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MINIMUM STANDARDS & RIGHTS OF MINORITIES

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ABSTRACT

In the 21st century, though development is at a great pace, still the minority class suffers discrimination globally. While in the 20th century, various international instruments such as the UN Declaration on the rights of minorities and the Framework Convention for the protection of national minorities (FCNM) were codified for the protection of minority rights. These conventions establish a baseline for the behavior with the minority class and non discrimination. But there remains an implementation gap, thus these conventions remain only on paper.

This research paper recognizes the dual approach of minority rights- the right to identity and the right to existence. It also investigates the examination of the minimum standards doctrine, laid by international law. This research further highlights the judicial philosophy and suggests the implementation of formal legal parity measures and reformation of minimum standards as a static set of obligations.

KEYWORDS: Minority rights, Minimum standards, Cultural integrity, Non- Discrimination, Equality

INTRODUCTION:

The protection of the rights of minorities is the fundamental aspect of any healthy democracy. In a democratic state, it is the right of every individual to seek fair treatment. However, the modern reality of democracy is totally different. Even in the 21st century, where there is rapid growth of globalization, privatization, liberalization, sharing borders, commerce and trade among nations, the status of the minority

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class remains an issue. The minority classes are not treated as they need to be. The minority class rests at a disadvantage because of the way of the living of majority class.

The principle of minimum standards given by international bodies² states that it is not only the will of the state to protect the minority class; rather it is the duty of the state to establish legal frameworks to protect the minority class. These basic standards make sure that identity and existence of minorities stay alive. They need not suffer the humiliations of the majority class.

The protection of the minority class³ rests on the establishment of Substantive Equality i.e. treating people according to their circumstances. For a minority group, this means providing them adequate resources to grow and protecting their place of worship, culture, etc to keep their existence and identity alive in the society. However, beside the minimum standards principle's existence, there is a huge gap between what the law says on paper and real world situation. This paper explores the needs for change in minimum standards to protect the small groups of the society.

MINIMUM STANDARDS:

The Minimum Standards Principle is the core framework of international law for the protection of the rights of minorities. It serves as the bedrock of the absolute lowest level of treatment that states must provide to minority classes to protect their existence. The minimum standards principle is a foundation of human rights. A country can only develop if it grants protection and fair treatment to the minority class.

This principle is a safety net for minority rights. While the laws differ from country to country, the international bodies have agreed and framed a principle that remains the same globally. This principle ensures that whether a person belongs to a rural community, small village or unpopular group, they will be given the same level of safety, protection, dignity, and cultural freedom as majority groups.

This principle serves as a check on the power of government in democratic countries. As democracy is considered the "rule of majority", it keeps an eye over the government so that it does not snatch the rights of the minority. There are basically two pillars of this principle as follows:

A. Right to Existence:

It is the first pillar of the minimum standards principle that grants the right to existence to the minorities. It states that the right to stay alive and safe is the minimum standard granted to the minority class. Earlier, the people who belong to minority groups often faced racial discrimination, ethnic cleansing, genocide and other evils. In the 20th century, with the rise in individualism and general awareness, the international communities through various treaties agreed to cast a responsibility on the state to protect the existence of the minority group residing in their country.

Further, the state is under an obligation to prevent small groups from violence and any other threats. It also prohibits the acts committed with intent to destroy any group or a part. It is the active responsibility of the state to provide them safe shelter and ensures that they are not removed forcibly from their ancestral homes.

This pillar is the literal basis of survival of the minority class.

² United Nations Declaration on the Rights of Minorities, 1992, Article 1

³ Francesco Capotorti, Study on the Minority Rights, UN Doc. E/CN (1979)

B. Right to Identity:

This is another pillar of protection of rights of the minority. Existence is not just enough for a peaceful life, it also requires living within one's own cultural identity⁴ .i.e. living as oneself. This pillar acts as a shield to protect the cultural rights of the minority class. It states that minorities have a right to use their own language while conversing or writing any examination. Minimum standards recognize that the minority groups are free to use their native language in private and public.

Further, they must be granted religious freedom. They can establish their places of worship and wear religious attire i.e. pagri, lungi, hijab, sari, etc to maintain their cultural identity. They can solemnize their marriages according to their personal laws or customs without any restrictions except if it breaches the moral laws of the state. It also grants them the right to inherit and succeed according to their personal laws or any custom that prevailed.

This pillar further grants the minority class the right to establish their own schools⁵ or colleges to teach their children historical or cultural values. It protects the identity and existence of their community.

C. Non- Discrimination:

This pillar serves as a legal basis for the protection of the rights of the minority. It ensures that there is no discrimination in granting political⁶ and civil rights between minority groups or majority classes. There is no such provision where only a specific group is allowed to vote, targeting the minority groups.

It further lays out that if any right of a minority class is violated, then it is the duty of the state to take certain measures for the upliftment of the minority group. This pillar acknowledges that people belonging to minority groups must have a right to have equal access to the judicial system and legal protection.

D. Participation:

Another pillar is the effective participation. It ensures that the voice of the minority groups must be heard as the majority class. They should be given adequate representation economically, politically, and administratively. The state should reserve seats for the minority groups in the political system to have an equal say in the law making. Minorities must be given equal opportunities in jobs, and other economic resources to curb the vicious circle of poverty.

ROLE OF INTERNATIONAL BODIES

International bodies are the watchdogs of the rights of an individual. They monitor the rights of the minority and create a network where a state needs to be accountable if they violate the minority rights. The United Nations acts as the master of the nations and protects the rights of humans. It monitors human rights through the establishment of a human rights committee.

⁴ International Covenant on Civil and Political Rights, 1966, Article 27

⁵ Minority Schools in Albania, Advisory opinion, 1935, P.C.I.J, 64

⁶ D.H & Others v. The Czech Republic, Application No. 57325, 2007

The international organizations thus provide a platform to victims whose minority rights are violated by the state. It holds the state accountable and dispenses justice. They act as interpreters by performing several functions as follows:

I. Forming Rules:

The United Nations and Council of Europe (COE)⁷ define minimum standards for the protections of the rights of the minor. The UN General Assembly passed the Minority Declaration in 1992, in which it was declared that states must protect the rights of minors. It stated that the cultural identity of the minority class must be protected by the state.

Further, the International Labor Organization (ILO),⁸ formed convention no.169 to protect the rights of tribal peoples and indigenous people regarding their work. It states that the state is under an obligation to protect the existence of the minority class.

II. Monitoring & Adjudication:

International bodies keep an eye on all the nations to check if they are following the international frameworks. The United Nations Human Rights Council (UPR), reviews the human rights records of every state after every 5 years. They may point out if any state is mistreating the rights of the minority class.

When a person cannot get justice in their own country, then they knock on the door of the international court. The European Court of Human Rights (ECtHR) issues legally binding judgments. It states that if any country violates the rights of the minority class then it is forced to change the laws and pay compensation.

Further, under ICCPR, victims can file complaints if their right is violated.

III. Assistance:

Most nations fail to provide protection to minority classes due to inadequate resources and awareness. International bodies act as a guide for states for better governance.

- Organization for Security & Co-operation in Europe (OSCE): It is an organization that aims to protect the identity of minorities. They issue warnings before the ethnic tensions and war related situations. It also provides government assistance in framing better laws and regulations for maintaining peace in the state.
- UNESCO: It works to protect the heritage of the minority class. It helps minority groups to preserve their language, identity, and existence by providing funding and awareness.

⁷ Framework Convention for the protection of National Minorities, 1995, Council of Europe, 157

⁸ ILO Convention no. 169, Indigenous & Tribal People in Independent Nations

RECOMMENDATIONS

To ensure the implementation of minimum standards principles in reality, there is a need for a change in the policy framework. The recommendations are as follows:

- i. Government must view the protection of rights of the minority as the active obligation.⁹ It must play an active role by providing assistance and funding to the minority schools.
- ii. Minorities must have an equal say in the law making process. There must be provision of permanent consultative bodies or reservation of seats in the Parliament for minority groups. They should have a right to be heard on any policy framework.
- iii. The minimum standards must be incorporated into the domestic laws as international courts are too far and also expensive for the common man to knock on the door for justice. So, the national courts should be trained to adjudicate the cases that involve the violation of rights of minority groups.
- iv. States must spread legal awareness among the citizens about the existence and identity of the minority class, so that the majority class knows the history and cultural values of minority groups.

CONCLUSION

The formation of the minimum standard principle recognizes the rights of the minority groups. It focuses on the right to existence and protection of identity of the minority classes. It shifts the duty of state from passive to active. It mandates that it is the duty of the state to protect the existence and preserve the cultural, linguistic and religious identities of the minority groups.

While international bodies have laid a robust framework for minority rights, there is an implementation gap. The laws remain mere on paper rather than in the real world. To bridge the implementation gap, the national and international bodies need to work hand in hand to protect the rights of minorities in a real sense.

⁹ General Comment No. 23, The rights of Minorities, Article 27, Union Rights Committee, 1994