

HUMAN RIGHTS ISSUES OF VICTIMS OF VIOLENT CRIMES: RESTLESS WAITING FOR RECOGNITION AS MINORITY

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Introduction

Although questions on minority form parts of the popular political discourses in India, the concept of minority remains debated and expanded from time to time. It is crystal clear since Independence and can be illustrated by the recognition of minority status recently received by Jain community. In a situation epitomized by ethnic-hegemony and competing ethnic endeavour, the majority-minority syndrome has turned out to be in inescapable phenomena in Indian democracy.

Since the issue of minority problems have assumed global importance, and since the question of addressing minority issues under every political set-up is of primary concern, there is imperative to develop who constitute majority or minority and under what circumstances. Nonetheless what is noteworthy is that the social relations cannot be viewed only in majority-minority aspects based on number of person belonging to particular group; *ceteris paribus* the interactive and cumulative nature of the social forces influencing inter-group relations needs to be equally emphasized in delineating minority. If such social forces demand, there needs to be “a gateway” for recognition of minority status of any group which needs special protection. To find out possibility of such gateway we need to study meaning and definitions of the term “minority”.

Definition of Minority

For the first time in India, the Motilal Nehru Committee recommended a number of fundamental rights some of them were to solve communal problems¹. The Motilal

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¹ MITTAL J. K., *Indian Legal and Constitutional History* (4th ed. 2007).

Nehru Report² showed a prominent desire to afford protection to minorities, but did not define the expression. Sir Tej Bahadur Sapru Committee³, set up by the Non-Party Conference also proposed, inter alia, a Minorities Commission but did not define minority.

The Constitution nowhere defines the terms “minority”, nor does it lay down sufficient indicia to the test for determination of a group as minority. Confronted, perhaps, with the fact that the concept of minority, laid its problem, was intercalate, the framers made no efforts to bring it within the confines of a formulation. Even in the face of doubts being expressed over the advisability of leaving vague justiciable rights to undefined minorities, the members of the Constituent Assembly made no attempt to define the term while Article 23 of the Draft Constitution, corresponding to present Articles 29 and 30, was being debated.

In India the term minorities is defined by academicians as the groups that are held together by ties of common descent, language, or religious faith, and feel themselves different from other dominant groups within a political entity⁴. Usually, a minority group is defined on the basis of a relatively permanent and unchanging status and on the basis of being different, often visibly, from the majority group. This definition includes minorities based on ascribed statuses such as race, ethnicity, and gender and other statuses that are difficult or impossible to change, such as sexual orientation and disability. It also includes groups with common identities that are deeply held and relatively unlikely to change, most commonly religious or linguistic groups.

Despite many references to “minorities” in international legal instruments, there is no universally agreed, legally

² *Motilal Nehru Report, 1928* (Jan. 26, 2014), [http://csspoint.yolasite.com/resources/Nehru%20Report%20\(1928\).pdf](http://csspoint.yolasite.com/resources/Nehru%20Report%20(1928).pdf).

³ *The Sapru Report, 1945* (Jan. 26, 2014) http://archive.org/stream/saprucommittee035520mbp/saprucommittee035520mbp_djvu.txt.

⁴ Brij Pal, *Empowerment of minority in India*, 1 Global Advanced Research Journal of History, Political Science and International Relations 4, 89-94 (May, 2012) also available at <http://garj.org/garjhpsir/index.htm>.

binding definition of the term “minority”. This is primarily because of a feeling that the concept of “minority” is inherently vague and imprecise and that no proposed definition would ever be able to provide for the innumerable minority groups that could possibly exist. It is often stressed that⁵ the existence of a minority is a question of fact and that any definition must include both objective factors (such as the existence of a shared ethnicity, language or religion) and subjective factors (including that individuals must identify themselves as members of a minority).

The most widely acknowledged definition is the one formulated by Capotorti⁶.

A minority group as – “a group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members - being nationals of the state - possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, maintain a sense of solidarity, directed towards preserving their culture, traditions, religion or language”.

The U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities⁷ has defined minority as under:

1) The term “minority” includes only those non-documents group of the population which possesses and wish to preserve stable ethnic, religious or linguistic traditions or characteristics markedly different from those of the rest of the population;

⁵ United Nations, *International Standards and Guidance for Implementation* (2010) (Jan. 9, 2014) http://www.ohchr.org/Documents/Publications/MinorityRights_en.pdf.

⁶ FRANCESCO CAPOTORTI, *STUDY ON THE RIGHTS OF PERSONS BELONGING TO ETHNIC, RELIGIOUS AND LINGUISTIC MINORITIES* 98 (1991).

⁷ The U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities, U.N. Doc. E/CN.4/Sub.2/1994/56 (1994), (15 Jan., 2014) <http://www1.umn.edu/humanrts/demo/1994min.html>.

- 2) Such minorities should properly include the number of persons sufficient by themselves to preserve such traditions or characteristics; and
- 3) Such minorities should be loyal to the state of which they are nationals.

No one of the above definition comes out to be comprehensive to cover all the varied situations, illustrates the difficulty experienced in assigning limits to concept of minority. This must remain the possible explainable reason why Legislature and Courts have not ventured to formulate a general definition.

After analyzing definition of minority and existing position in India, Bishnu N. Mohapatra⁸ has drawn two conclusions. First, although an important dimension, numerical weakness alone does not define a minority. Second, minority status is essentially fluid and it varies across level and time. He further opined that in any given context, a minority identity of a group is not solely dependent upon certain objective factors such as population, economic well-being and so on. The group should also possess a subjective awareness of its distinct status in relation to others. Beside these two dimensions, State plays a crucial role in the construction of minority identity. The author does believe it true and this research paper is one step toward recognition of minority status of victims of crimes.

Every situation may not necessarily involve the assumption that the group in order to deserve the title of 'minority' must be distinguishable from the majority by the presence of the feeling or consciousness of its being different from the majority. A group distinguishable from others by the possession of certain objective characteristics, such as language, may not have a feeling or consciousness of its distinct status of being counting as minority. Hence the most acceptable definitions as discussed above are not beyond the reach of argument. That definition appears to be confined to those non dominant groups only which, apart from having certain objective characteristics that are distinctively of their

⁸ BISHNU N. MOHAPATRA, *Minorities and Politics*, in "The Oxford Companion to politics in India 225 (Niraja Gopal Jayal & Pratap Bhanu Mehta eds., 2010)."

own, wish to preserve the distinctive identities and are not willing to be assimilated with the rest of the population.

On the same issue while discussing Islamic discussions of Western Secularism in the 'jurisprudence of Muslim minorities', Andrew F. March⁹ proposed a simple assumption to find out what constitute minority. His assumption is that all groups view themselves as more or less insular and equally closed vis-à-vis other groups. In a closed society consisting of only Catholics and Protestants, Catholics see Protestant reason as exclusive and thus potentially threatening. In a more complex society, Catholics see Protestant reason as equally exclusive as Jewish, Islamic, Mormon, or secular reason. In both of these societies, according to this simple assumption, where Catholics are a minority and their own reason cannot prevail they do not prefer the comprehensive reasoning of any of the other groups over any other, and thus have reasons to endorse some form of public reason.

As the Indian society is 'most complex society' consisting of many religions followed and languages spoken, his assumption about more complex society is equally true for Indian society. Hence it claims need of reconsideration of 'traditional concept of minority' through path-breaking research in this area.

Criteria of Recognition of Minority Status

In India, the term "minority" is often used to denote those non-Hindu religious communities whose members are for one reason or another inclined to assert their distinctiveness in relation to Hindus. Thus, Muslims, Christians, Sikhs, Parsees and Jews are commonly described as minorities in India. The Indian Constitution recognizes only two types of minorities based on religion and/or language¹⁰. It does not recognize minorities based on culture, ethnicity, race or nationality. However, the

⁹ Andrew F. March, *Are Secularism And Neutrality Attractive To Religious Minorities? Islamic Discussions Of Western Secularism In The 'Jurisprudence Of Muslim Minorities' (Fiqh Al-Aqalliyyat) Discourse*, 30 Cardozo Law Review 6, 2821-2854 (2009).

¹⁰ Under Article 25 to Article 30 of The Constitution of India.

emergence of lower caste movements, communal identities and ethno-nationalism have resulted to the phenomenon of identity politics in India on the one hand and deepening majority-minority syndrome on the other. In common parlance, “religion” tends to be limited to the easily identified faiths like Christianity, Hinduism, Judaism, Islam and Buddhism. Minority in India is confined to religious connotations. Hindus are regarded to be the majority while Muslims, Sikhs, Parsees, Anglo-Indians, Christians and now recently Jains are identified as religious minorities.

Religion as the primary basis of grouping people and differentiating between the majority and the minority has persisted even though it is by no means a comprehensive identity in the Indian context. But the fact that the Hindu society is further vertically and horizontally differentiated along caste lines remained out of mind. Indeed caste differences hinder Hindu population to act or behave as a cohesive majority¹¹. What exist, as a consequence, are a number of caste groups, more in the shape of diverse minorities rather than a single majority. It necessitates reconsideration of the concept of “minority status based on religion.”

As a minority identity, and similar to religion in this aspect, language has been considered equally important facet of minority identity.

Although religion and language are the primary bases of determining minority identity in India, religious affiliation and linguistic similarities do not hold precedence in most part of India. In Northeast India, the formations of collective identity due to intense “ethnic mobilization” and “ethnic nepotism” detriment religious affiliation considered imperative to outline majority-minority framework. Nonetheless, certain groups of people are identified as “religious” and “linguistic” minority nationally; yet, the consolidation on the grounds of ethnic and caste element have rather been overriding criteria of identification than any others¹². Thus, in order to define minority, it becomes essential to note the point of

¹¹ Ch. Sekholal Kom, *Defining Minorities of India's Northeast*, 6 Eastern Quarterly III, 117-127 (2010).

¹² *Id* at 122.

reference where minority is to be outlined vis-à-vis the prevailing facet of identification resorted in that specific area. In other words, although the dual recognition of religion and language acted as the only accepted identification tools, the feeling of “relative deprivation” and “dominance” along caste and ethnic lines seems to fragment the different population groups into smaller segments. Hence the author believe that to limit concept of ‘minority’ to religious and linguistic groups and to give them special protection, at the end of day, results in misuse of state instrumentality for ‘hidden political ends.’

Recognition of Minority Status of Victims of Violent Crimes

The history of human rights is an unending story of search for absolute values. The history of 2500 years of struggle for human rights can be summed up as follows¹³-

From exploitation to exploration
From exploration to proclamation
From proclamation to declaration
From declaration to protection
From protection to perfection

The term human right is emerged only after Second World War. The first documentary use of the expression ‘Human Right’ is found in the Charter of the United Nations¹⁴, which was adopted after Second World War at San Francisco on June 26, 1945. The preamble of this Charter declared its object as “to reaffirm faith in ‘fundamental human rights’.” But it was not a binding instrument. The only first concrete step in formulation of human right is the United Nations Declaration of Human Rights proclaimed in 1948 as a common standard of achievement for all people and all nations. The Declaration deals with many civil, political, social, economic and cultural rights. The Declaration is to be implemented through two international covenants namely, the Covenant on Civil and Political Rights, 1966 and the Covenant on Economic, Social and Cultural

¹³ Lakshminath A., *Human Rights- Post-human Challenges*, 2 JMR 2, 1 (2011).

¹⁴ The Charter of United Nations (Jan. 13, 2014) http://www.unic.org.in/items/Other_UNCharter.pdf.

Rights, 1966, which came into force in December 1976. These covenants; and thereby human rights protected there under are legally binding on all member States who ratified it. All civilized countries have recognized most of the human rights either in statutes and Constitution itself or while interpreting these legislations. Some countries like UK¹⁵ have changed their primary legislations (and sometime Constitutions) to make their legislative policies suitable for recognition and enforcement of Human Rights.

The concept of human right is inclusive and cannot be defined. The scope of Human Rights is increasing and there is new recognition of many rights which can result in better protection of Human Rights.

Till vary recent days the Human Right issues of victims of violent crimes were not taken seriously. It is only after the Second World War some criminologist started talking about victims' rights and only at the beginning of 21st century some legal systems recognized some rights of victims. Otherwise the poor victims of crime were entirely overlooked in misplaced sympathy for the criminals. On other hand the guilty man was lodged, fed, clothed, and entertained in a model cell at the expenses of the state.¹⁶ Some of the rights of an accused person are protected by Indian Constitution under Article 22. But the victim remained unknown to the Indian Law and Criminal Jurisprudence till 2008 when some sort of statutory protection was accorded through the Code of Criminal Procedure (Amendment) Act, 2008. There may be a controversy among academicians as well as professionals about deterrent effect of punishment but there is no second opinion as to the need of protection and rehabilitation of victims of crime. Now it is well accepted that provision of punishment does not serve the cause of the victim. Hence the Hon'ble Supreme Court in *Delhi Domestic Working Women's Forum v. Union of India and others*¹⁷ had directed the National Commission for Women to evolve a "scheme so as to wipe out the tears of unfortunate victims of rape". There are different schemes

¹⁵ The UK has changed its 11 primary legislations in response to adverse findings of Courts while implementing the Human Rights.

¹⁶ VIBHUTE K. I., *Criminal Justice*, 350 (1st ed., 2004).

¹⁷ 1995 (1) SCC 14.

of various State Governments (which are either implemented or in the process of formulation) with objective of protection and rehabilitation of victims of rape. But there is no such recognition of victims of other crimes. Hence the author proposes recognition of minority status for the victims of all types of violent crimes.

As per the existing standard of human rights, the traditional concept of minority denotes groups which basically possess following characteristics:

1. Its members experience discrimination, segregation, oppression, or persecution by a dominant group;
2. It is characterized by physical or cultural, linguistic etc traits, which are permanent or unchangeable, that distinguish from the dominant group;
3. It is a self-conscious social group; and
4. Membership in a minority is generally involuntary.

All the above standards, except about permanent or unchangeable physical, cultural or linguistic traits, are true with respect to victims of violent crime. This jurisprudential conflict about permanent or unchangeable physical, cultural or linguistic traits can be resolved by issuing "ad-hoc certificates of minority status" in which court can specifically mention about validity period and mode of restitution and rehabilitation to which victim of crime is entitle.

The Benefits of Such Recognition

The Constitution provides two sets of rights of minorities which can be placed in 'common domain' and 'separate domain'. The rights which fall in the 'common domain' are those which are applicable to all the citizens of our country. The rights which fall in the 'separate domain' are those which are applicable to the minorities only and these are reserved to protect their identity. The distinction between 'common domain' and 'separate domain' and their combination have been well kept and protected in the Constitution.

1. Common Domain under the Fundamental Rights – Part III of the Constitution,
2. Common Domain under the Directive Principles of State Policy – Part IV of the Constitution,
3. Common Domain under the Fundamental Duties – Part IVA of the Constitution,
4. Separate Domain under Article 29-30, Article 347, Article 350 and Article 350 A.

Apart from Constitutional Safeguards, there are some benefits in the form of schemes and programmes declared by State and Central Governments to which person became entitle to claim if he/she has been recognized as member of minority group. For example on the occasion of Independence Day, in 2005, the then Prime Minister, in his address¹⁸ to the Joint Session of Parliament on February 25, 2005, had announced “15 Point Programme” for the Welfare of Minorities. The programme includes following benefits of various government schemes-

1. Equitable availability of the Integrated Child Development Services (ICDS) Scheme for holistic development of children and pregnant or lactating mothers from disadvantaged sections.
2. Improving access to School Education through the Sarva Shiksha Abhiyan, the Kasturba Gandhi Balika Vidyalaya Scheme, and other similar Government schemes.
3. Greater resources for teaching Urdu through recruitment and posting of Urdu language teachers in primary and upper primary schools that serve a population in which at least one-fourth belong to that language group.
4. Modernizing Madarsa Education through the Central Plan Scheme of Area Intensive and Madarsa Modernization Programme which provides basic educational infrastructure in areas of concentration of educationally backward minorities and

¹⁸ Government of India, Ministry of Minority Affairs, Annual Report 2005-06, (Jan. 10, 2014) www.minorityaffairs.gov.in.

resources for the modernization of Madarsa education.

5. Pre-matric and post- matric scholarships for meritorious students from minority communities.
6. Improving educational infrastructure through the Maulana Azad Education Foundation to strengthen and enable it to expand its activities more effectively.
7. A certain percentage of the Urban Self-Employment Programme (USEP) and the Urban Wage Employment Programme (UWEP) will be earmarked to benefit people below the poverty line from the minority communities.
8. Upgradation of skills of members of minority community through technical training in ITIs.
9. Promoting economic development activities among the minority communities by enhanced credit support for economic activities through the National Minorities Development & Finance Corporation
10. Recruitment to State and Central Services through large scale employment opportunities by the Central and the State Governments in the police organisations, the Railways, nationalized banks and public sector enterprises.
11. Equitable share in rural housing scheme by reserving a certain percentage of the various schemes providing financial assistance for shelter for poor beneficiaries from minority communities living in rural area.
12. Improvement in condition of slums inhabited by minority communities under the schemes of Integrated Housing & Slum Development Programme (IHSDP) and Jawaharlal Nehru National Urban Renewal Mission (JNNURM).
13. Prevention of communal incidents by appointing district and police officials of the highest known efficiency, impartiality and secular record in the areas having such previous record.

14. Prosecution for communal offences for severe action against all those who incite communal tension or take part in violence.
15. Rehabilitation of victims of communal riots by providing immediate relief and prompt and adequate financial assistance.

Out of these 15 points, the last three points directly deals with and can be used even if victims can be given 'minority' status. Out of the remaining points, only the point at sr. no. 3 and 6 cannot be used if victims can be given 'minority' status as it specifically relates to religious and cultural minority. Otherwise for all other points minority status to victims of crime does not make any change. All these schemes can be extended for victims of violent crimes. The funds can be raised by different ways. In this regard some academicians have attempted sincerely to find out different ways to build the funds for compensation to the victims of crime. According to Prof. (Dr.) N. R. Madhava Menon¹⁹ there are many ways in which victim compensation can be generated by Center and State Govts. It includes-

1. Initial grants by State and Central Govts.
2. Court fees collected in full or part which exceeds Rs. 100 Crores the whole country every year.
3. Fines imposed on conviction by criminal courts, which may substantially increase, particularly in economic offence and from rich convicts.
4. Unclaimed small decree amount accumulated over the years.
5. Donations to the fund which may be exempted from tax like prime Minister's Relief Funds.
6. Access of Rs. 5 on select pleadings filed in criminal courts.
7. Monetary amount ordered to be paid by courts (punitive damage the Fund in different types of cases coming up before them.

¹⁹ N.R. MADHAVA MENON, *Victim Compensation Law and Criminal Justice; A Plea for Victim Orientation in Criminal Justice*, in *CRIMINAL JUSTICE- A HUMAN RIGHT PERSPECTIVE OF THE CRIMINAL JUSTICE PROCESS IN INDIA* 365 (K.I. Vibhute ed., 2004).

8. Bail bond forfeitures and
9. Wages earned by prison inmates

Above sources are sufficient to rise funding for protection and rehabilitation of victims of crime. There is no scarcity of funds when different State Governments started paying compensation to the victims of crime. For example State of M.P. The CAG Report²⁰ revealed that an amount of Rs. 2.46 crore was deposited in the common fund up to March 2006, out of which an amount Rs. 8.10 lakh only could be disbursed to 81 beneficiaries and balance of Rs. 2.38 crore was lying unutilized against which only 25 cases were pending at the end of March 2006. Same is the story of schemes formulated and implemented by many other State Governments. It means the only issue is about instrumentality through which Government can achieve noble objective of protecting human rights of victims through proper restitution and rehabilitation.

Jurisprudential Conflicts of Such Recognition of Victims

In spite of the persisting divergent views, the explanations of definitions of the concept 'minority' reveals four basic elements that make a minority; (i) a minority is a non-dominant and numerically insignificant group; (ii) distinguishable on the basis of physical and cultural features which are not changeable; (iii) collectively being regarded and treated as different and inferior; and (iv) minorities are the product of aggregation/segregation in a definite geographical locale. Thus, it is apparent that the traditional concept of 'minority' includes culturally, ethnically and linguistically distinct group, numerically inferior and non-dominant group living within a larger society. Thus, 'minority' has been understood as a comparatively non-dominant smaller group of people differentiated from others in the same society by race, religion, ethnic, language etc.

²⁰ CAG Report, Jail Department, *Audit Report (Civil) for the year ended 31 March 2006* (Jan. 22, 2014) <http://www.agmp.cag.gov.in/reports/State%20Audit%20Reports/2005-06/civil/civ%2005-06%20combine.pdf>.

The Indian Constitution rejects creation of a political majority on the basis of religion or language. The term “minority” is mentioned in four of its Articles namely Articles 29(1), 30, 350-A, 350-B, however, it nowhere defines the term “minority” nor delineates criteria for determining minority. In most cases, “minority” in India is described as that groups which are outside majority (i.e., Hindu). Thus, it implies that the core of Indian identity is Hinduism. This signifies that only religious groups, that are numerically smaller, can be minorities. On the other, it mapped out large ethno-linguistic states within the “Indian Union.” India as a “Union of States” formed laws and codes for Centre-State relationship for distributing powers among these ethnically based territorial provinces (states). As a result, the traditional concept of “minority” became confined to the religious minorities nationally and to a specific linguistic, religious or an ethno-cultural minority within a state, even if that “minority” constituted a majority in another state of India.

Apparently it looks, as Rakesh Kr. Singh²¹ believes, that the purpose of Article 29 is to facilitate migration of people. If, for example, a few people from Madras were to come and settle down in Mumbai, they would constitute a cultural and linguistic minority in Maharashtra and Article 29 would protect their culture, language and script. But according to author such situation clearly means that if a person belonging to such religious or linguistic group wants to make avail benefits of minority status – he needs to be part of such state where such religious or linguistic group is recognized as ‘minority’ and he loses the benefits of minority status if he migrates to the state where such group is not minority. Indirectly recognition of minority status on the criteria of religion or language is nothing but to restrict right to reside and settle in any part of the territory of India. In short traditional concept of minority is violation of Article 19 (1) (e) of the Constitution of India.

Hence, it is to be noted that religion or language could not be the only criteria of determining one’s minority identity. In fact, inequality also persists between people

²¹ Rakesh Kr. Singh, *Constitutional Mandate and Rights of Linguistic Minorities*, 48 *JILI* 2, 271 (2006).

professing the same faith and having same language of communication.

Recently some western countries have started debate on recognition of minority status on the basis of sexuality. The same has been started even in India²². It must be noted that certain concepts which developed from specific western contexts which *ipso facto* claimed to have universal validity does not necessarily have pernicious consequences for third world societies. In contemporary Indian society, on the same line we must review criteria for recognition of minority status and think seriously for awarding minority status to the victims of violent crimes.

Way Outs to the Jurisprudential Conflicts

During the framing of Constitution of India, the *Dalits/Harijans* as well as the 'backward' tribals claimed minority status²³. In the deliberations of Constituent Assembly, the minorities question was regarded as encompassing the claims of three kinds of communities: religious minorities, Scheduled Castes, and 'backward' tribes, for all of whom safeguards in different forms had been instituted by the British and by Princely States in the colonial period.

The representatives of most groups claiming special provisions in some form emphasized that the group was a minority of some kind. So close was the identification of the term 'minority' with the notion of special treatment for a group that even those opposed to a continuation of the colonial system of minority safeguards employed the same language to justify their stand. For instance, it was argued that the 'so-called minorities' were not the 'real minorities'. The latter were variously identified as 'the agriculturists', 'the rural people', 'the backward provinces', even 'the masses'. The claim was that these were the groups that ought to receive special treatment, rather than the communities hitherto favoured by the British Ruler²⁴.

²² A PUCL-K fact-finding Report about Bangalore, *Human rights violations against sexuality minorities in India*, (Jan.26, 2014) <http://www.pucl.org/Topics/Gender/2003/sexual-minorities.pdf>.

²³ CAD, I, at 139 *see also* p. 284.

²⁴ CAD, I at 264.

But this view remained “Minority Opinion” in Constituent Assembly and majority of members were not ready to recognize minority status for – the agriculturist, the rural people, etc.

Few members of Constituent Assembly understood that this “Minority Opinion” holds water and when time demands any group (even the masses) can be recognized as ‘minority’ based on criteria other than religion or language. Hence Constituent Assembly replaced word ‘minority’ (as throughout world it is intrinsically connected with religion, language, ethnicity, etc) with ‘any section’ (which is open ended where any group can be accommodated).

Dr. Ambedkar sought to explain the reason the reason for substitution in the Draft Constitution of the word minority by the words “any section” observing:

“It will be noted that the term minority was used therein not in the technical sense of the word ‘minority’ as we have been accustomed to use it for the purpose of certain political safeguards, such as representation in the Legislature, representation in the service and so on. The word is used not merely to indicate the minority in the technical sense of the word; it is also used to cover minorities which are not minorities in the technical sense, but which are nonetheless minorities in the culture and linguistic sense. That is the reason why we dropped the word “minority” because we felt that the word might be interpreted in the narrow sense of the term when the intention of this House....was to use the word ‘Minority’ in a much wider sense so as to give cultural protection to those who were technically not minorities but minorities nonetheless”.

After more than 60 years to the Constitution of India, now the time demands that for protection and enforcement of Human Rights of victims of crime, we need to recognise victims of crime as ‘minority’. By doing so, with few *jurisprudential adjustments*, Minority

Commission can be used as 'State Instrumentality' for protection and rehabilitation of victims of crime. The author does not see any other better way for protecting Human Rights of victims of violent crimes.

If one tries to analyze working of Minority Commission- it is crystal clear that even today, when victims of crime are not recognized as 'minority'; in most of the cases the National Minority Commission is engaged in solving 'Complaints of Law and Order'(see figure-1). So now the National Minority Commission is playing vary vital role in protection and rehabilitation of victims of crimes belonging to 'minority' communities. The author proposes that after successful working for last more than 20 years, now it is demand of time to give constitutional status to the National Minority Commission and to widen its powers and functions to include victims of violent crime as a 'minority'.

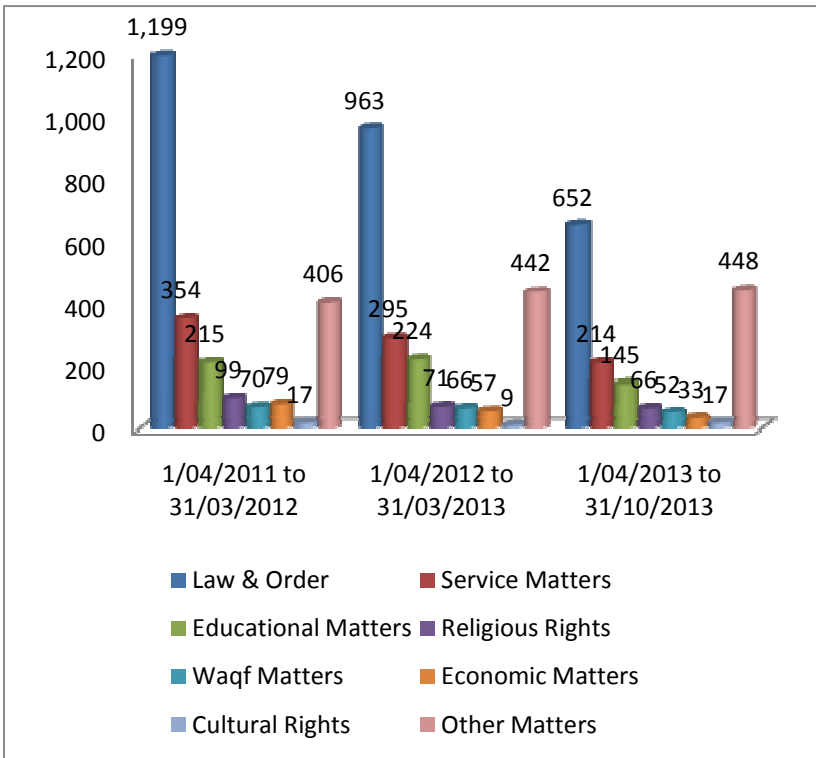


Figure 1: Subject wise Complaints to National Commission for Minority, **Source:** Reports of Complaint Monitoring System, *available at:* http://ncm.nic.in/Complaint_Monitoring_System.html.

Conclusion

It is not surprising that there should be both favourable and unfavourable views towards recognition of victims of violent crimes as ‘minority’. This research is, after all, a fundamentally doctrinal discussion, rather than a pragmatic one. Internal consistency and overall coherence shows need of and possibility of recognition of minority status of victims of violent crimes for their adherence and support. Fundamentally everyone including academicians, jurist, legislators and common citizen of India agrees that there is need of protection and rehabilitation of victims of violent crime. Most of the State Governments have formulated, and few of them have started implementation of different schemes to achieve

such objective. Indeed, the cost of creating new Instrumentality for such purpose is very high and certainly not expected in India. Hence the author proposes to recognize minority status for victims of violent crime and to make them beneficiary of all the benefits available for members of minority community. For that purpose the author suggests following changes-

- 1 The court, in each and every case for protection and rehabilitation of victims of crime, shall issue certificate of 'Minority Status' mentioning amount of compensation and or any other facility to be provided for restitution and rehabilitation of victims of crime. The National Commission for Minority shall do all the needful, on the production of such certificate of 'Minority Status'.

- 2 For recognition of minority status of victims of crime, the author suggests following amendment to the Constitution of India-

Article 29 A: Protection of Interest of Victims of Violent Crime: (1) every victim of violent crime shall have right to compensation and or restitution including rehabilitation in such manner as the State may, by law, determine.

(2) No victim of violent crime shall be denied the benefits of any scheme or programme available to the member of minority except the rights provided under Article 30 of the Constitution of India.

- 3 Constitutional status to National Commission for Minorities can help in the matters of protections of Human Rights of victims of crimes. The author suggests following constitutional amendment to that effect-

“Article 338 B. National Commission for Minorities- (1) There shall be a Commission for the Minorities to be known as the National Commission for Minorities.

(2).....

”

The author suggests all analogous provisions as provided under Article 338 and Article 338 A of the Constitution for the National Commission for Schedule Caste and the National Commission for Schedule Tribe respectively.

- 4 Sec. 9(1) of the National Commission for Minorities Act, 1992 needs to be amended for inclusion of following sub-clause:

“j. to award compensation and or to take such measures as required for protection and rehabilitation of victims of violent crimes as per ‘the certificate of minority status’ issued by the Court”

