

MINORITY: EXAMINING THE CONCEPT

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Introduction

The 'concept of minority' has become a question of global importance. In India this question has been long standing, controversial and very much discussed in modern times. In the Constitution of India we find reference of two kinds of minorities-religious and linguistic. But the Constitution does not define the term "minority". While extending the protection of the minorities to a particular group it becomes pertinent to identify who the minorities are. It becomes necessary to do so to ensure that the real minorities get the protection of the Constitutional provisions.

In India the minorities are victims of a dual nature. Various studies reveal that they have lagged behind in various fields and at the same time they are said to be appeased by the government. The concept of minority has attracted much attention, especially when the question of Minority Educational Institutions and their rights were discussed by the judiciary and the public at large.

The present article is limited to the concept of minority, its origin, meaning, development and the present situation. It also attempts to study whether there are any conceptual lacunae in the concept and whether the concept as followed in India is in line with the concept as followed by the International Agencies. Such agencies like the United Nations have also tried to define the term minority. But, it can very well be said that:

"The task of defining the term minority proved to be of such difficulties and complexities that neither the experts in this field nor the organs of International Agencies have been able to accomplish it to date. Thus there is no definite definition which is capable of being universally accepted."¹

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¹ Mishra Naveen, Singh Sudhir Kumar, Status of Minorities in South Asia, Authors Press, New Delhi p. 4 (1st ed., 2002).

This reality has inspired the researcher to undertake the present research and to critically examine the concept of minority with reference to the Indian legal system. It also attempts to examine whether the concept as followed in India and its interpretation by the judiciary has given rise to any ambiguity or misuse. It tries to study the various judgments of the Apex court which are concerned with the concept of minority.

The research further emphasizes that apart from numerical criteria other criteria should also be considered. It further points out the absurd situations which arise after considering language as the criteria for determination of minority status of a community.

Objectives of the Study

- To find out the meaning of the term 'minority' and to trace its historical background in context of India.
- To study the relevance of the concept taking into consideration the peculiar Indian scenario.
- To find out whether there is any conceptual lacuna in the concept of minority as followed in India.
- To study whether any novel approaches can be adopted regarding the concept of minority and their identification.

Methodology

The present study is a Doctrinal Research. For this work mainly secondary data has been used. The sources for collecting data would be Constitutional Assembly Debates, the Constitution of India, Text Books, Case Laws of the Supreme Court of India, Articles from Journals, and Newspapers and the Internet.

Meaning of Minority

In every country of the world there are some minority communities. In the nineteenth century there was the growth of the idea of Nationalism. During this period the question of minorities gained importance. One religion, one race, one language became the characteristics of Nationalism. The main reason for the existence of minorities in various countries is the expansion of

boundaries of countries and migration of various communities for a number of reasons. Religious conversions have also contributed to this. The migration was due to occupation of the homeland by the enemy, or to settle permanently in another country, or to seek refuge in another country. People had to leave their own country due to different political opinion, or in some cases it was voluntary migration. In many instances people were forcibly taken away to work as slaves on farms and plantations of westerners.

Democracy itself implies that the majority will rule because of their numerical superiority. Naturally the minority have to remain subservient to the majority community. In many countries the relations between minority and majority have remained strained due to variety of reasons.

“Minority and majority are basically arithmetical terms showing the relative numerical position of various groups in a particular political entity.”²

The concept of minority is not only related to the numerical strength of a particular community, but it is related to the basic difference between the power of the majority and the minority community.

Defining the concept of minority has proved to be a challenge to the global community.

“The world seems to be at the moment gripped with uncertainties at defining the word ‘minority’. According to *International Encyclopedia of Social Sciences*, minority is defined as a group of people-differentiated from others in the same society by race, nationality, religion or language—who thinks of themselves as a differentiated group with negative connotation. Further, they are relatively lacking in power and hence are subjected to certain exclusions and other differential treatment.”³

² Tahir Mahmood, (edited) *Politics of Minority Educational Institutions Law and Reality in the Subcontinent*, imprint One, Gurgaon, p. 11, (1st ed., 2007).

³ Mishra Naveen, Singh Sudhir Kumar, *Status of Minorities in South Asia*, Authors Press, New Delhi p. 77 (1st ed., 2002).

According to *Dictionary of Political Science*, the term minority means: “Group which is composite society forms one of the smaller parts. Its numerical weakness implies a potential threat to its equality, and protection of racial, ethnical, religious rights. Minorities are a major concern of our democratic systems. Yet some disablements of a minority are caused by the minority to submit to a contrary will and at many elections, the voice of an even sizeable minority is totally muted.”⁴

Minorities in India

The Constitution of India recognizes two categories of Minorities:

- i) Religious minorities and
- ii) Linguistic minorities

India being a multilingual country, the presence of linguistic minorities need not be explained. On the other hand the presence of religious minorities according to Dr. Naveen Mishra, has been explained by Oomen T.K. in the following words:

“Religious minorities in India may be grouped in to three broad categories based on the source of their presence. They are --

- a) Protest religions of India, e.g., Jainism, Buddhism and Sikhism.
- b) Migrant religions, e.g., Judaism and Zoroastrianism.
- c) Religions which are perceived to be products of conquest and colonialism, e.g., Islam and Christianity.”⁵

The Concept of Minority according to International Agencies

With the establishment of the United Nations the question of the rights of minorities gained importance. A sub commission on Human Rights known as the Sub-commission on the prevention of Discrimination and protection of minorities was established in 1947. It is

⁴ Bhatt Rakesh, *Dictionary of Political Science*, Mohit Publication, New Delhi (1st ed. 2005).

⁵ Oomen T.K., *State and Society in India*, Sage Publications, New Delhi, 1990, p. 207, Quoted from Mishra p.127.

important to note that the Universal Declaration of Human Rights which is the highest moral sanction of all human rights contains no provisions about the rights of minorities. The General Assembly stated that the United Nations cannot remain indifferent to the issue of minorities.

“The International Covenant on Civil and Political Rights (1966) stands as the only post-war human rights agreement which contains specific mentioned general statement of the rights of minorities. Art. 27 of the covenant reads, in those states in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their culture, to profess and practice their own religion, or to use their own language”.⁶

The special Rapporteur of the UN Sub Commission on the prevention of discrimination and protection of minorities, Prof Capotorti, offered this definition for the purpose of Article 27: “A minority is 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 any, a sense of solidarity, directed towards preserving their culture, traditions, religion or language.”⁷

Adoption of the Concept in India

While studying the concept of minority in the Indian context, it is important to study the dynamics of the Muslim community. The feeling of minority complex in the various Indian communities may be due to the feeling of insecurity in the minds of these communities. In British India, the British adopted the policy of giving special recognition to the Muslims, along with the Sikhs, Indian Christians, Anglo-Indians and the Depressed Classes. The formation of the Muslim League is an

⁶ Mishra Naveen, Singh Sudhirkumar, Status of Minorities in South East Asia, Authors Press, New Delhi, p. 5 (1st ed. 2002).

⁷ *Id.*

important event as to the recognition of minority rights of the Muslims in India. The Depressed Classes, under the leadership of Dr. Ambedkar were successful in getting recognition as a minority community in British India.

The Morley-Minto Reforms, the Simon Commission, the three Round Table Conferences, the Communal Award, the Cabinet Mission Plan, and the Constituent Assembly are the milestones in the study of the concept of minority in India. It can help us to know how the concept has gradually changed and evolved to date.

Last but not the least, the realization of the Muslim community as a “religious minority” and propounding of the “Two Nation Theory” led to the unavoidable partition of India. It is with this experience, the minority rights were to be discussed in the Constituent Assembly of India.

Discussions in the Constituent Assembly

The Constituent Assembly had a total of about fifteen committees on various subjects. The Advisory Committee on Minority and Fundamental Rights was one such committee concerned with the minorities. Sardar Vallabhbhai Patel was the Chairman of this advisory committee on minorities. The Report on the minorities was discussed in the constituent Assembly on 27th and 28th Aug. 1947.

The minorities were classified in to three groups:

GROUP ‘A’-- population less than ½ per cent in the Indian domain excluding the states.

- 1) Anglo-Indians.
- 2) Parsees
- 3) Plains tribesmen in Assam

GROUP ‘B’-- population not exceeding 1½ per cent.

- 4) Indian Christians.
- 5) Sikhs.

GROUP ‘C’-- population exceeding 11/2 percent.”⁸

- 6) Muslims

⁸ Constituent Assembly Debates, Book 1, Vol. V, Lok Sabha Secretariat, New Delhi, p. 224 (first printed 1950, reprinted 2003).

7) Scheduled Castes

Basis of the Classification the Rationale

Sardar Vallabhbhai Patel while tabling this Report said: "We have divided the minorities according to their strength or according to their population".⁹ Though the constituent Assembly was against separate electorate for the minorities, it does not in any way create hindrance in the recognition or protection of minorities.

Speaking on this issue Mr. Govind Vallabh Pant said: "Do you want the citizens of one country to look to their co-religionist in another state for their protection, or do you want them to be treated as equal citizens of their own free sovereign India? I want all minorities to have an honorable place in this Union of India. I want them to have full opportunities for self-realization and self-fulfillment. I want this synthesis of cultures to go on so that we may have a state in which all will live as brothers and enjoy the fruits of the sacrifices of those who gave their all for the achievement of this freedom, fully maintaining and observing and following the principles of equality, liberty, and fraternity."¹⁰

After considering the discussions in the Constituent Assembly, we find that though the minorities were provided various safeguards in the new Constitution, we do not find any specific discussion about the 'concept of minority' or the discussion about the 'definition' of the term minority. At the time of classifying the minorities into three groups viz., Group A, B, and C, the numerical strength of the minorities in relation to the population of India was considered. Here it is pertinent to note that, here the minorities were considered at the National level.

The scheduled castes, who were neither considered to be racial, linguistic nor religious minority, were considered to be minority, though they were not minorities in the strict sense of the term. The general attitude of the Constituent Assembly was to provide safeguards to the minorities and give them an honorable place in the Union of India.

⁹ *Id.* at p. 199.

¹⁰ *Id.* at p. 224.

Constitutional Provisions

Article 29 and Article 30 of the Constitution of India, contain specific provisions regarding minorities.

According to Fadia: “the sole purpose of these provisions is to reassure the minorities that certain special interests of theirs which they cherish as fundamental to their life are safe under the Constitution.”¹¹

- Article 29.** Protection of interests of minority-
1. Any section of citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.
 2. No citizen shall be denied admission to any educational institution maintained by or receiving aid out of state funds on the grounds only of religion, race, caste, sex, and place of birth or any of them.

- Article 30.** Right of minorities to establish and administer educational institutions-
1. All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice. The state shall not, in granting aid to educational institutions, discriminate against any educational institutions on the ground that it is under the management of a minority, whether based on religion or language.

Article 350- Facilities for instruction in mother tongue at primary stage-

It shall be the endeavor of every state and of every local authority within the state to provide adequate facilities for instruction in the mother tongue at the primary stage

¹¹ Fadia B.C., Indian Government and Politics, Sahitya Bhavan publications, Agra, p. 770 (1st ed. 1991 rev'd, 2001).

of education to children belonging to linguistic minority groups; and the president may issue to any state such directions as he considers necessary or proper for securing the provision of such facilities.

Article 350-B...Empowers the President of India to appoint a special officer for linguistic minorities.

If we consider the above provisions of the Constitution of India, we can summarize them in the following manner-

- a) Art. 29 and 30 are enumerated under the heading cultural and educational rights. Art. 29 speak about protection of interests of minorities. But the Constitution does not provide any definition about the concept of minority. From the reading of Art. 29, we can draw the conclusion that, minorities are the section of people residing in the territory of India or any part thereof who have-
 - i) Distinct language
 - ii) Distinct script or
 - iii) Distinct culture

And the distinct language, script or culture should be of their own. These groups of citizens can conserve their language, script, or culture as of right.

- b) Considering Art 30, the Constitution empowers the minorities to establish and administer educational institutions of their choice. The Art. 30 says- “All minorities whether based on religion or language....”

From the above wording it is clear that the Constitution recognizes two types of minorities-i.e.

- i) Minorities based on religion.
- ii) Minorities based on language.

According to Tahir Mahmood, who had been the Chairman of the Minority Commission-

“The Constitution of India contains no definition of ‘minority’ and gives no clue for the level of determination of minority status. It speaks of two categories of Minorities- religious and linguistic – but

provides no list of the minorities of either category, though it does mention certain languages by name for a limited purpose [schedule viii]. There is no Parliamentary legislation either specifying the religious or linguistic minorities in the country or prescribing any procedure for identifying them.

The National Commission for Minorities Act 1992 enables the Central Government to notify the minorities for the purpose of that Act only and in the exercise of this power, the government has notified five religious communities- Muslims, Christians, Sikhs, Buddhists and Parsis as minorities. The local Minorities Commission Acts of the states, wherever in force, generally ditto the provisions of NCM Act, while some of them specify the local religious and linguistic minorities. At the national level, while the followers of the Hindu religion constitute the predominant majority in India, all the other communities are regarded as minorities.”¹²

From the above observation of Tahir Mahmood it is amply clear that the concept of minority is not sufficiently clear in the Constitution

Ix. Judicial Pronouncements

Taking in to consideration the above Constitutional provisions and the legal position, we will be relying on the various judicial pronouncements to study the ‘concept of minority’.

*In Re: The Kerla Education Bill*¹³, it has been held that, any community which is numerically less than 50 percent of the state’s population will be considered as a ‘minority’.

In *Aldo Maria Patroni and Others v. E.C. Kesavan*¹⁴, It was observed by the Supreme Court that, “The word ‘minority’ has not been defined in the Constitution and in

¹² Tahir Mahmood, *Politics of minority Educational Institutes-Law and Reality in the Sub-Continent*, imprint One, Gurgaon, Haryana, pp. 11,12 (1st edn. 2007).

¹³ AIR 1958 SC 956-976.

¹⁴ AIR 1965, KERALA 75.

the absence of any special definition we must hold that any community, religious or linguistic, which is numerically less than fifty per cent of the population of the state is entitled to the fundamental right guaranteed by the Article. Held that as the Christians, at the 1961 census, amounted only to 21.22 percent of the population of the state of Kerala, the Roman Catholics who formed the section of that community were a minority within Article 30(1) of the Constitution.” considering the above observation of the Supreme Court, it has been underlined that the concept of minority has not been defined in the Constitution. Again in this case the court seems to have applied the numerical criteria for determining the minority status of a particular community.

In *D.A.V. College, Bhatinda v. State of Punjab*¹⁵, it has been held that-minority status can be granted if a community can establish that it has a distinct script and they can establish that they are a religious minority. Also while deciding the minority status, it should be decided in relation to the state concerned. If the impugned Act is a state Act, then it should be decided in relation to the state and not in relation to the country as a whole. On that basis it was held that the Hindus in Punjab are a minority in the state of Punjab, though they may not be so in relation to the entire country.

If we consider this peculiar situation, it is evident that an absurd situation has arisen. As known, the Hindus are considered to be a majority in India, but they have been recognized as a minority in the state of Punjab. It is important to note that by applying the same test, Jains and the Sikhs have been held to be minorities in the Union Territory of Delhi (*Arya Samaj Education Trust*, AIR 1976, Delhi, 207, 218.)

In *T.M.A. Pai Foundation v. State of Karnataka*¹⁶, Delivering the majority judgment the bench answered 11 questions.

¹⁵ (1971) 2 SSC 261.

¹⁶ (2002) 8 SSC 481.

“Q1. What is the meaning and content of the expression ‘minority’ under Article 30 of the Constitution of India?”

A. linguistic and religious minorities are covered by the expression ‘minority’ under Article 30 of the Constitution. 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 on a par in Article 30, have to be considered state wise”.

The effects of *T.M.A. Pai* case has been summarized by M.P. Raju in the following words-

- i) The decision of *T.M.A. Pai* destroyed the concept of national Minorities.
- ii) This issue should not have been decided in a vacuum without a Factual matrix-it is procedurally wrong to decide any Constitutional issue in a vacuum.
- iii) Prima facie the whole logic is flawed.

The fact of organization or reorganization on linguistic lines does not mean that for the purpose of Article 30 linguistic minorities ought to be determined in relation to the state alone”.¹⁷

*P.A. Inamdar v. State of Maharashtra*¹⁸, has been described by M.P. Raju as, “Inamdar 2005 was an attempt by a 7 judge bench to sort out the alleged confusion created by Islamic Academy (2004) when clarifying the 11 judge verdict in *T.M.A. Pai* (2002).

It is important to note that the “Answers to 11 questions in *T.M.A. Pai Foundation* have been quoted in the judgment of *P.A. Inamdar case*. It was held that, “Thus with the dictum of *Pai Foundation*; it cannot be doubted that a minority whether linguistic or religious, is to be determined only by reference to the demography of a state and not by taking into consideration the population of the country as a whole”.

¹⁷ Tahir Mahmood, *Politics of Minority Educational Institutes-Law and Reality in the Sub-Continent*, Imprint One, Gurgaon, Haryana, pp. 91, 92 (1st edn. 2007).

¹⁸ (2005) 6 SSC 537.

Though *P.A. Inamdar* was an attempt to clarify some doubts that were created by Islamic Academy (2004) it does not throw light on the concept of minority from a different perspective. It merely quotes and affirms the views expressed in *T.M.A. Pai Foundation* case, as to the concept of minority. It emphasizes that the unit for determining the minority, whether religious or linguistic should be the state alone.

X. Analysis of the Concept of Minority

The discussion regarding the concept of minority that has been carried out till now can be summarized as follows:

- i) A universally acceptable definition of the 'concept of minority' is an elusive idea.
- ii) There has been a gradual evolution in the concept of minority till date in India.
- iii) The propounding of the "Two Nation Theory" and the resultant partition of India had a great impact on the Constitution makers while framing the Constitution of India.
- iv) The Constitution uses the term minority in two senses, religious and linguistic minorities, but it does not provide a definition of the term minority.
- v) There is no parliamentary legislation either specifying the religious or linguistic minorities in the country or prescribing any procedure for identifying them.
- vi) The National Commission for Minorities Act, 1992 enables the Central Government to notify the minorities for the purpose of the Act only and in exercise of this power, the government has notified five religious communities-Muslims, Christians, Sikhs, Buddhists and Parsis as the minorities. On 20 January 2014, the Government of India awarded minority status to Jain community as per Sec. 2 (c) of the National Commission for Minorities Act 1992.
- vii) When the Constitution of India was adopted in 1950, the important task of interpreting the

- various provisions of the Constitution lay on the Supreme Court of India.
- viii) The concept of minority was much discussed when the question of interpretation of Article 30 arose, which deals with the right of minorities to establish and administer educational institutions of their choice.
 - ix) The Supreme Court has most of the times used the numerical criteria for determining the minority status of a community or a linguistic minority.
 - x) For determining the minority status of a community, the unit that has been used is the 'state' and not the nation as a whole.

XI. Findings

A) The numerical criteria

The Supreme Court on many occasions has applied the numerical criteria for determining the minority status of a community. e.g. *In Re: The Kerala Education Bill, Aldo Mario Patroni and others v. E.C. Kesavan*. The application of only the numerical criteria is not correct, taking into consideration the peculiar socio-economic conditions prevailing in India. Indian society is a caste ridden society and there is rigid social stratification within it. Various privileges like social status, cultural monopoly, land holding, access to educational facilities, representation in services of the state, and political representation are not available to all Indians alike. Some communities though numerically inferior, get much greater privileges in matters of land holding, monopoly over trade and commerce, dominance over cultural and educational field or representation in services of the state.

So without taking into consideration this peculiar Indian position, and applying only the numerical criteria, and expecting that, this numerical criterion will work with mathematical precision if fallacious. The majority and minority communities should be determined with relation to the difference in the power and dominance of the two communities. It is equally important to see

whether a minority community is facing any discrimination. In this regard the observations of Prof. Zoya Hasan, (JNU) Member of National Commission for Minorities is noteworthy:

“Contrary to this widely accepted perception of minorities, the Governments new proposal for state specific minorities is driven by a statistical or numerical approach. The size of a group is not what should concern our policy makers or those committed to eradication of inequality, prejudice and discrimination. This is because numbers per se quantify and describe the proportion of a group in a population; they do not tell us anything about whether a particular minority group is powerful or powerless, advantaged or disadvantaged, represented or under represented. A more meaningful conception of minority would include section of people who, on account of their non-dominant position in the country as a whole (not a specific state) and because of their religion, language, caste or gender, are targets of discrimination. The statistical approach disregards the crucial qualitative condition of vulnerability and disadvantage.”¹⁹

The framers of the Constitution had seen the partition of India. They wanted to ensure the unity and integrity of the country. In order to create a sense of belonging towards the nation, certain Constitutional safeguards were necessary for the protection of the minorities.

The provisions enshrined in the Constitution of India relating to minorities are basically meant to prevent discrimination, which the minorities may be subjected due to their different religion, language and culture etc. So it casts a Constitutional obligation on the state to see that the minorities are not discriminated against. Thus it becomes necessary that, while providing the protection of Article 29 and 30, the protection is given to the real needy, and not to those sections of the society which are already enjoying a dominant position in the society. The end result will be the perpetuation of the dominance of the influential classes only.

¹⁹ Zoya Hasan, *Defining Minorities in India, Law and Other Things*, blogspot.in/2007/07/defining-minorities-in-india.html.

Considering the above discussion, it can be said that application of only numerical criteria for determination of minority communities is not correct. The Constitution of India speaks of two kinds of minorities:

1. Religious and
2. Linguistic

Determination of minority communities on the basis of religion or language itself takes into consideration the numerical criteria only.

B) Role of Central Government

Taking into consideration the Constitutional provisions regarding the minorities, the central government has not enacted any specific legislation to identify the religious minorities or the linguistic minorities. Also there wasn't any legislation for prescribing any procedure for identification of the religious minorities. It can very well be said that, the central government has not carried out its responsibility of identification of the minorities. In the absence of any such legislation, the entire responsibility of interpreting the concept of minority laid upon the judiciary i.e., The Supreme Court of India.

But the paradox is that, though the Supreme Court of India has interpreted the concept of minority on various occasions, through various judicial pronouncements, the solution given by the court again gives birth to another set of problems. It clearly indicates that when the theory is applied to practice, it reveals serious lacunas, which cannot be ignored.

C) Whether State can be the unit for determining the minority status?

The unit for determination of the minority status of any community has been held to be the 'state' by the Apex on many occasions. The Court applied the similar test *In Re: The Kerala Education Bill, Aldo Mario Patroni and T.M.A. Pai* cases also. By application of this test, the Hindus who are considered to be a majority community in India were considered to be a minority community in the state of Punjab as per decision of *D.A.V. College, Bhatinda* case. This is very absurd.

It is important to refer to the dissenting judgment delivered by J. Ruma Pal in *T.M.A. Pai* case. She has held that the question of minority status must be determined with reference to the country as a whole. This view is important in order to prevent the misuse of the minority status for commercial purposes.

D) Why various communities are eager to get recognition as minorities?

Article 30 of the Constitution of India gives the minorities to establish and administer educational institutions of their choice. Though these educational institutions were meant to conserve their distinct language, script or culture, the 'educational institutions of their choice' has been interpreted by the Supreme Court to mean 'institutions imparting general secular education' (*St. Xaviers College v. State of Gujrat*, AIR 1974 SC1389).

With the State constantly shrugging off its responsibility of providing professional education to the citizens, and the judiciary providing an impetus for commercialization of technical education, professional education like medical, engineering and management has become the domain of private players. If such an Institution is a minority educational institution, it has, according to Mihir Desai three broad benefits, which are not available to other institutions-

- 1) Minority educational institutions do not have to maintain reservation in employment or admission for SCs, STs and OBCs as required to be done by other educational institutions.
- 2) In terms of control over employees, minority educational institutions have much greater power than other institutions. For instance in the selection of teachers and principal, the minority educational institutions can have a selection committee which does not include the University representative. Similarly. While in ordinary school the Headmaster normally has to be appointed on the basis of seniority, minority management can select a headmaster of their choice.

- 3) In matters of admission of students, minority educational institutions can have reservation of up to 50% for students of their community.”²⁰

The net resultant is that, the minority educational institutions which are genuine are not getting the protection of Article 30, while minority educational institutions which have come up to exploit the situation and derive personal benefits are impatient to get recognition as minority educational institution.

It is pertinent to note that the National Commission for Minority Educational Institutions is flooded with proposals from institutions to get recognition as minority educational institutions and this phenomenon is a recent development. It is certainly the misuse of the protection afforded to the minorities by the Constitution. Though genuine and sincere minority institutions need protection of Article 30, it is the foremost duty of the state to check profit motivated and pseudo minority educational institutions.

E) Criteria other than numerical criteria

The inherent limitations of the numerical criteria have been reiterated by many authors. The following could be the additional criteria for determining the minority status of a community.

- 1) Social Status--It is one of the most important indicator to determine whether a particular community needs the protection available to the minority community. The reality is that social backwardness is an important ground for discrimination in India.
- 2) Educational Status-Education is the root cause of overall development of a community. It is the only tool for moving up the ladder of economic and social empowerment.
- 3) Economic and Industrial Power--It is known that economic dominance of any particular community can

²⁰ Mihir Desai, Tahir Mahmood (edn.), *Politics of Minority Educational Institutes-Law and Reality in the Sub-Continent*, Imprint One, Gurgaon, Haryana, pp. 81-82 (1st edn. 2007).

make many constitutional safeguards a mockery and can also influence the state machinery to a great extent. It is noteworthy that, 80% of economic enterprise and industries are owned by industrial families of the Parsi community, but they are recognized as a minority at the national level.

- 4) Representation in political fields and services of the State would also be important criteria.

F) Whether the concept of minority as followed in India confirms to that followed by the international agencies.

According to the international agencies, apart from numerical inferiority, a minority community must be a disadvantaged group and it should also be in a non-dominant position.

If we consider these two important criteria it is crystal clear that the concept of minority according to the Indian legal system, does not take into consideration these two important criteria. It is only due to ignoring these two aspects the Jains and the Parsis have been recognized as minorities. It can very well be concluded that the concept of minority as followed in India does not confirm to the definition which has been followed by the International Agencies. Though India is not bound to follow the concept of minority which has been adopted by the International Agencies, it is high time that India considers seriously the lacuna which is patently evident in the “concept of minority as followed in India: “Such a step is important to be taken to extend the Constitutional protection available to the minorities, to the minorities in the true sense of the term”. What is important is that a total novel approach is needed while interpreting the provisions of Articles 29 and 30. It is equally important to interpret the provisions in the subaltern perspective.

To conclude, the views of *Soli Sorabjee* who had been the Solicitor General of India are very much relevant- “The MRG (Minority Rights Group) concept of minority is more comprehensive. It includes not only religious and linguistic minorities, but all sections of people who on account of their non-dominant position in a society and

because of their peculiar characteristics-be they physical, sexual, cultural, racial, religious or ideological, are the targets of discrimination and are subject to economic and social disabilities and disadvantages. A minority community should not be determined on the basis of quantity-it should be a qualitative determination.

Conclusions

Defining the concept of minority has been a challenge to the global community. Any universal definition which would be applicable to all situations seems to be an elusive idea. Minorities are people who are differentiated from the rest of the population by race, nationality, religion or language. They lack in power and are subjected to certain exclusions and other differential treatment. It is generally agreed that a minority is a group which is 'non-dominant group' and a 'disadvantaged group'. The Constitution of India speaks of 'religious' and 'linguistic' minorities. But it is important to note that the Constitution of India does not define the term 'minority'.

The discussion of the concept of minority in the Indian context is never complete without the role played by the Muslim community and the depressed classes, as other minority communities have played a relatively subtle role in the politics of India. Another community worth mentioning would be the Sikh community, whose assertion of Sikh identity had been very violent, and it had progressed to the demand of *Khalistan*.

During the pre-independence era, the sense of insecurity and suspicion towards the majority resulted in assertion of minority identity. This feeling was further fostered by the British by giving separate recognition to the minorities. The separate identity of the minorities was further strengthened by awarding "communal electorate. During the framing of the Constitution of India, it was the demand of the leaders of the minority community that their interest should be protected in the new Constitution. The founding fathers had before them, the bitter experience of the partition of India. Under this background, the provisions for the protection of minorities were made in the Constitution of India. The

minorities report classified the minorities into three Groups-A, B and C. This classification is essentially based on the numerical criteria. It should be noted that minorities were considered at the national level only. It can be concluded that the general attitude of the Constituent Assembly towards the minorities was to provide them adequate safeguards, and give them a place of honor in the Union of India.

In the Constitution of India, specific mention of the minorities can be seen in Arts. 29 and 30. These provisions are meant to create in the minds of the minorities a sense of belonging towards the nation, and assure to them that certain interests of theirs, which they consider as fundamental, are safe under the Constitution of India. The Constitution of India contains no definition of the term minority and provides no clue for the determination of minority status. Due to this reason, we have to rely on various judicial pronouncements to understand the concept of minority.

The Supreme Court on occasions applied the test of numerical inferiority while determining the minority status of a community. It can be very well said that, the application of only the numerical criteria is not correct considering the peculiar socio-economic conditions in India. The majority and minority status should be determined considering the difference in the power and dominance of the two communities. It is equally important to see whether the minority community faces any discrimination from the majority community. Further, the Court has determined the 'State' to be the unit for determining the minority community. Due to application of this test, the Hindus, who are considered as the majority at the national level, are considered as linguistic minority in the state of Punjab (*D.A.V. College case*) Also religious and linguistic minorities have been put at par and have been considered state wise. The concept of minority as followed in India should be in line with the concept of minority followed by the International Agencies. To foster national integration and curb separatist mentality, it is important to safeguard the interests of the minority communities. In a democratic setup, it is important for the state to admit the existence

of the minorities. For securing their welfare, it is essential to identify “who the minorities are” in the first instance.

The concept of minority as followed by the Indian legal system has the following lacuna, which needs to be addressed immediately. Further the concept should be in line with the concept followed by the International Agencies.

- I) While deciding who is a minority, only the numerical criteria are being considered.
- II) While deciding a particular community as a minority community, its dominance in the society, its disadvantaged position, whether it suffers from any discrimination from the majority community or the state, these factors should be considered.
- III) While deciding the minority status, the unit should be the nation and not the state, because, a community which is a religious majority at the national level becomes a linguistic minority in certain states, while the communities which are linguistic majorities in certain states, become linguistic minorities in the states of their migration.
- IV) Due to this contradictory situation, many communities which are socially and economically powerful and dominant are trying desperately to get the tag of minority, be it religious or linguistic, to perpetuate their monopoly in various fields. Such a trend is visible, with regard to starting of professional educational institutions.
- V) The right contained in Art. 30 seems to be an absolute right. It should be subject to other fundamental rights also. So there should be reasonable restrictions on the right.

Suggestions

Without taking into consideration only the numerical criteria, the President of India should establish a Commission for the proper identification of minorities. The commission should think of formulating a workable definition of minorities in the Indian context. Further the

definition should be in line with the definition as followed by the International Agencies.

The commission should carry out extensive and far reaching social survey. Eminent social scientists, economists, legal luminaries and representatives of the minority communities should be included in the Commission. Thorough discourses on the “terms of reference” should be carried on. One Urban and One or Two Rural units be selected randomly in all districts of the country and extensive empirical survey should be carried on. The data collected can be processed at the National Informatics Center and various indicators are determined to define a particular community as a ‘minority.’

It is high time that the Central Government takes immediate steps to prevent the misuse of the term minority, and pass on the benefits to those who are minorities in the true sense of the term.

In a democratic country, minorities should not exist for a long period. It is in the interest of national integration, that minority and majority assimilate. The majority has a greater role to play. The Central Government should immediately abandon the numerical criteria and establish a Commission for the determination of minorities taking in to consideration additional criteria. It would be an important step towards extending the protection of minorities to those who are minorities in the real sense of the term.

