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Challenges Faced By The Religious **Minorities For Right To Freedom Of** **Religion And Expression**

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Abstract

International Human Rights law on minorities puts forth a complicated system of provisions which influence religious groups. The rights of religious minorities follow from basic human right treaties and are an essential factor for democracy. The right to freedom of thought conscience and religion is closely associated with other human rights like freedom of expression, association and assemble enshrined under Article 19 of the Constitution of India. Hence respect for human rights indicate every person belonging to religious minorities have freedom to practice their religion freely and are protected against hate crime, abuse and persecution. Since the inclusion of the Declaration of Human Rights, 1948, the admission of human rights protection for every person has been framed, so it is hoped that there is no violation of human rights and crimes in every country in the world. All person has the right to live peacefully and carry out every activity of the religious beliefs without any oppression. Freedom of religion or belief is one of the fundamental right embodied under Constitution of India. This paper will also deal later what had happened with the Rohingya tribes of Myanmar. This paper will also deal how the international legal view of human rights abuses.

Keywords-

Religion, Minorities, Human Rights, Violation, International law.

Introduction

Nowadays human right violations which are based on freedom of religion or belief are very common around the globe. Religious minorities are frequently subjected to cordial animosity and limitations imposed by the government basically affect persons belonging to religious minorities due to their precarious legal and social situation. The most commonly Amidst the most frequent prevalent contravention determine prohibition of religious activities, constraints on worship, practice and festivity observance, confines on and refusal of public registration, arbitrary detention and prosecution of ethical objectors, demolition of religious property, denial to admit places of worship and refusal of access to education.

According to census in 1992, the United Nations Minorities Declaration in its article 1 refers to minorities as based on national or ethnic, cultural, religious and linguistic identity, and furnish that States should protect their subsistence. There is no internationally coincide definition as to which groups comprise minorities. It is often stressed that the presence of a minority is a question of fact and that any definition must involve both objective factors (such as the existence of a shared ethnicity, language or religion) and subjective factors as well as that person must distinguish themselves as members of a minority.

Likewise to minorities, there is no universally established international definition of indigenous peoples. Suggestion in this regard can be acquired, for example, from the work of the Working Group on Indigenous Populations, the provisions of Convention No. 169 of the International Labour Organization (ILO) and the contents of the United Nations Declaration on the Rights of Indigenous Peoples.¹ Various sources cite the following characteristics, either alone or in combination: indigenous peoples are declining from the peoples who lived the land or territory prior to colonization or the creation of State borders; they possess distinct social, economic and political systems, languages, cultures and beliefs, and are bound to conserve and develop this distinct identity; they exhibit strong attachment to their ancestral lands and the natural resources contained therein; and/or they belong to the non-dominant groups of a society and identify themselves as indigenous peoples.²

¹ https://books.google.co.in/books?id=zQg0EAAAQBAJ&redir_esc=y

² https://www.ohchr.org/documents/publications/minorityrights_en.pdf

In contemporary international law, common thing pertaining to religious minorities was raised in relation with the territorial changes following World War I. After the peace agreement led to the development of a legal definition embedded in international rules, within the work of the League of Nations. It was the requirement to assure peace at the global level that invoked a redefinition of the concept of nationality where pre-eminence was to be given to ethnic, linguistic and religious disparity between majorities and minorities.³ Religion ascertain its place among the standards to create the existence of a minority, while general identity and solidarity become the 'key words' to describe it.⁴ After World War II, a number of definition of the term 'minority' were given within the work of the United Nations all of them expressing the difficulty to ascertain which social groups were accredited to be called as minorities, if indigenous people or migrant workers were to be comprehended, which is obviously a subjective and objective measures were to be confronted and if a slightest size had to be solicited.⁵

According to Articles 29, 30, 350A, and 350B of the Indian Constitution the word minority has been used and its plural forms, but it is not defined anywhere. Currently, there has been various debate in India on the question on the button who constitutes a minority. The Supreme Court of India in TMA Pai Foundation & Ors v. State of Karnataka & Ors (2002) has held that for the purpose of Article 30 of the Indian Constitution, a minority whether linguistic or religious is determinable with reference to a state and not by taking into consideration the population of the country as a whole. Due to state-based recognition of religious minorities, some religious minorities have struggled to get national-level recognition by India's central government. In case of Bal Patil & Anr v. Union of India & Ors⁶ it was held that the Jains filed a petition in the Indian Supreme Court to seek a judgment by the central government for a parallel recognition at the national level. The Jains' petition was endorsed by the National Commission for Minorities in India, but the Supreme Court without making a proper judgement passed the matter to the central government of India.

Any act for the protection of minorities should concentrate initially on the protection of the physical presence of persons belonging to minorities, as well as protecting them from genocide and crimes against humanity.

³ Freedom of Religion or Belief. An International Law Commentary.

⁴ file:///C:/Users/hp/Downloads/religions-12-00691%20(3).pdf

⁵ <https://undocs.org/A/74/160>

⁶ 5 Case No: Appeal (civil) 4730 of 1999, Bal Patil & Anr v. Union of India & Ors (8 August, 2005).

Amidst collision, the physical unity of persons belonging to minority groups is in line of an imminence risk and attention should be paid to assuring that minorities, including those dislocated internally within their own country or externally as refugees, have convulsion to humanitarian aid and relief such as food, shelter and health care. Lack of respect for, lack of protection and lack of fulfilment of the rights of minorities may be at least a contributing factor if not the initial reason of dislocation and may—in the worst cases—even lead to the demolition of such religious communities. The dislocation of minorities can thus satisfy as a handler of the degree to which their rights are respected, protected and fulfilled in the country from which they are dislocated. Although it can be challenging to distinguish all minority community as such in a status quo of dislocation, protection mechanisms, including humanitarian assistance schemes, need to be purported in a way which approves these groups to reserve their identity to the greatest extent possible. It is prominent to allow that the protection of the presence of minorities also claims regard for and protection of their religious and cultural heritage, which are *sina qua non* to their group identity. As former United Nations Secretary General Kofi Annan remarked at the Stockholm International Forum in January 2004: “We must protect especially the rights of minorities, since they are genocide’s most frequent targets.”⁷

Persecution or minorities can be broadly classified as violence or discrimination against minority groups, involving acts aiming to deprive political rights and force minorities to associate, leave, or live as second-class citizens. Persecution of minority groups is popular in many situations whether challenged by disasters or not. Implying to disaster situations, Slim and Bonwick (2005) commented, ‘that it is important to understand who is the most vulnerable to threats and that this may involve important differentiation of the threats by age, gender, ethnic group, social status, religion or other factors’.

Moreover, in many parts of the world, they may be victims of several human rights violations, violence, conflict, ethnic or religious persecution, and in extreme cases, genocide. Religious minorities may affront a number of safeguard dangers that may involve more need than others in similar issues. These are-

- Minorities and indigenous peoples are among the most marginalized communities in many societies.

⁷ United Nations press release SG/SM/9126/Rev.1, 11 February 2004.

They are usually prevented from contributing in social and economic affairs, may not have authority to political power, and are subsequently excluded from revealing their identities. These hurdles are aggravated during migration, which rises the risks they face.

- Members of minority and indigenous groups can be at danger of harm from the surrounding population or from their own family or community.
- If the violence that caused dislocation targeted minority or indigenous communities, they may be at danger if it disclose over into their countries of asylum. Children and women are especially prone to attack; community leaders, and men who are regarded to be possible belligerent, are also at danger.
- Since minorities and indigenous peoples always assure persistent poverty and are assumed by other format of marginalization, they may be at danger of becoming victims of trafficking, including sexual exploitation. This danger increases in a case of dislocation and is especially acute for minority and indigenous children, young adults and women.⁸

Whilst minority groups of everyone may face persecution, societal tension between religious communities in a number of various countries has meant that religious minorities have been the target of violence and struggled to access assistance. The United Nations (UN) Special Rapporteur on 'Freedom of Religion and Belief' (FoRB) has reported that religious persecution is on the rise.⁹

Under the provisions of human rights mechanism, States have a responsibility to guard the rights of all persons subject to or under their direction. Protest express to this principle hit it off, among other things, to political rights. The Commentary on the United Nations Minorities Declaration by the Working Group on Minorities is important as it decipher the interpretation of the substantive provisions of the document. Under international law, few rights which are granted to minority have been made available to recently succeeded migrants who possess same ethnic, religious or linguistic identity. Their treatment is to be confirmed in the customary international law principle of non-discrimination, which is basic in international law and it is expressed in all human rights instruments and documents. The right not to be discriminate against is protected under various mechanism of direct rightness to minorities.

⁸ <https://www.wiltonpark.org.uk/event/wp1641/>

⁹ <https://www.ohchr.org/en/issues/freedomreligion/pages/freedomreligionindex.aspx>

A basic problem relating to minorities and citizenship is that again and again members of particular groups are denied or deprived of their citizenship because of their national or ethnic, religious and linguistic characteristics. This custom is against to international law, basically in regard to article 9 of the 1961 Convention on the Reduction of Statelessness, which provides that “a Contracting State may not deprive any person or group of persons of their nationality on racial, ethnic, religious or political grounds.”¹⁰

It is therefore necessary to note that discrimination against a person on one of the above grounds resulting in the arbitrary absence of nationality may confer to meeting some of the needs in the determination of refugee status. Discrimination against minorities has widely resulted to their exclusion from citizenship. Such exclusion is generally accomplished in newly independent States that outline citizenship in a way which excludes persons belonging to particular minority groups who are considered as “outsiders” regardless of long-standing associates to the territory of the new State. For instance discrimination against minorities may be a reason of statelessness, the very cause that members of a particular group are stateless can deteriorate their practice of a broad range of human rights. While in general most human rights are given to everyone under the jurisdiction of the State, in practice non-citizens, including stateless persons, face obstacles in exercising these rights. These hurdles may be larger yet if the refugee person also comes from a minority group.

Article 25(1) of the Indian Constitution guarantees that “subject to public order, morality and health, all persons are equally entitled to freedom of conscience and the right to freely to profess, practice and propagate religion.”¹¹ However, its sub-clause 2 (B) and its corresponding Explanation II is considered very debatable. While Explanation I states that the wearing and carrying of kirpans shall be considered to be included in the profession of the Sikh religion. Explanation II in sub-clause 2 (B) states, “Hindus shall be interpreted as involving a reference to persons practicing the Sikh, Jain or Buddhist religion, and the source of Hindu religious institutions shall be interpreted accordingly.”¹² This constitutional provision is very biased, as it states that even as a multi-faith state, India seems to be ardent about the social welfare of only one religion i.e. Hinduism and its religious practices.

¹⁰ E/CN.4/Sub.2/AC.5/2005/2, paras. 10–11.

¹¹ Article 25 of Indian Constitution. <https://indiankanoon.org/doc/631708/>.

¹²Ibid

Article 17 of the Indian Constitution officially makes the practice of “untouchability” the imposition of social disabilities on persons by reason of their birth into “untouchable” castes a punishable offense. Article 15 removes untouchability and discrimination based on caste. But, the caste system is an integral part of Hinduism, the majority religious belief of India. According to Hindu scripture, individuals are born inherently unequal into a graded, caste-based structure that defines their status and opportunities in life.¹³ They were categorized on the basis of 4 things namely the Brahmana, the Kshatriya, the Vaishya’s and the Shudras.

The practice of untouchability continues to affect the lives of millions of Dalits today. The essence of such suppression has taken and it continues to take various forms. The time immemorial customs included restricting Dalits from walking public streets in the event they cross “upper-caste” Hindus, and requires Dalits to mark themselves with black bracelets, ties a broom around their waists so as to clean the path they walk on, or hang an earthen pot around their necks “lest spit falling on the earth should pollute a Hindu who might unknowingly happen to tread on it.”¹⁴ Caste discrimination continues and caste categories are legally prominent in order to execute a form of positive action known as “reservations.” Reservations are a quota-based system that classifies individuals and communities as “Scheduled Castes”. The basis for this discrimination is provided by the Presidential Order of 1950, in which clause 3 states: “Notwithstanding anything contained in paragraph 2, no person who professes a religion different from the Hindu [the Sikh, or the Buddhist] religion shall be deemed to be a member of a Scheduled Caste.”¹⁵ Fifteen percent of all places in educational institutions, as well as jobs, are reserved for the Scheduled Castes. It has now been more than a decade that the Supreme Court of India has unnecessarily delayed its judgment on the case. A Zee News editorial raises a very important question: when the government has amended the constitution to give reservations to Dalit Sikhs (1956) and Buddhists (1990), why is it delaying the matter when it comes to Dalit Muslim and Christians?¹⁶

¹³<https://www.uscirf.gov/sites/default/files/Constitutional%20and%20Legal%20Challenges%20Faced%20by%20Religious%20Minorities%20in%20India.pdf>

¹⁴<https://www.uscirf.gov/sites/default/files/Constitutional%20and%20Legal%20Challenges%20Faced%20by%20Religious%20Minorities%20in%20India.pdf>

¹⁵ Ibid

¹⁶ Yousuf Ansari, “The Voice Unheard,” Zee News India, February 23, 2008.

The scheme of reservations has helped very few Dalits in the country. Increasing illiteracy and dropout rates among Dalits stands that very few are able to get themselves the constitutional rights in government sector employment and education. Various number of key sections also continue to remain outside the ambit of the reservation policy, and caste-based discrimination continues to be accomplished in the sectors where reservations are secured, resulting to under application. Separation between Dalits and non-Dalits is commonly practiced in housing, schools, and access to public and private sector services. Article 46 of the Indian Constitution states: “The State shall promote with special care the educational and economic interests of the weaker sections of the people, and in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and forms of exploitation.”¹⁷ Furthermore, Article 15 (4) encourages the state to make any special provisions for the advancement of any socially and educationally backward classes of citizens, or for Scheduled Castes and Scheduled Tribes.¹⁸ The majority of Dalit students are studying in government schools with inadequate classrooms, teachers, and learning resources. Government schools basically teach them in regional languages, as against to private schools where students are usually from upper caste and so they teach in English. The incompetency to speak English moreover disables Dalits in the private sector and the global market.¹⁹ The right not to be discriminated against is the key in safeguarding the rights of persons belonging to minorities in all regions of the world. Minorities all over the globe experience direct and indirect, de jure and de facto discrimination in their daily lives. Equality and equality before the law are one of the basic principles of international human rights law²⁰. The principle of nondiscrimination forbids any difference, exclusion, restriction or preference which has the goal or effect of deteriorating or deterring the recognition, enjoyment or exercise by all persons, on an equal pace, of all rights and freedoms.²¹ There is no need to express discriminatory intent. The phrase “purpose or effect” refers to laws and policies which may be literally neutral but are construed in a way that leads to discrimination. International human rights law prevents both direct and indirect differentiation practice.

¹⁷ Article 46 of Indian Constitution. <https://indiankanoon.org/doc/352126/>.

¹⁸ Article 15 (4) of Indian Constitution. <https://indiankanoon.org/doc/251667/>.

¹⁹ <https://www.uscirf.gov/sites/default/files/Constitutional%20and%20Legal%20Challenges%20Faced%20by%20Religious%20Minorities%20in%20India.pdf>

²⁰ [www.amnestymena.org › en › Magazine/MinorityRightsinInternationalLawSomehighlights](http://www.amnestymena.org/en/Magazine/MinorityRightsinInternationalLawSomehighlights)

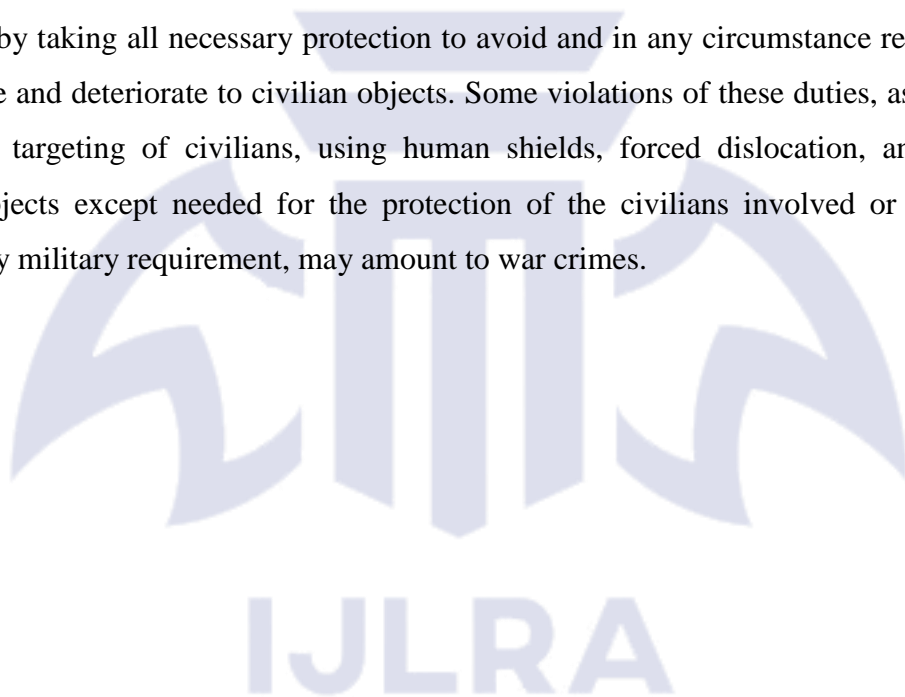
²¹ https://www.ohchr.org/documents/publications/minorityrights_en.pdf

Indirect discrimination is more deceptive and, hence, harder to recognize and prohibit. It occurs when a custom, rule or requirement is impartial on its face but has a distinct impact on particular groups, unless the practice, rule or requirement is an essential and claims to achieve a constitutional objective. Approaching the changing influence of a measure on an individual as a member of a group helps to better identify the main causes of discrimination and inequality. Distinct treatment may be allowed if its objective is to conquer past discrimination or address present inequalities. As a matter of fact, international human rights law provides for the adoption of special measures in favour of individual persons or groups for the objective of eradicating discrimination and attaining full equality, not only in law but also in practice. Various legal measures envisage this. The International Convention on the Elimination of All Forms of Racial Discrimination permits the implementation of special measures “for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individual’s equal enjoyment or exercise of human rights and fundamental freedoms”.²² The involvement of individuals belonging to minorities in public affairs and in all perspective of the political, economic, social and cultural life of the country where they live is in fact necessary to preserve their identity and combating social exclusion. Measures are needed to assure that the disparity of society with regard to minority groups is commented in public institutions, such as national parliaments, the civil service sector, including the police and the judiciary, and that individuals belonging to minorities are properly represented, discussed and have a say in decisions which impacts them on the territories and areas in which they live. Participation must be significant and not just simply symbolic, and recognize, for example, that minorities are generally inadequately represented and that their issues may not be aptly addressed. The participation of women belonging to minorities is of main concern. Pre-existing armed conflicts between the Tatmadaw and EAOs in different states and regions of Myanmar have continued or re-emerged since 1 February 2021. While Rakhine State saw major violence throughout most of 2020, a delicate ceasefire from late-2020 between the Tatmadaw and the Arakan Army (AA) has abide by to date. In other areas that have been less changeable in present years, notably Kachin and Kayin states, hostilities have resurged.

²² Art. 1, para. 4

Frequent, credible reports shows that various parties to armed conflict have not respected their duties to guard civilians in view with international human rights and humanitarian law. Generally, the Tatmadaw has prevailed to plan attacks apparently directly targeting civilians and civilian objects, or which were carried out indiscriminately, in flagrant disregard of civilian populations.²³ Landmines also abide to kill and injure civilians and affect livelihoods and humanitarian access.

As stated previously, wherever a non-international armed conflict continues, international humanitarian law is applicable in addition to international human rights law. As such, all parties to the dissention are needed to take constant care to save civilians and civilian objects, as well as by taking all necessary protection to avoid and in any circumstance reduce loss of civilian life and deteriorate to civilian objects. Some violations of these duties, as well as the intentional targeting of civilians, using human shields, forced dislocation, and attacking civilian objects except needed for the protection of the civilians involved or justified by compulsory military requirement, may amount to war crimes.



²³ A/HRC/39/CRP.2 and A/HRC/42/50.

Conclusions

As stated at the outset, India's constitution encompasses provisions that emphasize complete legal equality of its citizens regardless of their religion or creed, and prohibits any kind of religion-based discrimination. It also give protection although only to bound religious minority communities. However, the report demonstrates that there are constitutional provisions and state and national laws in India that do not comply with international standards of freedom of religion or belief, including Article 18 of the UN Declaration of Human Rights and Article 18 of the International Covenant on Civil and Political Rights. Under Congress Party and BJP-led governments, religious minority communities and Dalits, both have combatted discrimination and aggravation due to a connection of exorbitantly broad or severely defined laws, an inefficacious criminal justice system, and a lack of jurisprudential consistency.

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