

## INTRICACIES OF EDUCATIONAL AND CULTURAL RIGHTS OF MINORITIES IN INDIA: EFFICACY OF CONSTITUTIONAL SAFEGUARDS

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The fabric of human life is woven round religion and culture, and mankind lives by them. The phenomenon of culture is not static but dynamic. It is positive in nature. It is progressive and capable of constant growth like a living organism. The depth and richness of culture has a direct relation to the strength of character of a community and its inbuilt discipline. A nation having no distinct culture of its own may find it almost impossible to sustain itself today in the face of scientific and technological advancement which are fast leading towards a materialistic outlook of life. For long, India has been known for its ancient cultural heritage. This is enriched by the flow of segments of alien systems which in course of time have merged in the national mainstream while not losing their separate identity. There is thus in India a diversity in cultural patterns and yet all forming part of one cultural unity. The makers of the Indian Constitution envisaged the Indian Union as a welfare state, and the ultimate object, as enunciated in the preamble, is to secure to all citizens justice, liberty, equality and fraternity. The language and culture of a community can effectively be preserved by and through educational institutions. However, the process of education should be conditioned in order to meet the demands of a welfare state and also to discourage disruptive and separatist tendencies in the country. All this is conceived in articles 29 and 30 of the Constitution. At the same time educational rights under Article 30 also gives the freedom to minority to not only establish the educational institution but also to administer it. These goals have found manifestations in the fundamental rights and the directive principles of state policy as declared and formulated in chapters III and IV of the Constitution.

During the Constitution making process in the backdrop of history of communal conflict and pluralistic nature, need was felt in Indian society to provide constitutional protection to them. Therefore, special constitutional provisions were provided for the minorities. Providing safeguards under Constitution reflects the intention and will of constitutional makers with respect to the protection of minorities and to bring them in the mainstream of society. However it is immensely painful to see the present deteriorating status of minorities despite various efforts made by the legislature and judiciary. This research paper provides an insight on Minorities and their respective educational and cultural rights. Moreover, the purpose of this research paper is not only to discuss the various rights available to the minorities with respect to educational and cultural rights but also check the efficacy of various organs of State towards realisation of these rights in reality.

### **I. Introduction**

Jawaharlal Nehru wrote a note on minorities in Young India on May 15, 1930 that "The history of India and of many of the countries of Europe has demonstrated that there can be no stable equilibrium in any country so long as an attempt is made to crush a minority or force it to conform to the ways of the majority... It matters little whether logic is on its side or whether its own particular brand of culture is worthwhile or not. The mere fact of losing it makes it dear. Therefore we in India must make it clear to all that our policy is based on granting this freedom to the minorities and that under no circumstance will any coercion or repression of them be tolerated... we can also lay down as our deliberate policy that there shall be no unfair treatment of any minority"<sup>1</sup>

The Constitution of India protects rights of each and every individual in the Country. By applying the sacred provisions of Constitution, It becomes the duty of court to uphold the fundamental rights and thereby honour the sacred obligation of constitution makers towards the minority in India. Peoples of diverse creed, culture and races came – Aryans, Dravidians, Huns, Pathans, Mughals and so on from different places came to India and this holy place welcomed all. All the persons from different places lost in one and became the part of this country. This tradition and sense of oneness has been canvassed in these noble lines

*“None shall be turned away  
From the shore of this vast sea of humanity*

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<sup>1</sup> <http://www.thehindu.com/2002/07/27/stories/2002072700051000.htm> (last visited on 22nd April, 2017)

*That is India*<sup>2</sup>

The National Anthem of India also outlines the message of oneness and protection of minority. The then Chief Justice C.R.Das also referred the verses to signify the protection of minorities through certain rights enshrined under Article 29 & 30 of Indian Constitution as follows –

“Day and night thy voice goes out from land to land, Calling hindus, Buddhists, Sikhs and Jains round thy throne and parsees, Mussalmans and Christians. Offerings are brought to thy shrine by the East and the West to be woven in the garland of love. Thou bringest the hearts of all peoples into the harmony of one life, Thou dispenser of India’s destiny. Victory, Victory, Victory to thee”<sup>3</sup>

Above mentioned lines gracefully reflects the ancient cultural heritage of India. This is enriched by the flow of segments of alien systems which in course of time have merged in the national mainstream while not losing their separate identity. There is thus in India a diversity in cultural patterns and yet all forming part of one cultural unity. Will of constitution makers was always to make Indian Union as a welfare state, which rightfully showcased in the preamble as to secure to all citizens justice, liberty, equality and fraternity. These goals have found manifestations in the fundamental rights and the directive principles of state policy as declared and formulated in chapters III and IV of the Constitution. In these declarations and formulations is recognized the existence of various sections of the people having distinct language and culture and the need to preserve and promote the interests of all linguistic and cultural groups. Article 29 & 30 of Indian Constitution not only declares but also protects the minority’s educational and cultural rights. Almost all States have one or more minority groups within their national territories, characterized by their own ethnic, cultural, linguistic or religious identity which differs from that of the majority population. Harmonious relation of one minority with the other and between the minorities and majorities is a great asset to the multi-ethnic and multi-cultural diversity of global society. It is of prime importance that each citizen has respect for individual group's identity. Meeting the aspirations of national, ethnic, cultural, religious and linguistic groups and ensuring the rights of persons belonging to minorities acknowledges the dignity and equality of all individuals.

## II. Concept of Minority

The expression “minority” has been derived from the Latin word “minor” and the suffix ‘ity’, which means “small in number”. The term minority means “Minority, a culturally, ethnically, or racially distinct group that coexists with but is subordinate to a more dominant group. As the term is used in the social sciences, this subordinacy is the chief defining characteristic of a minority group. As such, minority status does not necessarily correlate to population”<sup>4</sup>. Though the Constitution of India provides protection for minority but it nowhere defines the term ‘minority’. However the term can be defined as a particular kind of group which differs from the dominant group within the state.

As per the memorandum Submitted by the Secretary-General, UNHCR, The term “Minority” is described as

“In modern times the term "minority" has been applied to more or less distinct groups, living within a State, which are dominated by other groups.

A fundamental distinction may be drawn between (a) minorities whose members desire equality with dominant groups in the sense of non-discrimination alone, and (b) those whose members desire equality with dominant groups in the sense of non-discrimination plus the recognition of certain special rights and the rendering of certain positive services.”<sup>5</sup>

Francesco Capotorti, Special Rapporteur of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities defined minority as “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 only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language.”<sup>6</sup>

While defining the minority, The Hon’ble Supreme Court through the then Chief Justice S.R.Das, held that a minority means a community which is numerically less than 50 per cent of the total population. The Court held that when an act of a State Legislature extends to the whole of the State, the minority must be determined by reference to the entire population of the State and any community which is numerically less than 50 per cent of the entire State population may be regarded as a minority for the purpose of the Constitution<sup>7</sup>.

The problem lies in the fact that despite several provisions for the protection of minorities in India, the situation and the position of minorities at grass root level is really an eye opener and a matter of great concern. Apart from it another fundamental problems relating to minorities in India is “at what level the status of minority should be granted.”

<sup>2</sup> Poems by Rabindranath Tagore.

<sup>3</sup> In re The Kerala Education Bill, (1959) S.C.R 995

<sup>4</sup> <https://www.britannica.com/topic/minority> (Last visited on 1st January 2020)

<sup>5</sup> [https://www.ohchr.org/Documents/Issues/Minorities/SR/A74160\\_Definitions\\_Descriptions.docx](https://www.ohchr.org/Documents/Issues/Minorities/SR/A74160_Definitions_Descriptions.docx) (Last visited on 1st January 2020)

<sup>6</sup> Available on [http://www.ohchr.org/Documents/Publications/MinorityRights\\_en.pdf](http://www.ohchr.org/Documents/Publications/MinorityRights_en.pdf) (Last visited on 23rd April 2017)

<sup>7</sup> In re-Kerala Education Bill 1957, A.I.R. 1958 SC 956

### III. Protection of Minorities under International Law

In 1992 the General Assembly adopted the United Nations Minorities Declaration by consensus. It is the main reference document for minority rights. It grants to persons belonging to minorities<sup>8</sup>:

- Protection, by States, of their existence and their national or ethnic, cultural, religious and linguistic identity (Art. 1);
- The right to enjoy their own culture, to profess and practise their own religion, and to use their own language in private and in public (art. 2 (1));
- The right to participate effectively in cultural, religious, social, economic and public life (art. 2 (2));
- The right to participate effectively in decisions which affect them on the national and regional levels (art. 2 (3));
- The right to establish and maintain their own associations (art. 2 (4));
- The right to establish and maintain peaceful contacts with other members of their group and with persons belonging to other minorities, both within their own country and across State borders (art. 2 (5)); and
- The freedom to exercise their rights, individually as well as in community with other members of their group, without discrimination (art. 3).
- States are to protect and promote the rights of persons belonging to minorities by taking measures to:
  - Ensure that they may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law (art. 4 (1));
  - Create favourable conditions to enable them to express their characteristics and to develop their culture, language, religion, traditions and customs (art. 4 (2));
  - Allow them adequate opportunities to learn their mother tongue or to have instruction in their mother tongue (art. 4 (3));
  - Encourage knowledge of the history, traditions, language and culture of minorities existing within their territory and ensure that members of such minorities have adequate opportunities to gain knowledge of the society as a whole (art. 4 (4));
  - Allow their participation in economic progress and development (art. 4 (5));
  - Consider the legitimate interests of minorities in developing and implementing national policies and programmes, and international programmes of cooperation and assistance (art. 5);
  - Cooperate with other States on questions relating to minorities, including exchanging information and experiences, to promote mutual understanding and confidence (art. 6);
  - Promote respect for the rights set forth in the Declaration (art. 7);

The International Covenant on Civil and Political Rights talks about protection of minority, it states that -

“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 own culture, to profess and practise their own religion, or to use their own language.”<sup>9</sup>

The International Covenant on Economic, Social and Cultural Rights provides that –

“the States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”<sup>10</sup>

The Convention on the Rights of the Child provides that –

“in those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.”<sup>11</sup>

### IV. Protection of Minorities under Indian Constitution

The framers of the Indian Constitution gave minorities all necessary rights and freedoms but they nowhere defined the term “Minority”. There is no parliamentary legislation either defining a ‘minority.’ In 1928, Sh. Motilal Nehru also prepared a report wherein he advocated for reservation of seats for Muslim in Provinces where they were in minority. However he also forget to

<sup>8</sup> The United Nations Minorities Declaration by consensus, G.A. Res. 47/135

<sup>9</sup> The International Covenant on Civil and Political Rights, art. 27

<sup>10</sup> The International Covenant on Economic, Social and Cultural Rights, art.2(2)

<sup>11</sup> The Convention on the Rights of the Child, art.30

define the minority. Thereafter in 1945 again efforts were made to protect the minorities by Sh. Tez Bahadur Sapru. He recommended full religious tolerance, non-interference in religious beliefs, practices and institutions, and protection of the language and cultures of all communities. The Sapru Committee also recommended political representation. However, these recommendations created so much controversy that the report could not be adopted.

The Constituent Assembly had set up Advisory Committee under the Chairmanship of Sardar Vallabhbhai Patel on the subject of Fundamental rights including rights of minorities, with the twin objectives of eliminating the chance of religion exploiting the State and vice-versa. The Advisory Committee appointed five sub-committees. One was the minorities sub-committee headed by H.C. Mukherjee a Christian leader from Bengal.

The Advisory Committee accepted the recommendations of Sub Committee partially and recommended the following clause to the Constituent Assembly:

1. Minorities in every unit shall be protected in respect of their language, script and culture, and no laws or, regulations may be enacted that may operate oppressively or prejudicially in this respect.
2. No minority whether based on religion, community or language shall be discriminated against with regard to admission into State educational institutions, nor shall any religious instruction be compulsorily imposed on such minority.
3. (a) All minorities whether based on religion, community or language shall be free in any unit to establish and administer educational institutions of their choice.  
(b) The State shall not, while providing State aid to schools, discriminate against schools under the management of minorities whether based on religion, community, or language.

The clause was incorporated as clause 24 with some drafting changes in the Draft Constitution prepared by the Constitutional Advisor. The Drafting Committee revised the text of clause 24 twice, the most significant change being the re-drafting of sub-clause (1). The clause finally took the shape as Article 23 of the Draft Constitution. The Drafting Committee, at the revision stage divided Article 23 into two separate Articles - Article 29 and 30 as now contained in the existing Constitution.<sup>12</sup>

Due to the partition of country there was a strong feeling against the communal forces and hence no attempt was made on any occasion even to define the term "minority" in precise words. The feeling was so strong that the words "certain classes" were substituted for the word "minorities" wherever it occurred in the text of the Constitution. Not only is the use of the term minority in the Constitution very rare but also no group is mentioned explicitly as a minority therein. The term 'minority' is mentioned in only two Articles, 29 and 30.

The expression 'minority' has been used in Article 29 and 30 of the Constitution but it has nowhere been defined. The Preamble of the Constitution proclaims to guarantee every citizen 'liberty of thought, expression, belief, faith and worship'. Group of Articles 25 to 30 guarantee protection of religious, cultural and educational rights to both majority and minority communities. It appears that keeping in view the constitutional guarantee for protection of cultural, educational and religious rights of all citizens, it was not felt necessary to define 'minority'. Minority as understood from constitutional scheme signifies an identifiable group of people or community who were seen as deserving protection from likely deprivation of their rights by other communities who happen to be in majority and likely to gain political power in a democratic form of Government based on election.

In the Constituent Assembly Debate on Article 23, B. R. Ambedkar<sup>13</sup> 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. That is the reason why we dropped the word "Minority" because we felt that the word might be interpreted in narrow sense of the term when the intention of the house was to use the word "Minority" in much wider sense, so as to give cultural protection to those who are technically not minorities but minorities nonetheless."

During the Constituent Assembly Debates, various amendments were proposed and after much deliberation, amendments proposed by Thakur Das Bhargava and Dr. B.R.Ambedkar were accepted and the rests were rejected. Subsequently, at the revision stage, the drafting committee divided Article 23 into two Articles i.e. Article 29 and Article 30.

In the back ground of constitutional scheme, the provisions of the Act therefore instead of giving definition of 'minority' only provide for notifying certain communities as 'minorities' who might require special treatment and protection of their religious, cultural and educational rights. The definition of 'minority' given under the National Commission of Minority Act, 1992 is in fact not a definition as such but only a provision enabling the Central Government to identify a community as a 'minority' which in the

<sup>12</sup> Patel Akhilesh, article on Concept of 'Minority' and 'Minority Status' under Indian Constitution.

<sup>13</sup> Constituent Assembly Debates, Vol. II : 922-923

considered opinion of the Central Government deserves to be notified for the purpose of protecting and monitoring its progress and development through the Commission.

## **V. Scope of Article 29 & 30 under Indian Constitution**

Article 29 and 30 of Indian Constitution talks about Educational and Cultural rights of community.

### **Article 29**

(1) Any section of the 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 into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

Critical analysis of Article 29 clearly reveals that the protection provided under Article 29 is not only available to Minority but it is also available to majority section also.

### **Article 30**

(1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

(1A) In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.

(2) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

Clause (1) of Article 30, the word “their choice” means only Secular Institution. It may be any educational institution either School, medical college or any other type of secular institution. Rational backing this equation lies in the fact that religious or linguistic rights of minorities are already protected under Article 26 & 29(1) of Indian Constitution. Therefore the purpose of Article 30 can not be to give religious or linguistic rights rather the policy behind Article 30(1) is to provide assurance to minorities regarding their educational rights. The object of Article 30 was to do away with the fear in the mind of minorities that their children will be side lined from the main stream as they would let out from normal education institutions.

## **VI. Data Regarding Minority**

The National Commission for Minorities Act, 1992 enabled the centre to notify minorities for the limited purposes of that Act only and in exercise of that power, the government had notified five religious communities- Muslims, Christians, Sikhs, Buddhists and Parsis- to be regarded as minorities. These five communities constitute 17% of the country’s population.

Rights of minority Judicial approach towards minority. The First Report on religion by Census of India 2001 provides the statistics relating to literacy rate and participation of minority in mainstream<sup>14</sup>.

In several States such as Himachal Pradesh, Jharkhand, Madhya Pradesh, Maharashtra, Uttar Pradesh and Uttarakhand, Jains have been recognized as a minority. The Jain community approached the Supreme Court seeking a direction to the central government for a similar recognition at the national level and their demand was supported by the National Commission for Minorities. However the Supreme Court did not issue the desired direction, leaving it to the state government to decide the issue<sup>15</sup>. In a later ruling however, another bench of the Supreme Court upheld the Uttar Pradesh law recognizing Jains as a minority<sup>16</sup>.

## **VII. Concept of Linguistic Minority**

Linguistic minority for the purpose of Article 30(1) is one which must have separate spoken language and that language need not have a distinct script. In India, a number of languages are spoken having no script of their own. But people speaking such a language having no script of its own constitute a linguistic minority for the purposes of Article 30(1). A linguistic minority is to be determined with reference to the language spoken by the community and not with reference to any other language which the community wants its children to study. Ultimately, it is left to the minority to establish its minority status in order to avail the benefits of the Article 30. The task is difficult especially because the concepts of ‘religion’ and ‘language’ have not been adequately defined in the Article or the constituent assembly debates. According to the 38th report of National Commission of linguistic Minority, “In each State there is a language which is spoken by the majority of the residents of that State. All others who do not speak that language belong to linguistic minority.”

It is easy to categorize linguistic minorities. The classification of linguistic minority is not based on National level. Hindi as such is declared as the official language, it is as such spoken by less than 50% of the population; and in addition to this there are

<sup>14</sup> [https://censusindia.gov.in/Tables\\_Published/C-Series/c\\_series\\_tables\\_2001.html](https://censusindia.gov.in/Tables_Published/C-Series/c_series_tables_2001.html) (Last visited on 1st February 2021)

<sup>15</sup> Bal Patil v. UOI AIR 2005 SC 3172

<sup>16</sup> Bal Vidya Mandir, Etah, U.P. v Sachiv, U.P. Basic Shiksha Parishad, Allahabad, U.P. and Ors., MANU/SC/3685/2006

thirteen other officially recognized languages. Thus minority based on languages in the Indian constitution pertains mainly to a State and not at the National level.

### VIII. Judicial approach towards Minority

The Issue of Minority rights under Article 30 was first raised in the case of re the Kerala Education Bill, 1957<sup>17</sup>, wherein the President sought the advice under Article 143. It was held that *“The existence of minority community should in all circumstances and for purposes of all law of that State be determined on the State basis only when the validity of law extending to whole State is in question or it should be determined on the basis of the population of the particular locality, for the bill in practice before us extends to the whole of State of Kerala and consequently the minority must be determined by reference to the entire State. By this test Christians, Muslims and Anglo Indians will certainly be minorities in the State of Kerala.”*

So basically the approach of SC was that to identify the minority, a particular community shall have less than 50% population in particular locality. Then only they will be considered as minority.

However the population of state may be so fragmented in linguistic, religious or cultural groups that no group may fall under the protection of Articles 29 and 30 without there being a single majority community against which minorities may claim protection. Second is that, certain communities which may be in majority in a particular state like Sikhs in Punjab or Muslims in Jammu and Kashmir or Christians in Nagaland, may be minority in relation to the entire population of India. Can they be majority from one point of view and in minority from the other? Suppose, there are a number of educational institutions set up by Christian minority, spread all over the country, then, applying the test formulated by the Supreme Court, the educational institutions situated in Nagaland would not be entitled to the protection of Articles 29(1) and 30(1) but the same would have the protection as minority in Gujarat. Thus the test laid down by the court does not specify minority.

In D.A.V. College, Jullunder’s Case<sup>18</sup>, the Constitutional Bench of the Supreme Court observed: ‘Though there was a faint attempt to canvas the position that religious or linguistic minorities should be minorities in relation to the entire population of the country, in our view, they are to be determined only in relation to the particular legislation which is sought to be impugned, namely that if it is the State legislature these minorities have to be determined on the basis of the population of the State’.

In St. Xavier College case<sup>19</sup>, nine judge bench delivered the judgement and observed that “primary purpose of affiliation to institutions established by Minority is that the student studying in the minority institution will have qualification in the shape of degrees necessary for useful career in life. The denial of same would amount to make this Fundamental Right ineffective”. It was also observed that Universities while granting affiliation to these institutions may impose regulations with respect to quality of education, syllabus, health and hygiene of students. Such regulations in no way contravene with the right of minority to administer the institution.

### Extent of reservation in Minority Educational Institution

In St. Stephen case<sup>20</sup>, it was held that the purpose of Section 30 (1) is to give secular education and to bring them in main stream of society. Hence minority children in isolation would not be able to achieve the goal so they should be mixed with the children of other community. The reservation in these institution shall not exceed 50%.

However in TMA Pai case<sup>21</sup> and P.A Inamdar case, the extent of reservation was raised upto 100%. However it was provided that while reserving seats even upto 100%, the justification would be required.

### IX. Conclusion & Suggestion

The present status of minorities clearly reflects that there is a need to take some solid efforts to bring the minorities in mainstream of society. The object of Article 29 & 30 was to uplift the status of marginal group. However it seems that the government effort’s are proved unfruitful so far. Moreover with the evolution of society, there is need to bring various marginal groups within the ambit of Minority status. These groups are LGBT community, children, aged minority, disabled minorities. These vulnerable groups also require attention. If we bring these groups under the umbrella of minority, then only we will be able to respect the will of constitution makers specially Dr. B.R.Ambedkar as he was of the view the the word minority should not be interpreted in strict technical sense, it has wide implication.

The another major area of concern is identification or test or any criteria for deciding and granting the status of minority. As of now there is lot of confusion in identifying minorities on the basis of religion or on linguistic basis.

<sup>17</sup> AIR 1958 SC 956

<sup>18</sup> AIR 1971 SC 1737

<sup>19</sup> 1974 SCC (1) 717

<sup>20</sup> 1992 AIR 1630

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