

Minorities at Risk - India Legal

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The recent turmoil in Bangladesh—marked by recurring episodes of violence, intimidation, and displacement affecting religious minorities—has once again drawn international attention to the precarious position of minority communities under international law. Periods of political instability in the country have repeatedly coincided with minority bashing, revealing the limits of constitutional guarantees and international commitments when confronted with majoritarian impulses. These developments reaffirm the continuing relevance of minority protection as a subject of international law and provide a timely context for examining broader legal frameworks, as well as India's role in shaping minority rights at the international level.

The concept of minorities in international law encompasses a body of legal principles and norms designed to secure both the rights and identity of minority groups within sovereign states. Minorities are generally understood as numerically inferior communities distinguished by ethnic, religious, linguistic, or cultural characteristics. Yet, despite decades of scholarly

debate and institutional engagement, international law still lacks a universally accepted definition of “minority,” reflecting the political sensitivities and contextual variations surrounding the term.

Minority protection first gained prominence in international law in the aftermath of the First World War, with the establishment of the League of Nations. Under this system, minority treaties were imposed selectively on newly created or reconfigured European states, granting group-based rights related to religion, language, and education. The regime, however, was fundamentally flawed—discriminatory in application, limited in scope, and lacking effective enforcement mechanisms. With the collapse of the League of Nations, the minority protection framework effectively disintegrated.

Following the Second World War, the United Nations adopted a different approach, prioritising universally applicable individual human rights. The underlying assumption was that safeguarding individual rights would adequately protect minorities. Experience soon demonstrated the shortcomings of this model, as minorities continued to face systemic discrimination, cultural erosion, and political marginalisation.

Over time, international law gradually reintroduced minority-specific protections. This shift is reflected in Article 27 of the International Covenant on Civil and Political Rights (ICCPR) (1966), which affirms that persons belonging to ethnic, religious, or linguistic minorities shall not be denied the right to enjoy their culture, practise their religion, or use their language. The 1992 UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities further elaborates state obligations, though it remains a non-binding instrument. Contemporary minority rights frameworks now emphasise non-discrimination, substantive equality, cultural preservation, and meaningful participation in public life.

India’s contribution to minority protection in international law must be understood in light of its own complex social fabric. As one of the world’s most diverse societies, India has confronted the challenge of minority protection since independence. The Partition of 1947—accompanied by widespread communal violence and mass displacement—left a deep imprint on India’s constitutional and international outlook, reinforcing a commitment to pluralism and coexistence.

At the United Nations, India played an active role in shaping early human rights discourse. As a founding member, it participated in drafting the Universal Declaration of Human Rights (UDHR), consistently advocating equality, freedom of religion, and non-discrimination. While supportive of minority protection in principle, Indian representatives expressed reservations about rigid group-based arrangements, cautioning that such frameworks could undermine national unity and political stability. This position has remained central to India’s engagement with minority rights.

India’s approach is particularly evident in debates surrounding the ICCPR. While supporting the inclusion of Article 27, India has consistently interpreted minority rights through an individual-rights framework rather than as collective political entitlements. In UN debates and treaty-body

interactions, India has emphasised that minority protection must operate within constitutional and democratic structures, aligning with its broader advocacy of internal self-determination and respect for territorial integrity.

Domestically, India's Constitution represents a significant contribution to international minority rights discourse. It provides robust safeguards, including freedom of religion (Articles 25-28), protection of cultural interests (Article 29), and the right of minorities to establish and administer educational institutions (Article 30). These provisions reflect a substantive equality model that recognises the need for differential protections to preserve minority identity. In international forums, India has frequently cited its constitutional framework as evidence that minority protection can be effectively realised within a sovereign democratic state.

During the drafting of the 1992 UN Minority Declaration, India adopted a cautious stance. While supporting its emphasis on cultural identity, participation, and non-discrimination, India stressed that the declaration should remain non-binding and respect sovereignty and non-interference. This position was shaped by historical unease with selectively enforced minority regimes, particularly those of the League of Nations era.

India has continued to engage with minority protection through UN mechanisms such as the Human Rights Council and treaty-monitoring bodies, emphasising dialogue, inclusive development, judicial remedies, and democratic participation as sustainable responses to minority grievances. Regionally, developments in neighbouring countries—most notably Bangladesh—have influenced India's approach. In UN debates, India has generally resisted country-specific resolutions targeting neighbours, preferring bilateral engagement and regional stability, consistent with its broader foreign policy of non-intervention.

While critics argue that India's international advocacy is sometimes undermined by domestic challenges, its contribution to international law lies in articulating a constitutional, democratic model of minority protection. Through sustained participation in UN debates, constitutional practice, and judicial development, India has helped shape minority rights as an integral component of international human rights law.

International minority protection regimes seek to prevent forced assimilation while largely rejecting secession as a remedy, instead prioritising territorial integrity. India's engagement with this framework illustrates how minority protection can be pursued within democratic and constitutional systems. In the face of continuing regional challenges—such as minority persecution in Bangladesh—India's experience highlights both the enduring relevance and inherent limitations of international law in fostering pluralism, social harmony, and peaceful coexistence.

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