

CONSTITUTIONAL FRAMEWORK FOR MINORITIES WITH SPECIAL REFERENCE TO THE PROTECTION OF CULTURAL AND LINGUISTIC IDENTITIES

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Introduction

“In any country, the faith and confidence of the minorities in the functioning of the State in an impartial manner is an acid test of it being a just State”

-Justice Rajendra Sachar

The process of establishing a council to draft constitution gathered steam during the second World War, whilst the British administration began to negotiate India's independence. Following a number of steps taken in this regard via the British authorities, the Cabinet Mission Plan was eventually introduced in 1946. It recommended the establishment of a Constituent Assembly and recommended that this assembly establish a committee of advisors upon the rights of citizens, minorities, and excluded areas.¹ According to the Cabinet Mission, the Indian people's right to secede from the union upon the foundation of a constitution drafted by the constituent assembly would only be granted if sufficient safeguards for minorities rights were put in place.² After the formulation of the constituent assembly the matter of minorities protection remained a significant and contentious one, capturing the interest of the members until the assembly finished drafting the constitution in November 1949.

The Congress found itself in a precarious situation when the Assembly was called to order. It needed to appease the majority as well as win over the minorities consensus. The congress party maintained the idea of Indian national unity in front of it as a fundamental tenet throughout the time it fought for the protection of rights and interests. As a result, if the minority agreement was obtained by making too many concessions in support of the preservation of minority interests, this would assist to maintain the minorities awareness of their distinct identities.

To define 'Minority' is inherently difficult, especially in a multi-ethnic and multicultural nation like India. For what reason may a group or community be designated as a minority? However, the most important need for a group to qualify as a minority is that it must not be dominant.

According to the Legal Dictionary:

“the state or condition of a minor; infancy opposite of majority. The smaller number of votes of a deliberative assembly opposed to majority. In the context of the

¹ B. Shiva Rao, Framing of India's Constitution: A Study, the Indian Institute of Public Administration, New Delhi, 1968, p. 775.

² Cabinet Mission statement. May 25, 1946, Select Documents, Vol. I, IIPA, New Delhi, p. 258

constitution's guarantee of equal protection minority does not have merely numerical denotation but refers to identifiable and specially disadvantaged groups such as those based on race, religion, and ethnicity or national origin."³

According to J.A. Laponce:

*"A minority is a gathering of individuals, who due to a typical racial, linguistic religious or national legacy which singles them out from the politically 'prevailing' gathering dread that they may either be kept from coordinating themselves into their preferred national group or be accommodated to do as such to the detriment of their personality"*⁴

Accordingly, the Indian Constitution recognises minorities with different scripts:

1. Religious minorities;
2. Linguistic minorities;
3. Cultural minorities; and
4. Minorities having their own script.

This broad categorisation of minorities, nevertheless, might be oversimplified. It is crucial to remember that comprehending the minority in India involves more than only identifying the non-dominant groups according to their numerical strength. Its main focus is on comprehending the relationships that various groups have with one another in various contexts as well as how these groups relate to the government and democratic institutions⁵. As post- independence, due to the representation of the Hindu majoritarian orientation as the national identity, equitable resource allocation was obstructed and social groups with diverse cultural backgrounds were not given the credit they deserved. These groups were placed in an awkward situation where they were both shut out of nationalism and imprisoned inside the nation-state.

- **Linguistic Minorities:** The Hon'ble Supreme Court in the case of *D.A.V. College, Jullundur v. State of Punjab*⁶ has rightly observed that *"a linguistic minority for the purpose of art. 30(1) is one which must at least have a separate spoken language. It is not necessary that language should also have a distinct script for those who speak it to be a linguistic minority."* However it should be noted that it should be noted that the Eighth Schedule of the Constitution lists twenty-two languages, so it is unquestionably not essential that the minority group's language become one of the 22 languages that the Constitution recognises. Certain languages spoken in this country lack a written script; yet, the people who speak those languages will constitute a linguistic minority.⁷
- **Cultural Minorities:** One may easily observe minorities in terms of language and religion, but it is difficult to understand the significance of the term *"culture."*

³ Available at: <http://legal-dictionary.thefreedictionary.com/minority> (last visited 14th May, 2024).

⁴ J.A. Laponce, Protection of Minorities, 5 (1960).

⁵ Nation and Minorities, 116 (Prakash Louis, Minorities and their Backwardness).

⁶ AIR 1971 SC 1737.

⁷ Rakesh Kumar Singh, Constitutional Mandate and Rights of Linguistic Minorities, Notes and Comments, Journal of the Indian Law Institute, 273 Vol. 48 No. 2 April-June, 2006.

Generally speaking, 'culture' refers to the sum total of the social, religious, and artistic achievements of human communities, including customs, traditions, and behavioural patterns that are all united by fundamental beliefs and characteristics. Culture encompasses more than just geography, language, or content. It includes every bit of the historical legacies of every group in both physical and extra-terrestrial space. In the context of art. 29(1), a group of people who have a distinct civilisation apart from the majority will be considered a "cultural minority" because this article defines culture, and because of these differences, they may also be considered a distinct ethnic minority.

Initiatives by the Indian Government for the betterment of Minorities

1. Establishment of Minority Commission

In order to defend and uphold the rights of the minority, the Indian government established the 'Minorities Commission' in January 1978. With the passage of the 'National Commission for Minorities Act, 1992' this Commission became a statutory entity. The Government of India informed five religious communities *i.e.* Muslims, Christians, Sikhs, Buddhists, and Parsis that they were minority communities in India under Section 2(c) of this act through a notification dated October 23, 1993. Similar to this, the Sixth Plan (1980–1985) recognised minorities as a distinct socioeconomic group and provided particular provisions to them via the Minimum Needs Programme.⁸

2. Sachar Committee Report

The purpose of the Prime Minister's High Level Committee sought to evaluate the social, economic, and educational standing of Muslims in India in 2005. This is as a result of the dearth of trustworthy information regarding this matter. In its comprehensive report, which was released at the close of 2006, this Committee commonly referred to as the Sachar Committee highlighted the low socioeconomic standing of Indian Muslims relative to the broader community. The Union government increased its commitment to addressing the issues of inequality, deprivation, and exclusion among Muslims during the *Eleventh Five Year Plan* after being frightened by the report's conclusions. This was accomplished through plans for area development, improved access to public services, the strengthening of institutions serving minorities, and educational and economic empowerment. The PMO outlined the committee's terms of reference, which included gathering pertinent data from state, federal, and local government departments and agencies in addition to conducting a thorough literature search to find published statistics, articles, and studies on the social, economic, as well as educational situation of muslim in the country at the state, local, and district levels.

The said committee in its report has highlighted different socio economic issues like

- i. Muslim women only make up 25% of the labour force. Muslim women make up 29% of the workforce in rural areas, in comparison to 70 percent of Hindu women.

⁸ Massey J., Minorities and Religious Freedom in a Democracy, Centre for Dalit Subalter Studies (Manohar, 2003).

- ii. In the 6-14 age bracket, 25% of Muslim youngsters either never gone to schools or simply dropped out;
- iii. Of the urban workforce, only roughly 27% of Muslims work regularly, compared to 40% of SC/ST, 36% of OBC, and 49% of upper caste Hindu workers.

The Committee proposed several measures to improve the lot of the Muslim community in India, routinely such as:

- i. Establishing an Equal Opportunities Commission to investigate the complaints of marginalised communities such as minorities.
- ii. Establish a nomination process to boost minority representation in public entities.
- iii. Create a delimitation process that does not designate SCs for constituencies with sizable minorities.
- iv. A higher percentage of Muslims are employed, especially in fields involving extensive public interaction. Determine how to connect the higher secondary school board with madarsas.

3. Rangnath Mishra Commission Report

The linguistic and religious minorities can be classified into socially and economically backwards classes based on the criteria proposed by the Justice Ranganath Mishra Commission. It implies that there should be absolutely no distinction made between those who are dominant and the minorities in the criteria used to identify backwards classes. As a result, the criteria currently associated with the majority community, whatever that model may be, should apply to all minorities without reservation. Recommendations like welfare initiatives upon the basis of education, economic condition, measurement upon the basis of status of reservation. The commission suggests the Muslim minority group should be regarded as a backwards community because minorities, particularly the Muslim community, are particularly underrepresented in government services and occasionally not entirely represented in government jobs.

Provisions for Minorities in the Indian Constitution

The Indian Constitution's framers were not confronted with the hypothetical problem of defining the concept of the minority within the parameters of a definition. They were providing a practical response to a primarily political question that had been part of India's political landscape for a very long time prior to Independence. Art. 25 to 28 of the Indian Constitution have been consolidated into Part III, which rightly guarantees the freedom to practice one's religion as a basic right. Everyone has a fundamental right to openly express, practice, and spread their religion, as guaranteed by art. 25. Every religious sect is allowed to create institutions for its own religious purposes under art. 26. Additionally, religious groupings have been classified differently in rulings made by Indian Supreme Court and High Courts. The Indian constitution contains provisions for both citizens as well as non-citizens, yet certain sections such as art. 15, 16, 19, 29, and 30 are exclusive to the citizens. The only people protected by these laws are Indian citizens; they grant them the freedom to peacefully exercise their fundamental rights without facing discrimination on the grounds of race, creed, sexual orientation, faith, or place of birth. In a similar vein, art. 29 and 30 of the constitution

contain several measures that the framers intended to safeguard the interests of minorities. Accordingly, they declared under art. 30 (1) without, in any case, identifying minority groups that would be the beneficiaries of the existing conferment or laying out a positive criteria that would clearly distinguish a minority from a dominating part in any given situation. When handling the delicate subject of minority rights, the Indian constitution's drafters kept this in mind. The constitution focuses on the rights of minorities because it attempts to translate the high expectations of a broad public that was founded on homogeneity and values into a stable reality. Without widespread advancement that permeates every level of our social structure and is positioned right down into the deepest pockets of unequal presence, the nation will never be able to go forward.⁹

According to D.E. Smith:

*“A secular state may be defined as a state which guarantees freedom of religion to the individual, treats the individual irrespective of his religion and is constitutionally neither connected to a religion nor seeks to promote or interfere with religion”*¹⁰

According to Dr. S. Radhakrishnan:

*“India is a symphony where there are, as in the orchestra, different instruments, each with its particular sonority, each with its special sound.”*¹¹

Role of Judiciary in Protecting Minorities Rights

The framers of the constitution made no mention of minorities protective rights, which allow them to exercise their constitutionally guaranteed right to self-defense and enjoyment of other fundamental liberties. In *T.M.A. Pai Foundation v. State of Karnataka*¹², the Supreme Court ruled that Articles 29 and 30 only aim to uphold existing differences while bringing the people together to create a powerful, unified nation. Art. 29 and 30 provide protection to communities of religious or linguistic minorities, but this protection does not grant them equivalence compared to other religion or linguistic groups in India.¹³ Minority languages and ideas are not to be suppressed in the name of progressing the majority language. This would be trespassing on the rights of those resident groups who have certain languages or topics that they believe should only be taught in their own educational institutions. In the case of *D.A.V College Jullunder v. State of Punjab*¹⁴, it was decided that art. 29(1) was not violated when a legitimate agreement required the Guru Nanak University to conduct advanced research and investigations in Punjabi language and writing as well as to try strategies regarding the enhancement of Punjabi writing, language, and culture. The Hon'ble supreme court emphasised that the linguistic States objection and justification for staying in India is to provide greater weight to the region's overall population's growth in terms of education, culture, and language use. Every State or university has the right to allow the majority of people to receive their education in the regional medium. However, the limitations outlined in art. 25 to 30 apply to this privilege. Minority language and subject

⁹ Abhishek Tripathy, *The Constitution of India and the Rights of Minority Commission vis-à-vis Education* available at: <http://airwebworld.com/Articles/index.php?Article=1042.?> (accessed on 15th May, 2024).

¹⁰ D.E. Smith, *India as a Secular State*, 408-9 (2015).

¹¹ Constituent Assembly Debates, 38 vol. I (1946).

¹² (2002) 8 SCC 481.

¹³ *Bal Patil v. Union of India*, AIR 2005 SC 3172.

¹⁴ AIR 1971 SC 1737.

matter are not to be suppressed in the name of progressing the majority language. This would be trespassing on the rights of those resident groups who have certain languages or topics that they believe should only be taught in their own educational institutions. Therefore, the mentioned agreement cannot be interpreted as forcing the minority groups affiliated with 'Guru Nanak University' to provide instruction in Punjabi or as impeding their ability to retain their dialect, script, and culture in any way.

Also, in the event that a place has a majority or minority, all residents are covered by the right granted by this article. It is not just restricted to minorities. According to the ruling in *State of Bombay v. Bombay Education Society*¹⁵, restricting this right to minority gatherings will ultimately result in the ruling that members of the majority population do not have the right to be admitted into an educational organisation whose upkeep they fund through fees. Further in the case of *Ravneet Kaur v. Christian Medical College, Ludhiana*¹⁶, the court ruled that a private organisation that receives government funding is prohibited from discriminating on the basis of religion, caste, race, or any combination of these.

In the case of Kerala Education Bill, the Hon'ble Supreme Court had interpreted the scope of Articles 29 and 30 of the Indian Constitution and held that the right of a minority group to establish and preserve their own educational institution is essential to their ability to preserve their unique language, the script, and culture via that institution. The proviso (2) art. 29 applies to the right within art. 30(1), which states that no citizen may be refused entrance to a state-run educational institution or assistance from public funds on the only basis of their race, religion, caste, language, or any combination of these. In the case of *St. Xavier's College v. State of Gujarat*¹⁷, the hon'ble court has after revisiting its previous rulings held that art. 29(1) and 30(1) handle specific situations and may even be seen as complementing one another insofar when particular cultural rights are concerned. Article 30(1) grants the freedom to create and manage an educational institution of its choice for all its minorities, regardless of their language or religion. The definition of 'establish' is to give birth to. It does not always imply that the minority built the institution.¹⁸ In the case of *A.M. Patroni v. Assistant Educational Officer*¹⁹, a school that had been administered by a different organisation was acquired and taken up by a church organisation, which restructured and oversaw it to better serve and adhere to Roman Catholic educational standards. For the purposes of Article 30, it was decided that the school was founded by Roman Catholics.

Conclusion

Minority rights have consistently been a contentious topic everywhere in the world, including India. When the Constituent Assembly of India was in the motion of drafting the constitution, this matter was hotly contested. The political and economic freedoms of minority communities, as well as the plan for reviewing such rights in the event of infringement, were

¹⁵ AIR 1954 SC 561.

¹⁶ AIR 1998 P&H 1.

¹⁷ AIR, 1974 SC 1389.

¹⁸ Professor Narendra Kumar, Constitutional Law of India 270 (Pioneer Publications, Delhi, Edition, 1997).

¹⁹ AIR 1974 ker.197.

given a great deal of weight by the Constituent Assembly's Subcommittee on Fundamental Rights and Minorities.

The '*National Commission for Minorities*' is an entity that looks out for the interests of India's minority communities, but it hasn't been able to carry out any of its assigned responsibilities in a way that is both productive and efficient. The Commission has failed miserably for this crucial reason. The Commission was established and tasked with investigating, reporting, and assessing the state of minority populations and efforts to safeguard their rights.

It hasn't tried to look into minority underrepresentation and its causes, such as prejudice and discrimination against them, nor has it pushed the Indian government to release these kinds of studies and statistics to the general public. A more critical look at the historical context of its formation, the changes it underwent as a result, and its working conditions after its ultimate establishment under an act of the Indian Parliament in 1992 speak volumes about the Commission. The Constitution of India excludes any further or specific provisions for ensuring the economic stability or political representation of the minority community, with the honourable exception of the Anglo-Indian community group, whose representation was guaranteed. It however provides the minority communities with certain safeguards, including the freedom to create and run educational entities of their choice and the protection and preservation of their own language, script, and culture. In all honesty, these were the primary safeguards that the Indian Constitution's founders granted to the minority.