

# MINORITY RIGHTS AND THE INDIAN CONSTITUTION

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## Introduction

Man was a nomad with no protection and family. When man began to form and live in groups, he formed the groups in such a fashion that some resemblance in their attitude, activities, culture, and color was found. There was homogeneity. These homogeneous groups started following caste system especially in India. Slowly man surrendered to the powerful group or powerful kingdom, which is also known as social contract theory. The powerful group or powerful kingdom commanded and ruled over the weak and they became the minority group.

The Indian society lacks homogeneity as there exist differences of religions, language, culture etc., and there are sections of people who are comparatively weaker than other's culturally, socially and economically. India is a religious tolerant nation, minority groups have contributed enormously during and after independence for building of our nation. Mutual suspicion and distrust exists between various religious and linguistic groups. To promote a sense of security, to ameliorate the conditions of the minorities and to make them useful members of the society the Constitution has set up an effective institutional machinery to oversee that safeguards are properly effectuated by the various governments in the country. This machinery has been strengthened by statutory bodies.<sup>1</sup>

## Objective of the Study

- To understand the concept of minority.
- The rights available to minorities under Indian Constitution.
- To understand the role played by the national commission for minorities.

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<sup>1</sup> M.P. Jain; Indian Constitutional Law; 6<sup>th</sup> edition: 2012; Gurgoan: LexisNexis Butterworths Wadhwa; at p. 18.

## Who is a Minority?

The Oxford dictionary defines “minority” as “the smaller number or part, especially a number or part representing less than half of the whole”.<sup>2</sup> A minority group is a sociological category within a demographic. The term refers to a category that is differentiated and defined by the social majority, that is, those who hold the majority of positions of social power in a society. The differentiation can be based on one or more observable human characteristics, including, e.g., ethnicity, race, gender, wealth, health or sexual orientation. In social sciences, the term “minority” is used to refer to categories of persons who hold few positions of social power.<sup>3</sup>

Anthropologist Charles Wagley and Marvin Harris defined minority groups in 1958 by five characteristics: their relative powerlessness when compared to majority groups, their distinct cultural and/or physical characteristics, their self consciousness, the transmittance of membership by descent rules and inter-marriage.<sup>4</sup>

According to United National Article 1 refers to minorities as based on national or ethnic, cultural, religious and linguistic identity, and provides that States should protect their existence. There is no internationally agreed definition as to which groups constitute minorities.<sup>5</sup>

According to a definition offered in 1977 by Francesco Capotorti, Special Rapporteur of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities, a minority is: “A group numerically inferior to the rest of the population of a State, in a non-dominant position, whose member O 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

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<sup>2</sup> <http://www.oxforddictionaries.com/definition/english/minority>.

<sup>3</sup> [http://en.wikipedia.org/wiki/Minority\\_group](http://en.wikipedia.org/wiki/Minority_group).

<sup>4</sup> <http://www.eolss.net/sample-chapters/c13/e1-20-04-04.pdf>.

<sup>5</sup> <http://www.ohchr.org/EN/Issues/Minorities/Pages/internationallaw.aspx>.

solidarity, directed towards preserving their culture, traditions, religion or language”.<sup>6</sup>

*In Re: The Kerala Education Bill*<sup>7</sup>, the Supreme Court observed that while it was easy to say that the minority meant a community which was numerically less than 50% the important question was: 50% of what—the entire population of India or of a State or of a part thereof? A community might be in majority in a State, but it might be a minority in the whole of India. A community might be in majority in a State, but it might be a minority in the whole of India. A community having concentration in a part of the State would be a majority there, though it may be in a minority in the State as a whole. If a part of a State is to be taken then the question would be where to draw a line and what unit would be taken into consideration—a district, a town, a municipality or its ward. The Supreme Court observed that minority was to be determined only in relation to the particular legislation which was being challenged.<sup>8</sup>

The Court in *A.S.E. Trust v. Director, Education, Delhi Adm.*<sup>9</sup> has pointed out that the sections of one religion cannot constitute religious minorities. The term “minority based on religion” should be restricted only to those religious minorities, e.g., Muslims, Christians, Jains, Buddhists, Sikhs etc., which have kept their identity separate from the majority, namely, the Hindus.

It has been held by the Eleven Judges Bench of the Supreme Court in *T.M.A. Pai Foundation v. State of Karnataka*<sup>10</sup> 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.<sup>11</sup>

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<sup>6</sup>[http://www.ohchr.org/Documents/Publications/MinorityRights\\_en.pdf](http://www.ohchr.org/Documents/Publications/MinorityRights_en.pdf)

<sup>7</sup> AIR 1958 SC 956.

<sup>8</sup> Prof. Narender Kumar; Constitutional Law of India; 5<sup>th</sup> edn; 2006; Faridabad: Allahabad Law Agency; at p. 393.

<sup>9</sup> AIR 1976 Del 207.

<sup>10</sup> AIR 2002 8 SCC 481.

<sup>11</sup>[http://ncmei.gov.in/writereaddata/filelinks/c296efcb\\_Guidelines.pdf](http://ncmei.gov.in/writereaddata/filelinks/c296efcb_Guidelines.pdf).

## **Nature of Rights of Minorities under Indian Constitution**

The most important event after Independence has been the drafting of the Constitution of India enshrine the principles of equality, liberty and social justice.<sup>12</sup> The Constitution of India has certain provisions relating to minorities. It makes special provisions for the treatment and development of minorities in every sphere of life.

The Preamble: The Preamble does not discriminate between minority and majority, it treats them alike. The Preamble contains the quintessence of the Constitution and reflects the ideals and aspirations of the people. The preamble contains the goal of equality of status and opportunity to all citizens. The aspect of social justice is further emphasized and dealt with in the Directive Principles of State Policy.

Article 14-Equality before Law: "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."

The Preamble of the Constitution itself declares that all people irrespective of their caste, class, colour, creed, sex, region or religion will be provided with equal rights and opportunities. Articles 15(1) and 15(2) prohibit discrimination on grounds of religion. Article 25 promises the right to profess, propagate and practice religion. It is clear that there is no legal bar on any religious community in India to make use of the opportunities [educational, economic, etc.] extended to the people. It is true that some religious communities [e.g., Muslims] have not been able to avail themselves of the opportunities on par with other communities.<sup>13</sup>

The Preamble of the Constitution describes the concept of secularism which means that the State has no religion of its own, and there is equal respect for and protection to all religions. No one is to be discriminated on grounds

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<sup>12</sup> Mamta Rao, *Law Relating to Women and Children*, 2<sup>nd</sup> edn., 2011, Lucknow: Eastern Book Company, at p. 22.

<sup>13</sup><http://www.shareyouressays.com/87317/essay-on-problems-of-minorities-in-india>.

of religion and everyone is guaranteed full and equal freedom of religion.<sup>14</sup>

**Fundamental Rights:** Human rights are the entitlement of every man, belonging to majority or minority community and it has been made enforceable as fundamental rights of India. In *Maneka Gandhi v. Union of India*, Justice Bhagwati said: “These fundamental rights represent the basic values cherished by the people of this country since the Vedic times and they are calculated to protect the dignity of the individual and create conditions in which every human being can develop his personality to the fullest extent.”<sup>15</sup>

The special features of fundamental rights which are guaranteed to all citizens irrespective of their minority status are:

- Right to equality (Articles 14 and 15)
- Right to freedom (Articles 19–22)
- Right against exploitation (Articles 23–24)
- Right to freedom of religion (Articles 25–28)
- Cultural and educational rights (Articles 29–30)
- Rights to constitutional Rights (Articles 32–35)

Recognition and protection of minority rights under a legal framework has two fold objectives—firstly to prevent state from being oppressive against the minorities as in a democratic setup government is run by majority, secondly to provide the minority a protective zone whereby they can preserve their separate identity while contributing in national development and progress.<sup>16</sup>

According to Article 29(1), any sections of the citizens residing in any part of India having a distinct language, script or culture of its own has the right “to conserve the same”. Article 29(1) does not refer to any religion. Article 29(1) includes the right “to agitate for the protection of the language”.<sup>17</sup>

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<sup>14</sup><http://www.radianceweekly.com/95/1635/india-with-israel-in-m-east-crisis/2008-02-10/minority-affairs/story-detail/problems-of-religious-minorities-a-big-challenge-to-the-secular-democracy-in-india.html>.

<sup>15</sup> AIR 1978 SC 597.

<sup>16</sup> <http://jurisonline.in/?p=1943>.

<sup>17</sup> Jagdev Singh Sidhanti v. Partap Singh Daulta, AIR 1965 SCA 183.

Article 30(1) gives the linguistic or religious minorities the following two rights:

- The right to establish and
- The right to administer educational institutions of their choice.

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. These rights are protected by a prohibition against their violation. The prohibition is contained in Article 13 of the Constitution which declares that any law in breach of the fundamental rights would be void to the extent of such violation.<sup>18</sup>

The benefit of Article 30(1) extends only to linguistic or religious minorities and not to any other section of the Indian citizens.<sup>19</sup> Although, Article 30(1) does not speak of citizens of India, however, it has been held that the minority to claim the protection of this Article must be a minority of persons residing in the territory of India. The Supreme Court in *Bramchari Sidheswar Shai v. State of West Bengal*<sup>20</sup> held that Ramakrishna religion was not distinct and separate from Hindu religion and not minority religion. Therefore, citizens of India, who are the followers of Ramakrishna religion could not claim to belong to a minority based on religion and as such were not entitled to the fundamental right under Article 30(1).

Though Article 30(1) provides rights to the minorities to establish educational institutions but it is not an absolute right and may be subject to reasonable restrictions. The Supreme Court in *T.M.A. Pai Foundation v. State of Karnataka* held that any regulation framed in the national interest must necessarily apply to all institutions, whether run by the majority or the minority.<sup>21</sup>

It is further observed that the right to administer an educational institution includes the right to take

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<sup>18</sup>[http://ncmei.gov.in/writereaddata/filelinks/c296efcb\\_Guidelines.pdf](http://ncmei.gov.in/writereaddata/filelinks/c296efcb_Guidelines.pdf).

<sup>19</sup> M.P. Jain, *Indian Constitutional Law*; 6<sup>th</sup> edn: 2012; Gurgaon: Lexis Nexis Butterworths Wadhwa; at p. 1342.

<sup>20</sup> AIR 1995 SC 2089.

<sup>21</sup> AIR 2003 SC 355.

disciplinary action against the teachers and other employees. A law regulating the manner of the functioning of its managing body would be not violative of the right under Article 30(1).<sup>22</sup>

Article 30(1) also postulates that the religious community will have the right to establish and administer educational institutions of their choice meaning thereby that where a religious minority establishes an educational institution, it will have the right to administer that. The right to administer has been given to the minority, so that it can mould the institution as it thinks fit, and in accordance with its ideas of how the interest of the community in general. The court held that the word administer and establish have to be read conjunctively.<sup>23</sup>

In *Andhra Pradesh Christian Medical Association v. Government of Andhra Pradesh*, the Supreme Court emphasized that the object of the Art. 30(1) is not to allow bogies to be raised by pretenders. The institution must be an educational institution of minority in truth and reality and not mere masked phantoms.<sup>24</sup>

Article 30(2) debars the State from discriminating against minority institutions in the matter of giving grants. Apart from the provision in the Constitution, Government of India has undertaken a number of initiatives for educational development of minorities, at all levels of elementary, secondary and higher education and in all sectors including vocational, professional and technical education. Apart from the Pre-Matric and Post-Matric Scholarships, Merit-cum-Means Scholarship Scheme and Maulana Azad Fellowship Programme, which are being implemented by the Ministry of Minority Affairs; Ministry of Human Resource Development is also implementing the Scheme for Providing Quality Education in Madarasa (SWQEM) and Infrastructure

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<sup>22</sup> Prof. Narender Kumar; Constitutional Law of India; 5<sup>th</sup> edn; 2006; Faridabad: Allahabad Law Agency; at p. 401.

<sup>23</sup> *Manager, St. Thomas U.P. School, Kerala v. Commr. & Secy. To General Education Dept.*, AIR 2002 SC 756.

<sup>24</sup> AIR 1986 SC 1490; (1986) 2 SCC 667.

Development in Minority Institutes (IDIM) exclusively for the benefit of the minorities.<sup>25</sup>

### **The National Commission for Minorities Act, 1992<sup>26</sup>**

Apart from Articles 29 and 30, for the protection of minority rights, the National Commission for Minorities Act, 1992 came in to force to safeguard and to monitor it such safeguards have been provided to minorities.

The Minorities Commission was set up in January, 1978 for providing an institutional arrangement for evaluating the safeguards provided in the Constitution for protection of the minorities and to make recommendations for ensuring implementation of the safeguards and the laws.

The Minorities Commission with statutory status would infuse confidence among the minorities about the working and the effectiveness of the Commission. The main task of the commission shall be to evaluate the progress of the development of minorities, monitor the working of the safeguards provided in the Constitution and in laws enacted by the Central or State Governments, besides looking into the specific complaints regarding deprivation of rights of the minorities. It shall cause studies, research and analysis to be undertaken on the issues relating to the socio-economic and educational development of the minorities and make recommendations for the effective implementation of the safeguards.<sup>27</sup>

The National Commission for Minorities undertakes review of the implementation of the policies formulated by the Union and State Governments with regard to minorities. It looks into specific complaints regarding deprivation of rights and safeguards of minorities, and

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<sup>25</sup> <http://indiaeduguide.blogspot.in/2013/03/problems-faced-by-minorities-in-getting.html>.

<sup>26</sup> Received the assent of the President on 17-5-1992, pub. in gaz., of India, dt 17.5.1992. Part ii, Sec.i, ext. p.1.

<sup>27</sup> Dr. V. Nirmala: Law Relating to Human Rights; 15<sup>th</sup> edn; 2011; Hyderabad: Asia Law House; at p. 345.



conducts research and analysis on the question of avoidance of discrimination against the minorities.<sup>28</sup>

The Commission shall perform all or any of the following functions, namely:

- Evaluate the progress of the development of Minorities under the Union and States.
- Monitor the working of the safeguards provided in the Constitution and in laws enacted by Parliament and the State Legislatures.
- Make recommendations for the effective implementation of safeguards for the protection of the interests of Minorities by the Central Government or the State Governments.
- Look into specific complaints regarding deprivation of rights and safeguards of the Minorities and take up such matters with the appropriate authorities.
- Cause studies to be undertaken into problems arising out of any discrimination against Minorities and recommend measures for their removal.
- Conduct studies, research and analysis on the issues relating to socio-economic and educational development of Minorities.
- Suggest appropriate measures in respect of any Minority to be undertaken by the Central Government or the State Governments.
- Make periodical or special reports to the Central Government on any matter pertaining to Minorities and in particular the difficulties confronted by them.
- Any other matter which may be referred to it by the Central Government.<sup>29</sup>

The Commission while performing any duty shall have the powers of the civil court trying a suit and in respect of the following matters, namely:

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<sup>28</sup> <http://www.radianceweekly.com/95/1635/india-with-israel-in-m-east-crisis/2008-02-10/minority-affairs/story-detail/problems-of-religious-minorities-a-big-challenge-to-the-secular-democracy-in-india.html>.

<sup>29</sup> [http://ncm.nic.in/ncm\\_act.html#c3](http://ncm.nic.in/ncm_act.html#c3).

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

The Sachar Committee on the basis of Census 2001 identified 100 Muslim dominated district where educational opportunities were minimal Indira Gandhi National Open University (IGNOU) in the 11<sup>th</sup> Plan (2007-2012) has decided to provide educational opportunities to the deprived regions and sections of the Society identified by the Sachar Committee by establishing at least one study centers in each block of the 100 District. The matter was taken by the Commission with the IGNOU.<sup>30</sup>

## **Conclusion**

The Constitution has not defined the term “minority”, but it has provided all rights to minorities. In certain circumstance it has categorically stated that such right though not absolute, but is meant only for minority class for their protection. Under Article 30(1) when the court spelled out that the words administer and establish must be read conjunctively, it is a classic example that has been proved that they have been given absolute right to mould their institution in consonance with the interest of their community and with the law of the land. The Constitution has been time and again trying to protect the minorities by providing various benefits, but still the fear of communal tension, poor representation and lack of protection lingers in their mind. The main aim of law should be to instill the confidence in the mind of such minorities that their legal rights will be protected and they will be treated in par with the majority and there would be no discrimination between citizens.



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<sup>30</sup> <http://ncm.nic.in/pdf/Agenda%202010.pdf>.