

Protection of Kin-minorities in International Law: Can South Asia Learn from Europe?

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1. Introduction

The concern of the kin-states in pursuing policies and extending protection for their kin-minorities residing abroad is not a new phenomenon in international law. Though there is no internationally recognised right or obligation of the kin-states to protect their kin-minorities in other states, there has been a detectable trend of states in showing their wish to intervene more significantly, mainly by adopting policies and engaging in the negotiation of bilateral or multilateral agreements aiming at the protection of their kin-minorities.¹ These agreements entrust the home-state with the obligation of securing fundamental minority rights and allow the international community to supervise the compliance thereof. The bilateral approach was first attempted after the collapse of Russian, Austro-Hungarian and Ottoman Empire during the First World War, but it was adopted again after the Second World War.² There are examples where bilateral arrangements between neighbouring states for the protection of kin-minorities have contributed to ensuring long-lasting peace and stability in the border regions.³ The experience of South Tyrol is particularly interesting in this regard.⁴

Since 1990s, many European states have passed laws known as 'status laws' to protect their kin-minorities residing in their neighbouring states, which has been characterised by the Venice Commission as a positive trend so far the territorial sovereignty of the states remains intact.⁵ But no such trend is visible in South Asia,

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¹ Natalie, S. 2006, 'Minorities and Kin-States'. *Helsinki Monitor*, Vol.17, No. 3, p. 245.

² Venice Commission [2001(2003)] 'Report on the Preferential Treatment of National Minorities by Their Kin-state'. In: European Commission for Democracy through Law, *The Protection of National Minorities by Their Kin-state*. Strasbourg: Council of Europe, p. 17.

³ Khan, B. U. and Rahman, M. M. 2009, *Protection of Minorities: A South Asian Discourse*, available at http://www.eurac.edu/NR/rdonlyres/860402D6-51A5-4D31-A0EA-B610F74F0C6F/0/Del_17_logos_FINAL.pdf, p. 13.

⁴ See for details, section 4 of this article.

⁵ Khan and Rahman, above note 3, pp. 13-14.

where religious, linguistic and cultural minorities in different countries form a considerable portion of kin-minorities due to the unnatural divide of the original Indian subcontinent in 1947.

The present article therefore aims at appraising the European developments on the issue of the protection of kin-minorities and also recommends ways of adopting those policies as a solution for the ongoing problems with the kin-minorities in South Asia.⁶

2. Kin-minority: meaning

Understanding the concept of 'kin-minority' and 'kin-state' adopted by the Venice Commission requires linguistic explanations. In case of dealing with the national minorities, as Allain observes,⁷ 'the situation is linguistically complex in several aspects'. The political/legal and geographical/historical meanings of a single term may not correspond entirely.⁸ A Slovenian, instead of being only a citizen of Slovenia, may be a person historically belonging to a particular linguistic/cultural group which may not be clearly defined, unless the situation is something like Bangladesh. The country Bangladesh or the language Bangla has the advantage of having two words which removes such confusion. For example, all the 'Bangladeshis' are not necessarily 'Bangalis', where, 'Bangali' refers to a linguistic and cultural community. Similarly, all the 'Bangalis' are not necessarily 'Bangladeshis'. Therefore, the minority population residing in Chittagong Hill Tracts of Bangladesh are definitely Bangladeshis, but are not necessarily Bangalis, as they belong to a different linguistic and cultural community.⁹ But the situation is not so simple in case of Hungarian community attached politically with Slovakia.¹⁰ They are linguistically and culturally Hungarian, again politically Slovakian.¹¹ Thus,

⁶ This article is an adapted version of a study undertaken in the frame of the project Europe-South Asia Exchange on Supranational (Regional) policies and Instruments for the Promotion of Human Rights and the Management of Minority Issues (EURASIA-Net) funded by the Seventh Framework Programme of the European Commission (FP7).

⁷ Allain, M. J. 2003, 'Some Thoughts on Language'. In: European Commission for Democracy through Law, *The Protection of National Minorities by Their Kin-state*. Strasbourg: Council of Europe, p. 11.

⁸ Id.

⁹ Mohsin, A. 2003, *The Chittagong Hill Tracts, Bangladesh: On the Difficult Road to Peace*. London: Lynne Rienner Publishers, p. 23.

¹⁰ Allain, above note 7, p. 12.

¹¹ Alexander, J. G. 2005, 'Slovakia'. In: Frucht, R. *Eastern Europe: An Introduction to the People, Lands, and Culture*. California: ABC-CLIO, Inc, p. 305.

due to redrawing of borders or displacement of population, sections of linguistic and/or cultural communities sometimes find themselves cut off from the states where the relevant majority communities live.¹² The situation gets more complex when the border is redrawn on the basis of religion, giving rise to the sections of religious minorities finding themselves under the similar situation, for example, in South Asia.¹³ When India and Pakistan was divided in 1947 mainly on the basis of religion, quite illogically attaching the present Bangladesh to the religiously compatible state of Pakistan, sections of religious communities, mainly Hindu and Muslim communities, found themselves cut off from their states where the relevant majority communities live.¹⁴

To describe this type of situation, as Allain suggests,¹⁵ it is better to avoid polysemic terms such as 'homeland', 'fatherland' or 'country', which often have emotional, romantic or ideologically charged connotations. Therefore, a number of concepts have emerged and appear to have established themselves in English, such as, 'kin-minority' and 'kin-state'.¹⁶ Venice Commission (2001[2003]) has also adopted these terms. Thus, it is commonly understood that for a minority, the kin-state is a state in which their ethnic kin compose a titular majority.¹⁷ Furthermore, the relationship between the kin-state and kin-minority appears to form the 'kin-state politics'.¹⁸ In Europe, the term kin-minority implies a close ethno-cultural affinity.¹⁹ Allain has explained the term kin-minority referring to a linguistic or cultural group.²⁰ Toth refers to kin-minority as a group of people having similar cultural and historical

¹² Allain, above note 7.

¹³ Prasad, R. 1947, *India Divided*. Bombay: Hind Kitabs, p. 1.

¹⁴ See generally, Prasad, R. 1947, *India Divided*. Bombay: Hind Kitabs.

¹⁵ Allain, above note 7, p. 12.

¹⁶ Id.

¹⁷ Natalie, above note 1, p. 244.

¹⁸ Hatvany, C. 2006, 'Legitimacy of Kin-State Politics: A Theoretical Approach'. *Regio - Minorities, Politics, Society- English Edition*, No. 1, p. 49.

¹⁹ See for example, Allain, M. J. 2003, 'Some Thoughts on Language'. In: European Commission for Democracy through Law, *The Protection of National Minorities by Their Kin-state*. Strasbourg: Council of Europe; Toth, J. (2006), 'Relations of Kin-state and Kin-minorities in the Shadow of the Schengen Regime'. *Regio - Minorities, Politics, Society- English Edition*. Issue No. 1/2006; Natalie, S. (2006), 'Minorities and Kin-States'. *Helsinki Monitor*, Vol. 17, No. 3; Hatvany, C. (2006), 'Legitimacy of Kin-State Politics: A Theoretical Approach'. *Regio - Minorities, Politics, Society- English Edition*, No. 1.

²⁰ Allain, above note 7, pp. 11-12.

background, 'who are, in a way, socially and ethnically related'.²¹ Natalie uses the term strictly in ethnic sense and loosely in the sense of linguistic, cultural and historic affinities.²² Hatvany emphasises the cultural bond as a 'must' for kin-state politics.²³ But they have completely ignored the religious aspect, albeit historically, religious minorities were the first to be afforded international protection through agreements between and among states.²⁴ The peace treaties of Munster and Osnabruck between France, the Holy Roman Empire and their respective allies (the Peace of Westphalia) contained provisions relating to the religious and political rights of minority communities in ceded territories.²⁵ However, Article 7 of the Romanian Constitution refers to 'religious identity' while extending support to Romanians living abroad. Even Article 1 of the Russian Federal Law on State Policy in respect of the compatriots abroad also includes 'religion' as one of the criteria to determine compatriotism. The present article argues that when the border is drawn mainly on the basis of religion (as mentioned above with reference to South Asia), the religious affinity surely implies the kinship and hence gives rise to kin-state politics. Therefore, the article includes the religious minority as a group of kin-minority while discussing the kinship issues in South Asia.

3. European development in the protection of kin-minorities

Throughout the history of Europe, borders have shifted as a result of war, alliance and political upheavals, and populations have voluntarily and involuntarily changed citizenship as a result.²⁶ People have also migrated from one location to another due to a variety of other factors, such as lack of employments or in search for a better life and as a result, multicultural populations exist no matter where borders are drawn.²⁷ Accordingly, concerted effort to deal with the national minorities by

²¹ Toth, J. 2006, Relations of Kin-state and Kin-minorities in the Shadow of the Schengen Regime'. *Regio -Minorities, Politics, Society- English Edition*. No. 1/2006, p. 19.

²² Natalie, above note 1, p. 244.

²³ Hatvany, above note 18.

²⁴ Defeis, E.F. 1999 'Minority Protection and Bilateral Agreements: An Effective Mechanism'. *Hastings International and Comparative Law Review*, Vol. 22, No. 2, p. 293.

²⁵ Id.

²⁶ Warner, E. 2004, 'Unilateral Preferences Granted to Foreign National Minorities by a Kin-State: A Case Study of Hungary's 'Status Law.' *Georgetown Journal of International Law*, Vol. 35, No. 2, p. 387.

²⁷ Ibid, pp. 387-388.

granting limited rights through a system of minority protection treaties is not a new phenomenon.²⁸

The latest developments in eastern and central Europe demonstrate that kin-state activism has increased despite and alongside substantive improvements in the existing framework of minority rights protection.²⁹ Especially, since the early 1990's, eastward European Union (EU) enlargement process has created a new external border in the eastern part of the continent having serious implications for all parties involved.³⁰ This borderline goes through the areas inhabited by people having common background and especially, divides the communities that belonged to one country during the communist era.³¹ The rate and absolute number of ethnic and national minorities living in the border zone of new and acceding EU member states is significant and thus, has given rise to the issues of kin-minority protection as an 'organic part of internal policy and regional affairs'.³² Accordingly, in recent years, a growing number of states have declared their support for kin-minorities abroad as one of their top foreign policy priorities and kin-state activism has taken the form of peaceful initiatives, legislative acts and bilateral agreements.³³

The main tool which kin-states dispose of in this respect is the negotiation of multilateral or bilateral agreements aiming at the protection of their kin-minority, with the relevant home-states.³⁴ For example, Germany, in order to secure its borders and to afford protection to its kin-minorities which after World War II had been placed under the rule of central and eastern European states, concluded agreements on friendly co-operation and partnership, notably with Poland, Bulgaria, Hungary and Romania. Hungary concluded similar agreements with three of its neighbouring countries: Ukraine, Croatia and Slovenia.³⁵ In fact, just like the Covenant of the League of Nations, neither the United Nation's Charter nor the Universal Declaration of Human Rights contained any provision for special minority

²⁸ See generally, Musgrave, T. D. 1997. *Self Determination and National Minorities*. Oxford: Oxford University Press, pp. 141-146.

²⁹ Natalie, above note 1, p. 244.

³⁰ Ekiert, G. and Zielonka, J. 2003, 'Introduction: Academic Boundaries and Path Dependencies Facing the EU's East-ward Enlargement'. *East European Politics and Societies*, Vol. 17, No. 1, p. 22.

³¹ Toth, above note 21.

³² Id.

³³ Natalie, above note 1.

³⁴ Venice Commission, above note 2, p. 16.

³⁵ Ibid, p. 19.

protection.³⁶ Both the documents accepted the principle of equality and non-discrimination of all individuals, rather than special minority protection and hence, the issues were left to the states to deal with either internally, or bilaterally.³⁷ Though the options for multilateral approach are left open,³⁸ the potentialities of bilateral treaties in respect of reducing tensions between kin-states and home-states have appeared to be significant, to the extent that they can procure specified commitments on sensitive issues, while multilateral agreements can only provide for an indirect approach to those issues.³⁹ Furthermore, they allow for the specific characteristics and needs of each national minority as well as of the peculiar historical, political and social context to be taken into direct consideration.⁴⁰ Thus, the European Union regarded bilateral treaties as an attractive tool for guaranteeing stability in Central and Eastern Europe. The parties to these treaties make mutual promises calling for reciprocal and fair treatment of each other's kin-minorities.⁴¹ These treaties usually contain mutual commitments to respect international norms and principles regarding national minorities.⁴² They provide for certain 'classic' core rights, e.g., right to identity; linguistic rights; cultural rights; education rights; rights related to the use of the media; freedom of expression and association; freedom of religion; right to participate in decision-making processes.⁴³

In addition to the bilateral agreements and to the domestic legislation and regulations implementing them, a number of European States have enacted specific pieces of legislation or regulations, conferring special benefits, thus a preferential

³⁶ Defeys, above note 24, p. 295.

³⁷ *Id.*

³⁸ Article 18:1 of the Framework Convention on the Rights of National Minorities, 1994 (entered into force in 1998), according to which States "endeavour to conclude, where necessary, bilateral and multilateral agreements with other States, in particular neighbouring States, in order to ensure the protection of persons belonging to the national minorities concerned". The same is encouraged under the Stability Pact for South Eastern Europe (1999). The United Nations also promotes the stipulation of bilateral and multilateral treaties: see resolution of the Human Rights Commission of 22 February 1995, UN Doc. E/CN.4/1995 L. 32.

³⁹ Venice Commission, above note 2, p. 19.

⁴⁰ *Ibid.*, p. 20.

⁴¹ Warner, above note 26, p. 392.

⁴² See for details, Venice Commission, above note 3. They often incorporate soft law provisions, such as the Council of Europe's Parliamentary Assembly's Recommendation no. 1201 (1993) and the CSCE Copenhagen Document (1990), and, by doing so, give them binding effect in their mutual relations.

⁴³ Venice Commission, above note 2, p. 22.

treatment, to the persons belonging to their kin-minorities.⁴⁴ The Act on Hungarians Living Abroad, also known as the 'status law', is perhaps one of the best known examples that can be seen as a benchmark in such a development of kin-state activism since the collapse of communism.⁴⁵ This status law was, however, preceded by similar legislative enactments in Austria, Slovakia, Romania, the Russian Federation and also other states.⁴⁶ But, it is the Hungarian law that has generated the greatest discontent and controversy among neighbouring states, highlighting the need for clear and specific international norms that would guide states in their treatment of kin-minorities abroad.⁴⁷ Under the traditional concept of state sovereignty, a state cannot interfere with another state's treatment of its own citizens.⁴⁸ With the growing acceptance of individual human rights law as a set of peremptory norms, as well as the rise in importance of non-state actors on the world stage, the contours of state are becoming more porous.⁴⁹ Hence, the kin-state interactions can be justified not only by the traditional right of a kin-state to adopt domestic legislations for the protection of kin-minorities within its borders, but also on the basis of treaties and customary international law relating to the right of the minorities to interact with their own communities outside the home-state.⁵⁰ Accordingly, Venice Commission has clarified the issue in its report by declaring such unilateral adoption of domestic legislation for preferential treatments as conditional upon the respect of the following principles:⁵¹ a) the territorial sovereignty of States; b) *pacta sunt servanda*; c) friendly relations amongst States, and d) the respect of human rights and fundamental freedoms, in particular the prohibition of discrimination. The preferential benefits usually include, benefits relating to education and culture, social security and health coverage, travelling benefits, work permits, exemption from visas, acquisition of property and even, acquisition of citizenship.⁵² Thus the legality of granting preferential treatment to minorities is evolving.⁵³ However, the Venice Commission has specified education

⁴⁴ Ibid, p. 24.

⁴⁵ Natalie, above note 1.

⁴⁶ For a list of such laws, see Venice Commission, above note 2, pp. 24-25.

⁴⁷ Natalie, above note 1.

⁴⁸ Gibney, M., Tomasevski, K. And Vedsted-Hansen, J. 1999, 'Transnational State Responsibility for Violations of Human Rights'. *Harvard Human Rights Journal*, Vol. 12 (Spring), p. 268.

⁴⁹ Warner, above note 26, p. 381.

⁵⁰ Id.

⁵¹ Venice Commission, above note 2, p. 33.

⁵² Ibid, pp. 30-31.

⁵³ Warner, above note 26, p. 381.

and culture as the main two areas in which such preferential treatments may be granted, save in exceptional cases.⁵⁴

Although the Venice Commission has termed this emerging new trend as a 'positive' one, it has clearly mentioned in its report that the practice of stipulating bilateral treaties on friendly co-operation or on minority protection is already the object of encouragement and assistance as well as of close scrutiny by the international community.⁵⁵ The Commission has also noted that international law entrusts home-states (and not kin-states) with the task of securing enjoyment of minority rights and assigns to the international community a supervisory role over home-state obligations.⁵⁶ The High Commissioner on National Minorities Rolf Ekeus stressed the importance of protecting minorities' rights while emphasising that the 'protection of minority rights is the obligation of the state where the minority resides'.⁵⁷ These statements clearly support the bilateral approach in the special protection of the kin-minorities. The case of South Tyrol may be a model of such bilateral arrangement.

4. South Tyrol: a model

Located in north-eastern Italy and bordering on Switzerland and Austria, South Tyrol has represented a coveted strategic region for centuries.⁵⁸ Excluding the years under Bavarian (1806-9) and Napoleonic occupation (1810-14), the territory of South Tyrol belonged to the larger Tyrolean entity, which was a part of the Austrian Empire from the thirteenth century until 1919.⁵⁹ As a part of the secret pact signed by Italy in 1915, which led to its entering World War 1 on the side of the entente, i.e. Great Britain, France and Russia, one of the territories promised to Italy as a compensation for joining the war was South Tyrol.⁶⁰ Accordingly, South Tyrol had been annexed to Italy against the will of the Tyroleans following the peace treaty of Saint-Germain en Laye of 1919.⁶¹ According to the last census conducted by Austria before annexation in 1910, 93 per cent of the South Tyroleans were Germans, 4 per

⁵⁴ Venice Commission, above note 2, p. 42.

⁵⁵ Ibid, p. 32.

⁵⁶ Natalie, above note 1.

⁵⁷ Id.

⁵⁸ Magliana, M. 2000, *The Autonomous Province of South Tyrol: A Model of Self-Governance?* Bozen/Bolzano: European Academy of Bozen/Bolzano, p. 24.

⁵⁹ Benedikter, T. 2007, *The Worlds Working Regional Autonomies: An Introduction and Comparative Analysis*. New Delhi: Anthem Press, p. 91.

⁶⁰ Magliana, above note 58.

⁶¹ Venice Commission, above note 2.

cent Ladins and only 3 percent Italians.⁶² In 1922, the Italian Fascists rose to power and ended the hopes of the South Tyroleans for the protection of their language and culture.⁶³ As a first measure, and in order to prevent the establishment of a province with a German-speaking majority, South Tyrol was absorbed by the province of Trento in 1923.⁶⁴ In the following 20 years, the German character of the region was repressed in all spheres of cultural, political and civil life.⁶⁵ In fact, according to fascists, the everyday life of the South Tyroleans had to be Italianised.⁶⁶

In 1945, the South-Tyroleans claimed a right to self-determination.⁶⁷ On the request of the Allies, Austria and Italy reached a bilateral agreement in September, 1946 and the region was thereby given limited autonomy.⁶⁸ The agreement is also known as the Gruber-Degasperi Agreement being named after the signers, Austrian Foreign Minister Gruber and Italian Prime Minister Degasperi.⁶⁹ The German minority was accorded 'substantial autonomy', safeguarded by the kin-state Austria and with 'complete equality of rights with the Italian speaking inhabitants within the framework of special provisions to safeguard the ethnical character and the cultural and economic development of the German-speaking element'.⁷⁰ But the first problem with the implementation of the agreement was the delimitation of the territory to which the autonomy had to be applied and thus, extension of the autonomy to the Italian-speaking region of Trentino.⁷¹ Thus, the German-speakers were again in a minority situation and could easily be outvoted in regional decisions.⁷² Therefore, after the Vienna Treaty of 1955, the Austria sought a better implementation of the treaty and requested a further bilateral negotiation which was refused.⁷³ Even though the matter was addressed by the UN General Assembly in 1960 and 1961, the conflict escalated into terrorist attacks.⁷⁴ It is only in 1969 that

⁶² Magliana, above note 58.

⁶³ Id.

⁶⁴ Lantschner, E. 2007. 'History of the South Tyrol: Conflict and Its Settlement'. In: Woelk, J., Palermo, F. and Marko, J. (eds.). *Tolerance through Law: Self Governance and Group Rights in South Tyrol*. Boston: Martinus Nijhoff Publishers, p. 6.

⁶⁵ Magliana, above note 58.

⁶⁶ Lantschner, above note 64.

⁶⁷ Venice Commission, above note 2.

⁶⁸ Id.

⁶⁹ See Lantschner, above note 64, p. 10.

⁷⁰ Magliana, above note 58, p. 92.

⁷¹ Id.; See also Lantschner, above note 64, p. 10.

⁷² Lantschner, above note 64, pp. 10-11.

⁷³ Venice Commission, above note 2.

⁷⁴ Id.

the 'package agreements' (*pacchetto*) in favour of the South-Tyroleans were agreed upon and a new autonomy statute for the region and the provinces of Bozen and Trent was approved by the Italian parliament.⁷⁵ After 20 years of intense negotiations, all the important measures contained in the package were implanted and only on 11 June, 1992, the Austrian government officially declared before the UN that the conflict had been settled.⁷⁶ Because of the friendly relationship between the two states, Austria nowadays goes on supervising the implementation and Italy never challenges its right to do so.⁷⁷

Although the autonomy process remained incomplete in 1992 and amendment to the second autonomy statute led to the third one in 2001 which may seek further improvement, Benedikter identifies the effects of the South Tyrolean autonomy system in a positive manner, namely, i) the restoration of the social and cultural position of the South Tyroleans; ii) the steady growth of GDP providing economic and social welfare; iii) the equal standing of languages, mainly Italian and German, along with Ladin and thus the creation of a dual character of autonomy with equality and segregation; iv) the inclusiveness of the three linguistic groups and thus the guarantee of autonomy for all and v) the stability in the framework of an integrated Europe.⁷⁸ All these features undoubtedly present the South Tyrol as a model for bilateral arrangement and regional autonomy.

5. South Asia: problems and prospects

South Asia is a very distinctive region having a very diverse physical landscape and environment, which encompasses seven diverse sovereign states, namely, India, Pakistan, Bangladesh, Nepal, Bhutan, Srilanka and Maldives.⁷⁹ Natural diversity has been a part of this region so does the diversity of race, language, culture, polity, economy and religion.⁸⁰ The region carries not only the weight of its nearly a billion people who account for 23 per cent of humanity, but also of its very ancient history, stretching back five millennia, and a modern history encompassing the

⁷⁵ Magliana, above note 58, pp. 92-93.

⁷⁶ Ibid, p. 93.

⁷⁷ Venice Commission, above note 2.

⁷⁸ Magliana, above note 58, pp. 99-102.

⁷⁹ Hussain, M and Ghosh, L. 2002a. *Religious Minorities in South Asia: Selected Essays on Post-Colonial Situations*. (Volume I. : Bangladesh, Pakistan, Nepal, Srilanka). New Delhi: Manak Publications, p. 1.

⁸⁰ Id.

experience of British colonialism.⁸¹ Colonisation made the region externally vulnerable to exploitation and oppression and internally, a divided society susceptible to social conflict.⁸² This was especially because of the partition of the then Indian sub-continent in 1947 on the basis of the 'two nation' theory 'along ostensibly religious lines'.⁸³ Though there have always been Hindus, Muslims, Buddhists and Christians in South Asia, for the first time, there emerged an independent state of India where Hindus formed the dominant majority and an independent state of Pakistan where Muslims constituted the dominant group.⁸⁴ The Hindu and the Muslim populations were so spread and intermingled with each other that it was impossible to have a homogeneous state of either the Hindus or the Muslims in any part of the country without a considerable minority of the other community in it.⁸⁵ Thus, the sections of religious communities, being cut off from their states where the relevant majority communities live, constituted kin-minorities in their respective states. This kinship feeling was very much clear from the statement of Durrani in his famous book 'The Meaning of Pakistan':⁸⁶ 'All Muslims, whether they live in Pakistan or Hindustan, constitute one nation, and we of Pakistan must always treat our co-religionists in Hindustan as flesh of our flesh and blood of our blood'.

This feeling was theoretically appreciable and in fact, the partition was apparently sought to have a friendly co-existence of these two religious communities in South Asia. As Prasad observes:⁸⁷

The object of partition is to have separate Muslim and Hindu States - just as national States were created after the first World War in Europe - so that both Muslims and Hindus may have an opportunity in their respective States to develop their cultural, spiritual, economic and political life in accordance with their own genius and shape their own future destiny.

⁸¹ Bose, A. and Jalal, A. 1998. *Modern South Asia: History, Culture, Political Economy*. London: Taylor & Francis Ltd, p. 165.

⁸² Hussain and Ghosh, above note 79.

⁸³ Bose and Jalal, above note 81.

⁸⁴ Ghuhathakurta, M. 2002. 'Communal Politics in South Asia and the Hindus of Bangladesh'. In: Hussain, M and Ghosh, L. (eds.). *Religious Minorities in South Asia: Selected Essays on Post-Colonial Situations*. (Volume I. : Bangladesh, Pakistan, Nepal, Srilanka). New Delhi: Manak Publications, p. 70.

⁸⁵ Prasad, above note 13, pp. 25-26.

⁸⁶ Durrani, F. K. K. 1944. *The Meaning of Pakistan*. Lahore: Muhammed, p. viii.

⁸⁷ Prasad, above note 13, p. 25.

But the reality was something different. Just after the partition, many communal riots broke out in India and Pakistan having crucial impact on the status of kin-minorities in both the states. The brutal killings by the religious majorities in India and Pakistan was followed by Liaquat-Nehru Pact of 1950, which affirmed that minorities living in both the countries owed loyalty to the state in which they resided.⁸⁸ This agreement somehow shows the adoption of a bilateral arrangement for the protection of religious minorities in those two states, but no further development is detectable. Not only that, until the birth of Bangladesh as an independent state in 1971, series of Hindu-Muslim riots took place in both the states, killing more Muslims than Hindus in India and the reverse was true for Pakistan.⁸⁹ Even after the independence of Bangladesh in 1971, similar situations arose with the religious minorities several times in Bangladesh.⁹⁰ In India too, the number of Hindu-Muslim riots has been increasing alarmingly particularly since the 1970's.⁹¹ Communal riots are spreading to new areas of India and along with the riots, the number of deaths, injuries, widowed and orphaned persons, arrests and police brutalities has also increased.⁹² But no such further bilateral or multilateral arrangements were thought of for the protection of kin-minorities in this region. Even the demand for the autonomy of certain indigenous groups in the Chittagong Hill Tracts of Bangladesh, who somehow qualify to be religious kin-minority groups of India because of mainly being Buddhists,⁹³ may also be dealt with properly by invoking the concept of bilateral arrangements between the two kin-states.

This communal holocaust which accompanied the creation of Pakistan and India created an atmosphere which tends to disguise and marginalise the existence of other ethnic minorities that also forms part of the reality of South Asia.⁹⁴ The Tamils, who have been fighting for their autonomy being linguistic minorities in Srilanka, include a considerable number of kin-minorities of India having their origin in the Indian

⁸⁸ Makeig, D. C. 1987. 'War, No-War, and the India-Pakistan Negotiating Process'. *Pacific Affairs*, Vol. 60, Issue No. 2, p. 278.

⁸⁹ Feldman, H. 1969. 'The Communal Problem in the Indo-Pakistan Subcontinent: Some Current Implications'. *Pacific Affairs*, Vol. 42, No. 2, p. 148.

⁹⁰ See for example, Ghuhathakurta, above note 84, pp. 79-81.

⁹¹ Hussain, M. 2002. 'The Muslim Questions in India'. In: Hussain, M and Ghosh, L. (eds.). *Religious Minorities in South Asia: Selected Essays on Post-Colonial Situations*. (Volume II.: India). New Delhi: Manak Publications, p. 128.

⁹² Id.

⁹³ Bhikshu, B. 2002. 'Budhdhist Minority in Bangladesh'. In: Hussain, M and Ghosh, L. (eds.). *Religious Minorities in South Asia: Selected Essays on Post-Colonial Situations*. (Volume I. : Bangladesh, Pakistan, Nepal, Srilanka). New Delhi: Manak Publications, pp. 23-24.

⁹⁴ Ghuhathakurta, above note 84.

province of Tamilnadu.⁹⁵ Especially, the riots not only affected the Sri Lankan Tamils or South Indian Tamils, but it extended to include all Indian enterprises and persons 'who happened to stand in the explosive and indiscriminating path of the rioting'.⁹⁶ A credible solution could have been reached through bilateral or multilateral approach considering those Tamils as the kin-minorities of India. Similarly, huge numbers of refugees who fled from Bhutan to Nepal being the victims of ethnic and religious discrimination have been residing in the refugee camps since 1990.⁹⁷ The response of the Bhutanese government, that claims those refugees as illegal immigrants from Nepal,⁹⁸ might have been addressed through a bilateral arrangement between the two concerned states.

6. Concluding remarks

It is very much evident that the issue of the protection of minorities has by now become a prominent one. States are showing growing interest in matters concerning kin-minorities abroad and such interest is legitimate.⁹⁹ Especially after the cold war period and the collapse of communism, provisions to the extent that the kin-state cares for its kin-minorities abroad and fosters its links with them were indeed included in a number of new European constitutions of 1990's.¹⁰⁰ In the same period, the treaty approach to minority protection re-emerged, and on a large scale.¹⁰¹ On the other hand, 'status laws' that provide benefits to co-nationals abroad seem to become a staple in the legislation of numerous, mainly east European, countries.¹⁰² Thus, the wish of the European countries to play a decisive role in the protection of their kin-minorities residing abroad has become even more apparent.

Though Venice Commission (2001[2003]) encourages bilateral or multilateral arrangements as a better solution, status laws are also to be appreciated so long as the territorial sovereignty is respected. Whatever measures are adopted, kin-state-minority

⁹⁵ See Wilson, A. J. 1988. *The Break-up of Sri Lanka: Tamil-Sinhalese Conflict*. London: C Hurst and Co Publishers Ltd, pp. 175-207.

⁹⁶ Tambiah, S. J. 1986. *Sri Lanka: Ethnic Fratricide and the Dismantling of Democracy*. London: I B Tauris & Co Ltd, p. 23.

⁹⁷ Saul, B. 2000. 'Cultural Nationalism, Self-Determination and Human Rights in Bhutan'. *International Journal of Refugee Law*, Vol. 12, No. 3, p. 321.

⁹⁸ See generally, *ibid*, pp. 321-353.

⁹⁹ Natalie, above note 1, p. 255.

¹⁰⁰ The list of such countries includes Hungary, Romania, Slovenia, Macedonia, Croatia, Ukraine, Poland and also Slovak. See for details, Venice Commission, above note 2, pp. 18-19.

¹⁰¹ Venice Commission, above note 2, p. 19.

¹⁰² Hatvany, above note 18, p. 1.

relations can be positive and constructive, contributing to regional stability and good neighbourly relations.¹⁰³ The present article therefore suggests that the development in the kin-state politics noted in Europe should be considered seriously by South Asian governments in order to reach peaceful solutions to all the ongoing minority problems in South Asia.

¹⁰³ Natalie, above note 1, p. 255.