

# MINORITIES RIGHTS VIS-À-VIS JUDICIAL PRONOUNCEMENTS

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## Introduction

The existence and settlement of minorities in India is not a modern phenomenon, its origin date back to the Aryan period.<sup>1</sup> In numerous ancient Indian relics there are accounts of division of society into 4 classes namely the 'brahmins', 'kshatriyas', 'vaishyas', and 'shudra'.<sup>2</sup> The *shudra's* formed minority in Indian socio economic system, this lead to their exploitation, degradation and subject to inhumane treatment. Further they were named untouchables or the outcaste. The minorities in India during the modern time are not the same as it used to be it has changed drastically over the period of time with the advent and interference of foreigners.

The present India is a result of a rise and falls of monarch followed with the advent of foreigners India has been ruled by Aryans, Muslims and the British but its original inhabitants were the Dravidians who were divided into different castes and religions. With the decline of Muslim rule in India the British found the right opportunity to expand their roots in the country and by the end of 17<sup>th</sup> century it was firmly established in India. The British widened the ongoing gap of religion and then left the country in turmoil with the issue at peak. The partition caused turmoil, bitterness, chaos among the various communities hence we can see that the issue did not emerge overnight but it is one that existed for time immemorial.

For achieving holistic development of a nation its minorities should be taken along in the process of nation

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<sup>1</sup> HUTTON J.H., CASTE IN INDIA 152 (3rd ed. 1961).

<sup>2</sup> 25 MAX MULLER F. ED., AND G. BUHLER TRANS., THE SACRED BOOKS OF THE EAST (1886).

building and should not be left alienated. There are certain essential core elements in every society enshrined in its constitution for safeguarding the rights of these, it is the duty and obligation of the state to uphold these principles without prejudice and if the state succeeds in its duty then these cases of violation would be brought down. But the debate still goes on whether India's minority has to live with deep seated biases and for how long?

### **Minorities in India**

In India a minority is regarded as one who is separate from the majority group. Not only religious groups consider themselves minorities but it encompasses of caste, tribe, linguistic too. The Indian Constitution recognizes two types of minority groups: linguistic and religious.<sup>3</sup> The Indian Government has recognized the following communities as minorities: **1.**Muslims, **2.**Christians, **3.**Sikhs, **4.**Buddhist, **5.**Zoroastrian and now **6.**Jains also.<sup>4</sup> The ministry of social justice and empowerment has identified these groups and described them under Section 2(c)<sup>5</sup> of Statue of National Commission of Minorities. The NCM does not define the term minorities but an assumption is drawn by seeing past practices that parameter population and religion as a yardstick.<sup>6</sup>

The present UPA 2 government has introduced many policy schemes to uplift the status of these communities and provide them a level playing field, the government has introduced affirmative actions like sub quota of 4.5 % out of 27 % quota of OBC for the development of backward classes of minorities from Jan. 1, 2012.<sup>7</sup>

There is no prescribed definition of the term minorities in national or international arena but certain attempts have been made by authors like Francesco Capotorti, United Nations Special Rapporteur who defines minority

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<sup>3</sup> D.D. BASU, HUMAN RIGHTS IN CONSTITUTIONAL LAW (2nd ed. 1994).

<sup>4</sup> National Commission for Minorities Act, 1992, SO No. 816(E).

<sup>5</sup> National Commission of Minorities, § 2(c).

<sup>6</sup> ANNUAL REPORT, MINISTRY OF SOCIAL JUSTICE AND EMPOWERMENT GOVERNMENT OF INDIA 29-36(2002-2003).

<sup>7</sup> ANNUAL REPORT, MINISTRY OF MINORITY AFFAIRS GOVERNMENT OF INDIA 71 (2012-13), available at <http://www.minorityaffairs.gov.in>.

as: “A minority is a group which is 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, a sense of solidarity, directed towards preserving their culture, traditions, religion or language.”<sup>8</sup>

Certain things tend to be forgotten among the dim, atrocities on the minorities have been among such things there have been cases of gross violation of their rights, large number of cases relating to violence on the minorities either go unreported or are suppressed, people belonging to the minority community are being victimized by the police in name of terrorist act in the country they are tortured in lockups and made to sign blank documents<sup>9</sup> the cataract of sorrow will never go away from the eyes of the community.

### 1. Linguistic Minorities

In India main problem for attaining nation integration is presence of a sub-national identity based on language. The constitution under the eighth schedule recognizes 18 major languages<sup>10</sup> that lead to people forming their own individual sub identity by regarding themselves a part of their own groups. Religious and cultural feelings are knit together closely in a fabric and can be seen as one moves far away from the Hindi heart land of north India.<sup>11</sup> In 1950 Hindi was chosen as the official language of the nation and further it was decided that it will be solely used as an official language after the constitution was in force for 15 years.<sup>12</sup> This decision led a huge outcry from the southern lands and leads the nation in 1965 to declare the use of English as a second official language

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<sup>8</sup> DEIRDRE FOTTRELL& BILL BOWRING, MINORITY AND GROUP RIGHTS IN THE NEW MILLENNIUM 91 (1999).

<sup>9</sup> Peoples Tribunal on the Atrocities Committed against Minorities In The name Of Fighting Terrorism *available at* <http://www.lokraj.org.in/?q=articles/news/peoples-tribunal-atrocities-committed-against-minorities-name-fighting-terrorism>.

<sup>10</sup> INDIA CONST. SCH. § 8.

<sup>11</sup> R. KOTHARI, POLITICS AND THE PEOPLE: IN SEARCH OF A HUMANE INDIA(1989).

<sup>12</sup> *Ibid.*

for indefinite period. Today Most of the States have an official language and people who speak another language as their mother tongue regard themselves as linguistic minorities. Articles 347, 350, 350 A of the Indian constitution provide safeguard to the protection of linguistic minority rights.

## **2. Religious Minorities**

India is a land of diversity a large number of religions are followed here Hinduism being in majority and Islam, Christianity, Buddhism, Zoroastrianism, Jainism in minority. As per the census of 2001 the Indian population was 1,027, 015, 247.40,<sup>13</sup> comprising of 828 million (80.5 per cent) Hindus forming the largest ethnic group followed by 138 million (13.4 per cent) Muslim, 24 million (2.4 per cent) Christians, 19 million (1.9 per cent) Sikhs, 8 million (0.8 per cent) Buddhists and 4.2 million (0.4 per cent) Jain.<sup>14</sup> A supplementary 6.6 million belong to other religions. As per the census report it was seen that India comprises of six major ethnic groups and fifty-two major tribes, six major religions and 6,400 castes and sub-castes; eighteen major languages and 1,600 minor languages and dialects.<sup>15</sup> In a land that has so much diversity it is difficult to hold together people of such vested needs, all the communities have their own religious faiths and it must be respected, at times it becomes difficult to hold together such a wide range of people together but India has been successful in achieving and maintaining it.

## **Judicial Interpretation**

Judicial interpretation have always read secularism as a fundamental law of the land and sought to outline its boundaries as sacred and profane. The Supreme Court has taken the task to set up the policies by being in an activist's role hence it should make sure that it promotes

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<sup>13</sup> Census of India 2001, Provisional Population Totals, *available at* [http://www.censusindia.gov.in/Census\\_Data\\_2001/India\\_at\\_glance/popul.aspx](http://www.censusindia.gov.in/Census_Data_2001/India_at_glance/popul.aspx).

<sup>14</sup> Census of India 2001, Religious composition, *available at* [http://www.censusindia.gov.in/Census\\_Data\\_2001/India\\_at\\_glance/religion.aspx](http://www.censusindia.gov.in/Census_Data_2001/India_at_glance/religion.aspx).

<sup>15</sup> TMAPai Foundation and Ors. v. State of Karnataka and Ors., 2 SCC 195, para 158(1994) [hereinafter TMA Pai Foundation and Ors.].

secularism in the plural multicultural sense. While in some cases the court has taken a strong point on the issue and declared secularism as unamenable feature of the constitution while in other cases the courts definition is susceptible to the interest of the majority encroaching on the rights of minorities.

The legal safeguards for minorities are derived from 3 main sources:

1. The Constitution of India
2. Govt. Schemes and Recommendations of various Committees
3. Judicial Pronouncements<sup>16</sup>

All these sources are discussed in depth in his paper.

### **1. Constitution**

The constitution safeguards and protects the rights of linguistic minorities through a system of built in mechanism under Articles 15, 16, 25, 26, 27, 28, 29, 30, 347, 350, 350A and 350B, together with Articles 32 and 226.

Article 15 protects the rights of minorities against the state it prohibits the state from discrimination on grounds of religion, race, caste, sex or place of birth. Article 16 states that no person should be denied public employment on the grounds of religion, race, caste, sex etc. however 16(4) permits state to take affirmative measures for the backward citizens who are not adequately represented. Article 25 grants every individual to the freedom of conscience and the right to practice, profess and propagate his religion. However, proselytization affects the freedom of conscience and thereby, conversion by force, fraud, and inducement is prohibited.<sup>17</sup>

Article 26 is complementary to Article 25 as it lays down freedom to manage religion affairs but subject to public morality, order, and health. The scope of this article is

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<sup>16</sup> MAHMOOD, SYED TAHIR ED., MINORITIES AND STATE AT THE INDIAN LAW: AN ANTHOLOGY 121- 133(1999).

<sup>17</sup> Stainislaus v. State of M.P., (1977) 1S.C.C. 677.

not only limited to minorities but is available to majority also, i.e., Hindus.<sup>18</sup> Article 29 grants the linguistic minorities living in any part of the country to conserve its language culture and script and Article 30, gives them the right to establish and administer educational institution of their choices. Hence these two articles create mutually supportive rights for both minority institutions and people. In *Ahmedabad St. Xavier's College Society and Anr. v. State of Gujarat and Anr.*,<sup>19</sup> the apex court defined the area of Articles 29 and 30 and observed that these two articles confer 4 distinct rights: the right of people of a group which are resident citizens to conserve protect and safeguard its own language, script or culture; the right of religion or linguistic minorities to establish and administer their educational institutions; an educational institution should not be discriminated for state aid on the ground that it is managed by religious or linguistic minority; it is the right of an citizen to be not denied admission into educational institution which are state maintained or state aided on ground only of religion caste, race or language. In *Rev. Sidhajibhai Sabhai v. State of Bombay*,<sup>20</sup> the Supreme Court held that unlike Article 19 of the constitution, the right mentioned in Article 30(1) is a fundamental right in absolute terms and is not subject to reasonable restrictions. The significance of these rights could be inferred from Justice Khanna's opinion that: "no tampering with these rights can be countenanced."<sup>21</sup> The spirit behind 30(1) is the conscience of the nation that the minorities, religious as well as linguistic, are not prohibited from establishing and administering educational institutions, of their choice.<sup>22</sup> Article 30 is a special right conferred on the religious and linguistic minorities because of their numerical handicap and to instill in them a sense of security and confidence, even though the minorities cannot be per se regarded as weaker sections or underprivileged segments of the

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<sup>18</sup> Pannalal Bansilal Patil and ors. v. State of A.P., (1996) 2S.C.C. 498.

<sup>19</sup> *Ahmedabad St. Xavier's College Society and Anr. v. State of Gujarat and Anr.* (1974) 1S.C.C. 717 [hereinafter *Ahmedabad St. Xaviers College*].

<sup>20</sup> *Rev. Sidhajibhai Sabhai and Ors. v. State of Bombay and Ors.*, (1963) 3 S.C.R. 837.

<sup>21</sup> AHMEDABAD ST. XAVIERS COLLEGE, *supra* note 19, at 717.

<sup>22</sup> *See id.* at 721.

society.<sup>23</sup> A linguistic minority for the purpose of Article 30(1) is one which must at least have a separate spoken language. It is not necessary that that language should also have a distinct script for those who speak it.<sup>24</sup> The expression in Article 30 is that the minorities shall have the right to establish and administer educational institutions of their choice and therefore it is entirely in the hands of the minority community to widen their choice.<sup>25</sup>

Article 347 of the Indian constitution provides for a presidential direction for the official recognition of a language. As per Article 350 every person is entitled to submit a representation for the redress of any grievance to any officer or authority of the union or state in any of the languages used in the union or in the state. Article 350-A provides facilities for instruction in mother tongue at primary stage of education to children belonging to linguistic minority groups. There is a clear violation of Article 29(1), if it is read with Article 350-A, if instructions are given by a state to its linguistic minority, to study a regional language at primary stage, i.e., a language not their own, but it could be prevented if they are given an option. In *D.A.V College, Bhatinda v. State of Punjab*,<sup>26</sup> the apex court held that Punjab university of Patiala can propose Punjabi as a medium of instruction in the collage but it cannot be the sole nor could it compel affiliated collages which are established and maintained by religious or linguistic minorities to teach Punjabi or give exams in that language. In *English Medium S.P.A. v. state of Karnataka*,<sup>27</sup> the Supreme Court clarified that the objective of Article 350-A is to safeguard the interests of linguistic minorities and its existence owns to reorganization of states.

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<sup>23</sup> TMA Pai Foundation v. State of Karnataka, (1994) 2S.C.C. 195 [hereinafter TMA Pai Foundation].

<sup>24</sup> St. Stephen's College v. The University of Delhi et al., (1992) 1 S.C.C. 558 [hereinafter St. Stephen's College].

<sup>25</sup> Faizan Mustafa, The Constitution, Minorities and the Judiciary, available at, <http://www.iosworld.org/constitution%20minority%20and%20judiciary.htm>.

<sup>26</sup> D.A.V. College Bhatinda v. The State of Punjab and Ors., (1971) 2 S.C.C. 269.

<sup>27</sup> English Medium S.P.A. v. State of Karnataka, (1994) 1 S.C.C. 550.

Article 350-B lays down the foundation of the institution of commissioner for linguistic minorities in India (CLM). The office exists since 30 July 1957. In pursuance of Article 350-B, it is the duty of the office of CLM to investigate all matters relating to the safeguards provided for linguistic minorities under the Constitution and report to the president upon those matters at such interval as the president may direct, and the president shall cause all the reports to be laid before each house of parliament and sent to the governments of the state concerned.

Under the Article 32 declares that anyone approach the highest court to gain protection against the violation with the rights comprises of the religious and linguistic minorities to seek remedy. A similar jurisdiction prevailed in the High court under the Article 226. The concern behind this right was to make believe to the minorities that if they discriminated then their interest can be protected by approaching to the highest court. In these situation, constitutional rights will remove the fear and to convince the minorities of protection of their interest. In the constituent assembly debate on Article 23 B.R. Ambedkar said: "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 purposes of certain political safeguards, such as representation in the Legislature, representation in the services 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 cultural and linguistic sense. For instance, for the purposes of this Article 23, if a certain number of people from Madras came and settled in Bombay for certain purposes, they would be, although not a minority in the technical sense, cultural minorities.... The article intends to give protection in the matter of culture, language and script not only to a minority technically, but also to a minority in the wider sense of the terms as I have explained just now."<sup>28</sup>

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<sup>28</sup> B.R. Ambedkar (*Constituent Assembly Debates*, 922-923 (1948-49)).



It was held that any community, religious or linguistic, numerically less than 50 per cent of the population of the State is a minority community.<sup>29</sup> Further, the question as to whether community can be said to be a minority community depends upon the question as to whether they are a minority in the State in question or not.<sup>30</sup> It is most humbly submitted that Muslims are, without a doubt a minority religion in the State of Uttar Pradesh, constituting a population of 18.5 per cent.<sup>31</sup>

The status of minority can be identified on the basis of the size of the population of the group. The Supreme Court held that the technique of arithmetical tabulation of less than 50 per cent of population for identifying a minority.

However, in the recent case Supreme Court said that the geographical entity of state for consideration of the status of minority for Article 30. The judgment of the Supreme Court:

“Since reorganization of the states in India has been on linguistic lines, therefore, for the purpose of determining the minority, the unit will be the state and not the whole of India. Thus, religious and linguistic minorities, who have been put at par in Article 30, have to be considered state wise.”<sup>32</sup>

## **2. Recommendation of Various Committees and Government Schemes**

### **I) Sachar Committee**

PMO constituted the high level of committee<sup>33</sup> under the chairmanship of Rajinder Sachar for preparation of a Report on the Social, Economic and Educational Status of the Muslim Community of India.

The Committee made various recommendations to address the status of the minority. Some of these recommendations were:

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<sup>29</sup> ST. STEPHENS COLLEGE, *supra* note 24.

<sup>30</sup> TMA PAI FOUNDATION AND ORS., *supra* note 15, at 201.

<sup>31</sup> Census of India on Religion 2001, *available at*:  
[http://censusindia.gov.in/Census\\_And\\_You/religion.aspx](http://censusindia.gov.in/Census_And_You/religion.aspx).

<sup>32</sup> TMA PAI FOUNDATION AND ORS., *supra* note 15, at 201.

<sup>33</sup> SACHAR COMMITTEE REPORT, *available at*,  
<http://www.minorityaffairs.gov.in/sachar>.

- To create a National Data Centre where the various data must be collected for different Minority groups.
- The status of the minority group must be monitored every five year.
- The discrimination which is there in the society must be removed and legal provisions must be implemented in a strict sense.
- The Authorities should develop a Diversity Index (DI) in the context of institution to strengthen the minorities and allocate them seats in higher education.
- Conduct appropriate curriculum for this purpose in teachers' education, organizing remedial classes and providing public spaces for minorities.
- It also recommended to provide admissions to the most backward amongst all minority group in recognized universities and autonomous colleges. It further discussed to provide different types of reservation to three main Muslims groups i.e., 'Ashrafs', 'Ajlaf's' and 'Arzals'. Arzals Muslim group is the most backward class and they need reservation so that their requisite growth can be achieved.
- The education system must be improved as school children get influenced by what they read; textbooks must have a content of social diversity and remove the material which contains religious intolerance. Institutions must be established where gender basis discrimination is not acceptable.
- Legal mechanism must be established in which complaints of discrimination against minorities will be dealt in matters like employment, housing, obtaining bank loans. There should be an autonomous assessment and a monitoring body should be set up to evaluate the development.

## II) Ranganath Committee Report

The Committee<sup>34</sup> submitted the final report on 2007. It made Major recommendation in the respect

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<sup>34</sup> RANGANATH MISHRA COMMITTEE REPORT, *available at*, <http://www.minorityaffairs.gov.in/nclrm>.

of the Muslims, who are the largest minority at the national level and yet they are educationally most backward religious community.

- The institution like Aligarh Muslim University and Jamia Millia Islamia should be authorized to promote education for the Muslims students by implementing all possible steps required for this authorization.
- All institutions run by the minority group i.e. Muslims should be given all facilities and advanced aid which help in raising the standards of minority group.
- The Madrasa Modernization Scheme of the government should be suitably revised, and they should be given funds so that they can provide facilities which are needed to be given.
- The rules and processes of the Central Wakf Council should be improved in a way that its main control should be educational development of the minority group. For this purpose, the Council may be legally authorized to collect a special 5 per cent educational levy from all Wakfs, and to sanction utilization of Wakf lands for establishing educational institutions, polytechnics, libraries and hostels.
- Anganwaris, Government Schools and several similar type of institution should be established under the schemes and Muslims families must be advised and incentives should be given to them for sending their children to these institutions.
- The report also recommended that the concessions which are provided to the Scheduled Castes and Scheduled Tribes, in terms of eligibility criteria for admission and low fee should also be given to all minority group specially Muslims women and Buddhists- are generally educationally backward.

### **III) Recommendation of the Steering Committee for the XII Year Plan**

The planning commission formed steering committee on "Empowerment of Minorities"<sup>35</sup> for the XII five year plan.

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<sup>35</sup> RECOMMENDATION OF THE STEERING COMMITTEE ON EMPOWERMENT OF MINORITIES, *available at*,

The strategy was to achieve development of minorities through education, skills development for employment, and to enhance the socio-economic status of the group. It stresses that the education is the main important tool for the socio-economic development of the minority group. The committee made recommendations as follows:

- Scholarships programs should be implemented and department implementing different scholarships should be given in the form of maintenance fee, tuition fee.
- The various components during the XI Year Plan under the scholarships have been constant, so it was recommended that data should be revised and fixed according to the Wholesale Price Index (WPI).
- In the previous plan it was mandatory for the student to obtain 50% marks for Pre-Matric Scholarship. This condition should be discarded as it allows retention of the minority students in schools.
- The rates of admission fees, tuition fees, and maintenance allowance should not be uniform. The rates shall be increasing for the students who are moving up from class IX to Class XII. This will motivate them and allow more number of retention students at the higher standards to gear up for higher studies.

### **Ongoing Schemes under Elementary Education and Literacy**

#### **IV) Sarva Sikhsha Abhiyan**

*Sarva Sikhsha Abhiyan*<sup>36</sup> was launched in 2000 with an objective to provide for a variety of interventions for universal access and retention, bridging social category gaps in elementary education and improving the quality of learning. This scheme include various missions like opening of new schools, improving the infrastructure of the schools, classrooms should be increased, toilets and drinking water facility should be available, regular teacher training, textbooks and support for learning achievement. With the implementation of Right to

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<http://planningcommission.gov.in/aboutus/committee/index.php?about=12strindx.htm#sd>.

<sup>36</sup> SARVASIKSHAABHIYAN, available at, <http://mhrd.gov.in/schemes>.

Education Act 2009, there have been changes in the schemes which are as follows:

- Providing all round education, as perceived by the National Curriculum Framework 2005, with complete renovation of the entire teaching syllabus, teaching methodology and management.
- The disadvantaged sections of the society specially children belonging to the backward sections should not only get an equal opportunity so that they stand on the same footing but also condition must be created for them so that they can avail opportunity.
- The term access should not only be restricted to providing basic schooling to the children living in a particular area but it should have a wider meaning to it, it should be also include children belonging to the backward sections of the society that are left behind .
- The gender concern, effort should be made that girls to keep pace with boys in the education perspective which is in national Policy on Education 1986/92, the step should be taken by the authority to bring change in the status of the women.
- Teacher issue: teacher should be trained in such a way that they put effort in creating a classroom culture and make their students think beyond the requisite limits and this will help in formation of healthy environment.
- With the introduction of the Right to Education Act, it put compulsion on parents, teachers, educational administrators and other institutional authority to send children to the schools for studying.

#### **V) Kasturba Gandhi Balika Vidyalaya (KGBV)**

*Kasturba Gandhi Balika Vidyalaya*<sup>37</sup> is the scheme launched by the government in July 2004, for building up residential schools at upper primary level for the girls of the minority group belong to SCs, STs, OBC and other disadvantaged group. This scheme implemented to those areas where female literacy rate is less than the national

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<sup>37</sup> KASTURBA GANDHIBALIKAVIDYALAYA, available at, <http://ssa.nic.in/girls-education/kasturba-gandhi-balika-vidyalaya/kgbv-scheme>.

average rate, especially in the backward villages of the country. The scheme provides reservation policy of about 75 per cent to the girls belonging to the SCs, STs, OBC and remaining 25 per cent is for the girls who belong to the families below poverty line. The scheme targets those adolescent girls who are unable to attend the schools, girls who are above the age of 10+ and unable to complete the primary school.

Out of 3600 KGBVs sanctioned, 3439 KGBVs have been operationalized. Out of these, 552 KGBVs have been sanctioned in rural and urban areas of Muslim concentration and 517 of these have been operationalized. 24,590 minority girls have been enrolled out of total of 3, 33,622 girls enrolled.<sup>38</sup>

## **VI) Integrated Child Development Services Scheme**

Equitable availability of Integrated Child Development Services (ICDS) Scheme<sup>39</sup> was launched for the development of children and pregnant mothers from the minority section of the society by providing services through *Anganwadi* centers such as supplementary nutrition, immunization health check-up, preschools and non-format education. These projects were also located in the villages with a substantial population of disadvantaged group to provide benefits of the scheme.

### **A. Supreme Court and Minorities**

It is fascinating to note that it is the judiciary that tells us what compromises of religion. The term religion is not defined in the constitution and it is not one that could be given a definition its scope is wide and difficult to limit it in words. The apex court has not restricted the definition of religion to only the relationship between individual and its creator and the obligations imposed on him. The court has also held that not all religion believe in the presence of a supreme being – like Buddhism and Jainism.

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<sup>38</sup> KASTURBA GANDHI BALIKAVIDYALAYA, available at, <http://ssa.nic.in/girls-education/kasturba-gandhi-balika-vidyalaya>.

<sup>39</sup> INTEGRATED CHILD DEVELOPMENT SERVICES SCHEME, available at, <http://wcd.nic.in/icds.htm>.

In *S.P. Mittal v. the union of India*<sup>40</sup> the court laid down that religion is a matter of faith, belief in the superior is not essential to constitute religion. Religion not only includes a code of ethical rules for its followers but it might prescribe rituals, ceremonies, observance which is regarded as its integral part. In *A.S. Narayan Deekshitulu v. State of Andhra Pradesh*<sup>41</sup> it was held that religion in constitution is a personal matter of faith and belief. Further in *Anandmargis case*<sup>42</sup> the Anandmargis were recognized as a religious denomination but the performance of tandava dance by its followers (carrying lethal weapons and skull in processions or at public places) was held by the honorable court as a non-essential feature. However on appeal it did recognize *Tandava* dance as essential to the religious belief of Anandmargis but restricted it due to maintenance of public order. During this phase the court not only decided what constituted religion but also what practices were to be allowed.

In *Ismail Faruqui v. Union of India*,<sup>43</sup> the Supreme Court's opinioned that the court, in the use of its sovereign power, can acquire places of worship, for the purpose of maintaining law and order. The court said that offering prayer and worshipping to one's own Supreme Being is important however its offering at every location where such prayer is offered is not essential religious practice.

In the *State of West Bengal v. Ashutosh Lahiri*<sup>44</sup> and prior to that, in *M.H. Querseshi v. State of Bihar*<sup>45</sup> the Supreme Court held that Muslim citizens of India are not allowed the freedom to kill cows for '*Qurbani*' as part of their tradition. The court viewed that the slaughtering of cows is not an essential practice of Muslims. And Under the Article 48 of the Constitution, the court banned cow slaughter – giving way to an unacknowledged respect to the Hindu belief in the holiness of the cow.

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<sup>40</sup> S.P. Mittal v. Union of India, (1983) 1 S.C.C. 51.

<sup>41</sup> A.S. Narayana Deekshitulu v. State of Andhra Pradesh and ors., (1996) 9 S.C.C. 548.

<sup>42</sup> Acharya Jagdishwaran and Avadhuta and Ors. v. Commissioner of Police, Calcutta and Anr.(1983) 4 S.C.C. 522.

<sup>43</sup> Ismail Faruqui v. Union of India, (1994) 6 S.C.C. 360.

<sup>44</sup> State of West Bengal v. Ashutosh Lahiri, (1995) 1 S.C.C. 189.

<sup>45</sup> M.H. Querseshi v. State of Bihar, (1959) S.C.R.629.

The judgments of the Supreme Court thus tell us that in matters of religion only essential practices can have absolute protection. This has given a way for continuous interference by the state in matters of religion. By their authority to decide what religion is and what not the courts in India have acquired the authority to regulate the meaning and ambit of religion.

*T.M.A. Pai Foundation and Others v. State of Karnataka & Others*<sup>46</sup>: It is a landmark judgment given by the apex court this judgment shapes the future of minority community in the field of education. It was given by a constitutional bench of 11 judges and involved fundamental questions like who constitutes a minority and who could obtain special rights mentioned under Article 30(1) of the constitution. The court accepted the view that minority is one which is numerically less than the majority and Article 30 covers both linguistic and religious minorities. The bench unanimously accepted that Article 30(1) confers religious and linguistic minorities the right to establish and administer educational institutions including professional institutions. The court held that the right to establish an educational institution is unfettered howsoever the right to administer the educational institution is not an absolute one. The judgment is important from the point of interplay between 29(2) and 30(1), Article 29(2) says that no citizen shall be denied admission on grounds only of religion, race, caste or language to an educational institution maintained or receives aid from state whereas Article 30(1) provides all minorities, whether based on religion or language, the right to establish and administer educational institutions of their choice.<sup>47</sup> Nine out of 11 judges in the bench held that aided minority institution have to admit reasonable extent of non-minority students hence Article 30(1) is substantially maintained while citizens' rights under 29(2) are not infringed.<sup>48</sup> The court

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<sup>46</sup> T.M.A. Pai Foundation & Others v. State of Karnataka and ors.,(2002) 8 S.C.C. 481.

<sup>47</sup> N.R.M. Menon, *Minority Rights and Education*, THE HINDU, January 10, 2003 [hereinafter Menon, *Minority Rights and Education*].

<sup>48</sup> M.P. RAJU, MINORITY RIGHTS MYTH OR REALITY: A CRITICAL LOOK AT THE II JUDGE VERDICT WITH FULL TEXT, 19-44 (2002) [hereinafter Raju, *Minority Rights Myth or Reality*].



left it to the state to decide the percentage of non-minority students.<sup>49</sup>

In the past the minority's right to establish and administer educational institution was maintained by *St. Stephens's* judgment which provided a cap of 50 per cent but the bench held that providing a rigid cap is not desirable in law or in practice.<sup>50</sup>

The court stated that the right enshrined under Article 30(1) of the constitution cannot be such that overrides the national interest or averts the government from framing regulations in that matter.<sup>51</sup> Minority as a community cannot have fundamental rights, which are not provided to the majority community or non-minorities this principle emerged out of the judgment.<sup>52</sup> Law of the land which includes rules and regulations must apply to all whether it is majority or minority.

## Conclusion

Looking at the present scenario we can say that in spite of so many constitutional assurances and enactments, the socio-economic development of this section of the society is not even nearer to the expectations of the constitution makers there is a dire need to rethink and formulate minorities rights that are being butchered, the constitution provides various articles to safeguard the community and protect its identity but in practical life these rights are not implemented as they should be. The constitution is not followed in the same spirit in which it was drafted by drafters of the Indian Constitution, the minority have become a tool of the political superior who use them to take mileage in the votes run, in lieu of actual development the community is given small incentives in form of schemes that are too not properly implemented. There is a need to introduce new central law that provides multi-culturalism and pluralism in educational institutions, making the social composition

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<sup>49</sup> *Ibid.*

<sup>50</sup> Menon, *Minority Rights and Education*, *supra* note 47. See also Acharya Jagdishwaranand Avadhuta and Ors. v. Commissioner of Police, Calcutta and Anr. (1983) 4 S.C.C. 522.

<sup>51</sup> Raju, *Minority Rights Myth or Reality*, *supra* note 48 at 45.

<sup>52</sup> *Ibid.*

of that institution diverse to tackle the problem of alienation that is being faced by the community. In case of judiciary there are three trends followed by it firstly, the judgments of the judges are contextual hence they are different, and reflect personal convictions of the judges. This makes the interpretation of the article vague and subject to constant struggle between the minorities and the state. Secondly the judgments are more liberal towards the linguistic minorities than religious ones and lastly they represent a trend towards reducing the scope of the article giving more scope to government control and interference, the courts in India that are being looked forward as savior of the rights of people hence should come forward in playing a proactive role in happier construction of existing constitutional provisions on minorities by being in conformity to the international standards. The government has launched many schemes for the betterment of disadvantaged groups in various parts of the countries but these schemes do cover the remote areas people in the village and blocks are not aware of the schemes. Corruption also plays a major role in the failure of the schemes in many places funds which are sanctioned by the government under the schemes do not reach to the targeted groups. The food material which is provided to children in *Anganwadis* is found to be of inferior quality. A committee must be devised to look into these issues and work for the benefit of the minority group. Any government scheme which is targeted for the minorities should be adequately advertised in both urban and rural areas where these minorities reside.