

INSTITUTIONAL FRAMEWORK FOR PROTECTION OF MINORITIES IN INDIA: AN ANALYSIS

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Introduction

National Human Rights Institutions (NHRI) are administrative bodies set up to protect or monitor human rights in a given country. The growth of such bodies has been encouraged by the Office of the United Nations High Commissioner for Human Rights (OHCHR) which has provided advisory and support services, and facilitated access for NHRIs to the UN treaty bodies and other committees. There are over 100 such institutions, about two-thirds assessed by peer review as compliant with the United Nations standards set out in the Paris Principles. Compliance with the Principles is the basis for accreditation at the UN, which, uniquely for NHRIs, is not conducted directly by a UN body but by a sub-committee of the International Coordinating Committee of National Human Rights Institutions (ICC). Institutions accredited by the ICC with 'A status', meaning full compliance with the Paris Principles, enjoy much greater access to UN human rights treaty bodies and other organs. The secretariat to the review process (for initial accreditation, and reaccreditation every five years) is provided by the National Institutions and Regional Mechanisms Section of the OHCHR. NHRIs can be grouped together in two broad categories: Human Rights Commissions and Ombudsmen. While most Ombudsman agencies have their powers vested in a single person, Human Rights Commissions are multi-member committees, often representative of various social groups and political tendencies. They are sometimes set up to deal with specific issues such as discrimination, although some are bodies with very broad responsibilities. Specialized national institutions exist in many countries to protect the rights of a particular vulnerable group such as ethnic and linguistic minorities, indigenous people, children, refugees or women.

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In most countries, a Constitution, a Human Rights act or institution-specific legislation will provide for the establishment of a National Human Rights Institution. The degree of independence of these institutions depends upon national law, and best practice requires a constitutional or statutory basis rather than (for example) a presidential decree.

Nations Human Rights Institutions are also referred to by the Vienna Declaration and Program of Action and the Convention on the Rights of Persons with Disabilities.

Concept of Minority in India

The position of minorities in Independent India was a question that received the attention of some of the tallest leaders of our freedom movement. The Hindu nationalist position on the matter was made abundantly clear by Veer Savarkar. In his Presidential address to the 20th session of the *Hindu Mahasabha* (Nagpur, 1938), Savarkar said:

“The Hindus will be ever ready to grant equal rights and representation to all minor communities in India in legislatures and services, civil and political life in proportion to population and merit. The Hindus although they are in overwhelming majority will still waive their right of claiming any preferential treatment, and special prerogatives which in fact in every other nation are due to the major community. But the Hindus will never tolerate the absurd and unheard of claims of the minorities to have any preferential treatment, weightage or special favours over and above what the majority community obtains.”

The Indian State has steadily moved away from the vision of One Nation, One People. India has a determined and astute religious minority that is fully alive to its long-term political and strategic objectives. It also has a clueless majority led by a short-sighted intellectual and political class. Both these factors have ensured that institutional mechanisms continue to be created by the State to address the ever-escalating imaginary grievances of the minorities. In some cases, these mechanisms were simply handed over to the minorities on a platter though

no corresponding demand had been made by them. Over the years, these mechanisms have become firmly entrenched and have acquired more teeth. They now threaten to undermine the Indian State itself.

The following is an ever-expanding list of Government Programmes and Institutions dealing exclusively with the Minorities:

1. Ministry of Minority Affairs, Government of India (established 2006)
2. Prime Minister's new (2006) 15-point Programme for the Development of (under Ministry of Minority Affairs)
3. (a) National Integration Council, presently with the Ministry of Home Affairs;
(b) Communal Harmony Award
4. a) Office of the Commissioner for Linguistic Minorities (under Ministry of Minority Affairs);
b) National Commission for Minorities (under Ministry of Minority Affairs);
c) Central Wakf Council (under Ministry of Minority Affairs);
d) Maulana Azad Educational Foundation (under Ministry of Minority Affairs);
e) National Minorities Development and Finance Corporation (under Ministry of Minority Affairs)
5. Haj Committee—presently with the Ministry of External Affairs
6. a) Maulana Azad National Urdu University, presently with the Ministry of HRD;
b) National Council for Promotion of Urdu Language;
c) Madrasa Modernization Programme;
d) National Commission for Minority Educational Institutions (NCMEI), established 2004.

Minorities in Law and Government

In the politics of some countries, a minority is an ethnic group that is recognized as such by respective laws of its country and therefore has some rights that other groups lack. Speakers of a legally-recognized minority language, for instance, might have the right to education or communication with the government in their mother tongue. Countries that have special provisions for minorities include Canada, China, Ethiopia, Germany, India, the Netherlands, Poland, Romania, Russia, Croatia and the United Kingdom.

Differing minority groups often are not given identical treatment. Some groups are too small or too indistinct compared to the majority, where they either identify as part of the same nation as the members of the majority, or they identify as a separate nation but are ignored by the majority because of the costs or some other aspect of providing preferences. For example, a member of a particularly small ethnic group might be forced to check "Other" on a checklist of different backgrounds, and consequently might receive fewer privileges than a member of a more defined group.

Many contemporary governments prefer to assume the people they rule all belong to the same nationality rather than separate ones based on ethnicity. The United States asks for race and ethnicity on its official census forms, which thus breaks up and organizes its population into different sub-groups, but primarily on racial origin rather than national one. Spain does not divide its nationals by ethnic group, although it does maintain an official notion of minority languages.

Some minorities are relatively so large or historically or otherwise so important that the system is set up in a way to guarantee them comprehensive protection and political representation. As an example, the former Yugoslav republic of Bosnia and Herzegovina recognizes the three main nations, none of which constitutes a numerical majority, as constitutive nations, see nations of Bosnia and Herzegovina. However, other minorities such as Romani and Jews are officially labeled as "others" and are excluded from many of these protections. For

example, they may not be elected to a range of high political positions including the presidency.

The issue of establishing minority groups, and determining the extent of privileges they might derive from their status, is the subject of some debate. One view is that the application of special rights to minority groups may be inappropriate in some countries, for example newly established states in Africa or Latin America (not founded on the European nation-state model), where recognition and rights accorded to specific groups may interfere with the state's need to establish a cohesive identity, and hamper the ability of the minority to integrate itself into mainstream society - perhaps to the point at which the minority follows a path to separatism or supremacism.

For instance, In Canada, some feel that the failure of the dominant English-speaking majority to integrate French has given rise to Quebec separatism. This position is countered by those that assert that members of minorities require specific provisions and rights to ensure that they are not marginalized within society (for example, bilingual education may be needed to allow linguistic minorities to fully integrate into the school system and hence compete on a level playing field in society), and that rights for minorities, far from weakening the nation-building project, actually strengthen it; where members of minorities see that their specific needs and ambitions have been acknowledged and catered for, they will commit themselves more willingly to accepting the legitimacy of the nation and their integration (as opposed to assimilation) within it.

National Commission for Minorities¹

The Union Government set up the National Commission for Minorities (NCM) under the National Commission for Minorities Act, 1992.

Five religious communities, viz. Muslims, Christians, Sikhs, Buddhists and Zoroastrians (Parsis)

¹ Available at <http://ncm.nic.in/> an official website for National Commission for Minority.

have been notified as minority communities by the Union Government.

The Commission has one Chairperson, one Vice Chairperson and five Members represented five minority communities. At present the Chairperson is Shri. Wajahat Habibullah. Dr. H.T. Sangliana is the Vice Chairperson, Smt. Saeeda Imam, K. N. Daruwalla and Sh. Vinod Sharma is the present Members. The post of two of the Members is vacant.

Andhra Pradesh, Assam, Bihar, Chhattisgarh, Delhi, Jharkhand, Karnataka, Maharashtra, Madhya Pradesh, Manipur, Rajasthan, Tamil Nadu, Uttarakhand, Uttar Pradesh and West Bengal have also set up State Minorities Commissions in their respective States. Their offices are located in the State capitals. The functions of these Commissions, inter-alia, are to safeguard and protect the interests of minorities provided in the Constitution and laws enacted by Parliament and the State Legislatures.

Aggrieved persons belonging to the minority communities may approach the concerned State Minorities Commissions for redressal of their grievances. They may also send their representations, to the National Commission for Minorities, after exhausting all remedies available to them. Complaints taken up by the Commission are featured on its official website.²

Genesis of NCM

The setting up of Minorities Commission was envisaged in the Ministry of Home Affairs Resolution dated 12.01.1978 which specifically mentioned that, "despite the safeguards provided in the Constitution and the laws in force, there persists among the minorities a feeling of inequality and discrimination. In order to preserve secular traditions and to promote National Integration the Government of India attaches the highest importance to the enforcement of the safeguards provided for the Minorities and is of the firm view that effective institutional arrangements are urgently required for the

² <http://www.ncm.nic.in>.

enforcement and implementation of all the safeguards provided for the minorities in the Constitution, in the Central and State Laws and in the government policies and administrative schemes enunciated from time to time". Sometime in 1984 the Minorities Commission was detached from Ministry of Home Affairs and placed under the newly created Ministry of Welfare.

With the enactment of the National Commission for Minorities Act, 1992 the Minorities Commission became a statutory body and renamed as National Commission for Minorities.

The first Statutory National Commission was set up on 17th May 1993. Vide a Gazette notification issued on 23rd October 1993 by Ministry of Welfare, Government of India, five religious communities viz., the Muslims, Christians, Sikhs, Buddhists and Zoroastrians (Parsis) were notified as minority communities. As per the 2001 Census, these five religious minority communities constitute 18.42% of the country's population.

Functions of NCM

As per Section 9(1) of the National Commission for Minorities Act, 1992, the Commission is required to perform following functions:

- (a) evaluation of the progress of the development of minorities under the Union and States;
- (b) monitoring of the working of the safeguards for minorities provided in the Constitution and in laws enacted by Parliament and the State Legislatures
- (c) making recommendations for the effective implementation of safeguards for the protection of the interests of minorities by the Central Government or the State Governments;
- (d) looking into specific complaints regarding deprivation of rights and safeguards of minorities and taking up such matters with the appropriate authorities;

- (e) getting studies to be undertaken into the problems arising out of any discrimination against minorities and recommending measures for their removal;
- (f) conducting studies, research and analysis on the issues relating to socio-economic and educational development of minorities;
- (g) suggesting appropriate measures in respect of any minority to be undertaken by the Central Government or the State Governments;
- (h) making periodical or special reports to the Central Government or any matter pertaining to minorities and in particular the difficulties confronted by them.

Section 2(c) of NCM Act, 1992 stipulates that 'minority' for the purposes of the Act, means a community notified as such by the Central Government.

Complaints received from notified minority communities³

Since the financial year 2000-01, the Commission received the following number of complaints (year-wise):

2000	–	01:	2478
2001	–	02:	2590
2002	–	03:	3146
2003	–	04:	3578
2004	–	05:	3342
2005	–	06:	2078 ⁴

The complaints now being received are mostly related to police atrocities, service matters, minority educational institutions and encroachments to religious properties. Reports were called for from the concerned authorities under the Union and State Governments. On receipt of the reports, the Commission makes appropriate recommendations to the respective authorities for redressal of the grievances.

³ Available at <http://india.gov.in/official-website-national-commission-minorities-0>.

⁴ As on 31. 12. 2005.

Constitution of the National Commission for Minorities⁵

The Central Government shall constitute a body to be known as the National Commission for Minorities to exercise the powers conferred on, and to perform the functions assigned to, it under this Act.

The Commission shall consist of a Chairperson, a Vice Chairperson and five Members to be nominated by the Central Government from amongst persons of eminence, ability and integrity; Provided that five Members including the Chairperson shall be from and amongst the Minority communities.

The Commission shall have all the powers of a civil court trying a suit and, in particular, in respect of the following matters, namely:

- a. Summoning and enforcing the attendance of any person from any part of India and examining him on oath.
- b. Requiring the discovery and production of any document.
- c. Receiving evidence of affidavits.
- d. Requisitioning any public record or copy thereof from any court or office.
- e. Issuing commissions for the examination of witnesses and documents; and
- f. Any other matter which may be prescribed.

National Commission for Minority Educational Institutions⁶

The National Commission for Minority Educational Institutions (NCMEI) was established, to begin with, through the promulgation of an Ordinance. The Department of Secondary and Higher Education, Ministry of HRD, Government of India, notified the National Commission for Minority Educational Institutions Ordinance 2004 (No. 6 of 2004) on 11th November 2004. Thereafter, on 16th November 2004, the Ministry of HRD

⁵ National Commission for Minorities Act, 1992.

⁶ Available at <http://ncmei.gov.in/> an official website for national commission of minority educational institutions.

issued the notification constituting the Commission, with its headquarters in Delhi.

1. The genesis of the National Commission for Minority Educational Institutions can be traced to the UPA Government's manifesto called 'National Common Minimum Programme'. In the NCMP, in its Section on "National Harmony, Welfare of Minorities", it was mentioned that a Commission for minority educational institutions would be established which will provide direct affiliation for minority professional institutions to Central Universities.
2. The NCMEI Act was an outcome of detailed consultations in a meeting held on Minority Education and Welfare at New Delhi which was followed by subsequent discussions in the National Monitoring Committee on Minority Education.
3. The Government brought out an Ordinance in November 2004 establishing the Commission. Later a Bill was introduced in the Parliament in December 2004 and both Houses passed the Bill. The NCMEI Act was notified in January 2005.
4. The Commission is mandated to look into specific complaints regarding deprivation or violation of rights of minorities to establish and administer educational institutions of their choice. Protection of rights of minorities are enshrined in Article 30 of the Constitution which states that "all minorities, whether based on religion or language shall have the right to establish and administer educational institutions of their choice".⁷
5. Thus, the Commission can look into any complaints relating to violation and deprivation of rights of minorities to establish and administer educational institutions of their choice.
6. This is the first time that a specific Commission has been established for protecting and safeguarding the rights of minorities to establish and administer educational institutions of their choice. This

⁷ Law of the Constitution, V.N. Shukla 10th edition.

Commission is a quasi-judicial body and has been endowed with the powers of a Civil Court. It is headed by a Chairman who has been a Judge of the Delhi High Court and two members to be nominated by Central Government. The Commission has 3 roles namely adjudicatory function, advisory function and recommendatory powers.

7. So far as affiliation of a minority educational institution to a university is concerned, the decision of the Commission would be final.
8. The Commission has powers to advise the Central Government or any State Government on any question relating to the education of minorities that may be referred to it.
9. The Commission can make recommendations to the Central Government and the State Governments regarding any matter which directly or indirectly deprives the minority community of their educational rights enshrined in Article 30.
10. The empowerment of the Commission has provided a much needed forum for the minority educational institutions to highlight their grievances and to get speedy relief. The subject matter of a petition/complaint include non-issue of No Objection Certificate (NOC) by the State Governments, delay in issue of NOC, refusal/delay in issue of minority status to minority educational institutions, refusal to allow opening of new colleges/schools/institutions by minorities, refusal to allow additional courses in minority educational institutions, delay/refusal in the release of grants in-aid, refusal to give financial assistance, denial of permission to create new posts of teachers in minority educational institutions even though there is increase in the number of students, approval of appointment of teachers being denied, non-equality in pay scales of minority schools teachers as compared to Government school teachers denial of teaching aids and or other facilities like computers, library, laboratory etc. to minority educational institutions on par with Government institution, non-availability of books in Urdu in all

subject for students of Urdu school, non-appointment of Urdu knowing teachers, in adequate payment to Madarasa employees, non-release of grants to Madarasa, non-payment of retirement benefits to teachers and non-teaching staff of minority schools, extension of Sarva Shiksha Abhiyan facilities to minority educational institution especially in the deprived rural areas etc.

Rights of Minority Educational Institutions⁸

The National Commission for Minority Educational Institutions Act 2004 (2 of 2005) as amended by the NCMEI (Amendment Act 2006) lays down rights of Minority Educational Institutions as under:

1. Any person who desires to establish a Minority Institution may apply to the competent authority for the grant of no objection certificate for the said purpose.
2. The competent authority shall:
 - (a) On perusal of documents, affidavits or other evidence, if any; and
 - (b) After giving an opportunity of being heard to the applicant, decide every application filed under sub-section (1) as expeditiously as possible and grant or reject the application, as the case may be:

Provided that where an application is rejected, the competent authority shall communicate the same to the applicant.

3. Where within a period of ninety days from the receipt of the application under sub-section (1) for the grant of no objection certificate:
 - (a) The Competent authority does not grant such certificate; or
 - (b) Where an application has been rejected and the same has not been communicated to the person, who has applied for the grant of such certificate,

⁸ The National Commission for Minority Educational Institutions Act, 2004 (2 of 2005) as amended by the NCMEI (Amendment Act 2006).

It shall be deemed that the competent authority has granted a no objection certificate to the applicant.

Conclusion

Article 30(1) of the Constitution of India gives linguistic and religious minorities a fundamental right to establish and administer educational institutions of their choice. The National Commission for Minority Educational Institutions Act (for short the 'Act') has been enacted to safeguard the educational rights of the minorities enshrined in Article 30(1) of the Constitution. It has been held by the Eleven Judges Bench of the Supreme Court in *T.M.A. Pai Foundation v. State of Karnataka*⁹ that a minority, whether linguistic or religious, is determinable only by reference to demography of the State and not by taking into consideration the population of the country as a whole. The concept of minority is not new to any society. In all the countries as per the guidelines of the UN Declaration protection of minority is effectively administered. In India minorities and their educational institutions are protected with the effective institutions for them separately. Apart from the Constitution separate legislations, administrative authorities and commissions look after the mechanism for the protection of minorities.



⁹ (2002) 8 SCC 481.