

**A Theoretical Framework on Minority Rights under International Law:
Regional Protection & Modern Initiatives**

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Abstract: Rising incidents of oppression on the minority group is an increasing concern all around the world. State practice has been inconsistent and incoherent so far as protection of minority rights is concerned. Some States have adopted generous policies not only in recognising the existence of minorities but also in protecting their cultural and linguistic identity. International law has historically found it difficult to provide firm guidelines in defining 'minorities'. However this paper has offered a theoretical framework for defining the concept of 'minority' and here a comprehensive analysis has been shown on the substantive rights of the minorities which includes their right to life and physical existence, right to religious, cultural and linguistic autonomy etc. In this analysis it is seen that The Genocide Convention has not come into operation and a number of States have not adopted any specific measures and large scale violation of human rights highlights the need for a permanent international criminal court. This study focuses on the modern initiatives in International Law and regional protection of minority rights. Recognition and authorisation of such rights form an essential element

of the concept of autonomy and the role of Working Group on Minorities to eradicate some of the criticisms regarding the weaknesses existent in the practical realisation and implementation of the Declaration. This study also shows some instances of violation of minority rights due to lack of balance between international law and domestic laws of Bangladesh which firmly put emphasis on to acknowledge the international commitments by the states.

Key words: *Substantive Rights, Modern Initiatives, Regional Protection, Bangladesh.*

1. INTRODUCTION

Minorities as groups exist everywhere in varied forms and sizes. There are ethnic, linguistic, cultural, racial, religious, sociological and political minorities in practically every State of the world. State practice has been inconsistent and incoherent in so far as protection of minority rights is concerned. Some States have adopted generous policies not only in recognising the existence of minorities but also in protecting their cultural and linguistic identity. In their practices, many States continue to refuse to recognise that minorities physically exist and have used forcible mechanisms of assimilation.¹ In view of the ambiguities emergent from State practices, international law has historically found it difficult to provide firm guidelines in defining 'minorities' and in articulating a detailed set of rights. An underlying theme in relation to the subject is that by way of contrast to individual human rights; minority rights as collective rights integrity of States or to those who form the government of those States.

At the time of the establishment of the League of Nations, an elaborate regime on minorities' treaties was set. The mechanisms that were adopted by the League of Nations to protect minorities were limited in nature and the minority protection regime collapsed well before the start of the Second World War. With the establishment of the United Nations, emphasis shifted to the position of individual human rights. The United Nations Charter contains several references to human rights. The Universal

Declaration is committed to promoting individual rights and non-discrimination. There is no reference to minorities in either the United Nations Charter or the UDHR.²

2. DEFINITION OF MINORITIES

A detailed examination of the Rights of the Persons Belonging to Ethnic, Religious and Linguistic Minorities, Capotorti also formulated a definition, which is generally regarded as authoritative. According to his definition a 'minority' is a group numerically inferior to the rest of the population of a State, in a nondominant position, whose members being nationals of the State retain ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if on!, implicitly, a sense of solidarity, concentrating towards conserving their culture, traditions, religion or language.³

This definition proposed by Capotorti has been challenged and criticised on a number of grounds. The key feature of the definition gives the impression to be a blending of both objective and subjective components in determining a minority group.⁴ Objective criteria would involve a factual analysis of a group as a distinct entity within the State 'Possessing stable ethnic, religious or linguistic characteristics that differ sharply from those of the rest of the population'.⁵ The subjective criteria would be found on the basis that there exists 'a common will in the group, a sense of solidarity, directed towards preserving the distinctive characteristics of the group'.⁶ However, it could be argued that in view of the rather onerous considerations of evaluating both the objective and the subjective criterion, identification of a minority group might prove to be a difficult task.

The numerical strength of the group is another concern to consider more cautiously. It appears that the numerical strength must at least account for 'a sufficient number of persons to preserve their traditional characteristics'⁷ hence a single individual could not form a minority group. On the other hand, it is argued that to initiate an absolute

principle that in order to be recognised as a minority an entity must inevitably be 'numerically inferior' places an unreasonably heavy encumbrance on the group and may well be precisely incorrect.

Among the modern-day situations, the tragedies of 'ethnic cleansing' in the two Central African States of Rwanda and Burundi also confront this outset of a minority being a necessarily 'numerically inferior'. As a fact of realpolitik, minorities are possibly undermined not so much by their weaknesses in numbers, but by their exclusion from power. As one critic has aptly pointed out, 'the distinction ... between nations and minorities is one of power. Professor Palley, with its focus on the power-politics of a group may be more appropriate in these circumstances. According to her, a minority is 'any racial, tribal, linguistic, religious, caste or nationality group within a nation state and which is not in control of the political machinery of the state'.⁸

The third issue to arise out of the Capotorti definition is that of the position of non-nationals within the State.⁹ Non-nationals could form a significant proportion of a State's population, and although the main thrust of the expansion of the international law of human rights has dedicated itself to a consideration of the plight of nationals within the State, the rights of non-nationals, as individuals, are also progressively more becoming a concern of human rights law.

Non-nationals include migrant workers, refugees and Stateless persons and the phenomenal increase in their numbers in recent years has brought considerable attention to their position in international human rights law.¹⁰ It is also significant to note the views put forward by the Human Rights Committee in its general comment on Article 27. According to the Committee:

The term used in article 27 specifies that the persons intended to be protected are those who belong to a group and who share in a common culture, a religion and/or a language. Those terms also indicate that the individuals designed to be protected need not be citizens of the 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 safeguard that the rights protected under the Covenant are accessible to all entities within its territory and subject to its jurisdiction, except rights which are expressly made to apply to citizens, for example, political rights under article 25. *A State party may not, therefore, restrict the rights under article 27 to its citizens alone.*¹¹

3. ANALYSING THE SUBSTANTIVE RIGHTS OF MINORITIES

It is well established that the rights of minorities are interrelated and are dependent upon the rights of the individual. Minority rights are built upon the existing framework of rights of the individual human being.

Right to life and physical existence:

The right to life and physical existence represents the most fundamental right of all individuals. The right is protected in all human rights instruments.¹² It is an unfortunate historical and contemporary feature of human existence that individuals have in many cases been deprived of their right to life because of their religion, culture, race or colour. Activity involving the physical destruction of minority groups has a long and painful history. In more modern times it has been labelled as genocide.¹³ Raphael Lemkin, a Polish jurist of Jewish origin is accredited with developing the modern principles relating to crime of genocide and for coining the term itself.¹⁴

Despite the coming into operation of the Genocide Convention, there have been several instances where minority groups have faced death and destruction.¹⁵ A number of cases have highlighted weaknesses both in the substance and the implementation of the Convention. The protected groups in the Convention are 'national, ethnical, racial or religious...'.¹⁶ The Convention makes no reference to the political and 'other' groups. Several cases reveal that political opponents have been a primary target of destruction and this omission is particularly unfortunate. There is no explanation regarding the meaning of 'national' or 'ethnical', 'racial or 'religious' groups as used in Article II.

A further gap in the Convention is the absence of a prohibition on demographic changes which could transform the proportion of a population.¹⁷ Forced expulsions are not within the ambit of the genocide Convention. Recent international instruments have covered some ground to condemn forced or mass expulsions. It is encouraging, therefore, to note that the Statute of the International Criminal Court regards mass expulsions as a crime against humanity. Similarly the forced expulsions are likely to breach the provision of ICESCR on the right to housing.¹⁸ Modern day developments have created new threats to the survival of certain groups which were not covered by the provisions of the Convention.

At the level of implementation, several situations have confirmed the ineffectiveness of the Convention in the actual prevention and punishment of the crime of genocide. Genocide of minorities has taken place in a number of States. These States include both those which are parties to the Convention and those which have not ratified the Convention. The Genocide Convention has not come into operation or has proved essentially flawed.¹⁹ According to Article V of the Convention:

All Contracting parties undertake to enact in accordance with their respective constitutions, the necessary legislation to give effect to the provisions of the present convention and, in particular, to provide effective penalties for persons guilty of genocide or any other acts enumerated in article III.

This provision implies that each State party would introduce legislation that would meet the requirements of Article V. States are given significant opportunity as to the application of this provision within their constitutional framework. This has also meant differences in interpretation of the several provisions nationally, both by legislatures and judiciary. A number of States have not adopted any specific measures, implying that they regard the treaty as being self-executing.

The legislation incorporated by a few States, however, raises questions as to whether it complies with the provisions of Article II of the Convention. The case of Israel is the

classic example as its legislation, although similar to the Convention, is deemed to apply only to crimes committed 'against the Jewish people' with the implication that other groups are not covered by the law.²⁰

In most cases of genocide, it is the governments within the States that are involved, and unless and until they are removed, there is a huge difficulty in trying those who have been involved in committing genocide. It is relatively possible for a genocidal regime to stay in command for a long time and defy international law and municipal laws.²¹ It is equally probable that the stance of successive governments might be based on the policy of genocide and forced assimilation of certain minority groups.

If the option of conducting trials on a territorial basis seems impractical, the second alternative to have an international criminal court has proved even more elusive. The large-scale violations of human rights in the former Yugoslavia, Rwanda and elsewhere highlighted the need for a permanent international criminal court.

The jurisdictional and territorial limitations of these ad hoc tribunals were obvious, generating an unprecedented momentum towards the creation of a court with a universal jurisdiction. The General Assembly, which had 309 requested the ILC in 1990²² to draft a statute of an international criminal court, reiterated its request underlining the significance and urgency of the matter.²³

The aforementioned jurisdictional and substantive limitations establish a significant barrier to attain the ultimate objectives of the Statute- the accountability and punishment of individuals involved in serious crimes against international law. Meanwhile and in so far as the punishment of those involved in breaking the right to physical existence is concerned, the world-wide scenario cannot be taken to denote a serious sign of optimism. Many minority groups endure miseries as the provisions of international criminal law (and more specifically those of the Genocide Convention) remain inadequate to penalize the culprits of these crimes.

The right to religious, cultural and linguistic autonomy

Religious, linguistic and cultural autonomy is not a novel concept for minorities. Its history stretches to the time when minorities as distinct groups came to be recognised. Medieval and Modern History presents many revealing examples of yielding of autonomy to religious minorities. A clear example of autonomy was presented by the League of Nations through its system of minority rights at the end of the First World War. The intervening years between the two world wars saw a number of imaginative attempts to realise meaningful autonomy, for example, in the Aaland Islands, the Free City of Danzig and the Memel territory. The tools set up to safeguard minorities proved defective and, along with minority treaties, distorted well before the Second World War.²⁴

The legal and political developments that took place after the Second World War more or less resulted in the erosion of any independent concern that had previously existed for ethnic, linguistic and religious minorities and for their aspirations to autonomy and existence as distinct entities. The interest in the position of minorities that could be ascertained was largely of an indirect nature, namely the United Nations' preoccupation with upholding individual human rights and concerned with non-self-governing territories. In the present context the provisions of Chapter XI of the UN Charter need to be noted. Chapter XI concerns non-self-governing territories and Article 73 applies to territories 'whose peoples have not yet attained a measure of self-government. A focus of this nature upon territorial elements meant a lack of consideration for ethnic, linguistic and religious groups who were without a territorial base. United Nations' bodies started relying heavily on the concept of individual human rights and non-discrimination, neglecting the subject and concerns of minorities.²⁵ Despite the absence of any specific mention of minorities or their rights within the UN Charter or UDHR, minorities have been able to benefit from a number of concepts enshrined in these instruments.

The rights enshrined in UDHR can be treated as the basis of safeguard for minority groups. The Declaration specifically provides, in Articles 1 and 2, the right of equality and non-discrimination. The right to freedom of thought, conscience and religions stated in Article 18, the right to freedom of opinion and expression is provided in Article 19, the right to peaceful assembly and association in Article 20, the right to education in Article 26 and the right freely to participate in the cultural life of the community.²⁶ All these right establish the required base for providing individual members with a natural privilege for autonomy. Although the Universal Declaration has no explicit references to minorities, subsequent international instruments have given greater attention to minority or group rights. The International Convention on the Elimination of All Forms of Racial Discrimination,²⁷ while obviously emphasising the elimination of racial discrimination, also aims to protect racial minority groups. It provides an explicit recognition to affirmative action policies²⁸ and allows minority groups to institute a complaints procedure.²⁹ The ICESCR³⁰ has the value of cultural rights in the human rights context. According to Article 15 of the ICESCR, States undertake to recognise that everyone has the right to 'take part in cultural life'.³¹ There is also recognition of legitimate differences in beliefs and traditions in Articles 13(3) and 13(4). Article 27 of the ICCPR is of special importance for minorities as it is the main provision in current international law which attempts to provide direct protection to ethnic, linguistic and religious minorities. Article 27 provides as follows:

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

The obligations in the Article require States 'not to deny the right [to persons belonging to minorities] to enjoy their own culture, to profess and practice their own religion, or to use their own language'. The wording of the provision, contrary to other articles, is

negative in tone.³² The obligations that are to be imposed upon State parties have also been a matter of considerable debate. The text is not strong enough to place States and governments under the obligation of providing special facilities to members of minorities. The commitment that was placed on the States was not to deprive or oppose members of the minority groups the status they were already enjoying.³³ Article 27 is not only weak in placing positive obligations on State parties, but it is also limited in scope as far as the issue of *locus standi* is concerned. The jurisprudence emanating from the operation of the first Optional Protocol confirms that the provisions of the article are limited to persons. Cases such *Sandra Lovelace v. Canada*³⁴ establish the possibility of vindication of minority rights using Article 27. At the same time, the article has proved inadequate in satisfying many of the claims put forward by minority groups, in particular when they may link across to the claims of self-determination.³⁵

4. MODERN INITIATIVES IN INTERNATIONAL LAW

Since the adoption of the ICCPR a number of recent initiatives have reinforced the international provisions relating to minority protection, the primary instrument at the global level is the United Nations General Assembly's Resolution 47/135 of 18 December 1992.³⁶ The Declaration represents a concerted effort on the part of the international community to overcome some of the limitations in Article 27 of the ICCPR.³⁷ According to Article 1(1), States shall protect the existence and the national or ethnic, cultural, religious or linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity.

Article 2(1) confirms and elaborates upon the position of Article 27 of ICCPR. The provisions of this article present a more positive attitude compared with the tentative position adopted by Article 2. It provides:

Persons belonging to national or ethnic, religious and linguistic minorities (hereinafter referred to as persons belonging to minorities) have the right to enjoy their own culture,

to profess and practice their own religion, and to use their own language, both in private and in public, freely and without intervention or any form of discrimination.

Article 2(2) provides for wide-ranging participatory rights to persons belonging to minorities in 'cultural, religious, social, economic and public life'. The provision is significant as the recognition and authorisation of such rights form an essential element of the concept of autonomy. Hence, Article 2 as a whole, could be taken to bear significant value in recognising autonomy for minorities, even though the right to autonomy itself failed to be incorporated in the Declaration. Article 4 provides that:

(1) States shall take measure to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedom without any discrimination and in full equality before the law.

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

(3) States should take appropriate measures so that, wherever possible, persons belonging to minorities have adequate opportunities to learn their mother tongue.

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

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

According to Article 5, 'legitimate interests' of the persons belonging to minorities would be taken into account when formulating national policies or programmes of cooperation and assistance among States. The importance of Articles 6 and 7 is upon international assistance in understanding the minority question in a more lenient and

balanced manner. The Declaration has many constructive elements. Aspects of ethnic, cultural and linguistic autonomy seem within the text of the Declaration and represent an extensive advance. The communal issues of the existence of minorities are more noticeable; the references relating to State sovereignty and territorial integrity, although fundamental to the Declaration, are framed in a more compliant manner.

The Declaration, however, is a General Assembly Resolution and its impact on the development of international law is not clear. Many of the substantive provisions of the Declaration are themselves framed in a rather general manner, enabling a number of States to claim that they already respect minority rights.³⁸ States may also prevent legitimate expression of minorities on the pretext of being 'incompatible with national legislation.'³⁹

One ingenious method of overcoming historical weaknesses in the implementation of minority rights mechanisms has been through the setting-up of a Working Group on Minorities. The Working Group, which was established in 1995, has facilitated to eliminate some of the reproaches on the subject of the weaknesses existent in the real-world and execution of the Declaration. The Working Group on Minorities has also been influential in promoting the issue of minority rights at the global level, and notwithstanding its brief history has already created a lasting impression within the United Nations as an effective forum for deliberation and producing mutual understanding between minorities and their governments.

The directive of the Working Group is constituted as follows:

- (a) Inspection of the advancement and practical realisation of the Declaration;
- (b) Study potential solutions to difficulties involving minorities, including the promotion of reciprocal understanding between and among minorities and governments;
- (c) Commend supplementary actions, as suitable, for the promotion and protection of the rights of persons belonging to national or ethnic, religious and linguistic minorities.

The Working Group has been able to enhance the overall jurisprudence of minority rights through a number of initiatives. Members of the Working Group have produced commentaries on the Declaration, as well as on the various rights contained therein.

At the current period it seems premature to come to any irrefutable assessments on the influence of the Working Group on the world-wide safeguard of minority rights. Nevertheless, it has now become a firm notion that in the global context, where there are significant difficulties in the execution machineries, the Working Group has remarkable potential to advance the cause of minority rights.

5. REGIONAL PROTECTION OF MINORITY RIGHTS

Several problems which have categorized the United Nations attitude towards minorities have been reflected at the regional level. The continents of Europe, America and Africa have established regional institutions for the protection of human rights, although concern for minority rights has not been a strength of any of these systems. The ECHR contains a number of provisions relevant to protecting the interests of minorities. However, it is only in Article 14 (an article providing for a regime of non-discrimination) that a direct reference to minorities is made.

The European Court and Commission have not been forthcoming in advancing the cause of minorities. Efforts to adopt a minority rights protocol have, thus far, not borne fruit. The Council of Europe has however been successful in adopting two treaties which are directly relevant to minorities in Europe. The Framework European Convention for the Protection of National Minorities 1994⁴⁰ is the first binding instrument which has an exclusive focus on minorities. It provides for equality, prohibiting discrimination on the grounds of belonging to a national minority'.⁴¹ The States parties also undertake to adopt 'measures in the fields of education and research to foster knowledge of the culture, history, language and religion of their national

minorities and of the majority',⁴² There is an undertaking to promote minority languages,⁴³ and educational rights.⁴⁴

In spite of these positive features, the Convention has many weaknesses. The Framework Convention, like other minority rights instruments, fails to define the term 'national minority'. The Convention also does not detract from the path of individual rights as opposed to collective group rights.⁴⁵ The authors of the text of the Framework Convention reiterate this point in an explanatory note, commenting that the application of the provisions of the Convention 'does not imply the recognition of collective rights'.⁴⁶

In addition, a number of provisions of the Framework Convention are structured in such a manner that there is an apparent distinction in the nature of obligations undertaken by States parties. For example, under Article 7, States parties undertake to ensure respect for the rights of persons belonging to a minority to enjoy freedom of peaceful assembly, association, expression, thought, conscience and religion.

There is little in the Convention for minorities from the standpoint of autonomy. The closest the Convention comes to the subject of autonomy is in the Article that provides that '[t]he Parties shall create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them'.⁴⁷

The final and most significant of weaknesses in the Convention is it does not have a complaints procedure. The Convention establishes general principles which are not directly applicable at the national level, with implementation being the 'prerogative of the States'.⁴⁸ States parties are required to submit reports to an advisory committee of the Committee of Ministers on the measures, legislative and administrative, taken in order to ensure compliance with the treaty.

The Council of Europe has also adopted the European Charter for Regional or Minority Languages (1992). The Charter, a binding treaty, as its title suggests aims to protect the

regional and minority languages spoken within Europe. States parties to the Charter undertake to encourage and facilitate regional and minority languages inter alia 'in speech and writing, in public and private life'.

In addition to work done by the Council of Europe, significant contributions in the field of minority rights are made by another intergovernmental organisation, the Organisation for Security and Cooperation in Europe (OSCE).⁴⁹ Article 35 provides:

The participating States note the efforts undertaken to protect and generate conditions for the promotion of the ethnic, cultural, linguistic and religious individuality of certain national minorities by creating, as one of the potential means to attain these objectives, appropriate local and autonomous administrations corresponding to the specific historical and territorial circumstances of such minorities and in accordance with the policies of the State concerned.

Again, as has been discussed, the work of the OSCE High Commission on National Minorities has been of great value in promoting the interests of the minorities of Europe.⁵⁰

6. SOME INSTANCES OF BANGLADESH

The nonexistence of binding rules in the widely held written international law documents regarding minority protection makes the problem ineffectively resolved in the international level and puts emphasis on the state in the protection and promotion of internationally attained commitments. Apart from legislative outlines at national level, very often positive methods by states are indispensable 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. Failure to achieve the appropriate balance results in interethnic tensions and conflicts. Such as:

Hefajat supporters attack Hindu homes

Several hundred supporters of Hefajat-e Islam attacked, vandalized and looted at least 75 Hindu houses in Sunamganj's Noagaon village yesterday morning over a Facebook post. Thirty-five houses were damaged badly and 40 more partially in the attack, said Md Jahangir Hossain, deputy commissioner of Sunamganj.⁵¹

Hindu School Teacher Gang Raped

Hindu School Teacher (30) gang raped by several Muslim perpetrators on 17.08.2017. Husband of the School Teacher beaten, kept confined in a room. This incident happened within the school premises at Uttar Karuna of Betagi Upazila of Barguna District 5-6 kilometres away from local Police Station.⁵²

Moni Mala Biswas abducted, converted, killed

Moni Mala Biswas, 30, w/o Prakash Biswas, was kidnapped by Mohammad Zamal Gazi, 39, of Sonali, P.S. Tala, district Satkhira, with the help of others. A case was filed at Tala P.S. (case No.25 dated 21 April 2010 under section 7/30 of Women and Children Repression Act, 2003). The abductors forcefully converted Moni Mala to Islam on 9 June 2010 and renamed her Fatema Begum. She was forced to marry the perpetrator, even though he had another wife. Police neither recovered the women nor arrested the culprits till her murder. Mohammad Zamal Gazi put immense mental and physical pressure on Moni Mala Biswas to withdraw abduction case, and finally she was tortured to death. A case was filed under section 11(ka)/30 of Women and Children Repression Act, 2003 (Case No. 15 dated 28 Oct 2010), but no arrests were made. Moni Mala (Fatema Begum) was buried as per Muslim custom.⁵³

Pratima Rani, 34, an Adibashi (Adivasi, tribal) woman, was raped at midnight of 13 July 2010 by Mohammad Zahurul Islam, 28, who unlawfully entered into her house in North Sadishpur village, Badalgachi Upazila, Nowgaon district. Her husband, Budhu, 40, was away at the time. The tried raised a hue and cry, and a neighbour came out and

witnessed the assault. The victim felt so humiliated that she took poison; she was taken to the nearest hospital at Joypurhat but breathed her last on 14 July 2010.⁵⁴

Hindu college girl converted to Islam

Hindu college girl Ritu Parna Mistry, aged 18, was kidnapped on 8th June 2017 at about 5.10 pm by perpetrators and she has been forcefully converted to Islam says minority watchdog Bangladesh Minority Watch (BDMW). Her conversion has been sealed after a swearing affidavit was submitted on 8th June at the Morrelganj Upazila of Bagerhat district, Bangladesh.⁵⁵

47 temples, 700 Hindu houses torched across Bangladesh

Islamic activists have attacked dozens of Hindu temples and hundreds of homes across Bangladesh since an Islamist leader was sentenced to death for war crimes last month, a Hindu group said on Wednesday. Bangladesh Puja Udjapon Parishad, a group which looks after Hindu temples, said 47 temples and at least 700 Hindu houses had either been torched or vandalized since the verdict against Delwar Hossain Sayedee.

Sayedee, vice-president of the country's largest Islamic party Jamaat-e-Islami, was sentenced to hang on February 28 for crimes, including rape and murder, committed during the 1971 independence conflict.⁵⁶

Minority Eviction, Bangladesh Style?

11 indigenous families were driven out at Godagari, Rajshahi on last Saturday. At the time, the family members were in deep sleep, when the perpetrators attacked at night, destroyed their houses and drive them out of the area. Victim Konok Gomej told, Nazrul Islam and his gangs attacked them, looted their tins on the top of the house and all belongings. She informed that, nobody dares to protest because they were heavily armed. Police knows nothing. Nazrul told, he is the owner of the land, so he drives them out.⁵⁷

'Please save my future generation'

The Buddha statues made of gold are lost forever. The intrinsic designs of Khadi wood are lost in the inferno. The Tripitak is lost too. But for Shreemad Satyapriya Mohathero, who had just turned 83, the loss and pain are even greater. He has lost all faith in his knowledge and reading of humanity. "Even in 1971, I did not see this grotesque brutality on us," Mohathero says. Mohathero is the second highest priest of the Buddhist community in Bangladesh.⁵⁸

Two temples vandalized

Unidentified persons have vandalized idols at two temples of Hindu goddess Kali in Netrokona Sadar. The desecrations of 'Sharbojonin Kali Mondir' at village Betati and 'Sharbojonin Mondir' at Jongolboruari village are believed to have taken place sometime during Saturday night, said Netrokona Model Police Station OC SM Mofizul Islam. At Jongolboruari village the idols of goddess Kali and Mahadeb were found wrecked, said Nirmol Das and Pankaj Saha Roy, secretary of Upazila Pooja Celebration Committee. The vandal had broken into the temple and beheaded the idols and left the heads lying inside.⁵⁹

7. CONCLUSIONS

Minority rights have been a problematic issue for international law to handle. Although international law primarily operates through the medium of States, and minorities generally have no *locus standi*, the treatment which minorities receive from their States has increasingly become a matter of international concern. International law, however, has historically found it difficult to deal with the problems around minorities. Like the poor, the weak and the inarticulate, they have since time immemorial been treated as natural victims of persecution and genocide. Even in the contemporary period of relative tolerance and rationality, minorities are often subjected to persecution, discrimination and genocide. The stance of international law remains tentative and

extremely cautious, for minorities pose questions of a serious nature; they exist in myriad forms, with their own social, political, cultural and religious particularities.

After considerable hesitation, there are now a number of notable initiatives. At the UN level, Article 27 of the ICCPR continues to represent the leading provision dealing with minority rights. It is inadequate and there is a need for reform. The UN Declaration on Minorities has been a positive step though much remains to be done. The Declaration needs to be converted in a binding treaty, and States must acknowledge more firmly their commitment to protecting minority rights. At the regional level, the Council of Europe's adoption of the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages represents two positive initiatives. It is, however, an unfortunate reality that the regions where some of the worst minority rights violations have taken place.

References

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⁴ the prevailing approach to the definition of minorities (is one] which intermingles objective and subjective criteria'. M.N. Shaw, *International Law*, 4th edn (Cambridge: Grotius Publication 1997, p. 222.

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⁷ "UN Doc. E/CN.4/703 (1953), para. 200.

⁸ C. Palley, *Constitutional Law and Minorities* (London: Minority Rights Group) 1978, p. 3; also see J. Fawcett, *The International Protection of Minorities* (London: Minority Rights Group) 1979, p. 4; J.A. Laponce, *The Protection of Minorities* (Berkeley and Los Angeles: University of California Press) 1960, pp. 8-9.

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¹¹ Para, 5.1. *Italics added.* Human Rights Committee, General Comment No 23 (Fifteenth Session 1994) Report of the Human Rights Committee 1 GAOR 49th Session, Supp. No (A/49/40) pp. 107-110.

¹² See the UDHR Article 3; ECHR Article 2, and the Sixth Protocol (1983), ICCPR Article 6 31 ACHR Protocol to American Convention on Human Rights to Abolish the Death Penalty: AFCHPR, Article 4.

¹³ Whitaker aptly describes this activity as the ultimate crime and gravest violation of human rights it is possible to commit'. Special Rapporteur B. Whitaker, Revised and Updated Report the Question of the Prevention and Punishment .of the Crime of Genocide UN Doc E/CNA/Sub.2/198516, 5.

¹⁴ R Lemkin, *Axis Rule in Occupied Europe* (Washington: CarneigeEndowmentin International Peace) 1944, p. 79; J. Portes *What is Genocide? Notes towards a Detinition* J. Porter (ed.), *Genocide and Human Rights: A Global Anthology* (Washington D.C: Univer Press of America) 1982, P. 5.

¹⁵ See J. Rehman, *The Weaknesses in the International Protection of Minority Rights* (The Hague:Kluwer Law International), 2000, p. 58.

¹⁶ Article II, *Convention on the Prevention and Punishment of the Crime of Genocide*, adopted 9 December 1948. Entered into force 12 January 1951. 78 U.N.T.S 277.

¹⁷ F. Ermacora, *The Protection of Minorities before the United Nations'* 182 *Rec. des cours* (1983) 251-366 at p. 314.

¹⁸ See Article 11 *Right to Adequate Housing*. Discussion by M1. Craven, *The International Covenant on Economic, Social and Cultural Rights: A Perspective on its Development* (Oxford: Clarendon Press) 1995, pp. 340-344.

¹⁹ See H. Hannum, *Guide to International Human Rights Practice* (London: Macmillan) 1984; LB. Sohn, 'Human kighes; Their implementation and Supervision by the United Nations' in T. Meron (ed.), *Human Rights in International Law Legal and Policy Issues* (Oxford: Clarendon Fress) 1984, pp. 369-401.

²⁰ See the *Nazi and Nazi Collaborators (Punishment) Law 1950*.

²¹ The recent example of the arrest and extradition of the former President of Yugoslavia, President Milsovich also confirms this position. It has only been possible to extradite the former President after the overthrow of his government.

²² GA Res. 45/41 UN GAOR, 45th Sess. Supp. No. 49, p. 363, UN Doc. A/RES/45/41 (1990).

²³ GA Res. 47/33 UN GAOR, 47th Sess. 73rd mtg, at 3, UN Doc. A/RES/47/33 (1992).

²⁴ See Claude Jr., *National Minorities: An International Problem* (Cambridge, Mass: Harvard University Press) 1995, p. 85; J. Kelly, 'National Minorities in International Law' 3 *JILP* (1973) 253-273 at p. 258.

²⁵ From the very beginning of the United Nations, emphasis has been put on the development of the non-self-governing territories towards independence LB. Sohn, 'Models of Autonomy within United Nations Framework' in Y. Dinstein (ed.), *Models of Autonomy* (New Brunswick London: Transaction Books) 1981, 5-22 at p. 9.

²⁶ Article 27, The Universal Declaration of Human Rights, adopted on 10 December 1948. UN GA Res. 217 A(III), UN Doc. A/810 at 71 (1948).

²⁷ Adopted 21 December 1965. Entered into force, 4 January 1969. 660 U.N.T.S. 195, 5 *I.L.M* (1966) 352.

²⁸ See Articles 1(4) and 2(2).

²⁹ See Article 14(1).

³⁰ Adopted at New York, 16 December 1966. Entered into force 3 January 1976. GA Res. 2200A (XXI) UN Doc. A/6316 (1966) 993 U.N.T.S. 3, 6 *I.L.M.* (1967) 360. Craven notes that the Covenant 'arguably recognises the different needs of ethnic minorities particularly as regards their cultural identity'. Craven, above n. 18, at p. 188.

³¹ *Ibid*, Article 15(1) (b).

³² In contrast see e.g. Article 18(1): Every one shall have the right to freedom of thought, conscience and religion. Article 24(3) Every child has the right to acquire a nationality.

³³ According to Capotorti during the discussions at the Commission "It was generally agreed that the text submitted by the Sub-Commission would not, for example, place States and governments under obligation of providing special schools for persons belonging to ethnic, religious and linguistic minorities. Persons who comprised of ethnic, religious or linguistic minorities could as such request that they should not be

deprived of the rights recognised in the draft article. The sole obligation imposed upon them was not to deny that right'. Capotorti, above n. 3, at p. 36.

³⁴ *Sandra Lovelace v. Canada*, Communication No. 24/1977 (30 July 1981), UN Doc. CCPR/C/OP/I at 83 (1984).

³⁵ See *Lubicon Lake Band v. Canada*, Communication No. 167/1984 (26 March 1990), UN Doc. Supp. No. 40 (A/45/40) at 1 (1990). Also see General Comment 23(50) Article 27, UN Doc CCPR/C/21/Rev., 1/Add.5 (1994) at para 3.1.

³⁶ UN Doc A/Res/47/135

³⁷ B. Dickson, 'The United Nations and Freedom of Religion' 44 ICLQ (1995) at p. 354.

³⁸ Hence the position adopted by Poland in the Human Rights Commission may be unduly optimistic according to which "Even though the text, was not perfect, it did appear to fulfil two essential requirements: firstly, it constituted a comprehensive international instrument in the field of protection of minorities, all of whose rights were clearly specified, and secondly, it clearly set out the commitments by which States could universally agree to be bound in so sensitive a sphere. It was thus a sound document, in line with the general approach to the question of international standards for the protection of the rights of minorities, and which, while ensuring a satisfactory balance between the rights of the nation as a whole.' UN Doc. E/CN.4/1992/SR.18, para 20.

³⁹ See Articles 2(3) and 4(2) of the Declaration.

⁴⁰ For the text of the Convention see 16 HRLJ (1995) 98.

⁴¹ Ibid. Articles 3-4.

⁴² Article 12(1).

⁴³ Articles 10-11.

⁴⁴ Articles 12-14.

⁴⁵ See S. Whearley, 'The Framework Convention for the Protection of National Minorities' 1 EHRLR (1996) at pp. 583-584.

⁴⁶ See the Framework Convention for the Protection of National Minorities and Explanatory Report (1995) paras 13, 22.

⁴⁷ Article 15, The Framework Convention for the Protection of National Minorities, 1994.

⁴⁸ Wheatley. above n. 45 , at p. 585.

⁴⁹ J. Wright "The OSCE and the Protection of Minority Rights" 18 HRQ (1996) 190.

⁵⁰ See Helsinki Document 1992, reprinted 13 HRLJ (1992) 284.

⁵¹ <https://www.thedailystar.net/backpage/news/hefajat-supporters-attack-hindu-homes-2062373>, accessed on 19 March, 2021.

⁵² The Daily Bangladesh Protidin, dated 19.08.2017.

⁵³ Dailies "Purbanchal" dated 29 Oct 2010 & "Gramer Kagoj" dated 29 Oct 2010.

⁵⁴ The Daily "Janata", dated 19 July 2010.

⁵⁵ The Daily "Bangladesh Protidin" dated 9th July 2017.

⁵⁶ <http://www.bangladeshchronicle.net/index.php/2013/03/47-temples-700-hindu-houses-torched-across-Bangladesh/>, accessed on 11 January, 2021.

⁵⁷ The Daily "Janakantha", dated 2 September 2012.

⁵⁸ <http://www.thedailystar.net/newDesign/news-details.php?nid=252147>, accessed on 22 December, 2020.

⁵⁹ <https://bdnews24.com/bangladesh/2013/09/08/two-temples-vandalized>, accessed on 11 January, 2021.