

MINORITY RIGHTS AND NATIONALISM

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The Indian Constitution ensures “justice, social, economic and political” to all the citizens. The Indian Constitution has adopted measures for the protection of the rights of the religious and ethnic minorities and of the socially and disadvantaged classes such as the SC/ST.¹ The Constitution of India doesn’t define the word ‘Minority’ but has used the word minorities considering two attributes religion and language of a person and uses its plural form in some Articles including Article 20 to 30 and Article 350A to 350B. To provide enough equality and dwindle the discrimination, makers have spelt out various things in Fundamental Rights (Part III), Directive Principles of State Policy (Part IV) and also the Fundamental Duties (Part IV-A). The expression ‘minority’ has been derived from the Latin word ‘minor’ and the suffix ‘ity’, which mean ‘small in number’. Certain sociologist defined minority as “ a group of people who, because of their physical or cultural characteristics, are singled out from the others in the society in which they live for differential and unequal treatment, and who therefore regard themselves as objects of collective discrimination.”² This definition include both objective and subjective criteria: membership of a minority group is objectively ascribed by society, based on an individual’s physical or behavioural characteristics, such as ethnicity and race or gender and sexuality. It is also subjectively applied by its members, who may use their status as the basis of group identity or solidarity. Members of the minority groups are prone to different treatment in the countries and societies in which they live. The discrimination may be directly based on an individual’s perceived membership of a minority group, without consideration of that individual’s personal achievement.

¹ Vijay Jaiswal, Rights of Minorities in Indian Constitution, Important India, available at <http://www.importantindia.com/2182/rights-of-minorities-in-indian-constitution/>

² Wirth, L. (1945). “The Problem of Minority Groups”. In Linton, Ralph. *The Science of Man in the World Crisis*. New York: Columbia University Press page no. 347. The political scientist and law professor, Gad Barzilai, had offered a theoretical definition of non-ruling communities that do not rule and excluded from resources.

Our country India is a multi-lingual and a multi-religious country. Indian society is pluralistic in character from the religious and other point of view. From a very long time people belonging to various religious communities has been living together in this country. With such diversity of community, it becomes necessary to give each community their due, without inciting any conflicts. Moreover, it becomes the duty of the state to ensure that human rights are available to all citizens, irrespective of caste, colour, or creed. Minority rights protection in India has always been in limelight with political parties garnering votes of various communities through triggering their emotions upon their minority status. Thus the Union Government set up the National Commissions for Minorities Act, 1992. Minorities can be classified according to their religion as well as language spoken, caste, tribal status and so forth. Six religious communities, viz; Muslims, Christians, Sikhs, Buddhists, Zoroastrians (Parsis) and Jains have been notified in Gazette of India as minority communities by the Union Government all over India. Though the majority of people living in our country are Hindus (82.41%), people belonging to other religious communities such as Muslims (11.67%), Christians (2.32%), Sikhs (2%), Buddhists (0.77%), Jains (0.47%) and others (0.43%) are also living along with Hindus by enjoying on par similar rights and opportunities.

The minority rights find its origin in the age-old caste system of India. The caste system at its birth was meant to divide people on the basis of their occupation like teaching and preaching (Brahmins), kingship and war (Kshatriya) and lastly business (vaish) etc. but soon it became an instrument to divide the society on caste-basis, creating various walls between different sections of the society. Today we stand divided widely into Hindu, Muslim, SC, ST and OBCs with newer communities coming up for other different sections of the society like Christians, Kashmiris, Jats, Kashmiri Pandits, Tribals etc. The minority system only divides the society leading to discrimination and conflicts between different sections. It is oppressive and does not find its basis in casteism. It is actually the antithesis of a communal living. It also creates a rift between the people belonging to different minority classes. With India being a vast country and a majority of Hindus resided in our country, the rise of Hindu nationalism has been a burning problem in recent years. The rise of Hindu nationalism differs from place to place. Careful attention needs to be paid to this variation which exists within the levels of violence against these minority groups. It is assert that religion can and has played a positive role in Indian nation- building, but this Hindu nationalism has continuously reproduced exclusionary practices against other religious communities and worked against any forms of assimilatory

processes. Minority groups face mass violence in the name of counter-violence, killing in the name of protection. As the case of Hindutva in India illustrates, violence against minorities is normalized in the name of personal, communal, national and even international security. The will to secure the self has as its corollary the will to make insecure the other, the desire to control and use violence. The violence against Muslims is facilitated and justified in the name of achieving security for the Hindu self at individual, community, national as well as international levels. As cows are considered sacred in certain interpretation of Hindu philosophy. But in present time, this mammal is at the centre of the country's increasingly violent social upheaval. In the name of defending Hindu values, vigilante mobs are lynching and killing people suspected of eating or trading cows. For example: In the April 6 incident captured on video and widely viewed on social media, vigilantes brutally thrashed 55 year-old dairy farmer and the other Muslims traders, ostensibly for transporting cattle and in March, a mob set fire to three meat shops in Hathras, a district in western Uttar Pradesh as the mob doubt that these people were selling cow meat. The cow trade in India mainly benefits Muslims, as they are the dominant traders and consumers of beef (Islam does not prohibits its consumption), so the surge in cow protectionism has disproportionately impacted them. But Christians also face the era of India's Hindu nationalism. According to Holland-based Christian human rights NGO, violence against Christian in India has increased since 2016. Churches have destroyed; priests, nuns have been beaten. On April 5, the members of the Uttar Pradesh "Hindu Yuva Vahini" group forced the police to halt prayers at a church in the town of Maharajganj, alleging that it was forcing Indians to convert to Christianity. Indian Dalit community who were known as untouchables is also being targeted. A recent incident occurred in Uttar Pradesh, a 45 year-old men named Qasim lynched over cow slaughter rumour, as it is the traditional occupation of are outcast community. In April 2017, moral vigilantes targeting inter-faith couples claiming that when Muslims boys date Hindu girls it represents a "love jihad". From meat politics to love jihads, such incident has strained India's constitutional values and secular fabrics. Thus a series of incidents of communal violence revealed a rising climate of intolerance for minority groups.

Not only India, other countries has its minority population. However, in all countries it is seen that they do suffer some sort a setback, real or even may be just psychological. For example, in the United States we love to ape in all its aspects, and a country that is known to be most advanced also has a different attitude towards their minorities. The minorities in America are

the Negroes who didn't even have voting rights upto the middle of this century. But now, these rights have been given to the blacks as they are called, and they have been now permitted entry into the mainstream of governance, but they are still not given the privileges and status of the Americans. Another example of treatment of the minorities can be seen in our neighbourhood, in Pakistan. In Pakistan, their own Muslims are treated as minorities just because they are original Muslims of India. These minorities have been struggling since 1947, for equality with other Muslims of Pakistan.

Minorities in India are a privileged class, instead of being differentiated against, as in other countries. In the last fifty years, there has been a constant and continuous rise in the status of the minorities in India, to the extent that, here the minorities have become pampered a lot. The proof of this lies in the fact that the minorities are increasing leap and bounds. If they did not feel an advantage of being this class, they would not strive to join the bandwagon of minorities. In India the minorities are getting reservation for them in all spheres of development. Currently, as per the government policy, 15% of the government jobs and 15% of the students admitted to universities must be from Scheduled castes and for the Scheduled tribes there is a reservation of about 7.5 %. Other than this, the state governments also follow their own reservation policies respectively based upon the population constitution of each state. So nearly 50% seats are reserved. Under the Constitution of India, there are various provision rights of minorities.³ Preamble of the Constitution declares India to be a secular state.⁴ Article 15 prohibits any sort of discrimination on the ground of race, religion, caste, sex, descent, place of birth or residence.⁵ Article 16 also prohibits any sort of discrimination when it come to public employment, on the basis of religion, caste, language, race and so on.⁶ This guarantees equal employment opportunities to all the citizens in case of government offices. Under Article 25 of the Indian Constitution right to profess, practice and propagate any religion has been guaranteed to every citizen as a fundamental right. This Article 25 allows the minorities communities to follow their beliefs and practices without any hindrances as long as it does not hamper public order, morality and health of the person.⁷ But the State can regulate the secular activities related to religious practices such as financial, political, economic activities. Article

³ Manoj Kumar Sinha, *Minority Rights: A Case Study of India*, *International Journal on Minority and Group Rights*, Vol.12, Pg.355-374.

⁴ Preamble, Constitution of India.

⁵ Article 15, Constitution of India.

⁶ Article 16, Constitution of India.

⁷ Article 25, Constitution of India.

26 gives the freedom to the religious denominations or any such sections to manage their own religious affairs including managing institutions for religious and charitable purposes; owning, acquiring and administering movable and immovable property.⁸ Again, this right is subject to public order, morality and health. Article 27 prohibits any compulsion on citizens to pay taxes, proceeds of which are to be appropriated in promotion of any particular religion.⁹ Article 28 prohibits state funded educational institutions from providing religious instructions unless there is a requirement in the terms of the endowment or trust, by which the institution has been established, regarding imparting such religious instruction.¹⁰ It also gives the person attending any educational institution the right to not participate in any religious instruction imparted by the institute. Article 29 of the Constitution provides the citizens with the right to conserve their language, script and culture; as well as guarantees that they would not be denied admission into any educational institution based on their race, language, religion or caste.¹¹ This right is provided to any section of the society, whether it has been recognised as a minority by the State or not.¹² Article 30 is pivotal to the protection of minority rights in India. It provides the minorities the right to establish and administer educational institutions and the State has been prohibited from any discrimination in matters of granting aids to such institutions.¹³ But these educational institutions can be regulated by the State. Although this Article uses the term “minorities”, it has not been given any definition by the Indian Constitution. The judiciary has tried to dwell upon this matter in various cases. In the judgment of *Re Kerala Education Bill*,¹⁴ the Supreme Court held that the meaning of the term minority can be construed to a “community which is less than 50% of the total population” in a defined area. In *D.A.V. College v. State of Punjab*,¹⁵ it was held that Hindus even though they are majority in the nation, can be treated as a minority in State of Punjab for the purpose of conserving their language under Article 29 of the Constitution. Hence, religious or linguistic minority status should be construed in relation to the legislation which is sought to be impugned, in case of state legislature, according to the state population.¹⁶ In *A.S.E. Trust v. Director, Education, Delhi*

⁸ Article 26, Constitution of India.

⁹ Article 27, Constitution of India.

¹⁰ Article 28, Constitution of India.

¹¹ Article 29, Constitution of India.

¹² Vijay Jaiswal, Rights of Minorities in Indian Constitution, Important India, available at <http://www.importantindia.com/2182/rights-of-minorities-in-indian-constitution/>

¹³ Article 30, Constitution of India.

¹⁴ *Re Kerala Education Bill*, 1957, 1956 SCR 595.

¹⁵ *D.A.V. College v. State of Punjab*, 1971 AIR 1737

¹⁶ Varun Shivhare, Minority Rights – The Judicial Approach, Legal Services India, available at <http://www.legalservicesindia.com/articles/judi>.

Administration, it was held that only those religions such as Muslims, Christians, Jains, Buddhists, Sikhs etc., which have kept their identities separated from the majority, i.e., Hindus, can only be considered to be “minority” based on religion.¹⁷ Not every section of the Hindu religion can be considered to be minority. TMA Pai foundation Case also upheld that the minority status of any community has to be decided based on state population.¹⁸ It also established that Article 30(1) confers both linguistic and religious minorities the right to establish and administer educational institutions of their choice, albeit the right to administer is not absolute. The Judges also held that aided minority institutions need to admit a certain number of non-minority students so as to maintain a balance between minorities’ right under Article 30(1) and citizen’s rights against discrimination under Article 29(2). The National Commission for Minority Educational Institution Act, 2004, amended in 2006 and 2010, was promulgated with an objective to safeguard the minorities educational rights as mentioned in Article 30(1).

From Gujarat riots in 2002 to the Uttar Pradesh riots in 2018, India seems to have somewhat stagnated when it comes to communal tension. Though the law provides adequate measures for the protection of the minority rights, but the minority communities still face a lot of difficulty in climbing the ladders of success and development as there is no proper enforcement and implementation of these laws. Nevertheless, looking at the population of this great nation, it is not surprising that there are conflicts within the communities. But, what is surprising is the fact that India, being diverse at each and every step, has brought together so many different communities and the minorities have not lost their voice in conundrum. Protection of minority can be achieved through proper enforcement of the laws related to minority communities, keeping the spirit of democracy alive as well as balancing it with Individual’s rights. The minorities, linguistic or religious, can resort to the various constitutional and legislative provisions available to them to protect their rights in an efficient manner. In order to bridge the gap created in the promises by the Government and the ground reality of achievement now, the Government has to see that at least now, the minorities get their share of the progress of the country, and not remain in the baseless promises. They need not be pampered but, they must be treated with equality. If this can be achieved, the minority class in India will be an enviable lot.

¹⁷ AIR 1976 Del 207.

¹⁸ AIR 2003 SC 355.