born less due to any real sense of empathy towards the condition of the minorities and more due to political concerns. While the victorious States of World War I that met at the Paris Peace conference were engaged with the treatment of minorities, their concerns stemmed from an apprehension that their newly drawn boundaries might perpetuate the tensions between majorities and minorities leading to the destabilization of the State.

After World War II there was a move away from the minority protection system of the League. The move has been attributed to many factors. One of the reasons for the change was based in the liberal theory which deems the individual to be valued over the group or community. It has also been at the centre of the collective versus individual rights debate as seen in chapter 3. Another important factor was the continued perception of most States and people that minority groups are a threat to the unity of the State. States prize stability and unity, and minority groups have been and continue to be seen as disruptive forces whose loyalty to the State remains in question. It was

seen how during the League days' minority groups were required not to have subversive sentiments but to show loyalty to the State in which they resided. These sentiments remain in vogue even today and can be observed through the refusals of many States to recognise the existence of minorities.

The discussion on the extant of minority rights in the preceding chapters has resulted in the following findings.

First, there is the continued lack of an acceptable definition of the term '*minority*' or '*national minority*'. The lack of consensus has been attributed to a variety of social and political factors including the burgeoning feeling amongst States and scholars that the absence of a definition does not in any way hamper the progress and implementation of minority rights. This thought process itself directly or indirectly makes States and scholars unwilling to expend resources or their energy in trying to find a definition. As such while there are now quite a number of legal instruments pertaining to minority rights the problems of not having a definition continues to plague their implementation. In the absence of a definition at the international or even regional levels leaves it to the discretion of an individual State to recognise minority groups and provide for their protection. For example, States like France continue to claim that they have no minority groups present within their borders. The lack of a definition has also meant that a growing number of other disenfranchised groups and communities like women, the disabled etc., claim to come under the umbrella of a minority group.

Second, there is a continuing debate over how minority rights should be classified. The prevailing system of minority rights are based on an individual rights approach keeping in line with the liberal philosophies. Most official interpretations of the minority rights provisions have specifically and repeatedly emphasised their individual right character. For example, *HRC General Comment No 23, on Article 27 ICCPR* has pointed out that minority rights are accorded to individuals not to the group as a whole. However, what is evident is that minority groups have a strong collective character and the individual rights accorded to members of minority groups like the right to enjoy their culture in community involves collective participation of minorities in public and political sphere. It cannot be exercised without the group itself being protected and accorded rights. Proponents of individual rights argue that protecting the individual indirectly protects the group itself. Conversely, advocates of group rights argue that if collective rights for

minorities are not given then Article 27 of ICCPR for instance would not substantially add anything to the norms of equality and non-discrimination which are already present.

Third, the survey of the international legal instruments like the *UN Declaration on Minorities* and the *Framework Convention on the Protection of National Minorities* shows that the concept of minority rights has evolved from negative rights to becoming positive rights. States are now under the obligation to not only respect minority rights but to positively enforce them as well. The content of these rights have progressed into rights involving the right of public and political participation at least in areas that concern minorities. To some extent the right to autonomy of minorities has also been considered. A number of institutional mechanisms have also been established to monitor the situation of minority rights and giving recommendations on areas of concern. For example, the *High Commissioner on National Minorities* (OSCE) who is tasked with identifying and addressing sources of ethnic tensions and the *Monitoring System of the FCNM* is responsible for the adoption of country-specific opinions. However, problems of implementation remain, chiefly attributable to the ambiguity of provisions of the legal instruments and weak mechanisms.

Fourth, minority rights have acquired international salience. The claim made by minority groups have been recognised as identity claims constituting an integral part of human personality thereby worthy of protection. Their international significance lies in the fact that problems relating to discrimination of minorities, etc. is no longer treated as exclusively an internal affair. The break-up of former Yugoslavia where the international community has been concerned is a recent example. Further, it has also been contended that most of the present and persisting minority issues are a result of international law itself.

Fifth, courts and quasi-judicial bodies have offered insights and interpretations of the rights of minorities and helped develop a minority rights jurisprudence. The HRC's decisions in the *Ivan Kitok* and *Sandra Lovelace* cases have been noteworthy in their interpretation of Article 27 ICCPR. At the domestic level in India the *Re Kerala Education Bill* and *T.M.A. Pai* cases have been landmark in their efforts to deal with questions of definition of a minority and other minority related concerns. Earlier decisions given by the PCIJ like the *German Settlers in Poland* and the *Minority*

Schools in Albania cases was commendable. They contributed to the understanding of questions of minority rights.

Lastly, it has been found that a pressing question is whether minority rights have been integrated into the human rights cannon. From the examination of the present legal regime it can be more or less Stated with certainty that minority rights have been absorbed into the wider concept of human rights. Most of the minority instruments and provisions are today placed under the umbrella of human rights. It has however been pointed out that viewing minority rights synonymously with human rights fails to recognize the other varied claims of minorities that include the economic as well as political claims. As such it is imperative that we try and build a theory on minority rights which will be able to address all concerns of minorities which the traditional approaches of the human rights regime remain unable to do.

Thus it is necessary to meet challenges ahead. These involve the application of minority rights to non-citizens and immigrants and the inter-relationship between minority rights and refugees and Stateless persons. These enquiries not only call for a debate on the beneficiaries of minority rights but also a larger debate on the rights discourse and human rights itself.

In summation, there is a need for a comprehensive understanding of minority rights in international law which will enable us to tackle the various challenges in the realm of minority rights both internationally and domestically and for achieving the goals of international peace and stability.

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ANNEXURE-I: DECLARATION ON THE RIGHTS OF PERSONS BELONGING TO NATIONAL OR ETHNIC, RELIGIOUS AND LINGUISTIC MINORITIES

(Adopted by General Assembly resolution 47/135 of 18 December 1992)

The General Assembly,

Reaffirming that one of the basic aims of the United Nations, as proclaimed in the Charter, is to promote and encourage respect for human rights and for fundamental freedoms for all, without distinction as to race, sex, language or religion,

Reaffirming faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small,

Desiring to promote the realization of the principles contained in the Charter, the Universal Declaration of Human Rights, the Convention on the Prevention and Punishment of the Crime of Genocide, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, and the Convention on the Rights of the Child, as well as other relevant international instruments that have been adopted at the universal or regional level and those concluded between individual States Members of the United Nations,

Inspired by the provisions of article 27 of the International Covenant on Civil and Political Rights concerning the rights of persons belonging to ethnic, religious or linguistic minorities,

Considering that the promotion and protection of the rights of persons belonging to national or ethnic, religious and linguistic minorities contribute to the political and social stability of States in which they live,

Emphasizing that the constant promotion and realization of the rights of persons belonging to national or ethnic, religious and linguistic minorities, as an integral part of the development of society as a whole and within a democratic framework based on the rule of law, would contribute to the strengthening of friendship and cooperation among peoples and States,

Considering that the United Nations has an important role to play regarding the protection of minorities,

Bearing in mind the work done so far within the United Nations system, in particular by the Commission on Human Rights, the Sub-Commission on Prevention of Discrimination and Protection of Minorities and the bodies established pursuant to the International Covenants on Human Rights and other relevant international human rights instruments in promoting and protecting the rights of persons belonging to national or ethnic, religious and linguistic minorities,

Taking into account the important work which is done by intergovernmental and non-governmental organizations in protecting minorities and in promoting and protecting the rights of persons belonging to national or ethnic, religious and linguistic minorities,

Recognizing the need to ensure even more effective implementation of international human rights instruments with regard to the rights of persons belonging to national or ethnic, religious and linguistic minorities,

Proclaims this Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities:

Article 1

1. States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity.

2. States shall adopt appropriate legislative and other measures to achieve those ends.

Article 2

1. Persons belonging to national or ethnic, religious and linguistic minorities (hereinafter referred to as persons belonging to minorities) have the right to enjoy their own culture, to profess and practise their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination.

2. Persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic and public life.

3. Persons belonging to minorities have the right to participate effectively in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live, in a manner not incompatible with national legislation.

4. Persons belonging to minorities have the right to establish and maintain their own associations.

5. Persons belonging to minorities have the right to establish and maintain, without any discrimination, free and peaceful contacts with other members of their group and with persons belonging to other minorities, as well as contacts across frontiers with citizens of other States to whom they are related by national or ethnic, religious or linguistic ties.

Article 3

1. Persons belonging to minorities may exercise their rights, including those set forth in the present Declaration, individually as well as in community with other members of their group, without any discrimination.

2. No disadvantage shall result for any person belonging to a minority as the consequence of the exercise or non-exercise of the rights set forth in the present Declaration.

Article 4

1. States shall take measures where required to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law.

2. States shall take measures to create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs, except where specific practices are in violation of national law and contrary to international standards.

3. States should take appropriate measures so that, wherever possible, persons belonging to minorities may have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue.

4. States should, where appropriate, take measures in the field of education, in order to encourage knowledge of the history, traditions, language and culture of the minorities existing within their territory. Persons belonging to minorities should have adequate opportunities to gain knowledge of the society as a whole.

5. States should consider appropriate measures so that persons belonging to minorities may participate fully in the economic progress and development in their country.

Article 5

1. National policies and programmes shall be planned and implemented with due regard for the legitimate interests of persons belonging to minorities.

2. Programmes of cooperation and assistance among States should be planned and implemented with due regard for the legitimate interests of persons belonging to minorities.

Article 6

States should cooperate on questions relating to persons belonging to minorities, inter alia, exchanging information and experiences, in order to promote mutual understanding and confidence.

Article 7

States should cooperate in order to promote respect for the rights set forth in the present Declaration.

Article 8

1. Nothing in the present Declaration shall prevent the fulfilment of international obligations of States in relation to persons belonging to minorities. In particular, States shall fulfil in good faith the obligations and commitments they have assumed under international treaties and agreements to which they are parties.

2. The exercise of the rights set forth in the present Declaration shall not prejudice the enjoyment by all persons of universally recognized human rights and fundamental freedoms.

3. Measures taken by States to ensure the effective enjoyment of the rights set forth in the present Declaration shall not prima facie be considered contrary to the principle of equality contained in the Universal Declaration of Human Rights.

4. Nothing in the present Declaration may be construed as permitting any activity contrary to the purposes and principles of the United Nations, including sovereign equality, territorial integrity and political independence of States.

Article 9

The specialized agencies and other organizations of the United Nations system shall contribute to the full realization of the rights and principles set forth in the present Declaration, within their respective fields of competence.

ANNEXURE-II: LIST OF THE MINORITIES TREATIES PLACED UNDER THE LEAGUE OF NATIONS [308]

TREATIES	REMARKS
1. The treaty of June 28, 1919, between the Principal Allied and Associated Powers and Poland,	Placed under the guarantee of the League of Nations, February 13, 1920.
2. The treaty of September 10, 1919, between the Principal Allied and Associated Powers and Czecho-Slovakia,	Placed under the guarantee of the League of Nations, November 29, 1920.
3. The treaty of September 10, 1919, between the Principal Allied and Associated Powers and the Serb-Croat-Slovene State,	Placed under the guarantee of the League of Nations, November 29, 1920.
4. The treaty of December 9, 1919, between the Principal Allied and Associated Powers and Roumania,	Placed under the guarantee of the League of Nations, August 30, 1921.
5. The treaty of August 10, 1920, between the Principal Allied Powers and Greece.	
6. The treaty of August 10, 1920, between the Principal Allied Powers and Armenia.	
7. Articles 62 to 69 of the treaty of peace with Austria (signed at St. Germain-en-Laye on September 10, 1919),	Placed under the guarantee of the League of Nations, October 22, 1920.
8. Articles 49 to 57 of the treaty of peace with Bulgaria (signed at	Placed under the guarantee of the League of Nations, October 22, 1920

[308] Source: Rosting, Helmer (1923), "Protection of Minorities by the League of Nations", *The American Journal of International Law*, 17(4):641-660, pp. 647-648; Fink, Carole (1995), "The League of Nations and the Minorities Question", *World Affairs*, 157(No. 4) Woodrow Wilson and the League of Nations: Part One:197-205, p. 204.

Neuilly Seine November 27, 1919),	
9. Articles 54 to 60 of the treaty of peace with Hungary (signed at Trianon on June 4,1920),	Placed under the guarantee of the League of Nations, August 30, 1921.
10. Article 140 to 151 of the treaty of peace with Turkey (signed at Sevres on August 10, 1920).	

Apart from the minority treaties five States were compelled to make declarations of their adherence to the provisions of the Minority Treaties as a condition of their admission to the League[309]

NAME OF STATES	YEAR
1. Finland	27 June , 1921
2. Albania	2 October ,1921
3. Lithuania	12 May , 1922
4. Latvia	7 July, 1923
5. Estonia	17 September, 1923

[309] Texts of these treaties and declarations are in League of Nations, Protection of Linguistic, Racial, and Religious Minorities (Geneva: League of Nations, 1927).

ANNEXURE-III: LEAGUE OF NATIONS MEMBER COUNTRIES[310]

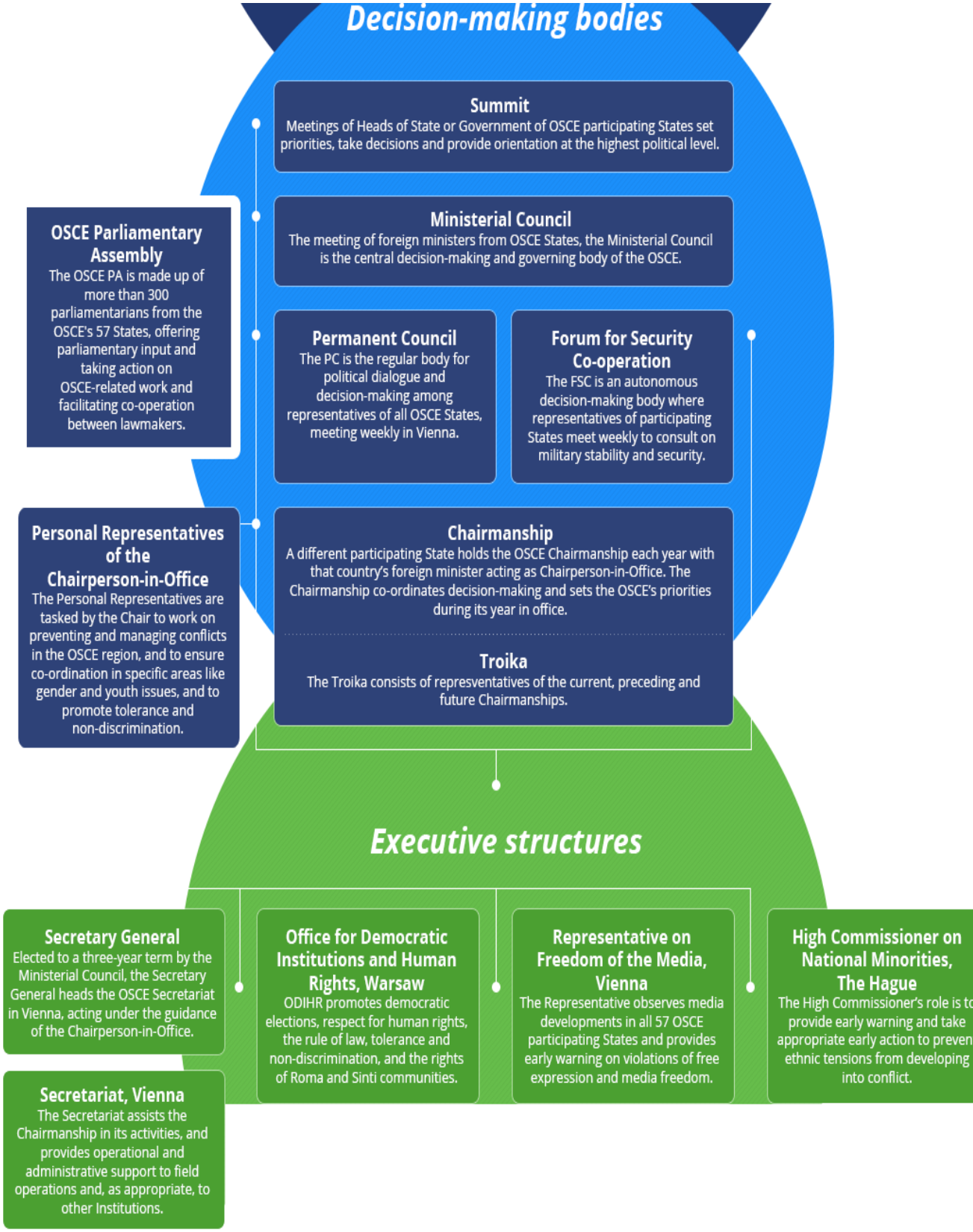
FOUNDING MEMBERS (10 JANUARY 1920)	REMARKS
Argentina	Left in 1921, it resumed full membership in 1933
Belgium	
Bolivia	
Brazil (withdrew 14 June 1926)	Withdrew 14 June 1926
British Empire separate membership for: • *United Kingdom* • *Australia* • *Canada* • *India* • *New Zealand* • *South Africa*	
Chile	Withdrew 14 May 1938
Republic of China	
Colombia	
Cuba	
Czechoslovakia	15 March 1939 occupied by Germany, Never Formally left
Denmark	Left upon German takeover in 1943
El Salvador	Withdrew 11 August 1937
France	Vichy France withdrew 18 April 1941; withdrawal not recognised by Free French forces
Greece	
Guatemala	Withdrew 26 May 1936
Haiti	Withdrew April 1942
Honduras	Withdrew 10 July 1936
Kingdom of Italy	Withdrew 11 December 1937
Empire of Japan	Withdrew 27 March 1933
Liberia	
Netherlands	
Nicaragua	Withdrew 27 June 1936
Norway	
Panama	
Paraguay	Withdrew 23 February 1935
Persia	Known as Iran from 1934
Peru	Withdrew 8 April 1939
Poland	
Portugal	
Romania	Withdrew July 1940

[310] Of the 42 founding members, 23 (or 24, counting [Free France]) remained members until the League of Nations was dissolved in 1946. A further 21 countries joined between 1920 and 1937, but 7 left, withdrew or were expelled before 1946.

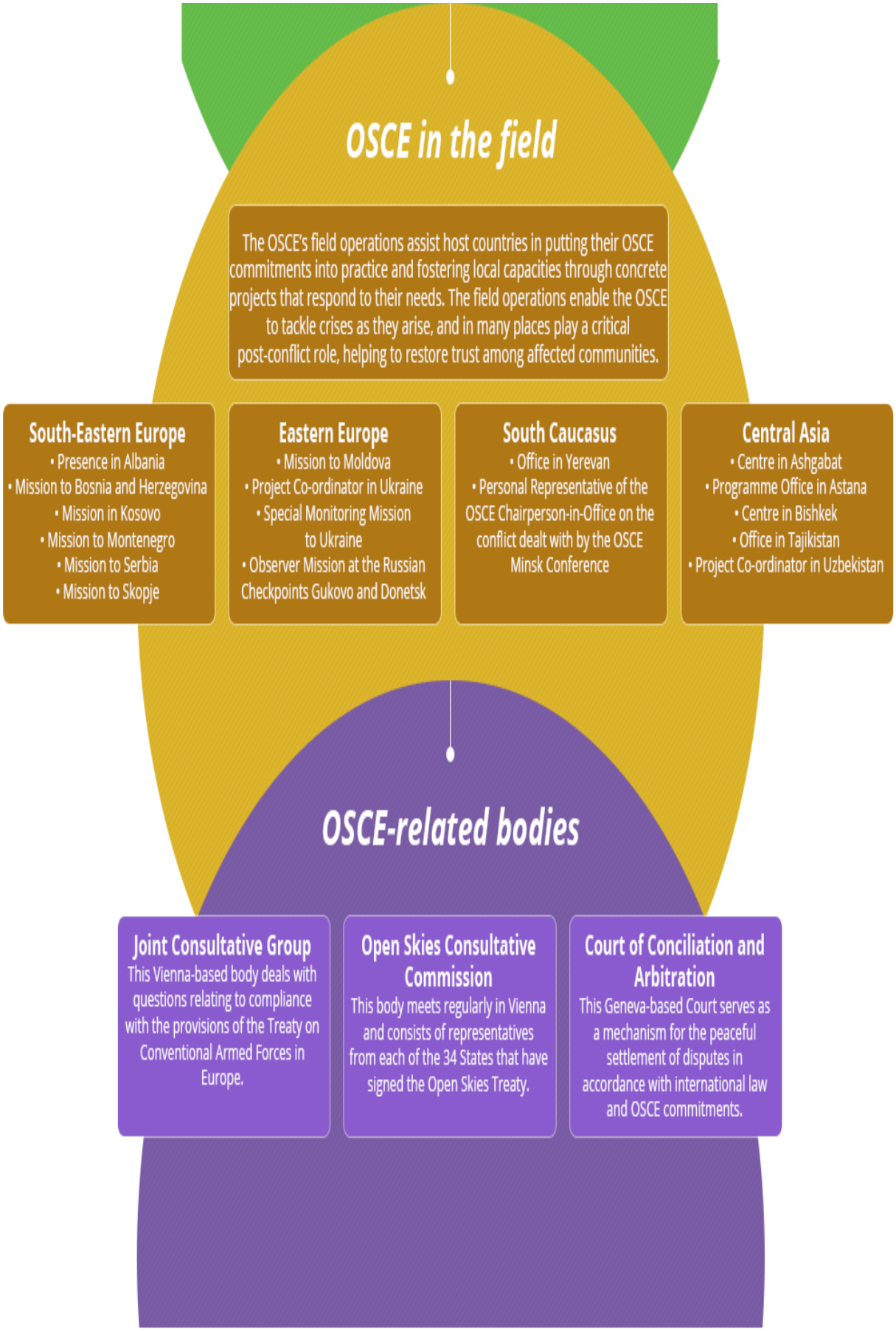
Siam	Known as Thailand from 1939
Spain	Withdrew May 1939
Sweden	
Switzerland	
Uruguay	
Venezuela	Withdrew 12 July 1938
Kingdom of Yugoslavia	Known as Kingdom of Serbs, Croats and Slovenes until 1929; Occupied by Axis Powers 1941-1945
COUNTRIES WHICH BECAME MEMBERS AFTER THE FOUNDING	**REMARKS**
1920	
Austria	Joined 15 December 1920; ceased to exist 13 March 1938
Bulgaria	Joined 16 December 1920
Costa Rica	Joined 16 December 1920; withdrew 22 January 1925
Finland	Joined 16 December 1920; Withdrew from active participation in the League after its defeat by the Soviet Union in 1944
Luxembourg	Joined 16 December 1920; Forced to withdraw by German occupation in May 1940 and incorporation into the German Reich
Albania	Joined 17 December 1920; Forced to withdraw by Italian invasion of 1939.
1921	
Estonia	Joined 22 September 1921; Occupied and annexed by the USSR in 1940
Latvia	Joined 22 September 1921; Occupied and annexed by the USSR in 1940
Lithuania	Joined 22 September 1921; Occupied and annexed by the USSR in 1940
1922	
Kingdom of Hungary	Joined 18 September 1922; Withdrew 11 April 1939
1923	
Irish Free State	Joined 10 September 1923, Known as Ireland from 1937
Abyssinia	Joined 28 September 1923
1924	
Dominican Republic	Joined 28 September 1924
1926	

Germany	Joined 8 September 1926; Withdrew 19 October 1933
1931	
Mexico	Joined 9 September 1931, and is declared member 12 September 1931
1932	
Turkey	Joined 18 July 1932
Kingdom of Iraq	Joined 3 October 1932
1934	
Union of Soviet Socialist Republics	Joined 18 September 1934; expelled 14 December 1939
Kingdom of Afghanistan	Joined 27 September 1934
Ecuador	Joined 28 September 1934
1937	
Kingdom of Egypt	Joined 26 May 1937

ANNEXURE-IV: STRUCTURE OF THE OSCE[311]



[311] Source OSCE Official Website, http://www.osce.org/whatistheosce#timeline


OSCE in the field
The OSCE's field operations assist host countries in putting their OSCE commitments into practice and fostering local capacities through concrete projects that respond to their needs. The field operations enable the OSCE to tackle crises as they arise, and in many places play a critical post-conflict role, helping to restore trust among affected communities.
South-Eastern Europe
• Presence in Albania
• Mission to Bosnia and Herzegovina
• Mission in Kosovo
• Mission to Montenegro
• Mission to Serbia
• Mission to Skopje
Eastern Europe
• Mission to Moldova
• Project Co-ordinator in Ukraine
• Special Monitoring Mission to Ukraine
• Observer Mission at the Russian Checkpoints Gukovo and Donetsk
South Caucasus
• Office in Yerevan
• Personal Representative of the OSCE Chairperson-in-Office on the conflict dealt with by the OSCE Minsk Conference
Central Asia
• Centre in Ashgabat
• Programme Office in Astana
• Centre in Bishkek
• Office in Tajikistan
• Project Co-ordinator in Uzbekistan
OSCE-related bodies
Joint Consultative Group
This Vienna-based body deals with questions relating to compliance with the provisions of the Treaty on Conventional Armed Forces in Europe.
Open Skies Consultative Commission
This body meets regularly in Vienna and consists of representatives from each of the 34 States that have signed the Open Skies Treaty.
Court of Conciliation and Arbitration
This Geneva-based Court serves as a mechanism for the peaceful settlement of disputes in accordance with international law and OSCE commitments.