

Democracy, Minorities and Constitution of India An Analysis

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Introduction

In a democracy where the number is everything and the minority community definitely doesn't have numbers with them. Therefore to protect minorities rights is very important for democratic system. Protection of minorities is the hallmark of a civilization. According to Gandhiji, the claim of a country to civilization depends on the treatment it extends to the minorities. Lord Acton added another dimension: the most certain test by which we judge whether a country is really free is the amount of security enjoyed by minorities. In a democracy such as India, where people are divided in terms of religion, language, caste, race, culture, and socio-economic factors, one of the tasks of the framers of the Constitution of India was to devise safeguards for the country's different minorities. India has a pluralist society. This is the result of certain geographical and historical phenomenon in India. It is known for its 'unity in diversity'. Diversity in different geographical areas of the country project the cultural, religious, linguistic, racial and ethnic differences.¹ The one billion population of india consists of six main ethnic groups and fifty two major tribes; six major religions and 6400 castes and sub castes; eighteen major languages and 1600 minor languages and dialects,² India has opted for democratic form of government where decisions are made by majority opinion; therefore need to provide safeguards to minority becomes necessary.

After Independence India opted for democratic form of Government. Where majority by their number could safeguard their interest but minority needed special safeguard so that they could preserve their language and culture. Articles 29 and 30 of the Indian Constitution are cultural and educational safeguards provided to minorities. It provides minorities the right to establish and administer educational institutions of their choice. Education not only plays a major role in growth and development of any nation but also helps in breaking the vicious circle of poverty and backwardness. The Constitutional rights conferred on minority are not in anyway favour bestowed upon them, and are not

meant to give some extraordinary rights or to treat them as privileged class of the population. It aims at providing a sense of security and belongingness among minority.

The framers of the Constitution had a difficult job to perform and were fully aware of the complex and complicated problem of minority rights especially at the backdrop of partition of India and Pakistan. They made efforts to incorporate in the Constitution guaranteed rights, safeguards and protective rights. All this is done, with broader interest of national integration and to inculcate confidence among the minorities so that they may be put on equal footing with the majority and should enjoy all the opportunities to participate in the democratic functions of the country. The framers of Constitution of India need to be praised for the protection it affords to the minorities in the country. The framers of the Constitution were quite conscious of the importance of these provisions.

The minority rights are sought to be preserved through fundamental rights. Articles 25 to 30, safeguards religion and culture of minority group in India. Articles 14, 15, 16 and 29(2) seek to protect them from hostile and discriminatory State actions. Minority rights being fundamental rights are protected by the prohibition against their violation, and are backed by a promise of enforcement. Every legal provision or executive action must confirm to mandates implied in them. The prohibition contained in Article 13 bars the State from making any law abridging or limiting any of these provisions and provides for striking down of any law found inconsistent. The promise of enforcement is contained in Article 32 which provides for the right to move the Supreme Court by appropriate proceeding for the enforcement of Fundamental Rights. This provision imposes a duty upon the Supreme Court to afford protection against any violation and vests right in religious and linguistic minorities to seek remedy in case the rights are threatened with deprivation or infringement. A similar jurisdiction has been confirmed upon the High Courts under Article 226.

The Supreme Court through its numerous decisions has been upholding the rights of religious and linguistic minorities in respect to,

- 1) Declaring a community as a minority community and
- 2) In respect to establishing and administering minority institutions.

Supreme Court has not only upheld the fundamental rights of minorities in large number of cases but has honored the sacred obligation to the minority communities. In Re: The Kerala Education Bill, 1957 case³ the Chief Justice S. R. Das observed,

“We the people of India have given unto ourselves the Constitution which is not for any particular community or section but for

all. Its provisions are intended to protect all, minority as well as the majority communities. There can be no manner of doubt that our Constitution has guaranteed certain cherished rights of the minorities concerning their language, culture and religion. So long as the Constitution stands as it is and is not altered, it is, we conceive, the duty of this Court to uphold the fundamental rights and thereby honor our sacred obligation to the minority communities who are of our own.”

The Indian constitution strives to respect all religions equally. every section of the public the majority as well as minority has rights in respect of religion as contemplated in article 25 and 26 and rights in respect of language, script, culture as contemplated in article 29. The whole object of conferring the right on minorities under Article 30 is to ensure that there will be equality between the majority and minority.⁴ The preamble to the constitution proclaims to guarantee to every citizen equality.

The expression ‘minority’ has been used in Article 29 and 30 of the constitution but it has nowhere been defined. Minority as understood from the constitutional scheme signifies an identifiable group of people or community who were seen as deserving protection from likely deprivation of their religious, cultural and educational 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.⁵

Conserve and preserve the language

Justice S. M. Sikri, former Chief Justice of India, has once said, “In fact one may well compare our nation to a big Jumbo jet flying through turbulent weather to a golden destination. For this flight every section of the people must be galvanized together firmly as the various parts of the frame. The strength of the frame is equal only to the strength of the weakest section of the frame. One little crack, i.e. a disgruntled minority, would force the jet to the ground till the crack is repaired.” This realization is an important rationale for the special protections accorded to the minorities in almost all the modern democracy including ours.⁶ The protection of the rights of minority is a *sine qua non* in a healthy democracy and language used in the article 29-30 must be conserve and preserve for a healthy democracy. The very basis of the minority protection is that the political non dominant i.e. a group small in number, need to be protected against interference of majority in their cultural and linguistic development. This differential treatment is necessary to preserve the basic characteristics which they possess and which distinguish them from majority of the population. Interest of minorities, their culture and individuality of minority need to be protected without jeopardizing the interest of majority at large.

The idea of giving some special rights to the minorities is not to have a kind of a privileged or pampered Section of the population but to give to the minorities a sense of security and a feeling of confidence. The great leaders of India since time immemorial had preached the doctrine of tolerance and catholicity of outlook. Those noble ideas were enshrined in the Constitution. Special rights for minorities were designed not to create inequality. Their real effect was to bring about equality by ensuring the preservation of the minority institutions and by guaranteeing to the minorities autonomy in the matter of the administration of these institutions.

Those provisions were a kind of a Charter of rights for the minorities so that none might have the feeling that any Section of the population consisted of first-class citizens and the others of second-class citizens. The result was that minorities gave up their claims for reservation of seats. Sardar Patel, who was the Chairman of the Advisory Committee dealing with the question of minorities, said in the course of his speech delivered on February 27, 1947: This Committee forms one of the most vital parts of the Constituent Assembly and one of the most difficult tasks that has to be done by us is the work of this committee. Often you must have heard in various debates in British Parliament that have been held on this question recently and before when it has been claimed on behalf of the British Government that they have a special responsibility a special obligation for protection of the interests of the minorities. They claim to have more special interest than we have. It is for us to prove that it is a bogus claim, a false claim, and that nobody can be more interested than us in India in the protection of our minorities. Our mission is to satisfy every interest and safeguard the interests of all the minorities to their satisfaction.”⁷ In his Judgment in the *St. Xavier College Ahmedabad v the State of Gujarat*⁸, Justice K. K. Mathew quotes from Urmila Haksar, “Protection of minorities is the protection of non-dominant groups, which, while wishing in general for equality of treatment with the majority, wish for a measure of differential treatment in order to preserve basic characteristic which they possess and which distinguish them from the majority of the population”.

Opinion of Judges on Minority Rights

The rights promised in the Constitution are binding on the state and even the legislative assembly cannot modify these rights. Intrusion on these rights can be challenged. A study of court cases reveals regular and frequent interpretation of these rights in both, High Court and Supreme Court. In course of deciding the matter judges have given the opinion on minority rights. Hereunder opinion of few eminent judges is discussed to gauge the judicial trend.

In the Kerala Education Bill⁹, Reference Case (1959) Chief Justice S. R. Das observed, “So long as the constitution stands as it is and is not altered, it is, we conceive it, the duty of this court to uphold the Fundamental Rights and thereby honour our sacred obligations to the minority communities who are of our own”. Justice Das has made it very clear that these rights are to be treated as “Sacred obligations to the minorities”. Again he has made the following observations on Article 30 (1), “The minorities quite understandably regard it as essential that the education of their children should be in accordance with the teachings of their religion and their hope. Quite honestly such education cannot be obtained in ordinary schools designed for all the members of the public, but can only be secured in schools conducted under the influence and guidance of people well-versed in the tenets of their religion and in the traditions of their culture. The minorities evidently desire that education should be imparted to their children of their community in an atmosphere congenial to the growth of their culture. Our constitution makers recognized the validity of their claims and to allay their fears conferred on them the fundamental rights referred to above”.

In the famous case of Ahmedabad St. Xavier’s College Vs State of Gujarat¹⁰ (1974) Jus. H. R. Khanna categorically stated that, “the provisions of the minority rights were a kind of Charter of Rights for the minorities so that none might have the feeling that any section of the population consisted of first-class citizens and the others of second-class citizens”.

In the T.M.A Pai Foundation v State of Karnataka¹¹ the 11 Judge Constitution Bench headed by Justice B. N. Kripal ruled that minorities have an unfettered right to establish an educational institution of their choice but added that the State could bring regulatory measures, for ensuring educational standards and maintaining excellence thereof. At the same time the Bench has given complete power to the management in the case of unaided educational institutions. Judges, in the various judgments have not only recognised the rights of minority but have time and again upheld their constitutional validity.

Constitutional Rights

The minorities rights under the constitution of India are in form of fundamental rights. Firstly the Constitution nowhere discriminates among the citizens of India on the grounds of religion, race, caste, etc and secondly, the rights conferred under Articles 25 to 30 are fundamental rights. The State is duty bound to protect the fundamental rights. The followings are the minority rights:-

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.

Article 15, Prohibition of discrimination on the grounds of religion, race, caste, sex or place of birth-

(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, and place of birth or any of them.

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to-

(a) access to shops, public restaurants, hotels and places of public entertainment, or

(b) the use of wells, tanks, bathing ghats roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of general public.

Article 16. Equality of opportunity in matters of public employment.

(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the state.

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

Article 21. Protection of life and personal liberty- No person shall be deprived of his life or personal liberty except according to procedure established by law.

Article 25. Freedom of conscience and free profession, practice and propagation of religion.

(1) Subject to public order, morality and health and to other provisions of this part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion.

Article 26. Freedom to manage religious affairs

Subject to public order, morality and health, every religious denomination or any section thereof shall have the right-

(a) to establish and maintain institutions for religious and charitable purposes;

(b) to manage its own affairs in matters of religion.

(c) To own and acquire movable and immovable property; and

(d) To administer such property in accordance with law.

Article 27. Freedom as to payment of taxes for promotion of any particular religion

No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination.

Article 28. Freedom as to attendance at religious instruction or religious worship in certain educational institutions.

(1) No religious instruction shall be provided in any educational institution wholly maintained out of State fund.

Article 29. Protection of interests of minorities.

(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.

Article 30. Right of minorities to establish and administer educational institutions.

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

Article 13 of Constitution of India deals with: Laws inconsistent with or in derogation of the fundamental rights.

Article 12 defines State: The State includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.

Article 347: Special provision relating to language spoken by a section of the population of a State.

On a demand being made in that behalf the President may, if he is satisfied that a substantial proportion of the population of a State desire the use of any language spoken by them to be recognized by that State, direct that such language shall also be officially recognized throughout that State or any part thereof for such purpose as he may specify.

Article 350: Language to be used in representations for redress of grievances.

Every person shall be entitled to submit a representation for the redressal of any grievance to any officer or authority of the Union or a State in any of the languages used in the Union or in the State, as the case may be.

Art. 350A: Facilities for instruction in mother-tongue at primary stage.

It shall be the endeavour of every State and of every local authority within the State to provide adequate facilities for instruction in the mother-tongue at the primary stage of education to children belonging to linguistic minority groups; and the President may issue such directions to any State as he considers necessary or proper for securing the provision of such facilities.

Art. 350 B: Special Officer for Linguistic Minorities

i) There shall be a special officer for the linguistic minorities to be appointed by the president. It shall be the duty of the Special Officer to investigate all matters to the safeguards provided for linguistic minorities under this Constitution and report to the president upon those matters at such intervals as the President may direct, and the President shall cause all such report to be laid before each House of the Parliament, and sent to the Government of the State concerned.

Minority's right to Establish and Administer Educational Institution

In a vast country like India in order to provide equality and unity among its citizens, as there is a wide difference between the minority and the majority, special rights have been endowed to minorities so that they can develop their personality to the maximum. 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 Supreme Court has pointed out in Ahmedabad St. Xavier's College v State of Gujarat¹² that the spirit behind article 30(1) is the conscience of the nation that the minorities, religious as well as linguistic, are not prohibited from establishing and administering educational institutions of their choice for the purpose of giving their children the best general education to make them complete men and women of the country. There have been instances when Minority Community wanted to start a school in a certain locality but the State disallowed it.

Such issue came up before the full bench of Kerala High Court in Fr Mathew MC Vicar v State of Kerala¹³. Kerala Education Rules prescribe the procedures for determining the areas where new schools were to be opened. The Petitioner wanted to start an educational school in a particular area since it did not have a Catholic school but as per the rules no schools could be opened till the Director of Education gave a report indicating the areas where schools can be opened. The Petitioner claimed infringement of minority rights under Article 30 (1) and went to Court. Supporting the government decision the Court observed "Regulation of the right, in time as well as space, must, it appears be permissible". A different approach was adopted by the Karnataka High Court in Socio Legal Advancement Society vs. State of Karnataka¹⁴ where a society founded for the benefit of the Malayali minority community has been denied the recognition of a Teachers Training Institute established by the Society. The State felt that allowing another institute would lead to unhealthy competition and bring about a dilution

of the Teachers Training Programme. The Court held that a minority institute could not be stopped from establishing such an educational institution. In, *State of Kerala v Mother Provincial*¹⁵, Supreme Court has clarified the position that a Society or Trust consisting of members of a minority community, or even a single member of minority community, may establish an educational institution. The Supreme Court observed, “Establishment means bringing into being of an institution and it must be by a minority community. It matters not if a single philanthropic individual with his own means, institution or the community at large founds the institution or the community at large contributes the funds.

Conclusion

In a plural society all cultures and languages must be allowed to flourish. India which is a secular state cannot grow and develop as truly secular until the divisive anti national activities are abolished. The duality (minority and majority) be permitted only in the area of religion and language and not to other areas. Here it is germane to quote Dr. B.R. Ambedkar what he said in the constituent assembly¹⁶ that “it is wrong for the majority to deny the existence of minorities .it is equally wrong for the minorities to perpetuate themselves. A solution must be found which will serve a double purpose .it must recognize the existence of the minorities to start with it will also be such that it will enable majorities and minorities to merge some day into one.”

The width of Article 30(1) cannot be cut down by introducing in it considerations which are destructive to the substance of the right enshrined therein. Article 15(5) of the Constitution of India exempts an educational institution covered under Article 30(1) from the policy of reservation in admission. That being so, provisions of the Central Educational Institutions (Reservation in Admission) Act, 2006 cannot be made applicable to an educational institution covered under Article 30(1). Moreover, *P.A. Inamdar case*¹⁷ is an authority on proposition of law that neither can the policy of reservation be enforced by the State nor can any quota or percentage of admission be carved out to be appropriated by the State in a minority educational institution. The State cannot regulate or control admissions in minority educational institutions so as to compel them to give up a share of the available seats to candidates chosen by the State. This would amount to nationalisation of seats which has been specifically disapproved in *T.M.A. Pai case*¹⁸. Such imposition of quota of state seats or enforcing reservation policy of the State on available seats in minority educational institutions are acts constituting a serious encroachment on the right enshrined in Article 30(1). Such appropriation of seats can also not be held to be a regulatory measure

or a reasonable restriction within the meaning of Article 30(1) of the Constitution.

Thus All Democratic States ensure Constitutional Protection for Minority Rights. They can, however, be enforced only by an independent judiciary, comprising judges with a broad, liberal outlook when politicians in the Executive and the Legislature trammel on the rights of minorities.

If fundamental right is infringed the remedy is given under Article 32 and Article 226. A person can directly approach to Supreme Court under Article 32 and High Court under Article 226 in case of violation of his fundamental rights. So, the true spirit and intention of the Constitution is to provide a very formal and water tight arrangement for safeguarding the interest of minorities.

References:

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- 3 1959 1 SCR 995
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- 8 AIR 1974 SC 1389, (1974) 1 SCC 717, [1975] 1 SCR 173,
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- 14 AIR 1989 KAR 217
- 15 AIR 1970 SC 2079
- 16 *The Constitution and the Constituent Assembly, Lok Sabha* (1990) p. 131
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