



Minorities And Their Right Of Self-Determination: A Challenge For Democratic Setup

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Introductio

"Self-determination is not a mere phrase. It is an imperative principle of action, which statesmen will henceforth ignore at their peril."

—Woodrow Wilson

Self-determination and rights of minorities are two sides of the same coin. The right of self-determination is a fundamental human right that allows individuals or groups to determine their own political, economic, and social status. This concept is closely tied to the principles of equality, non-discrimination, and human dignity. In the context of minorities, the right of self-determination is particularly important, as they often face historical, cultural, and social marginalization.

Today, self-determination presents one of the most remarkable concepts of international law and politics. It proves difficult to understand, and sometimes impossible to guarantee and apply in practice. It reveals a lack of clarity which might provide conditions for double standard application and underlines some of the weaknesses of the existing international legal order. As **Antonio Cassese** points out, it has a Janus-like nature, being a radical, progressive, alluring and at the same time subversive and threatening concept.¹ Though the idea underlining the concept is progressive, it appears in some cases to be dangerous and ambiguous creating more confusion and awakening unrealistic hopes rather than bringing just and peaceful solutions. It is regularly invoked in the claims for liberation, secession, democratic participation, but also in the claims for enjoyment of basic human rights.

Accession to independence and defence of that independence parade under the banner of self-determination, a concept enshrined in various international human rights instruments, including the *United Nations Charter* (Article 1), the *Universal Declaration of Human Rights* (Article 1), and the *International Covenant on Civil and Political Rights* (Article 1). It is understood as the right of individuals or groups to freely determine their own political, economic, and social status, free from external interference or coercion.² The legal implications of the concept of self-determination for minorities are, therefore, a matter of considerable moment. It is a concept of liberation.³ Its inscription in legal texts has coincided with an astounding transformation of political geography. States have replaced Empires. The age of colonialism becomes a historical datum, even if its long-term effects are profound.⁴

International Charters Proclaims Self-determination a Right

The concept of self-determination has a rich history, and it has been recognized as a fundamental right by various international charters and organizations. During World War II, the United States and the United Kingdom issued the **Atlantic Charter, 1941** which included the principle of self-determination.⁵ The charter stated that:

¹ Antonio Cassese, *Self-Determination of Peoples, A Legal Reappraisal* 05 (1995).

² UN Special Study on Racial Discrimination in the Political, Economic, Social and Cultural Spheres, UN Sales No. 71 XIV 2.

³ Patrick Thornberry, "Self-Determination, Minorities, Human Rights: A Review of International Instruments" 38:4 *International & Comparative Law Quarterly* 867-889 (1989).

⁴ One result is that many colonies have advanced to statehood within their sometimes arbitrary colonial borders, resulting in States of great ethnic complexity.

⁵ John McGarry and Brendan O'Leary, *Introduction: The Macro-Political Regulation of Ethnic Conflict* 03 (1993).

“all peoples have the right to choose their own government and that they have the right to be free from fear and want.”

The **United Nations Charter**, adopted in 1945, affirms the principle of self-determination as a fundamental right of peoples. Specifically, **Article 1(2)** of the Charter states that:

“Everyone has the right to equal access to public service in his country.”

Article 55 of the Charter further emphasizes the importance of self-determination, stating that:

“With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:⁶

- *higher standards of living, full employment, and conditions of economic and social progress and development;*
- *solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and*
- *universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.”*

In other words, the UN Charter recognizes that all peoples have the right to self-determination, which means they have the right to freely determine their own political, economic, social, and cultural development.⁷ This principle has been reaffirmed in numerous UN resolutions and declarations, including the **Universal Declaration of Human Rights, 1948**.

Within two years the General Assembly went farther, deciding to include an article on the subject in the **International Covenant on Human Rights** then being drafted.⁸ In this official sense, then, self-determination became a human right. It is set forth in **Article 1** of both of the Covenants approved in 1966.⁹ **Paragraphs 1 and 3** of that **Article** read as follows:

- All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social, and cultural development.
- The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect the right, in conformity with the provisions of the Charter of the United.

In order to locate minority rights in international law, a convenient starting point is the well-known **Article 27** of the **International Covenant on Civil and Political Rights (ICCPR)** which provides that:

“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 practise their own religion, or to use their own language.”¹⁰

The **Vienna Declaration** provides at para 4, inter alia, that *‘the promotion and protection of all human rights is a legitimate concern of the international community.’*

The **United Nations Declaration on the Rights of Indigenous Peoples**, adopted by the United Nations General Assembly in 2007, recognizes the rights of indigenous peoples to self-determination, including their right to autonomy, self-government, and control over their own lands and resources.

The concept of self-determination has been applied in various contexts, including decolonization, national liberation movements, and minority rights. It remains an important principle in international law and human rights discourse.¹¹

Why is Self-determination important for Minorities?

Minorities need self-determination in order to exercise their freedom to select their own political, economic, and social standing. This implies that individuals are free from outside influence or control to make decisions about their own lives, cultures, and identities. Minorities might face persecution, marginalization, or even forced assimilation in the absence of self-determination.¹² Feelings of helplessness, animosity, and

⁶ Charter of the United Nations, Chapter IX—International Economic and Social Co-operation (Repertory of Practice of United Nations Organs, 2022).

⁷ Louis K. Hyde, *The United States and the United Nations, Promoting the Public Welfare* 176 (GA/Res/420 (V), New York: Manhattan, 1960).

⁸ GA/Res/545 (VI). 5 February 1952.

⁹ See Zubeida Mustafa, “The Principle of Self-Determination in International Law” 5:3 *The International Lawyer* 479-487 (1971).

¹⁰ Jane Wright, “Minority Groups, Autonomy, and Self-Determination” 19:4 *Oxford Journal of Legal Studies* 605-629 (1999).

¹¹ Avishai Margalit and Joseph Raz, “National Self-Determination” 87:9 *The Journal of Philosophy* 439-461 (1990).

¹² Gregory H. Fox and Brad R. Roth, *Democratic Governance and International Law* 340 (2000).

frustration may result from this, which may have detrimental effects on people individually as well as on communities and society at large. Minorities benefit from it because it gives them the freedom to pursue their own interests, maintain their cultural identities, and be accepted as full, contributing members of society.

For minorities, self-determination is crucial for several reasons:¹³

- **Protection from assimilation:** Minorities often face pressure to assimilate into the dominant culture, which can lead to loss of their cultural identity, language, and traditions.
- **Preservation of cultural heritage:** Self-determination allows minorities to preserve their cultural heritage, including their language, customs, and traditions.
- **Economic empowerment:** Self-determination can enable minorities to develop their own economic systems, promote entrepreneurship, and improve their economic well-being.
- **Political representation:** Self-determination can lead to greater political representation and participation in decision-making processes.
- **Addressing historical injustices:** Self-determination can be a way to address historical injustices and past discrimination against minorities.

Challenges facing Minorities in exercising their Right of Self-determination

Despite its importance, exercising the right of self-determination can be challenging for minorities. Some of the obstacles they face include:¹⁴

- **Lack of recognition:** Minorities may not be recognized as distinct groups by governments or international organizations.
- **Political and economic power imbalances:** Minorities often face significant power imbalances compared to the dominant group, making it difficult to exercise their rights.
- **Discrimination and violence:** Minorities may face discrimination, violence, and persecution if they attempt to exercise their rights.
- **Internal divisions:** Minorities may have internal divisions that can hinder their ability to present a united front in seeking self-determination.
- **External interference:** External interference from governments or international organizations can undermine the ability of minorities to exercise their rights.

Autonomy and Minority Groups: A Right in International Law

Could the right to self-determination give minority groups the path to autonomy in the absence of an international convention on minorities' rights that includes a right to autonomy? External self-determination, or the people's freedom to decide how their state will be administered free from outside influence, is the conventional understanding of self-determination.¹⁵ Concurrently, the notion of internal self-determination emerged, positing that every population inside the state should participate in the process of state governance.¹⁶ By recognizing that peoples have the freedom to choose their political status without outside intervention and that gives State actions legal validity, **Martti Koskenniemi** demonstrates how self-determination simultaneously supports and undermines the State. On the one hand, self-determination presents a challenge to the formal structures of Statehood.¹⁷ It explains that:

*"Statehood per se embodies no particular virtue and that even as it is useful as a presumption about the authority of a particular territorial rule, that presumption may be overruled or its consequences modified in favor of a group or unit finding itself excluded from those positions of authority in which the substance of the rule is determined."*¹⁸

The 1994 Draft Declaration on the Rights of Indigenous Peoples had made reference to the connection between autonomy and self-determination in Article 31.¹⁹ Although the State can assign powers to other organs within its "space", autonomy also strengthens the semi-detached nature of some of those peoples within the State.²⁰ In this way, it reflects elements of both concepts of self-determination. Autonomy

¹³ James Crawford, *The Right of Self-Determination in International Law: its Development and Future* 07 (Philip Alston, 2001).

¹⁴ Antonio Cassese, *Self-Determination of Peoples: A Legal Reappraisal* 101 (1995).

¹⁵ United Nations Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States, G.A. Res. 2625, U.N. GAOR, 25th Sess., Supp. No. 28, U.N. Doc. A/8028 (1970); 9 I.L.M. 1292 (1970).

¹⁶ Allan Rosas, *Internal Self-Determination* 225 (Christian Tomuschat, 1993).

¹⁷ Principle V, Drawing on the Declaration on Friendly Relations (The Principle of Equal Rights and the Self-Determination of Peoples).

¹⁸ Martti Koskenniemi, "National Self-Determination Today: Problems of Legal Theory and Practice" 43 *INT'L & COMP. L.Q.* 241, 243-44 (1994).

¹⁹ Draft Declaration on the Rights of Indigenous Peoples, art. 31.

²⁰ Anthony Carty, *The Decay of International Law* 05 (1986).

acknowledges the right of all peoples to freely determine the future of the State through democratic self-governance.²¹

Minority Groups seeking Self-determination in a Globalized World

It makes the case that minorities have the right to internal self-determination. Internal self-determination, however, is a notion with conflicting benefits for minority groups. It is a notion that does not grant autonomy; autonomy must always be realized inside a state.

There are numerous examples of minority groups seeking self-determination around the world. Some examples include:

- **Kurds in Turkey:** The Kurdish population in Turkey has been seeking greater autonomy and recognition for decades.
- **Tibetans in China:** The Tibetan population has been seeking greater autonomy and recognition from China.
- **Indigenous peoples in Canada:** Indigenous peoples in Canada have been seeking greater autonomy and recognition from the Canadian government.
- **Basques in Spain:** The Basque population in Spain has been seeking greater autonomy and recognition from the Spanish government.

Rights of Self-determination and Indian Minorities

In India, the issue of self-determination is closely tied to the question of minorities. The Indian Constitution recognizes several minority groups, including the Scheduled Castes (SCs), Scheduled Tribes (STs), and religious minorities such as *Christians, Muslims, Sikhs, and Jews*.

However, the implementation of self-determination for minority groups in India has been a subject of controversy. Some argue that the Indian government has not done enough to recognize and protect the rights of minority groups, while others argue that the government has taken steps to promote minority rights. There are several reasons why self-determination for minority groups is important in India. *Firstly*, it is essential to recognize and respect the cultural and linguistic diversity of minority groups. *Secondly*, self-determination can help to address issues of social and economic marginalization faced by minority groups. *Finally*, it can help to promote peace and stability in India by recognizing and addressing the legitimate grievances of minority groups.

There are several ways in which self-determination for minority groups can be implemented in India. One approach is through the recognition of autonomy or special rights for minority groups. *For example*, some states in India have recognized autonomy for minority groups, such as the **Gorkhaland Territorial Administration** in West Bengal and the **Hill Councils** in Meghalaya. Another approach is through the recognition of minority rights under international law. However, India has ratified several international human rights treaties, including the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights*. These treaties recognize the rights of minority groups to maintain their cultural identity, practice their religion, and enjoy their own language and customs. However, self-determination for minority groups can also be achieved through democratic participation and representation. *For example*, minority groups can participate in the political process through representation in parliament or state assemblies. This can help to ensure that their voices are heard and their concerns are addressed.

Therefore, the right of self-determination and minorities in India is a complex issue that requires careful consideration and dialogue. While there are several challenges to implementing self-determination for minority groups in India, there are also several ways in which this can be achieved. By recognizing and respecting the cultural and linguistic diversity of minority groups, addressing issues of social and economic marginalization, and promoting democratic participation and representation, India can work towards a more just and equitable society for all its citizens.

Conclusion

The right of self-determination is a fundamental human right that allows individuals or groups to determine their own political, economic, and social status. For minorities, this right is particularly important for preserving their cultural heritage, addressing historical injustices, and promoting economic empowerment and political representation. However, exercising this right can be challenging due to various obstacles, including lack of recognition, political and economic power imbalances, discrimination and violence, internal divisions, and external interference. Despite these challenges, many minority groups around the world continue to strive for self-determination and recognition.

The nation-state is and has always been a myth. There has never been a mono-ethnic state, as evidenced by the centuries of slaughter and forced assimilation of minority people. This is not meant as criticism of

²¹ Thomas M. Franck, "The Emerging Right to Democratic Governance" 86 *AM.J. INT'L L.* 46, 52 (1992).

President Wilson at Versailles, as he recognized the little window of opportunity for resolving the minority issue. Instead, it is meant to denounce international law, which has not yet addressed groups of people. What has made secession so alluring is the fact that entities other than States lack a voice on the international arena, and autonomy is seen as a privilege bestowed by the State. However, others might contend that although attorneys can participate in the negotiation of autonomy within the State, the choice is ultimately political. In fact, they would contend that the right is not enforceable since its terms are negotiable.