CHAPTER – III
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INDIA’S INTERNATIONAL OBLIGATIONS ON MINORITY RIGHTS

Promotion of respect for the observance of human rights and fundamental freedoms for all without distinction as to race, language or religion has been one of the avowed purposes of the United Nations\(^1\). The UN since its inception has been making constant global efforts to this end by bringing about international agreements on issues involving mankind.

Representing unanimous voice of the global human fraternity, UN General Assembly on 10\(^{th}\) December 1948 adopted and proclaimed the Universal Declaration of Human Right (UDHR). The Universal Declaration has sent out for the nation the message of maintaining a civilized social order in which all individuals freely enjoyed all the basic human rights irrespective of the numerical strengths and size of respective religious, linguistic or ethnic groups to which they belong. In its very first opening articles UDHR pronounced. “All human beings are born free and equal in dignity and rights.” It further said in an unambiguous term

Everyone is entitled to all the rights and freedoms set forth in this Declaration without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status\(^2\)

But this was not enough. Increased attention was needed to be given to the question of non-discrimination and people susceptible to discrimination. The United Nations therefore came out with a series of human rights instruments calling for measures of prevention and protection. Under these instruments reference to the
grounds on which discrimination is prohibited such as national or
ethic origin, language and religion cover almost all minority
situations. Special measures or special rights for minorities or
distinct group and for persons belonging to such group are
manifested in provisions set forth in the convention against
genocide, International Covenant on Civil and Political Rights
(article 27), International Convention on the Elimination of All Forms
of Racial Discrimination, UNESCO Convention Against
Discrimination in Education, the Convention on the Rights of the
Child, UNESCO declaration on race and racial prejudice, the
Declaration on the Elimination of Intolerance and Discrimination
Based on Religion or Belief, the Universal Declaration of Human
Rights (article 26), International Covenant on Economic, Social and
Cultural Rights (article 13), and the declaration and the programme
of action adopted in 1978 and 1983 by the two world conferences to
combat racism and racial distinction and lastly but most importantly
for minorities the Declaration on the Rights of Persons Belonging to

Below we discuss international legal frameworks of minority
protection accomplished under the aegis of the United Nations
bringing under close examination some of the above UN conventions
and declarations having special bearing and implication for the
minority rights in India.

Genocide Convention

The right to full and complete protection of life in addition to
liberty formed part of the core of fundamental rights recognized in
the context of the international protection of minorities during the
post World War II period. The tragic event of the World War II led
the United Nations later to evolve an international instrument designed to guarantee that rights against the possible danger of criminal acts "committed with intent to destroy in whole or in part a national, ethnic, racial or religious group". On this basis approval was given on December 9, 1948 to the Convention on the Prevention and Punishment of the Crime of Genocide which is regarded as one of the most important international treaties for the benefit of minorities now in force even though the protected groups need not necessarily be minority groups.

Under article II of the Convention, the concept of genocide includes not only the killing of members of a national, ethnic, racial or religious group but also the causing of serious bodily or mental harms to them, deliberately inflicting on the group condition of life calculated to bring about its physical destruction in whole or in part, imposing measures intended to prevent births within the group and forcibly transferring children of the group to another group. Underlying all these acts must be the intent to destroy that group. The international obligation to punish those responsible for such crimes also covers acts of public incitement to genocide as well as conspiracy and attempts to commit it. The provision of penalties as part of legislation giving effect to the convention is left to the states parties to this convention under article V. When the Convention was in course of preparation the adhoc committee set up by the Economic and Social Council of the United Nations had proposed that it could also cover the crime of cultural genocide, which in the article III of the draft was defined by means of a list of specific acts which were capable of being committed both by public authorities and private individuals such as prohibiting the use of language of the group in daily life and in school as also the destruction of libraries, museums, schools, historical monuments, religious shrines and other cultural institutions etc. If this idea had been
approved, it would have been possible to draw from the list of the measures and actions prohibited, a clear indication of interest protected. In other words state parties would have implicitly undertaken to recognize certain specific rights of the members of national, ethnic and religious groups including minorities and to respect such rights in order to protect their cultural and religious identity. But by a majority, the General Assembly of the United Nations decided to keep the subject of cultural genocide out of the convention on the ground that it called for a comprehensive re-examination of the subject of the protection of minorities and that it was best to confine the concepts of genocide to physical destruction of a group only.

India is a party to Genocide Convention, which was signed by it on 29 November 1949 and ratified on 27 August 1959. Like any other party, India too is obliged under article V to enact legislation to give effect to the provisions of the convention in its domestic field. But this obligation remains unfulfilled even after India committing itself to this international law over half a century back. The non-compliance of this requirement is likely to continue, as the government even now does not feel the necessity of making any such law. This is evident from the official position taken by the government of India in Parliament. In a statement made in Lok Sabha on 17.7.2002, Minister of State in the Ministry of Foreign Affairs, Mr. Digvijay Singh said that “no implementing legislation has been enacted for this convention as the statute and existing laws such as the constitution of India, Indian Penal Code, Criminal Procedure Code etc. have adequate provisions to prevent and punish those committing crimes such as murder including mass murder.”
The claim of the government of India that the normal provision of Indian Penal Code (IPC) and Criminal Procedure Code (Cr.P.C) are adequate to prevent and punish those responsible for such crime, can be seen as its callous indifference towards the convention. It is indeed a great lapse on the part of government of India. The offences enumerated in the Indian Penal Code fall short of comprehending, defining, describing, and punishing the crime of genocide. This statutory limitation compounded by the partisan conduct of the state on numerous occasions has seriously undermined the criminal justice system. The criminal justice system is not so equipped to deal with any sort of group crimes where political forces are at play. Genocide represents the most brutal side of such crimes.

By the definition of the Genocide Convention, there is no question that what has happened against Muslims in Gujarat in 2002 and against Sikhs in Delhi in 1984 is a crime of genocide. The 1987 incident of Hashimpura (Meerut) where PAC personnel killed more than 40 Muslim youths provides another example of such grave crime. There is in fact an endless list presenting case of genocidal killings that has taken place in India.

The government must realise that it is impunity enjoyed by perpetrators of such crime, which is major source of its recurrence. And punishment is not possible without appropriate effective laws and functioning justice system. Though a new law is on the anvil (Communal Violence (suppression) Bill 2005), intended to deal with the situations arising out of communal violence which generally as the experience shows, results into mass killings of members of minority community. But the law in its present drafts suffers serious lacuna and can hardly prove to be an effective piece of legislation for preventing and punishing communal crime of grave nature⁹.
According to article VI of the convention, persons charged with crime of genocide has to be tried by a competent tribunal of the state in which this grave crime is committed. Given the recurring precedents on its land, India should establish such a tribunal in the country. While at the global level, India is undecided or does not want to be a party to Rome Statute of the International Criminal Court (ICC) which will have no jurisdiction over states which are not parties.

**Convention On The Elimination Of All Forms Of Racial Discrimination (CERD)**

The principle of non-discrimination underlies all the three conventions namely ILO Convention, UNESCO Convention and UN Convention on all forms of racial discrimination adopted between 1957 and 1965 which are of outstanding importance among the instruments of international law governing human rights and are concerned with the problems of distinct minority groups. In each of these Conventions the objective of equality is sought in more than one formal term. To this end they make provisions for special measures extending benefit to under privileged groups but in conditions and purpose they vary considerably from one Convention to another.

The classic features of protection of minorities such as respect for religion, language, institution, custom and values are all touched upon in ILO Convention. But the convention is mainly designed to promote the integration of indigenous, tribal, and semi tribal groups into main national community to which they belong and to improve their standard of living through a policy of development. Under the convention, the cultural and religious values are required to be
given due consideration but in the context of economic and social change they can be replaced with suitable substitutes if the group concerned is willing to accept them.\textsuperscript{11}

The UNESCO convention of 1960 against discrimination in education adopts a different approach. The first thing to be noted is that its concept of prohibited "discrimination" is defined by article I so as to include discriminatory treatment against groups and not merely persons (for example limiting any person or group of persons to education of an inferior standard). The rights granted to those who belong to different groups include, in the first place the establishment or maintenance, for religious or linguistic reason, of separate educational system or institutions offering an education which is in keeping with the wishes of the pupils, parents or legal guardian.\textsuperscript{12} Secondly, the rights of member of national minorities to carry on "their own educational activities" including the maintenance of school and depending on the educational policy of each state, the use or the teaching of their own language.\textsuperscript{13} In each case, however these are specific conditions. The duty to conform to the general rules and standard laid down by the competent authorities; the fact that attendance at separate schools or institutions must be optional and further more in the case of school of national minorities the duty not to prejudice the understanding of the culture and language of the community as a whole, participation in its activities or national sovereignty. Finally, it should be emphasised that the rights which members of national minorities are recognized as having must be interpreted in the light of the principles that, in any forms of assistance granted by the public authorities to educational institutions no group may be the subject of preference or restriction.\textsuperscript{14} Although the UNESCO Convention reflects a fairly advanced conception of cultural rights of minorities in the educational field, there can be no doubt that the limitations which
lies in the recognition of these rights are heavy. In practice they enable each state to frustrate the operation of clause referred to by invoking discretionary consideration of national education policy or the need to avoid compromising sovereignty. A better balance is struck between the requirement of sovereign state and the requirement peculiar to the different groups subject to it than in I.L.O. Convention considered earlier but the balance is still essentially in favour of state.\textsuperscript{15}

The Convention on the Elimination of all Forms of Racial Discrimination was signed by India on 2 March 1967 and subsequently ratified it on 3 December 1968. The Convention considerably strengthens the safeguards for equality of treatment for the benefit of the members of all groups who could be described as racial, ethnic or national. The concept of racial discrimination used in this convention is rather wide. It means any distinction, exclusion, restriction or preference based on colour, race, decent or national or ethnic origin\textsuperscript{16}. The state parties undertake to pursue by all appropriate means and without delay a policy of eliminating discrimination of this kind in all its forms. This gives rise not only to the obligation upon public authorities and public institutions not to engage in any acts of discrimination or sponsor, defend or support them but also to the obligation to prohibit any private practices of discriminatory nature\textsuperscript{17}. The object is to guarantee the rights of anyone to equality before the law in the enjoyment of a host of rights – civil, political, economic, social and cultural all set out in minute details in Article 5.

The question of the special and concrete measures which may prove necessary to ensure the adequate development and protection of certain racial groups or individuals belonging to them so that equality with persons belonging to other groups becomes something
more than a formal requirement is tackled by this convention under Article 2 (2). The state parties are bound to take measures of this kind "when the circumstances so warrant in the social, economic, cultural and other fields" provided always that their consequence is not to maintain unequal or the separate rights for different racial groups after the objectives for which they were taken have been achieved. The temporary nature of such measures is stressed by the convention that they "shall not be continued" after the achievement of their objectives. This clearly implies that the aim of special measures is to restore the balance between the respective positions of the various groups including minorities groups but the ultimate objective of the Convention is uniform treatment of individuals to whatever group they belong.

As required by Article 9 of the Convention, India has submitted several periodic reports to the Committee on Elimination of Racial Discrimination for consideration of measures adopted by it to give effect to the provisions of convention in its domestic jurisdiction. The Committee considered tenth to fourteenth periodic reports of India in its meeting held on 7 & 8 August 1996 and later on 22 August 1996 adopted important concluding observations on various aspects of these reports.

A number of measures adopted by India show its efforts to achieve the purpose of this Convention. The existence of an independent and active judiciary achieved through the constitutional mechanism of separation of powers has been of great help to India. The emergence of a free press, an active NGO movement and a range of institutional mechanisms of civil society have also complemented the efforts of the Government to eliminate racial as well as other forms of discrimination against individuals. The establishment of a National Commission for Scheduled Castes and
Scheduled Tribes, a National Commission for Minorities, and a National Human Rights Commission with wide-ranging powers is also worth mentioning in this respect.

The Constitution of India, the Indian Penal Code and the Representation of Peoples Act provide the general legal framework within which "racial discrimination" is prohibited. The Constitution prohibits discrimination on grounds of religion, race, caste, sex or place of birth. It guarantees to all persons equality before the law and equal protection of laws within the territory of India. It further incorporates the freedom of speech and expression, the right to form associations and unions, and the right to life and personal liberty. The right to remedies for the enforcement of fundamental rights is also provided for by the Constitution. Provisions of the Indian Penal Code prohibit actions that promote hatred, enmity and ill will on grounds of race or religion. The Representation of Peoples Act, 1951, provides for the punishment of persons who attempt to promote feelings of enmity on grounds of race.

It should be noted in this regard that "race", as a ground for discrimination has never been invoked before the courts of law of India so far. India always maintains that it has no racially or ethnically homogenous society and race, as an issue does not impinge on the consciousness or outlook of Indian citizens in their social relations. Indian people prefer to seek identification in terms of language, religion, caste or even regional characteristics rather than race, colour or ethnic origin. As conveyed to the Committee during the presentation of India's last periodic report, it has been submitted that the policies of the Indian Government relating to Scheduled Castes and Scheduled Tribes do not come under the purview of Article 1 of the Convention.
Referring to India's stated position on the issue of race, the Committee made it clear that the term "descent" mentioned in Article 1 of the Convention did not solely refer to race. The Committee asserted that the situation of the Scheduled Castes and Scheduled Tribes falls well within the scope of the Convention. It expressed its concern that within the discussion of the report, there was no inclination on the part of India to reconsider its position.

The Committee was seriously concerned at the plight of Kashmiris, and other groups. It took special note of Clause 19 of the Protection of Human Rights Act, which prevents the National Commission on Human Rights from directly investigating allegations of abuse involving the armed forces. The Committee was of the view that this was a too 'broad restriction' on the powers of the Commission and 'contributes to a climate of impunity for members of the armed forces.' Moreover, it regretted that the Commission is debarred from investigating cases of human rights violation that occurred more than a year before the making of the complaint.

Further the Committee expressed dismay on the absence of information on the functions, powers and activities of the National Commission on Scheduled Castes and Scheduled Tribes and of the National Commission for Minorities as it made impossible to assess whether these Commissions have a positive impact upon the enjoyment of human rights and fundamental freedoms by members of the groups these Commissions are meant for.

It was also regretted by the Committee that the information furnished in the Indian report on penal provision was inadequate as it failed to give details on the important aspect of effective implementation of these penal provisions. This assumes particular significance in view of numerous reports suggesting acts of
discrimination based on race, colour, descent or national or ethnic origin. The lack of concrete information on the legal provisions in force to prohibit organizations which incite and promote racial discrimination and hatred, and to punish members of such organizations in accordance with article 4 of the Convention, as well as on their application in practice, including eventual court decisions came in for severe criticism. This is most serious in view of widespread violence against certain minorities actively sponsored by extremist organizations that have not been declared illegal. Non-availability of information on the text of the Directive Principles of State Policy of the Constitution relating to the promotion of social, economic and cultural rights, and on measures to give them effect was also criticised as it rendered any evaluation of the implementation of article 5 of the Convention difficult. Regrets were expressed that the National Security Act and, in some areas of India, the Public Safety Act, remained in force. The Committee also regretted that certain communities do not enjoy representation in proportion to their size.

International Covenant on Civil and Political Rights (ICCPR)

The International Covenant on Civil and Political Rights (ICCPR) as adopted by the UN General Assembly on 16 December 1966 came into effect on 23 March 1976. This was acceded to by India on 10 April 1979. The ICCPR is the only international human rights treaty that contains a provision under its Article 27 on the rights of persons belonging to different minorities. Now the question arises what are the rights of minorities under ICCPR. Besides seeking answer to this question, we also have to examine India's legal position in terms of ICCPR and the steps taken by the Indian
authorities as part of its obligation with regard to minorities in India especially religious minorities.

The drafting history of Article 27 suggests difference of opinion between member countries as to the use of certain words in the first draft. The former Soviet Union wanted to limit protection to national minorities only whereas others favoured protection for other ethnic, religious and cultural groups. According to the first draft, the Article 27 initially read ethnic, religious, and linguistic minorities shall not be denied the right to enjoy their own culture, to profess and practice their own religion or to use their own language. There was objection to this wording in the draft. It was said that minorities as such had no plane juridical personality. Therefore it was suggested that in stead one should speak of 'persons belonging to minorities.' This newly suggested phrase was ultimately approved. On the suggestion of Chile which like other Latin American countries had fears that immigrants to these countries might form a separate entity asking for minorities rights, a new phrase was added at the beginning of the article which read 'in those States in which ethnic, religious or linguistic minorities exist'.

The contents of Article 27 of ICCPR read as follows:

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

What is expressed in this article is that it establishes and recognizes a right which is conferred on individuals belonging to minority group and which is distinct from and additional to all the other rights which, as individuals in common with every one else, they are already entitled to enjoy under the Covenant.
The terms used in this article indicate that the persons designed to be protected are those who belong to a group and who share in a culture, religion or a language. Those terms also indicate that the individuals designed to be protected need not be citizens of a state party. In this regard the obligations deriving from Article 2.1 are also relevant. Since a state party is required under that article to ensure that the rights protected under the covenant are available to all individuals within its territory and subject to its jurisdiction, except rights, which are expressly made to apply to citizens for example political rights under Articles 25. A state may not therefore restrict the rights under Article 27 to its citizens alone.

Article 27 confers the rights on persons belonging to minorities, which exist in a state party. The applicability of this is not subject to official recognition of a minority by a State. Given the nature and scope of rights envisaged under that article, it is not relevant to determine the degree of permanence that the terms ‘exist’ connotes. Those rights simply are that individuals belonging to those minorities should not be denied the rights in community with members of their group, to enjoy their own culture, to practice their own religion and speak their language just first as they need not be nationals or citizens they need not be permanent residents. Thus migrant workers or visitors in a state party constituting such minorities are entitled not to be denied the exercise of those rights. As any other individuals in the territory of the state party, they would also for this purpose have the general rights, for example to freedom of association of assembly and of expression. The existence of an ethnic, religious or linguistic minority in a given state party does not depend upon a decision by that state party, but requires to be established by objective criteria.
The rights of individuals belonging to linguistic minority to use their language among themselves in private or in public is distinct from other language rights protected under the Covenant in particular it should be distinguished from the general rights to freedom of expression protected under Article 19. The latter right is available to all persons, irrespective of whether they belong to minorities or not. Further the rights protected under Article 27 should be distinguished from the particular rights which Articles 14.3(f) of the Covenant confers on accused persons to interpretation where they cannot understand or speak the language used in the courts. Article 14.3(f) does not in any other circumstances, confers on accused persons the right to use or speak the language of their choice in court proceedings.

With regard to the exercise of cultural rights protected under Article 27, it is stated that culture manifests itself in many forms including a particular way of life associated with the use of land resources, especially in the case of indigenous people. That right may include many traditional activities. The enjoyment of those rights may require positive legal measures of protection to ensure the effective participation of members of minority communities in decisions, which affect them.

Although the rights guaranteed under Article 27 are individual’s rights, they depend in turn on the ability of minority group to maintain its culture, language or religion. Accordingly positive measures by states may also be necessary to protect the identity of a minority and the rights of its members to enjoy and develop their culture and language and to practice their religion in community with other members of the group. In this connection it has to be observed that such positive measures must respect the provision of Articles 2(1) and 26 of the Covenant both as regards
the treatment between different minorities and the treatment between the persons belonging to them and the remaining part of population. However, as long as those measures are aimed at correcting conditions of which prevent or impair the enjoyment of rights guaranteed in Article 27, they may constitute a legitimate differentiation under the Covenant provided that they are based on reasonable and objective criteria.

None of the rights protected under Article 27 of the Covenant may be legitimately exercised in a manner or to an extent inconsistent with the other provisions of the Covenant. Although the Article expressed in negative terms, it nevertheless does recognize the existence of the rights and requires that it shall not be denied. Consequently, a state party is under an obligation to ensure that the existence and exercise of the rights are protected against their denial or violation. Positive measures of protection are therefore required not only against the act of the state party itself but also against the acts of other persons within the state party.

The Article 27 relates to rights whose protection imposes specific obligation on state parties. The protection of these rights are directed to ensure the survival and continued development of the cultural, religious and social identity of the minority concerned, thus enriching the fabric of society as a whole. Accordingly these rights must be protected as such and should not be confused with other personal rights conferred on one and all under the Covenant. State parties, therefore, have an obligation to ensure that exercise of these rights is fully protected and measures taken by them to this end have to be indicated in their periodic reports.

The above explanation underlines the fact that members of minorities are entitled to enjoy not only the rights provided in Article...
27 but all other rights and guarantees enshrined in the Covenant including the most fundamental ones such as right to life (article 6), freedom from torture or cruel, inhuman and degrading treatment (Article 7), freedom from arbitrary arrest and detention (Article 9), equality before law and equal protection of law (Article 26) etc.

For overseeing and monitoring States' compliance with the international obligation of promoting, protecting and guaranteeing human rights of its individuals including rights of minorities, the ICCPR establishes a mechanism called reporting and complaint procedure. Under the reporting procedure, all state parties are required to submit periodic reports to the Human Rights Committee on the measures and steps taken to give effect to the rights provided in the Covenant and progress made on those measures adopted with a view to making the enjoyment of those rights a reality. These reports are supposed to contain also details on factors and difficulties, if any, coming in the way of implementing the Covenant rights33. When a State report comes before the Human Rights Committee for its consideration, a representative of the country concerned introduces it, answers questions from the expert members of the Committee, and comments on the observations made. In this way the Committee engages into a dialogue with the state representative. The study of state reports by the committee reveals the degree of compliance of the Covenant provisions34.

The Committee has outlined a set of reporting guidelines specifying the type of information to be given by the states. For reporting under Article 27 of the ICCPR, information given in the report must be related to the minorities conditions in the state, their respective numbers as compared to the majority and the concrete measures adopted by the reporting state to preserve minorities ethnic, religious, cultural and linguistic identity as well as other
measures to provide minorities with equal economic and political opportunities. Particular reference should be made to their representation in central and local government bodies. Beside the reporting procedure ICCPR provides for two optional complaint procedures. They may be submitted by an individual or a state. One, the first optional protocol to the ICCPR provides for individual communication to be submitted to the Human Rights Committee, alleging violations by a state party of any of the Covenant articles including article 27. Unfortunately, the Indian Government has not acceded to this Protocol, although it has been ratified by almost 70 states. Second, under article 41 ICCPR provides state to state complaint mechanism, if the state party has recognized the competence of Human Rights Committee to receive and consider such complaints. In this case the Committee may consider communications to the effect that a state party claims that another state party which has also accepted this optional procedure is not respecting the rights set out in the Covenant including Article 27. It is regretting to note that India has not acceded this procedure also.

Under Article 40 of ICCPR, India has a legally binding obligation to submit periodic reports to the Human Rights Committee (HRC) on the state of observance of norms set out in the Covenant. After ICCPR ratification by India, it has submitted three such reports so far. It was in July 1983 that India submitted its first report though it was due in 1980. The report was examined by the HRC in New York on 28 and 30 March 1984 in three meetings. As is the practice, India's Attorney General, K. Parasaran was closely questioned. The second report, due in 1985, was submitted on 12 July 1989, which was examined by the HRC on 26 and 27 March 1991 in four meetings. Third report was again submitted late on 29 November 1995, which was supposed to be submitted by 31 March 1992. The Committee examined it on 24-25 July 1997. The fourth periodic
report, whose submission is already due since 31 December 2001, is yet to be submitted.

State periodic report generally gives an idea about the provisions made in the constitution and statutory laws of the country but evades giving details in terms of their actual implementation to be found in practice on the ground. India has adopted almost similar pattern of reporting, as it is evident in its all three reports. Also state reports, in most cases, project spotless image of the country as far as human rights are concerned. For example, in one of India's periodic reports it has been highlighted that "India is a mosaic of different religions and cultures. It has a tolerant eclectic society". But the facts concerning frequent eruption of religion oriented communal riots and atrocities committed on religious minorities contradict this very statement.

Regardless of it being late, the first Indian report only contained just a vivid single page account of its minorities. The report made particular reference to the constitutional provision of Articles 29 and 30 the object of which is none other than various Indian minorities. It also made mention about the existence of minorities' commission as a measure of government policy. But this was found to be inadequate and for its brevity and shortness it came in for sharp criticism during the deliberation by the Human Rights Committee (HRC). The report attracted adverse comment of the members of the committee as it was lacking in respect of making a comprehensive presentation of the facts concerning country's human rights situations. It was pointed out that the report should sufficiently account for difficulties responsible for non-implementation of the Covenant.
Moreover, the other two reports submitted by India in later years too did not go well with the Committee as it just kept harping on the lofty constitutional scheme without dwelling on actual measures taken by the government to meaningfully give effect to minorities' constitutional guarantees. To conform to HRC guidelines these reports were in fact required to reflect on India's ground situation in terms of minorities' actual position in various walks of national life such as their demographic strength and economic and political empowerment. The repeated mention of the mandate of National Commission for Minorities in these reports for preparing its Annual Report to be tabled in Parliament by the government with Action Taken Report did not make any positive impact on the members of the Committee either. It is a common knowledge that given its mandate the NCM enjoys little clout over the government. The fact remains that its reports lay waiting to be tabled in Parliament for years together. While considering these reports, the HRC asked the government to take all necessary steps to fully introduce the provisions of the Covenant into internal laws. India was further advised to ratify the first Optional Protocol to ICCPR so as to make individual communication to the Committee directly possible. It was also asked to reconsider its reservation with regard to various Articles of the Covenant such as Article 1, 9, 12, 13, 19 para 3, 21 and 22 so as to achieve progress in their implementation.

India's records of practical compliance with ICCPR in the domestic arena are found to be very poor. Indian minorities continue with their plights even today. A number of studies and reports have come out with facts that testify to their pitiable conditions. Among all minority groups the condition of Muslims is most deplorable in all areas of human concern, whether it is education, security, religion or culture, representation in institution
of governance, employment and economic development. Discriminatory treatments of minorities have not been successfully done away with in India.

There are even some laws practiced in India which are very much discriminatory in nature like Hindu Marriage Act of 1955, Hindu Adoption and Maintenance Act of 1956 and Hindu Succession Act of 1956 etc.

Declaration On The Elimination Of All Forms Of Intolerance And Discrimination Based On Religion And Belief

Taking note of the basic principles of the UN Charter and International Bills of Rights proclaiming of the principle of non discrimination and equality before the law and right to freedoms of thought, conscience, religion and belief, the General Assembly of the United Nations on 25th Nov. 1981, proclaimed the declaration on the elimination of all forms of intolerance and discrimination based on religion or belief.

Like any other instrument of human rights, this declaration also seeks to strengthen the safeguard for the equality of treatment for the benefit of all groups based on religion or belief. States are required to adopt effective measure “to prevent and eliminate discrimination on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, economic, political, social and cultural life”. The declaration regards discrimination as an attack on human dignity against the principle of UN Charter and therefore condemnable. The expression “intolerance and discrimination based on religion or belief” has been given a wide meaning under
This declaration. It includes any distinction, exclusion, restriction or preference based on religion or belief practiced with a view to nullifying or impairing the recognition, enjoyment or exercise of human rights and fundamental freedoms on equal basis. In the ambit of this declaration are included the rights of child as well. In this connection, Article 5 elaborates the rights of child. Here it states that "every child shall enjoy the right to have access to education in the matter of religion or belief in accordance with the wishes of his parents. Article 6 enumerates a number of rights, which signify freedom of thought, conscience religion or belief.

Declaration On The Rights Of Persons Belonging To Minorities

This UN Declaration which was adopted by General Assembly on December 18, 1992 and exclusively devoted to minorities was in fact inspired by article 27 of the International Covenant on Civil and Political Rights providing protection to persons belonging to minorities. The General Assembly has been of the opinion that the promotion and protection of rights of minorities contribute to the political and social stability of the state in which minorities live and contribute to strengthening of friendship and co-operation among peoples and states.

The Declaration builds on as also adds to the rights contained in the International Bill of Human Rights and other human rights instruments by strengthening and clarifying those rights which make it possible for persons belonging to minorities to preserve and develop their group identity. The human rights set out in Universal Declaration must at all times be respected in the process, including the principle of non discrimination between individuals. The state is
obliged to respect and ensure to every person within its territory and subject to its jurisdiction without discrimination on any ground including race religion or national origin, the rights contained in the instrument to which that state is a party.

It is in the light of these purposes and that the articles of the Declaration on rights of minorities should be seen and interpreted.

Article I provided for the protection of existence of the minorities and their distinct identity by the states. The relationship between the state and its minorities has in the past taken five different forms namely elimination, assimilation, toleration, protection and promotion. Under present international law elimination is clearly illegal. The declaration is based on the consideration that forced assimilation is unacceptable. While a degree of integration is required in every national society in order to make it possible for the state to respect and ensure human rights to every person within its territory without discrimination, the protection of minorities is intended to ensure that integration does not become unwanted assimilation or undermine the group identity of persons living on the territory of state.

Integration differs from assimilation in that while it develops and maintains a common domain where equal treatment and a common rule of law prevail, it also allows for pluralism. The areas of pluralism covered by the Declaration are culture, language and religion.

Minorities' protection is based on four requirements: protection of existence, non exclusion, non discrimination and non assimilation of the group concerned.
The protection of the existence of minorities includes the physical existence, their continued existence on the territory on which they live and the continued access to the material resources required to continue their existence on those territories. The minorities shall neither be physically excluded from the territory nor be excluded from access to the resources needed for their livelihood. The right to existence in its physical sense is sustained by the Convention on the Prevention and Punishment of Crime of Genocide, 1948 as discussed earlier.

The second requirement is that minorities shall not be excluded from the national society. Apartheid was extreme version of exclusion of different groups from equal participation in the national society as a whole. The minority Declaration repeatedly underlines the rights of all groups, small as well as large to participate effectively in society.

The third requirement is non-discrimination, which is a general principle of human rights law and elaborated by the International Convention on the Elimination of All forms of Racial Discrimination. The minority Declaration elaborates the principle of non-discrimination by its provision that the exercise of their rights as persons belonging to minorities shall not justify any discrimination in any other field and that no disadvantage shall result from the exercise or non exercise of these rights.

The fourth requirement is non-assimilation and its corollary, which is to protect and promote condition for the group identity of minorities. Many recent international instruments use the term identity which expresses a clear trend towards the protection and promotion of cultural diversity both internationally and internally to states.
Identity requires not only tolerance but also a positive attitude towards cultural pluralism by the state and the larger society. Required is not only acceptance but also respect for the distinctive characteristics and contribution of minorities in the life of the national society as a whole. Protection of the identity means not only that the state shall abstain from policies, which have the purpose or effect of assimilating the minorities into the dominant culture, but also that it shall protect them against activities by third parties which have assimilatory effect. Crucial in these regards are language policies and educational policies of the state concerned. Denying minorities the possibility to learn their own language or instruction in their own language or excluding from the education of minorities, transmission of knowledge about their own culture history, tradition and language, would be a violation of the obligation to protect their own identity.

Promotion of their identity requires special measures intended to facilitate the maintenance, reproduction and further development of the minorities. Cultures are not static, but minorities should be given the opportunity to develop their own culture of an ongoing process.

Article 1.2 requires appropriate legislative and other measures. Legislation is required and must be complemented by other measure in order to ensure that Article 1 can be effectively implemented. Both process and content is here important. In terms of process, it is essential that the state consult the minorities on what would constitute appropriate measures. Other measures include judicial, administrative, promotional, educational and further policies and measures. In general terms the contents of the measures which have to be adopted are set out in other provisions of the Declaration. For example one set of measure could be
legislation for state follows directly from Article 1.1 adopting a law seeking protection against acts or incitement to such acts which threatens the existence of group physically or their identity.

The Article 2 of the Declaration contains almost the same language as of the Article 27 of International Covenant on Civil and Political Rights but the declaration is more explicit in requiring positive action. As seen earlier, Article 27 has been interpreted as requiring more than mere passive non-interference. The minorities Declaration of 1992 makes it clear that these rights often require action including a protective measures and promotion of the condition for their identity and specified active measures by the state.

While section 2 of this article confers on minority persons the rights to participate effectively in cultural, religious, social, economic and public life, Section 3 calls for minorities to have rights to participate effectively at different levels in the decisions concerning them. The rights accruing from these provisions have far reaching effects for persons of minorities as these will essentially contribute to the promotion of their interests and values and to create an integrated but pluralist society based on tolerance and dialogue. By their participation in all forms of public life in their country they will be able to shape their own destinies and contribute to development of society as a whole.

Effective participation provides channel for consultation between and among minorities and government. It can serve as means of dispute resolution and sustain diversity as a condition for dynamic stability of society. The number of persons belonging to minorities is by definition too small for them to determine the outcome of decision in majoritarian democracy. They must as
minorities have the rights to have their opinion heard and fully taken into account before decision which concern them are adopted. A wide range of constitutional and political measure is used around the world to provide access for minorities to decision making\textsuperscript{51}.

Effective participation requires representation in legislative, administrative and advisory bodies and more generally in public life. Persons belonging to minorities like all others are entitled to assemble and to form their associations and thereby to aggregate their interest and values to make the greatest possible impact on national and regional decision-making. They are entitled not only to setup and make use of ethnic, cultural and religious association and societies, but also to establish political parties, if they so wish\textsuperscript{52}.

Moreover, their right to association is not limited to those related to their cultural linguistic or religious identity. The right to associate extends both to national and international associations. Their right to form or join association can be limited only by law and the limitation can only be those which apply to association of majorities. Limitations are a necessity in a democratic society in the interests of national security or public safety public order, the protection of public health or morals or the protection of the rights and freedoms\textsuperscript{53}.

Further section of the article provides members of minorities the rights to make contacts not only with other members of their group and those of other minorities but also with persons of their community living across borders\textsuperscript{54}. This can be divided and categorized as rights permitting intra–minorities contact, inter minority contacts and transfrontier contacts. While the first two contacts make it possible for persons belonging to minorities to share experience and information and to develop a common
minorities platforms within the state, the third type of contacts constitute the major innovation of the declaration and serves in part to overcome source of the negative consequence of the often unavoidable division of ethnic groups by international frontier. Such contacts must be free and also peaceful. Implied in this limitation is that it must not involve use of violent means and must be in conformity with the Declaration and with the purpose and principles of United Nations.

While first section of the Article 3 provides that persons belonging to minorities shall not be subjected to discrimination for exercising individually or collectively their minority rights, the second section makes it clear that they shall also not be disadvantaged in any way from choosing not to belong to minority concerned. This provision is directed both against the state and its agencies. While first section of the Article 3 provides that persons belonging to minorities shall not be subjected to discrimination for exercising individually or collectively, the minority rights of the minority group. Neither state can impose ethnic identity on persons not wishing to be a part of that ethnic group nor persons of a minority group can subject to disadvantage a person who on objective criteria may be held to be a part of that group but who subjectively doesn't want to belong to it. While under conventional law responsibility to human rights compliance normally rests on the state the Declaration in this respect implies duties at least morally on persons representing minorities.

The whole of Article 4 talks about state measure that should be taken in order to achieve the purpose of the Declaration and is its most important part together with Article 2 which sets out the score of rights for minorities. While states are generally obliged under international law to ensure that all members of society may
exercise their human rights, states must give particular attention to the human rights situation of persons belonging to minorities because of the special problem they face. They are often in a vulnerable position and have in the past often been subjected to discrimination. In order to ensure equality in fact, it may under some circumstances be required that the states take transitional affirmative action provided these measures do not disproportionately affect the rights of others.

Appropriate active measures that states are obliged to take under various provisions of this article include.

(i) Creation of "favourable condition" enabling minority people to express their traditional characteristics and to make their living in their own cultural way as well as to develop their culture, language, religion, traditions and customs\(^{56}\).

(ii) Creating adequate opportunities for minorities to learn their mother tongue or to have instruction in their mother tongue as far as possible\(^{57}\).

(iii) Encouraging knowledge of history, traditional language and culture of its minorities in the field of education\(^{58}\).

(iv) Facilitating minorities' full participation in the economic progress and development in their country\(^{59}\).

All these measures may require economic resources from the state. In the same way as the state provides funding for the development of culture and language and many other activities of the majority, it is expected to provide resources for measures on minorities also.
The Article 5 calls for "due regard for legitimate interest of persons belonging to minorities" to be given in the planning and implementation of national policies and programmes by the states. The participation of people belonging to minorities in the economic progress and development in their country as required under Article 4.5 can be achieved only if their interests are taken into account in the planning and implementation of national policies and programmes. However, their interests go beyond purely economic aspects. Planning of educational policy, health policy, public nutrition policy or housing and settlement policies are among many aspects of social life in which interests of minorities are needed to be taken into consideration. In the second section of this article also, state is directed to give due consideration to minorities' interest when "programmes of cooperation and assistance" with other states are planned and implemented. The provision relates to development assistance and other economic cooperation among states including trade and investment agreements.

Article 6 has been provided for keeping in view situations involving minorities which often have international repercussion "states should cooperate on question relating to persons belonging to minorities inter alia, exchanging information and experiences in order to promote mutual understanding and confidence". The Idea underlying this provision has two facets. One is to share and exchange knowledge about good practices where states can learn from each other. The other is to promote mutual understanding and confidence. The article encourages states to cooperate in order to find solution to situations involving minorities. Further cooperation of states is sought through Article 7 to promote respect for the rights enshrined in the Declaration. Nothing in this Declaration is intended to prevent the fulfillment of international obligation of the states in relation to minorities. This is to suggest that this Declaration does
not replace or modify existing international obligations in favour of persons belonging to minorities. Though there is no binding mechanism, states are expected to fulfill all the obligations and commitments under international agreements to which they are parties in good faith. Whereas the Declaration is designed and intended to strengthen the implementation of the human rights with regard to members of minorities it is not to weaken for any one the enjoyment of universal human rights. As a result the exercise of rights under the Declaration must not negatively affect the enjoyment of human rights for any one irrespective of whether he belongs to the minority group or not. Universal human rights and fundamental freedoms as recognized by Universal Declaration forms the basis and the minority Declaration is in addition to them and not its substitute.

According to the Universal Declaration of Human Rights Article 1, all human beings are born free and equal in dignity and rights. In accordance with Article 2 of the Universal Declaration every one is entitled to all the rights set out in that declaration without distinction of any kind such as race, language, religion or national origin. The question is raised whether special measures in favour of national or ethnic religious or linguistic minorities constitute a distinction in the enjoyment of human rights. It could be raised with even greater strength when taking into account the definition of racial discrimination contained in Article 1.1 of the International Convention on the Elimination of all forms of the Racial Discrimination which reads “the term racial discrimination’ shall mean any distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political economic social, cultural or
any other field or public life". The question would then be whether special measures under the Minority Declaration, which indeed would be made on national or ethnic origin would constitute a preference and therefore constitute impermissible discrimination.

Article 8.3 answers this very question by pointing out that such measures shall not "prima facie" be considered to be contrary to the principle of equality. Under normal circumstances measures such as to ensure effective participation or ensuring that minorities benefit from economic progress in society or have the possibility to learn their own language, will not be a privilege as compared to the other members of society. It is essential however, that, measures do not go beyond reasonable limitation and are proportional to aims sought to be realized.

As stated in its preamble, the Declaration is based on the principle of the United Nations Charter. It should be noted that the conviction expressed in the preamble that the promotion and protection of rights of minorities contribute to the political and social stability of states. Article 8.4 serves as a reminder that nothing in the Declaration can be construed to permit any activity, which is contrary to the purposes of the Charter. Particular mention is made of activities that are contrary to sovereign equality, territorial integrity and political independence of states. The rights of persons belonging to minorities are different from the rights of people to self-determination and minority rights can't serve as a basis for claim of secession or dismemberment of states.

The specialized agencies and various other bodies of the United Nations system have been directed to contribute to the full realization of the rights and principles set forth in the Declaration. The role of United Nations system is in this respect should been
seen in the lights of U.N charter. According to Article 55 and 56 of charter, UN is supposed to promote respect and observance for human rights and fundamental freedoms. Promotion of the rights of persons belonging to minorities forms the part of that obligation. Thus the importance of provisions in the declaration on the role and function of the United Nation and its specialized agencies in the realization of minorities' rights was underlined. But in the promotion and protection of minorities' rights, not only the inter-governmental organization but also the representatives of minorities should have the opportunity to participate and present their views. This opportunity should be extended to standard setting, promotional activities, technical assistance and prevention and resolution of conflict.

Thus the Declaration expresses minimum standard relevant to all national or ethnic, religious and linguistic minorities and applicable in all situations. It is important to emphasise the implementation of the Declaration that is a continuing process requiring sustained attention and resources by all parties concerned.

In 1995 United Nations Working Group on Minorities was established as a mechanism for raising minorities concerns, encouraging participation and addressing grievances. It is there to examine question related to the implementation of the Declaration. The three major tasks of the Working Group are:

(i) To review the promotion and practical realization of the Minorities Declaration

(ii) To examine possible solutions to problems involving minorities, including the promotion of mutual understanding between and among minorities and Governments
(iii) To recommend further measures, as appropriate, for the promotion and protection of the rights of persons belonging to national or ethnic, religious and linguistic minorities

The Working Group consists of five expert members who are also on Sub-Commission. It meets between Sub-Commission sessions for one week each year, normally in May in Geneva. It prepares a formal report that is submitted to and discussed by the Sub-Commission when it meets each August. The report also is made available as a background document for the Commission on Human Rights. The session of the Working Group provides an important opportunity from all over the world to meet, share experiences and address their common interest and common challenges.

At the same time, it is also important to recognize the limitations of the Working Group. It cannot provide immediate answers to queries about specific situations or find immediate solutions to minority problems. Nor is the Working Group empowered to take action on complaints about alleged violations of minority rights. Rather, the Working Group should be considered as an additional mechanism to address minority issues and one element in the process of providing more effective redress for violations and long-term solutions to current problems.

The Working Group provides a framework within which non-governmental organizations (NGOs), members of minority groups or associations, academics, governments, and international agencies may meet to discuss issues of concern and attempt to seek solutions to problems. The hope is that these meetings and the dialogue they foster will lead to greater awareness of the different perspectives on minority issues and to increased understanding and mutual tolerance.
among minorities and between minorities and governments. The Working Group also provides a forum for encouraging peaceful and constructive solutions to problems involving minorities and on the application, meaning, and scope of the principles contained in the Minorities Declaration.

Conclusion

Non discrimination and special measures leading to the equal enjoyment of all human rights form the basis of minority rights protection. Provision given in the international legal framework confirms this to be so. Genocide Convention provides protection from physical extermination and destruction as well as serious bodily or mental harm to members of any minority group while Convention on Racial Discrimination outlaws all sorts of exclusionary treatment to any group based on descent or birth. ICCPR prohibits denial of cultural, religious and linguistic rights to persons belonging to minorities. Provisions of the 1992 Declaration expands all these standards relating to existence, identity and full participation of minorities. What needs to be emphasized here is the planning and implementation of national policies and programmes by the state party keeping in line with norms set forth in these treaties and declarations.

India has been on the forefront in extending support to the creation of international regime of minorities’ protection. The duties and obligations accruing on India by virtue of its being a party to it are manifold. But its efforts in giving effect to these obligations in its internal jurisdiction have not been satisfactory and their practical realization has been minimal. The same is true with the implementation of constitutional and other legal provisions. India has in fact failed to act on removing inconsistencies and
inadequacies found in its constitution so as to bring them at par with international standards. It needs to take many legislative, administrative measures and political decisions to improve its compliance of international human rights standard and minority rights obligations.

Endnotes

1. Charter, Article 1.3 and 55 under chapter I and IX respectively

2. Universal Declaration of Human Rights (UDHR), Article 2


5. Ibid, Article III (b), (c) and (d)


7. Ibid, p. 101


10. Francesco Capotorti, n.6, p.96

11. Ibid, p.97

12. UNESCO Convention of 1960 against Discrimination in Education, Article 2 (b)

13. Ibid, Article 5.1 (c)

14. Ibid, Article 3 (d)

15. Francesco Capotorti, n.6, p.98

16. Convention on the Elimination of All Forms of Racial Discrimination, article 1

17. Ibid, Article 2

18. Ibid, Article 2 (2)

19. Ibid, Article 1.4

20. CERD/C/299/Add.3 dated 29.4.96


22. Ibid

23. UN Doc. CERD/C/304/Add.13 (1996)

24. Ibid

25. Ibid


27. A.P. Vijapur “Minorities and Human Rights: A Comparative Perspective of International and Domestic Law”, in D.L. Seth
and Gurpreet Mahajan (eds), *Minority Identities and the Nation State*, New Delhi, Oxford University Press, 1999, pp. 246-47


29. Ibid, p. 236

30. Ibid

31. Ibid p. 237

32. Ibid pp. 236-37

33. ICCPR, article 40.2


35. Ibid


37. Cited in India's Third Periodic Report, CCPR/C/79/Add. 6

38. UN.Doc. CCPR/C/79/Add. 81 (1997)

39. See A. P. Vijapur, “Domestic Application of the International Covenant on Civil and Political Rights- With Special Reference
to Rights of Minorities in India”, in K.P.Saxena (ed), Human Rights And the Constitution –Vision and Realities, Gayan Publishing House, New Delhi, 2003, p.223


41. Tahir Mahmood (ed.), Minorities And The State At Indian Law, Institute of Objective Studies, New Delhi, 1991, pp.72-75

42. Declaration on the Elimination of All forms of Intolerance and Discrimination Based on religion and Belief, Article 4.1

43. Ibid, Article 3

44. Ibid Article 2.2

45. See Preamble to Declaration on the Right of Persons Belonging to National, Ethnic, Religious and Linguistic Minorities 1992


47. Declaration on the Rights of Persons Belonging to Minorities, 1992, Article 2.2 and 2.3

48. Ibid, Article 3

49. Asbjorn Eide n.54, p. 259

50. Ibid pp. 259-60

51. Ibid p. 264
52. Declaration on the Rights of Persons Belonging to Minorities 1992, Article 2.4

53. Asbjorn Eide n.54, p. 266

54. Declaration on the Rights of Persons Belonging to Minorities 1992, Article 2.5

55. Asbjorn Eide, n.54, p. 266

56. Declaration on the Rights of Persons Belonging to Minorities 1992, Article 4.2

57. Ibid, Article 4.3

58. Ibid, Article 4.4

59. Ibid Article 4.5

60. Ibid Article 8.1

61. Ibid Article 8.2

62. Asbjorn Eide n.54 p. 278

63. Pamphlet No.2 of the UN Guide for Minorities, p.2

64. Ibid, p.4