

ESSAY ON MINORITY RIGHTS AND INDIAN CONSTITUTION

Ms. Megha Dugar*

Introduction

This study focuses on different definitions of “minorities” by various authors and the rights provided to them as in Indian Constitution. The paper also discusses the contemporary state of minorities.

This first phase of the secondary research looks at the birth of the word “minority” crawling to Historical Evolution of Minorities and further steps into distinguishing between minority rights to indigenous rights.

The second phase deals with the provisions in the Constitution of India associated with minorities and their effectiveness in the Indian society.

This research bring in light the minority as a social category of powerlessness, caste, linguistic, religious, ethnic group and indigenous people.

The present paper looks into the specific historical trajectories such communities often labelled minorities have had in the past.

The focus of this article is to bring out the majority-minority relationship and the discourse of rights as a community’s tools to enable political self-expression.

The case studies that comprise this paper offer not just a glimpse of the particular histories of these communities but also connect with each other and highlights how the discourse of community rights have been used with various degree of success by minority communities in order to articulate their political and other demands.

* Student, 1st year, BBA LL.B., SLS, Noida.

Wikipedia says: "A minority group is a sociological category within a demographic. Rather than a relational "social group", as the term would indicate, the term refers to a category that is differentiated and defined by the social majority, that is, those who hold the majority of positions of social power in a society. The differentiation can be based on one or more observable human characteristics, including, for example, ethnicity, race, gender, wealth, health or sexual orientation. Usage of the term is applied to various situations and civilizations within history, despite its popular mis-association with a numerical, statistical minority. In the social sciences, the term "minority" is used to refer to categories of persons who hold few positions of social power."

The Constitution does not define the term "minorities" anywhere but only mentions it in some articles.

"The Constitution of India used the word minority or its plural form in some Article 29 to 30 and 350A to 350B, but does not define it anywhere."

Though Article 29 refers to "minorities" in its marginal heading, it speaks of "any section of citizens having a distinct language, script and culture".

An entire community or a group within a majority community could thus be seen as a minority.

Article 30 speaks about two categories of minorities - religious and linguistic-while Article 350 relates to linguistic minorities only.

The National Commission for Minorities Act has declared five communities-Muslims, Christians, Sikhs, Buddhists and Parsis-as religious minorities.

The Indian Constitution ensures "justice, social, economic and political" to all citizens. The Indian Constitution has adopted measures for the protection of the rights of the religious and ethnic minorities and of the socially and economically disadvantaged classes such as the scheduled castes and scheduled tribes.

The Indian Constitution enshrines various provisions for the protection of the rights and interest of the minorities.

- **Firstly**, India declares herself a secular state. No particular religion is the religion of the overwhelming majority, has been made the religion of the state.
- **Secondly**, Article 29 give the religious and linguistic minorities right to establish and manage educational institutions of its own. The minorities have been given the unrestricted rights to promote and preserve their own culture. Indeed is a country of diverse cultural groups and India is keen to preserve her cultural diversity. Thus for example, even though, Hindi is made the official language of India, primary education everywhere is given in the mother tongue.
- **Thirdly**, Article 29 expressly forbids discrimination on grounds of race, religion, caste, language, in admission to educational institutions run by the state or receiving aids from the state. This means that the doors of all educational institutions run by government or receiving funds from the state are open to all groups of Indians. Linguistic, religious or ethnic minority students cannot be denied admission to such educational institutions.

Article 30 is vital to the protection and preservation of rights of the minorities. The minorities have been given the right to establish and administer educational institutions of their choice. The state also cannot discriminate against educational institutions established and managed by the minorities in matters of granting aids. Such educational institutions however must receive state recognition. The state educational authorities have the right to regulate such educational institutions because the “right to manage does not include the right to mismanage.”

Article 16 guarantee that in matters of public employment, no discrimination shall be made on grounds of race, religion, caste or language etc. This means that in

matters of public employment, all Indians are placed on a footing of equality.

Finally, Article 25 of the Indian constitution guarantees freedom of religion to every individual. This article of the Indian constitution ensures that the members of the religious minority community have the unhindered right to follow their own religion. The state regulates the practice of a religion only when and to the extent it disturbs public peace. The minority not only has the right to follow their own religion, they also have the right to propagate it. But the state certainly does and should regulate conversion through force or temptation. Forcible conversion is forbidden because it transgresses the individual's freedom of conscience.

On the whole, the minorities of all kinds have very secure rights in India which must be a matter of envy to the minorities elsewhere.

Why is the expression 'minority' - such a touchy word - undefined under the Constitution? Is it because a large number of benefits are conferred on minority communities through a series of inviolable fundamental rights?

The Supreme Court takes them as a protective arrangement. In its 2005 judgment in *Bal Patil v. Union of India*, the court said: "The group of Articles 25 to 30 of the Constitution, as the historical background of partition of India shows, was only to give guarantee of security to the identified minorities and thus to maintain integrity of the country."

- **Article 25:** Freedom of conscience and free profession, practice and propagation of religion.
- **Article 26:** Freedom to manage religious affairs.
- **Article 27:** Freedom as to payment of taxes for promotion of any particular religion.
- **Article 28:** Freedom as to attendance at religious instruction or religious worship in certain education institutions.

- **Article 29:** Protection of interests of minorities.
- **Article 30:** Right of minorities to establish and administer educational institutions.

The apex court, in its 2005 judgment, felt that the special guarantees and protection to the religious, cultural and educational rights of minorities was guaranteed as a fundamental right in the Constitution, in the backdrop of the bloody partition, to allay apprehensions and fears in the minds of Muslims and other religious communities.

"Such protection was found necessary to maintain unity and integrity of free India because even after partition, communities like Muslims and Christians in greater numbers living in different parts of India opted to live in India as children of its soil," the court had said.

It said the minorities initially recognized, were based on religion and on a national level, for example Muslims, Christians, Anglo-Indians and Parsis.

However, it had sounded a warning against vote bank politics based on divisive tactics and underlined that "the constitutional ideal, which can be gathered from the group of articles in the Constitution under Chapters Fundamental Rights and Fundamental Duties, is to create social condition where there remains no necessity to shield or protect rights of minority or majority."

The recent Judgment given by Justice S.N. Srivastava of Allahabad High Court to the effect that, Muslims in UP are not a minority within the state, came as a surprise to many. The media is both electronic and print media gave prominent coverage to the judgment. The Judgment has now been stayed by the Division Bench of the same Court. The legal and Constitutional merits and demerits of the proposition will be gone into by the Appeal Courts upholding or overruling the judgment of the single judge of the Allahabad High Court in the coming days.

The Allahabad High Court's judgment has in a way indirectly reopened the debate on rights of minorities

under the Constitution. Samna, a daily edited and published by Bal Thackeray also welcomed the judgment in the issue dated 6 April 2007 stating that too many concessions and privileges are being granted to the Muslims in India. The right wing politicians have led the people of India to believe that minorities enjoy too many special rights and privileges and that minority means Muslims or at best Christians.

There is only one article pertaining to the Minorities in the Constitution of India. Article 30 of the Constitution provides that all minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice. The Constitution thus envisages that minorities can be based on religion or language. Not only Muslims and Christians but also Buddhists, Sikhs and even Jains are minorities. Moreover, Hindus are a religious minority within the state of Jammu and Kashmir, Mizoram, Meghalaya and Lakshadweep and enjoy the privileges of minorities under the Constitution in those states. But more important, and not perceived in popular imagination, is the category of linguistic minorities. In Maharashtra, all those speaking Gujarati, Tamil, Hindi, Kannada, Malayalam, Urdu and languages other than Marathi are minorities and enjoy the same privileges as religious minorities. Marathi speaking people in India are a minority in states other than Maharashtra. Thus all the citizens in India are a minority and enjoy the privilege of minorities. Not only Akbar Peerbhoy College and Saint Xaviers College in Mumbai are minority institution, but also Mithibai College (set up by Gujarati minorities), SIES College (set up by Tamil speaking minority in Mumbai) K.C. College, Jai Hind College (set up by Sindhi speaking minorities) are recognized as minority educational institutions.

In *TMA Pai Foundation* judgment, the Supreme Court has laid down that the right to establish educational institutions of their choice is available not only to the minorities but to all the citizens of the India. One of the fundamental rights in Article 19 of the Constitution to practice any profession, or to carry on any occupations, trade or business - has been interpreted by the Supreme Court to include right to establish educational institutions, which is a right guaranteed to all the

citizens. What is the exclusive right of the minorities then? Minorities can not only establish educational institutions of their choice but also administer them. Supreme Court has further laid down that the right to establish and administer broadly comprises of right to (a) admit students; (b) set up a reasonable fee structure; (c) constitute a governing body; (d) appoint staff (teaching and non-teaching); and (e) take action if there is dereliction of duty on the part of any employees. Non-minority educational institutions are governed by the policies and regulations of the state government or the Central Government in matters of admission, appointment of staff, fixing the fee structure and constitution of governing body, where as the minority institutions are not.

The right to establish and administer educational institutions is to ensure that religion and language of minorities are preserved, reproduced, regenerated and recreated. The language, culture and religion of the majority need not fear that their language and religion will not be preserved, as the elected representatives are not expected to be insensitive to the cultural, linguistic and religious needs of the majority in spite. Except the right establish and administer educational institutions of their choice, there is no other exclusive right that minorities enjoy under the Constitution of India. Articles 14, 15 and 16 prohibit any discrimination on grounds of religion, race, caste, sex, place of birth by the state. As Sachar Committee Report has pointed out, the Muslim minorities are not privileged but are discriminated and therefore are socially and economically backward. Not privileges, but inclusive growth is what is necessary to ensure social justice which was the dream of the Constitutional Fathers and all Indians minus the elites.

There are many theocratic countries where equal rights are not extended to all of its citizens. They have categorized citizens according to their believes. The rights are also attached differently; we must thank the fathers of our constitution who envisioned equal rights to all citizens and added special rights to religious and linguistic Minorities.

The Indian constitution guarantees equal rights to all its citizens, violation of which by the State or Central Government can be challenged in the High Court or Supreme Court as per the Article 32 of the Constitution, such cases are taken up with utmost urgency. Article 14 of the constitution states that, 'the State shall not deny to any person equality before the law or the equal protection of the laws within territory of India.' It gives equal status to all citizens in freedom and dignity. It further makes clear in Article 15, 'the state shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth, or any of them, and it offers, 'equal access to public facilities.' The 93rd amendment added a new clause- Clause 5-to Article 15. This enables the enactment of laws, making special provisions for the socially and educationally backward classes, the Scheduled Castes and the Scheduled Tribes in educational institutions including private educational institutions, except in minority institutions.

It is good to understand the Directive Principles and Fundamental Rights. 'Fundamental rights are legally enforceable and guaranteed rights but directive principles are not enforceable in any court of law. But under article 31-C, a DP may be framed as law even if it abridges fundamental rights. The 42nd Amendment Act allowed DPs to usurp FRs.' Therefore the reservation policy is a directive principle and it can be formulated as per the requirements. It makes clear that the policy on reservation is a directive principle to help a socially weak entity to become better.

The Constitution positively undermined the division of opportunities on the basis of birth to any particular entity. It provides equal opportunities in employments which is made clear in Article 16 'there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the state'. It also spells out in clear terms that, 'no citizen shall on grounds only of religion, race, caste, sex, descent, place of birth, resident or any of them be ineligible for or discriminated against in any respect of any employment or office under the State.'

It is also to be noted that the constitution provides an additional provision to the government to enact laws to make sure that no section of the society is left out. The Article 16(4) point out that 'Nothing in this article shall prevent the State from making any provision for the reservation of posts in favour of any backward class of citizens, which in the opinion of state is not adequately represented in the services under the state'. The constitution has not defined in clear terms what does it mean by backwardness and how do we determine the backwardness. It has definitely raised questions.

Education is seen as the only means to progress for an individual and society at large. So the Article 29 states that 'no citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of the State funds on ground only of religion, race, caste, language, or any of them.' It gives a feeling that unaided educational institutions does not bind by this Article. But opportunity is equally distributed to all.

The constitution of India is very clear in terms of Minority Rights. The Indian Constitution very well protects the minorities and it provides opportunity to develop to its fullness. The recent communal clashes and accusations on minorities raises a question that whether the constitutional rights are exercised well? There is no political will or leadership to pursue the cause of the Minority Community

"The Constitution (103rd Amendment) Bill, 2004 to grant constitutional status to the National Commission for Minorities envisages a change in the way minorities are specified. The Cabinet has reportedly approved a proposal (May 2007) to define minorities State-wise in line with several Supreme Court judgments, most notably that in *T.M.A. Pai*. For the purpose of this legislation, minority will be specified as such in relation to a particular State/Union Territory by a presidential notification issued after consultation with the State Government; this will be in addition to the five minorities (Muslims, Christians, Sikhs, Buddhists, and Parsis) referred to in the NCM Act, 1992. The new approach is not consistent with the understanding developed in the

Constituent Assembly on the protection of minorities and the constitutional compact between the State and minority groups.

Although the Constitution does not define a minority or provide details relating to the geographical and numerical specification of the concept, it is clear that the constitutional scheme envisages this to be determined at the national level. Periodic judicial interventions and categorization has had major repercussions. Over the years, judicial pronouncements have sought to give a restricted meaning to minority rights by limiting them to education and defining minorities at the State level in terms of protection under Article 30 which provides religious minorities the right to set up educational institutions of their choice. The legitimization of a restrictive conception of minority rights can also be noticed, in this context, in the Central Government's proposal to adopt a State-specific notion of minorities.

At the heart of the current controversy is confusion about which groups qualify as minorities and regarding the nature of the unit of determination under this rubric. However, internationally, some agreement exists. Commonly cited characteristics that make groups distinctive and expose them to discrimination include religion, language, culture, and gender. There is also a unanimous opinion that the term 'minority' refers to a power relationship. In this, the size of a group may bear some relation to the degree of power it wields, but presumably because other factors are also involved in the equation, the relationship of group size is not all that significant.

Contrary to this widely accepted perception of minorities, the Government's new proposal for State-specific minorities is driven by a statistical or numerical approach. The size of the group is not what should concern our policy-makers or those committed to eradication of inequity, prejudice, and discrimination. This is because numbers per se merely quantify and describe the proportion of a group in a population; they do not tell us anything about whether a particular minority group is powerful or powerless, advantaged or disadvantaged, represented or under-represented. A more

meaningful conception of minority status would include sections of people who, on account of their non-dominant position in the country as a whole (not a specific State), and because of their religion, language, caste or gender, are targets of discrimination and therefore deserving of special consideration. The statistical approach disregards the crucial qualitative condition of vulnerability and disadvantage.

In the circumstances, defining and confining the category 'minority' to States is not the best way forward; it would be far more helpful to recognize the comprehensive character of minority rights, in consonance with the demands of substantive equality, to include them by revisiting the concept of affirmative action. This would be in step with the slew of policies and measures currently under consideration to address the economic, social, and educational deprivation that minorities experience."

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