

MINORITY RIGHTS AND ITS REFLECTION IN THE INDIAN DEMOCRACY

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History of Minorities and Their Rights in India

India possesses one of the biggest cultural and religious diversity in the world. Such is the case from past ten centuries or more, owing to the invasion of different classes of people in India. India's diversity is an array of its billion and odd population consists of six main ethnic groups, 52 major tribes, six major religions, and 6,400 castes and sub-castes, besides 18 major languages and 1,600 minor languages and dialects.¹ Since the late nineteenth century, the British as well as some princely states, for a wide range of groups designated as 'minorities', have made certain special provisions.²

The Morley-Minto Reforms brought a religious division, by giving separate electorates to Muslims, in pursuance of their 'divide and rule' policy. Apart from this, the colonial rulers and princely states instituted several reforms to a three-fold classification of minorities, namely, the religious minorities, scheduled castes and backward tribes. The colonial rule ended with the partition of India and creation of a separate State for Pakistan for the Muslim community. Even though a significant number of this community chose to stay back in India, there were several anxieties about the future of

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¹ Joshua Castellino and Elvira Dominguez Redondo, *Minority Rights in Asia: A Comparative Legal Analysis*, <http://www.oxfordscholarship.com/view/10.1093/acprof:oso/9780199296057.001.0001/acprof-9780199296057-chapter-3>, (last accessed on 22nd Jan. 2014).

² B. Shiva Rao (ed.), *The Framing of India's Constitution, A Study* (Delhi, 1967).

the Muslims in a Hindu-dominated society.³

Independent India was given the task to tackle the anxieties of the religious minorities that were formed. In a situation where social and cultural identities had been mobilized, there were several imponderables.⁴

Minorities in Pre-independence Era

The non-cooperation and the civil disobedience movement resulted in strong mixture of nationalism and communism feelings. Dr. Ambedkar was invited to the second round table conference in London in 1932, for which he wished to propose separate electorates for the 'untouchables'. Gandhi vehemently opposed this idea as he believed it would further lead to division among Hindus. All this along with Nehru's report, gave rise to a struggle for independence as the prime objective, and issue of caste and minorities became secondary within the Congress. Mohammed Ali challenged this formulation when he proposed that a parity existed between Hindus and Muslims that overrode their demographic imbalance.⁵ Similarly, Ambedkar too, reserved his comments on the 'majority' population of India, opposing the formulation. By the time of the Poona Pact of 1932, national identity had come to be aligned with the idea of democratic majority, while communalism was widely understood as the politics of the religious minorities.⁶ Thus came the birth of the battle for recognition of minorities in its initial phase of the pre-independent India.

In November 1939, Gandhi brought out demands for Constituent Assembly. In *Harijan* he wrote 'the constituent assembly provides the easiest method of arriving at a just solution of the communal problem. Today we are unable to say with mathematical precision

³ Gurpreet Mahajan, *Negotiating Cultural Diversity and Minority Rights in India*, Democracy Conflict and Human Security: Further Readings, Centre for Political Studies, Jawaharlal Nehru University.

⁴ *Id.*

⁵ Shabnum Tejani, *Indian Secularism: A Social and Intellectual History 1890-1950*, p. 234 Indiana University Press (2008).

⁶ *Id.*

who represents whom; but the Constituent Assembly will represent all communities in their respective proportion'.⁷ This was passed by the Congress in their resolution in March 1940. Soon after, Jinnah called upon all Indian Muslims to adopt the demand for 'independent states of Pakistan' at the League's session in Lahore.⁸ Jinnah argued that the Congress was not a nationalist but a Hindu party, and a constituent assembly could not proceed without the agreement of India's Muslims.⁹ The 1946 Cabinet Mission plan identified the threat of communal problems which lay on the premise that the 'Hindus with the greatly superior numbers must be a dominating element'.¹⁰

After Nehru's statement opposing the plan drafted by the Cabinet Mission for the allotment of proportion of seats to Muslims, Sikh and General, Jinnah launched the Direct Action Day, meant to be a peaceful campaign but ultimately led to widespread communal violence and bloodshed. When the much debated partition became a reality, it was seen by an overwhelming number in the assembly as a result of secessionist politics of the minority.¹¹ Thereafter, the debate shifted to what constituted a 'minority' and how it was to be defined.

Ambedkar's Reasoning for *Dalit* Rights

Dr. Ambedkar articulated *dalit* rights in the name of rights for untouchables, depressed classes, scheduled castes and tribes in a given historical context.¹² He linked the discontent in the parliamentary democracy to the

⁷ Chaube, Constituent Assembly of India, p. 31, Manohar Publishers and Distributors, Revised edition (2000).

⁸ See *supra* note 5 at p. 238.

⁹ See *supra* note 5 at p. 239.

¹⁰ N. Manswergh (ed.), Transfer of Power Documents, Vol. VII, p. 583 London, 1977.

¹¹ See *supra* note 5 at p. 247.

¹² Dr. P. Kesava Kumar, Liberal Democracy and Kymlicka's Conception of Minority Rights: Towards a Perspective of *Dalit* Rights, (30 June 2013),

http://roundtableindia.co.in/index.php?option=com_content&view=article&id=6582:liberal-democracy-and-kymlicka-s-conception-of-minority-rights-towards-a-perspective-of-dalit-rights&catid=124&Itemid=140, last accessed 22nd Jan. 2014.

idea of liberalism which had not been delivered to the masses in the right proportion. He did not want the Indian mass to suffer such weakness, and hence propounded a written constitution where the right to liberty, property is envisaged to each person irrespective of their social or economic status. He points out that parliamentary democracy in standing out as a protagonist of liberty has continuously added to economic wrongs of the poor, downtrodden and disinherited class.¹³

Hence, political democracy goes in vain where there is no social or economic democracy which he argues is the tissue and fibre of political democracy. This was the strength of his argument for the *dalits*. He felt the western thought of democracy was more surreal in nature. Even in the Draft Constitution, he emphasized on morality and social customs. He proposed a moral community with right to equality, liberty, and fraternity borrowed from the French philosophy.

Therefore, *dalit* rights, he believed, should be assessed within this political, social and economic framework, where each is judged by what he individually possesses. The idea of reservation for the *dalits*, took a start with Ambedkar's views, and was subsequently added in the Constitution.

Constituent Assembly Debates

Each article in the Constitution has been deliberated upon by the members of the Assembly, and amendments been passed, following which motion was adopted. Minority rights constitute a big mass of the Constituent Assembly debates as this was a sensitive issue at that period. Though 'minority' occurs only four times in the Constitution (Arts. 29, 30, 350A, and 350B) discussion of the concept of 'minority' in India needs to pay due attention to debates that took place in the legislative assembly.¹⁴ The debate on Article 23 (of the Draft Constitution, now in the form of Articles 28 and 29)

¹³ *Id.*

¹⁴ See *supra* note 1.

ensued around the issue of what should constitute minority rights. The original report on Part III of the Constitution prepared by the Committee on fundamental rights did not contain the word 'minority'. K.M Munshi is responsible for bringing the concept of 'national minorities' in Article 30 of the Constitution. However, the word 'minority' only appears in Article 30(1) but is omitted in Article 29. The reason was explained by Dr. Ambedkar as:

"The word is used not only to indicate the minority in the technical sense of the word; it is also used to cover minorities which are nonetheless minorities in the linguistic and cultural sense."¹⁵

These provisions were inserted to annul any discrimination against the minorities, where the minority claim is based on religion is decided on the numerical basis and on any other yardstick other than religion is decided on the stretched meaning as Dr. Ambedkar has explained, must be construed in the true spirit of the historical jurisprudence and legislative intent.

Moreover, the Constituent Assembly debates inclined more on achieving a socialistic vision of a nation wherein a vast majority lived in poverty, irrespective of caste, creed, or religion than with the tag of 'minority'. Gandhiji propagated:

"...[A]n India, in which the poorest shall feel that it is their country in whose making they have an effective voice; ...an India in which all communities shall live in perfect harmony. There can be no room in such an India for the curse of untouchability or the curse of intoxicating drinks and drugs. Women will enjoy the same rights as men."¹⁶

In the Assembly's deliberations, the minorities question was regarded as encompassing the claims of three kinds of communities: religious minorities, backward castes and tribals, for all of whom safeguards in different forms

¹⁵ Dr. Ambedkar, Constitutional Assembly Debates, Vol. VII, Amendment no. 678, 8th December 1948, available at <http://parliamentofindia.nic.in/lis/debates/vol7p22.htm>, last accessed on 21st Jan. 2014.

¹⁶ M.K. Gandhi, *India of My Dreams*, Published 2009 by Diamond Pocket Books (1947) 9–10.

had been instituted by the British and by princely states during the colonial period.¹⁷ Each group wanted to attain the minority status of some kind, and sought to receive more safeguards than other minority groups. It was argued that only through the retention of their own distinct cultures could members of these communities contribute effectively to the nation.¹⁸ Minorities as backwards classes were connoted on the basis of social and economic backwardness and not on numerical basis as they were a part of the Hindus. However, some argued in keeping with Congress nationalist opinion, that political safeguards were undesirable and that the solution to the problems of these groups lay in the removal of economic and social disabilities.¹⁹

The demand for separate electorates by the Muslims was one of the key debates of the Constituent Assembly. It was finally rejected by the house on the ground that it would destroy the national character of India and would bring in distinctiveness of communities, and could sabotage the political community. Also religion was a sensitive subject, and the house felt it lies safer outside the political sphere as they were incompatible with secularism principles.

The debate on quotas in services is also an interesting argument. The house passed the quotas as undesirable with the exception of backward communities only for a short run. The reason behind this motion was neither did they want to identify caste in the political agenda, nor did they want to deviate from the principle of equality enshrined in the Constitution.

Reservation in government posts was regarded as undesirable not only for the country but also for the backward castes themselves.²⁰ Here the most common arguments were that not only would quotas stigmatize

¹⁷ Rochana Bajpai, *Constituent Assembly Debates and Minority Rights, Economic and Political Weekly*, May 27, 2000, available at http://www.epw.in/system/files/pdf/2000_35/21-22/Constituent_Assembly_Debates_and_Minority_Rights.pdf, last accessed Jan. 26th 2014.

¹⁸ See the statements of Rev Jerome D'Souza, *CAD*, vol. III, p. 296.

¹⁹ See *supra* note 17.

²⁰ *Id.*

the recipients induce feelings of inferiority among them and stifle initiatives for self-development but also that they would benefit only a few, already privileged sections within the group.²¹

Challenges to Protection of Minority Rights: How has Indian Democracy Tackled it?

The 8th Schedule of the Indian Constitution has recognized a variety of languages as the official language. Apart from this, the Constitution also mentions 'National Minority' as Muslim, Christian, Sikh, Parsees and Buddhists.

There is a twofold dimension of minority rights in the current scenario. First, they made community a legitimate subject of political discourse; and second, they placed the issue of inter-group equality on the agenda.²²

However, it also proposes two basic problems to the Indian democracy, one, it transgresses the right to equality which form a fundamental pillar of the Indian Constitution and two, the minorities recognized are indifferent to the issues of their internal minorities. Thus, while special safeguards provided to identify minorities curb the hegemony of any one community or the nation-state, they do not guarantee free and equal status to all groups and communities in society.²³

Division of *Dalit's* on the Basis of Religion

The presidential order of 1950 brought about a few amendments to the rights of minorities. It provided the same '*dalit* rights' to Sikh and Buddhist minorities but refused the same to Christian minorities. This order deviated from Articles 14 and 15 of the Constitution and divided the *dalits* on the basis of religion. No explanation was given for the exclusion of Christian although the

²¹ See *supra* note 17.

²² Emmanuel Nahar, *Minority Rights in India: Christian Experiences and Apprehensions*, *Mainstream Weekly*, Vol. XLV No. 1, (December 23, 2006).

²³ *Id.*

then Union Minister of Welfare and Labour, stated that irrespective of religion economic and social backwardness must be addressed.

The Reservation Debate

A major problem posed by recognition of minority rights is in the field of government employment. The Government in India is the largest employer, and it is thus obvious that the State must follow Article 16(1) which reads: "There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State".²⁴ Therefore, the State must observe equality in its own employment mechanism.

However, the plight of minorities even after 6 and odd decades of independence, has not improved as visualized by the founders. One major reason for this is the fact that the Constitution has explicitly provided for qualified rights of minorities over every other class, gives them a handful of opportunities which are being taken for granted. These opportunities have not been utilized to strive and come out of the 'backwardness of the class' but these opportunities are rather being used as a platform to merely conceive employment as they see no other easy way through. This problem is especially seen with the social minorities. Religious minorities do not figure in this particular issue as they have been given a different background of rights under the Constitution. The founders had conceived the idea of reservation in employment, but had clearly stated that this reservation would be in force only for a short period of time, because they were then expected to use the benefits and grow to become on par with the rest of the society. They did not introduce this concept to allow the minorities to misuse the provision to their advantage. This calls for legislative intent while interpreting the Constitution which clearly passed a resolution that quotas are undesirable with the exception of backward communities only for a short run. This short run has been amended by the Parliament several times, and extended up to 2010. The viability of

²⁴ Constitution of India, Art. 16.

this extension has been much debated. The bottom line however is, India being the largest democracy must re-analyze the conditions of minorities and re-draw boundaries.

Cultural Diversity

The common tendency when addressing questions of cultural diversity is to treat given communities as near-natural groups, with clearly identified boundaries that demarcate them from other communities.²⁵ Similarly, when we speak of cultural diversity, it is usually assumed that the communities to be accommodated are empirically given and there is little room for dispute there.²⁶ These assumption need to be visited yet again due to the varied reactions from the society.

The claims for due recognition of a given identity-based community may come both from the desire to seek some redistribution of goods as well as deeply felt expressive needs. Most often the two are combined, and this poses serious challenges. This shows that the recognition vested today is open to manipulation and hence this poses a serious threat to the very essence of democracy.

The disputes have often concerned claims from ethnic groups on a homeland and territory separated from a certain state or in other cases, demands for autonomy or even secession from the Indian union have been made.²⁷ The extent and force of these movements are best illustrated in a publication issued in 1995.²⁸

One solution to this complex issue is to provide formal

²⁵ Gurpreet Mahajan, *Negotiating Cultural Minority and Diversity Rights in India*, Vol. II Democracy, Conflict and Human Security: Further Readings, Idea Publications, http://www.idea.int/publications/dchs/upload/dchs_vol2_sec3_4.pdf.

²⁶ *Id.*

²⁷ Ingolf Kiesow Nicklas Norling, *The Rise of India: Problems and Opportunities*, <http://www.silkroadstudies.org/new/docs/Silkroadpapers/2007/0701India.pdf>, last accessed Jan. 31, 2014.

²⁸ P.S. Datta, *Ethnic Peace Accords in India*, New Delhi: Vikas Publishing, (1995).

recognition to the languages of the diverse communities. No tribal language has been made an official language albeit it is spoken by more than a million people.

Giving political and self governance is one way to achieve a united nation, but this thought must go hand in hand with the basic structure of our constitution, as the Indian society still prejudices the position of women to a large extent. Therefore, though there is a pressing need to recognize community desires, at the same time, equal rights of all citizens must not be compromised.²⁹

Policies seeking to enhance cultural diversity, must positively acknowledge the existence of minorities, for it to succeed. The enforcement of Special Marriage Act, 1954 was a giant step towards a modern society acknowledging harmonization of communities. This is also a tread towards a uniform civil law.

Possible Solutions

In India the Ministry of Minority Affairs was created on 29th January, 2006 to ensure a more focused approach towards issues relating to the minorities and to facilitate the formulation of overall policy and planning, coordination, evaluation and review of the regulatory framework and development programs for the benefit of the minority communities.³⁰ The Government also created the National Commission for Minorities Act in 1992.

Yet another solution lies in the task of minimizing communal violence, although it had reduced greatly since the bloody partition. This must be done in a systematic manner, not just by appeasing the minority community to increase vote banks by political parties, but by genuinely creating a harmony between the majority and minority through strong secular policies. What is

²⁹ Amrita Basu and Atul Kohli (eds), *Community, Conflict and the State in India*, Oxford: Oxford University Press, (1998).

³⁰ Dr. Arun Kumar Sharma, *Defining Minorities in India*, IIT HSS Department, http://www.academia.edu/1438983/Defining_minorities, last accessed 1st Feb. 2014.

strengthened, on the one hand, is intra-community rather than inter-community bonds and, on the other, a traditional and more orthodox leadership, which is more insular and hostile to the expression of differences within the community.³¹ Distributing freebies, ridiculing the majority, and keeping the minority at the height of every decision are no way of promoting cultural diversity. This would result in ignorance of majority for the benefit of minorities, which would in turn convert the majority into minority, not in terms of numbers but in terms of benefits and advantages.

However, despite the efforts, the current policy tackling minority is creating an adversarial spirit in the civil society and annihilation of Indian civilization.³² Therefore, there is a need for restructuring of policies and analyzing alternative approaches.

Dr. Arun Kumar Sharma³³ has proposed a four-model alternate approach to solving the minority issue at hand. The first model proposed is the Sarvodaya Model, wherein there is equalization of benefits on all levels and constraint on higher scales of income with more emphasis on morality at the individual level.

The second model proposes the representative educational elite in bureaucracy that is the original demand for caste and community reservation, which serves no good purpose but enhances the British policy of 'Divide and Rule'.

The reflexive affirmative actions calls for a beginning of reverse discrimination whereby the elite from all categories are truncated from the state support, thus implying defining not the backward classes but the forward classes whose share in the power and wealth should be increasingly restricted, be they from any caste

³¹ See *supra* note 25.

³² Agrawal, S.P., and Aggarwal, J.C., Educational and Social Uplift of Backward Classes: At What Cost and How? Concept Publishing Company, New Delhi.(1991).

³³ See *supra* note 30.

or community.³⁴

The western approach is giving preferential treatment to minorities in all walks, but this we have seen only helps in increasing vote banks in the Indian context and is hardly a solution. The benefits of all the models above could be extracted to create a balanced approach.



³⁴ *Id.*