

MINORITIES AND INTERNATIONAL LAW (2016). By Dr. Kamal Ahmad Khan, Mittal Publications, New Delhi. Pp. xxii + 266. Price Rs. 1100/-.

IT WOULD be incorrect to understand the term ‘minority’ only as a smaller group of persons living in the midst of a larger group. The concept of minorities is much wider and carries several connotations of religion, culture, race *etc.* The presence of one or more minority groups in a state is an undisputable reality of today. Threat of the majority rule *i.e.*, the democracy leaves minorities insecure and vulnerable. The horrors of the past events like *Holocaust* are evidence of minority’s struggle. The plight of Palestinian minority in Israel, African-Americans and Hispanics in United States, Jews in Arabic countries are only few instances which underline the minority problems existing internationally.

Despite the stringent efforts of the United Nations and recognition of individual human rights, minority protection continues to be challenging even till date. One of the biggest challenges to minority protection is the avoidance of the state parties to fulfil their international obligations prescribed under the conventions and the treaties by claims that they do not have any minorities.¹ The principles present in minority protection instruments are very generic and are also subject to multiple interpretations, giving state parties extensive discretion in interpreting and implementing the instrument².

The book under review as the name suggests, explores the concept of minorities from the lens of international law. The work makes an attempt to underline the existing international legal framework on minority protection and its inherent limitations. The author, through the book proposes to elevate the consciousness about minority issues mainly in the international arena.

The book is divided into eight chapters. The first chapter “Introduction” deals with the basic premise of the book and attributes the emergence of minority problem mainly to reasons like migration, forced migration by colonial rule, rapid economic growth, emergence of democracy *etc.* This chapter provides a foundation to understand and appreciate the subsequent chapters.

The second chapter titled “The Term Minority and its Concept under International Law” scrutinises the term minority and its varying notions. The author systematically explores the evolution and origin of the concept of minority from the historical angle and gradually builds up the minority consciousness

1 Dragana Kovacevic, *International Minority Protection System* 11 (Ethnicity Research Center, Belgrade, 2010).

2 Aftab Alam, “Minority Rights Under International Law” 57 (3) *JILLI* 400 (2015).

existing as of now. The chapter outlines the reasons and facts leading to the growth of religious minority in Europe, drawing special references to Protestant and Catholic Christian, Jews, *etc.* and racial minority like Negroes in America. The problem of 'national minority' has also been stressed upon which was a result of breakup of two great empires in central Europe post the first world war.

The chapter further focuses on defining and understanding the term minority in order to ensure their protection. The author critically analyses the approach adopted by various philosophers and authors like J.A. Laponce, Mello France, Wirth, F.J. Brown and J.C. Roucek *etc.*, in conceptualising minority, more specifically minority by will or by force. Factors which determine the minority status are also elucidated in the chapter, which includes the numerical strength of the group, special characteristics like physical and cultural traits shared by the group, social disabilities and discrimination faced by the group from the majority, space and time factors *etc.* The chapter with the help of above discussion highlights the absence of any conceptual clarity on the identification of minorities and provides practical examples of the problems arising due to the lacunae.

It also analyses the term 'minority' as used in international instruments like, International Covenant on Civil and Political Rights (ICCPR), Convention on Rights of the Child, Framework Convention, 1998, and by international organisations like High Commission on National Minorities, Permanent Court of International Justice, Human Rights Committee *etc.* to further understand the concept of minority. The author observes that the definition of minority needs to be clear and exhaustive "by recognising the relativity of the term minority and the decisive character of related majority",³ to ensure the international protection of minorities.

The second chapter is titled "Kinds of Minorities in International Law". This chapter sketches the various forms and kinds of minorities existing internationally. The author provides basis or classification for assessing minority status of a group like the quantitative aspect, contiguity aspect, circumstances under which minorities are inducted into a state, desire to preserve some characteristics *etc.* The chapter contains a very detailed analysis of ethnic, religious and linguistic minority. The controversial nature of 'ethnic' minority has been highlighted specially with reference to article 27 of ICCPR, which according to some scholars implies that ethnic minorities enjoy only culture and not religion

3 Kamal Ahmad, *Minorities and the International Law* 34 (Mittal Publication, New Delhi, 2016).

or language. The author is of the view that culture cannot be isolated from religion or language and “it is difficult at times, to describe an ethnic group without regard to its linguistic and religious characteristics”. The state practices further complicate the matter when some groups are ethnic minority in one state and religious minority in another. The chapter enumerates many examples from Europe. Further, inconsistency in the state practices with regard to religious and linguistic minorities has been examined in one of the segment of the chapter.

In addition, the author discusses the conflict among some scholars as to the inclusion of indigenous group as a minority. Racial minority and the origin of racial discrimination also forms part of the deliberation. However, a detailed discussion is avoided as term racial minority has been denounced by United Nation and has been replaced by ethnic minority. The chapter further explains the situation of religious, linguistic and ethnic minorities in west Asia. Lastly, the chapter gives a detailed analysis of the concept of ‘National Minority’ and some ancillary issues pertaining to it.

The third chapter titled “Rights of Minorities” explores the various contours of rights which different minorities ought to be entitled to. The chapter begins with a general classification of minority rights into civil, classical and modern socio-economic rights. The rights of the minorities are conceptualised in different ways depending upon the type of minority *i.e.*, minority by coercion, by will, religious, linguistic, national *etc.* The author distinguishes between the rights of minority by coercion and minority by will. The former demands equality and assimilation within the nation and their claims are at the level of the individual of the state, whereas the latter demands rights in the form of privileges to compensate for their social and numerical inferiority as a group. The rights claimed by religious and linguistic minorities have been elucidated in the chapter in a detailed manner. The author contends that the rights of ethnic, religious and linguistic minorities recognised in the international law, however, lacked any uniformity in the protection post the first world war. The rights of the minorities were recognised mainly in the form of ‘Special Minorities clauses’ in the Peace Treaties, Versailles Treaty with Poland, 1919 *etc.*, and some developments took place after the formation of League of Nation as well. Further, the author has analysed these treaties to extract the nature the of rights granted to the minorities which mainly included general human rights for aliens, special minority rights and collective rights. There is further discussion on the rights of minorities in the treaties signed post the conclusion of the second world war, which includes more inclusive rights like prohibition of genocide, preservation of separate identity, right to language. The chapter deals exhaustively with the minority language rights and scrutinises the theoretical, civil and socio-economic aspects of linguistic rights. In the last section of the

chapter, minority rights under international instruments mainly United Nation Charter, Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities and Rights of Minorities, 1992 have been enumerated and systematically discussed. In addition, discussions on United Nations Educational, Scientific and Cultural Organization's minority rights along with Copenhagen Meeting of Conference on the Human Dimension of the CSCE, 1990, provides a good insight into the significant developments in the recognition of minority rights.

Various aspects pertaining to the protection of minority has been dealt with in the fifth chapter titled "The Protection of Minority". The chapter attempts to ascertain nature, of minority protection and the purpose and need for the international protection of minority. In view of the author, the purpose of minority protection was mainly political—to shield the minorities from danger of oppression by majority, however, later on humanitarian reasons led to protection of minorities. The author also discusses other reasons for protection like assimilation into the majority. The author also highlights the various problems faced in relation to the protection of the minority. This section highlights the threat to the minority protection due to sovereign power of a state over its domestic jurisdiction, consolidation of state, duty of the minority to show loyalty towards the state.

The protection of minorities at international level has been methodically divided by the author in five stages. In the *first* stage, the treaties from Westphalia to Vienna have been analysed which protected the religious minorities. The *second* stage analyses treaties from Vienna to Versailles, which according to the author provided detailed minority rights and better protection extending to other minorities as well. The *third* stage covers the treaties during the period of first world war to the second world war and most importantly the protection of minorities by the members of League of Nations. "Before, World War First, the protection of minorities other than religious ones was the exception, but became the rule after the war"⁴. The author contemplates the *fourth* stage post the second world war, and considers this stage "a setback in the protection of minorities by treaty"⁵ for number of minorities had been reduced due to reasons like genocide, mass deportation. The *last* stage examines the treatment of minority immediately after the second world war, where there was population

4 *Id.* at 130.

5 *Id.* at 131.

transfer of ethnic and national minorities, to bring an end to the problem of minorities.

In the next segment of the chapter, the development post the United Nation Charter and the Human Rights Convention, ushering an era of promotion of human right has been discussed. The author states that initially, the minority protection was indirect and non specific through conventions like Geneva Convention, the Universal Declaration of Human Rights, 1948, the European Convention of Human Rights, Convention against Discrimination in Education, 1960. A more specific minority protection under article 27 of the International Convention on Civil and Political Rights, 1966 has been studied by the author in detail along with its enforcement in various cases⁶ before the Human Rights Committee. Next the minority protection under the Helsinki Declaration has been elaborated. The chapter lastly, approaches the minority protection during the era of Cold War, post the dissolution of Soviet Union and Yugoslavia which instigated the strong force of minority protection in form of the Declaration on Rights of Persons, Belonging to National or Ethnic, Religious and Linguistic Minorities, 1992, Framework Convention for the Protection of Minorities, 1995.

The sixth chapter titled “Minorities under Municipal Law” examines the protection of minorities from the perspective of municipal laws of different countries. This chapter begins with the analysis of the nexus between Constitution and the minority protection. Many reasons have been attributed to the inclusion of minority protection in the constitutions and municipal laws, like political pressure, to avoid a civil war and conflicts. The chapter analyses municipal laws of several countries separately for religious, linguistic and racial minorities. While examining the religious minority rights the author divides constitutional protection into three parts *i.e.* freedom relating to conscience and worship, relating to discrimination based on religion, relating to privileges. Constitutional provisions of various countries like Russia, Portugal, Burma, Czechoslovakia, Italy, Pakistan, China, India, Singapore, Kuwait, Australia, USA, Austria, Sri Lanka, Nepal, South Korea *etc.* have been analysed to understand the variation in the constitutional protection of religious minorities, their right to practice and profess any religion and the restrictions subjected by different nations on such right and freedom. The chapters also deals with constitutional treatment of state

6 *Lovelace v. Canada* (Communication No. 24/1977), UN Doc. A/36/40/1981; *Lubicon Lake Band v. Canada* UN Doc A/45/40 Vol. II App. A (1990); *Kitok v. Sweden* (Communication No. 197/1985), UN Doc/A/43/40 (1998).

religion on minority right, aspects pertaining to minorities barred from holding public offices, religious teachings in public school, privileges, *etc.*

Second part of the chapter particularly deals with the rights of the linguistic minorities and the municipal recognition of the same in different countries. The author divides the linguistic rights into five sub-rights or categories and scrutinises the constitutional provisions of various countries on the benchmark of these sub-rights or categories. The five sub-rights are right to speech, right to pictographic language, right to teach, right to be understood and right to equal treatment. Constitutional provisions of Belgium, India, USA, Germany, Namibia, Nepal, South Africa, China, Sri Lanka, Russia, Rumania, Burma, Italy, Canada, Czechoslovakia, Australia, Austria, Yugoslavia, Finland *etc.* have been analysed to understand the rights of linguistic minorities. The last part of the chapter deals briefly with the racial minorities and the equality and the non discriminatory clauses present in the constitutions of some countries like India, United States, Italy, Russian Federation *etc.*

In the seventh chapter titled “The Protection of Minorities - Whether a neglected field”, various lacunae in the protection of minorities at the international level have been highlighted. The chapter scrutinises the loopholes in the international protection in a chronological manner starting from the League of Nations. The lack of general protection of minorities applicable to all states post the first world war under the League of Nation is contended to be one the ground for improper minority protection. The author further observes that the minority treaties did not provide sufficient protection as they were “all too unclearly formulated to provide a workable safeguard”.⁷ The author criticises the transfer of population after the end of second world war on the principles of international law. The loopholes of the Peace Treaties of 1947 have been enumerated stating that there were no clear clauses protecting the national minorities and “neither the scantily-worded clauses prescribe the relations between the rights of non-discriminated enjoyed by inhabitants and the obligation incumbent upon the state to secure those rights, nor even the length for which the Statutes are valid.”⁸

The chapter further analyses the international instruments which came into existence post formation of the United Nations and separately assesses them to find out the lacunae in protection of minorities. The author criticises the United Nation charter for some defects *inter-alia* no proper definition of certain

7 *Supra* note 3 at 196-197.

8 *Id.* at 200.

terms, absence of state obligation, lack of state protection. The chapter then moves on to analyse the Genocide Convention, 1948 and mainly condemns it on the point of lack of protection of cultural and linguistic attributes, “the convention guarantees the right of continued existence to members of minorities, it does not guarantee the continued existence of a group discrete entity”⁹. Various loopholes in the Universal Declaration of Human Rights, 1948 are elucidated which include the absence of specific minority protection. A detailed discourse on the neglected area of article 27 of the ICCPR is contained in the chapter, asserting lack of positive duty on the state to protect minority culture, language or religion, issues pertaining to definition of minority and lack of a uniform solution. Aspects related to loyalty, assimilation *etc.* are also discussed briefly in the chapter. Through the analysis of various instruments, the author depicts the inadequate minority protection existing in the international sphere.

The last chapter “Conclusion and Suggestions” summarises the discussion in the above chapter and presents valuable suggestion in the field of international minority protection. The author urges greater involvement of the permanent members of the Security Council in the matters of minority protection. Author further recommends that the United Nation should ask states for information pertaining to minorities in their states and scrutinises the state policy and steps taken by the state to protect the minority. Author supports adoption of a separate declaration dedicated towards majority protection. Author recommends an approach where protection of minorities against discrimination is not enough and they should receive positive safeguard as well. He further recommends that the numerical requirement for rights to the minorities must be fixed by law. Lastly, author suggests the state to build up a fellowship between the minority and majority.

The book addresses various important aspects ranging from conceptualising the term ‘minority’ to inadequate protection of minorities under international instruments. It provides a good insight into the historical and contemporary minority issues in Europe. However, the minority problems in other parts of the world have received little attention. The task of evaluating the international instruments, constitutional provisions as well as domestic laws of various countries on minority protection has been meticulously performed by the author. The author’s suggestions on various issues raised in the book are laudable. The work throughout maintains consistency and coherence. The book would be a

9 *Id.* at 205.

constructive aid for scholars of international law and professionals working with international agencies, who are keen on examining the minority issues from an international perspective.

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