

## RELIGIOUS MINORITIES AND LAW

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The term Minority is derived from the Latin word “minor” and suffix “ity” which means small in numbers. According to the Encyclopedia Britannica, minorities mean “group held together by ties of common descent, language or religious faith and feeling different in these respects from the inhabitant of a given political entity.”<sup>135</sup> The United Nations Minorities Declaration in its Article 1 refers to minorities as based on national or ethnic, cultural, religious and linguistic identity. There is no internationally agreed definition as to which groups constitute minorities.<sup>136</sup> Every nation has its own minority groups i.e. groups of people closely associated for some specific reason or purpose, characterized by its own country on the basis of national or ethnic, cultural, religious and linguistic identity. They are often the most disadvantaged groups subject to discrimination and injustice leading to marginalization and exclusion. Estimates suggest that 10%-20% of the world’s population belong to minorities. These people aspire to participate in the public, social, economic, cultural and religious life of the societies in which they live, on an equal footing with the rest of the population. However, a certain gap persists in the protection of their rights, which is also duly acknowledged by the United Nations, through the adoption of Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities in 1992.<sup>137</sup> It includes a list of rights to which persons belonging to minorities are entitled, including the right to enjoy their own culture, to profess and practice their own religion and to use their own language. It also suggests measures which the state can undertake to create conditions for effective implementation of these rights.<sup>138</sup> Other International documents which talk of Minority rights include the International Convention on Civil and Political Rights under its Article 27.<sup>139</sup> Minority rights in India have been under focus since the beginning of the last phase of independence and have also been

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<sup>135</sup> SK. Jahangir Ali, *Introduction*, EDUCATIONAL RIGHTS OF MINORITIES: A CONSTITUTIONAL PERSPECTIVE, <http://shodh.inflibnet.ac.in:8080/jspui/bitstream/123456789/1031/1/synopsis.pdf>

<sup>136</sup> Anonymous, *Who are Minorities under International Law*, MINORITIES UNDER INTERNATIONAL LAW, <http://www.ohchr.org/EN/Issues/Minorities/Pages/internationallaw.aspx>

<sup>137</sup> Anonymous, *Minority Rights 2012*, UNITED NATIONS DECLARATION ON MINORITY RIGHTS, <http://www.ohchr.org/EN/NewsEvents/Minorities2012/Pages/minorityrights2012.aspx>

<sup>138</sup> Anonymous, *National, Ethnic, Religious and Linguistic Minorities*, VULNERABLE PEOPLE, <http://www.un.org/en/letsfightracism/minorities.shtml>

<sup>139</sup> Sanjeev Nayyar, *Why did the Ramakrishna Mission say they are not Hindus?*, (August, 2002), [https://www.google.co.in/url?sa=t&rcct=j&q=&esrc=s&source=web&cd=10&ved=0CFYQFjAJahUKEwisgrry2MXHAhUOW44KHdqWDtg&url=http%3A%2F%2Fwww.esamskriti.com%2Fessays%2Fdocfile%2F23\\_436.doc&ei=dSPdVezzGY62uQTarbrADQ&usg=AFQjCNESMi7LLSrqNts2mrV6TwaLqAi27g&cad=rja](https://www.google.co.in/url?sa=t&rcct=j&q=&esrc=s&source=web&cd=10&ved=0CFYQFjAJahUKEwisgrry2MXHAhUOW44KHdqWDtg&url=http%3A%2F%2Fwww.esamskriti.com%2Fessays%2Fdocfile%2F23_436.doc&ei=dSPdVezzGY62uQTarbrADQ&usg=AFQjCNESMi7LLSrqNts2mrV6TwaLqAi27g&cad=rja)

mentioned in the Sapru Report which stresses on protecting the rights of minorities. The Constituent Assembly also had deliberate discussions on the rights of minorities and even had an Advisory Committee chaired by Vallabhbhai Patel to suggest on the protection of minorities.<sup>140</sup> The Constitution of India does not define the term minority and only employs the term at four places. Defining the term was left by the Constitution makers upon the discretion of the courts. The courts also do not prefer giving a general definition of the term since no general definition will be wide enough to cover various situations in this regard.<sup>141</sup> The Constitution, however, envisages three categories of minorities- classified in terms of language, religion and culture. Minority groups in India based on religion include every religion other than Hinduism, since 80% of the population of India professes the Hindu religion. Minorities majorly constitute the Muslims who constitute 10%-11% of the total population of India being the world's second largest Muslim population. They are subject to more discrimination as compared to other minorities in India like the Christians or Buddhists. These religious groups were declared to be minority groups by the National Commission for Minority Act 1992 vide Ministry of Welfare Notification dated 23 October 1993. Muslims, however, constitute a majority in the state of Jammu and Kashmir and in the Union Territory of Lakshadweep.<sup>142</sup> This religious division was the result of the partition of India in 1947 which led to one of the largest transfer of population in the twentieth century. However, this transfer of population is no reason for the Muslims who stayed behind in India to claim special safeguards because they stayed back as Indians first and Muslims later.<sup>143</sup> These minorities face problems in adjusting with the majority communities and are insecure about their life, security and well being. The discrimination which they face keeps them deprived of various opportunities of development which creates in them a feeling of inequity. This discrimination is further magnified when these minorities start to live in the urban areas, though they are better provided with opportunities there. The constant threat which these minorities face raises a question on the ability of the State to protect their rights along with maintaining national integrity and communal harmony. And it is this threat which has led to an increasing emergence of these issues on the political front in the form of demand for participation or separatists

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<sup>140</sup> Anonymous, *History*, FUNDAMENTAL RIGHTS, DIRECTIVE PRINCIPLES AND FUNDAMENTAL DUTIES OF INDIA, <http://www.acb.mizoram.gov.in/uploads/files/fundamental-rights.pdf>

<sup>141</sup> Varun Shivhare, *Minority Rights, The Judicial Approach*, LEGAL SERVICES INDIA, [https://www.google.co.in/url?sa=t&rct=j&q=&esrc=s&source=web&cd=4&cad=rja&uact=8&ved=0CDAQFjADahUKEwiUuYilirzHAhVQVY4KHQFuD1Y&url=http%3A%2F%2Fwww.legalservicesindia.com%2Farticles%2Fjudi.htm&ei=ExnYVdTjH9CquQSB3L2wBQ&usg=AFQjCNGVrgudT0\\_PBSOTiFYlyFo8OCTPUg](https://www.google.co.in/url?sa=t&rct=j&q=&esrc=s&source=web&cd=4&cad=rja&uact=8&ved=0CDAQFjADahUKEwiUuYilirzHAhVQVY4KHQFuD1Y&url=http%3A%2F%2Fwww.legalservicesindia.com%2Farticles%2Fjudi.htm&ei=ExnYVdTjH9CquQSB3L2wBQ&usg=AFQjCNGVrgudT0_PBSOTiFYlyFo8OCTPUg)

<sup>142</sup> Anonymous, *Who are the Minorities*, CONSTITUTIONAL AND LEGISLATIVE PROVISIONS REGARDING THE MINORITIES, (April 2010), <http://www.sabrang.com/cc/archive/2010/apr10/chapter2.pdf>

<sup>143</sup> GOKULESH SHARMA, CONSTITUTIONS OF SAARC NATIONS, 2008

movements. Such issues continue to emerge in spite of the various provisions in the Constitution which was adopted on 26 January, 1950, to keep the rights of the minorities intact. The first proposal for conferring rights on religious minorities in the Constitution was put forward by Shri K.M. Munshi, on the acceptance of which paragraph 18 of the draft of Fundamental Rights contained the provisions corresponding to the present Articles 29 and 30 of the Constitution.<sup>144</sup> The basic concepts are enshrined in the Preamble, along with provisions in the form of Directive Principles of State policy, Fundamental Duties and Fundamental Rights. Such provisions were included to lay special emphasis on the unity and equality of the people of India by bringing all religions under its fold. The Preamble talks of Secularism which means that the state does not have a religion of its own and where all religions are treated equally. Secularism ensures that the minority religions do not suffer from a sense of inferiority and assures to them that the majority class will not rule the economy. This concept of secularism was introduced in the Indian Constitution during the emergency by Indira Gandhi's Government in the year 1976 by virtue of the 42<sup>nd</sup> Amendment of the Constitution, though India was a secular state before the introduction of these words as well. Secularism is a necessity as India is a country inhabited by people of all faiths and it cannot accept one religion as state-religion. However, there are various factors which hamper the growth of secularism in India. One such factor is the continuous attempt to make India a Hindu nation. Other factors include the use of communalism by the political parties. This feeling of communalism also grows when the majority groups of the nation refuse to accept the contributions of the minorities to the nations' history and culture. Such insensitivity to the feeling of minorities and their contribution destroys the secular nature of the State. However, there is yet another way of looking at the concept of secularism which raises the question that if India is a secular state, then why it provides special privilege to the religious minorities who are otherwise seen as equal in the eyes of law. The answer, however, lies in the concept of secularism itself. This concept talks of equality to various religions and hence the Government is empowered to give special privileges to communities which have always been socially weak. Secularism cannot work on its own. It requires efforts from the majority groups as well as the minorities, and more so from the minorities. The minorities have to put in efforts to intermingle with the national mainstream rather than insisting on maintain a separate identity. The fundamental duties provided for under Article 51A also contain provisions regarding minorities and makes clear

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<sup>144</sup> Dr. P.C. Jain, *Rights of Jains to be declared as a Minority based on Religion*, JURISPRUDENCE, (2004), <http://www.ebc-india.com/lawyer/articles/705.htm>

that attack upon minority communities are looked down upon. Article 51A(e) desires the promotion of harmony and the spirit of common brotherhood among all the people of India transcending religious, linguistic, regional or sectional diversities. The most important Constitutional provisions are included in the Fundamental rights which are provided to all citizens irrespective of religion, caste and sex, under Articles 14, 15, 16, 21 and 25 to 30. Article 15 prohibits discrimination on grounds of religion and Article 16 gives equality of opportunity in matters of public employment. Articles 25 to 28 talk about right to freedom of religion. This gives citizens of the country a right to preach, practice, and propagate any religion of their choice subject to public order, morality and health. Due to this subject clause, many people including the minorities feel that this article does exactly the opposite. Bhajan Singh, Founding Director of US-based Organization for Minorities of India (OFMI) said, “The foundational threat to religious liberty in India is Article 25.”<sup>145</sup> The Supreme Court, however, in the case of *Pannalal Pitti V. State of Andhra Pradesh* mandated that while Article 25 and 26 grant religious freedom to minority religions, yet they do not intend to deny the same guarantee to Hindus.<sup>146</sup> Article 29 provides for the protection of interests of minorities and Article 30 provides minorities with a Fundamental Right to establish and administer educational institutions of their choice. It further states that the Government shall not discriminate against any educational institution run by religious minorities while granting aid. Madarsas are governed under Article 30. This article raises certain issues. One such issue is that this Article implies that Government cannot intervene in the administration of such institutions even in case of malpractices. There has also been an opinion regarding Article 30 that the religious minorities should only be allowed to establish educational institutions of their choice for the protection of their distinct languages, script and cultures. However, this view has never been accepted by the superior courts.<sup>147</sup> The Supreme Court has ruled that for the purpose of deciding a minority, the state will be the geographical unit within which headcounts will decide majority or minority. There are many ways in which this can be misused. A Telugu Institution, for instance, will be happier based in Delhi or Gujarat to ensure less meddling, rather than Andhra Pradesh where it can’t have that autonomy granted to minority institutions.<sup>148</sup> And therefore, it is many a time contended that minority status should be decided in terms of

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<sup>145</sup> Organization for Minorities of India (OFMI), *Obama Affirms Indian Constitution’s Article 25 Over Objections of South Asian Americans*, SIKH SIYASAT NEWS, January 28, 2015

<sup>146</sup> Anonymous, *Right to Freedom of Religion: Article 25-28*, GENERAL KNOWLEDGE TODAY, (2013)

<sup>147</sup> Anonymous, *The Indian Concept of Secularism*, RELIGION UNDER CONSTITUTION AND RELATED LAWS, [http://shodhganga.inflibnet.ac.in/bitstream/10603/1936/8/08\\_chapter%203.pdf](http://shodhganga.inflibnet.ac.in/bitstream/10603/1936/8/08_chapter%203.pdf)

<sup>148</sup> R Jagannathan, *We are a Nation of Minorities. Let’s scrap Article 30*, FIRST POST, (August, 2015), <http://www.firstpost.com/india/we-are-a-nation-of-minorities-time-to-scrap-article-30-277019.html>

population of the whole country. The Supreme Court says that even institutions of general education, unrelated to preservation of language, set up by minorities come under the ambit of Article 30. This broad construction of Article 30(1) given by the Supreme Court raises certain doubts regarding why such privileges should not be enjoyed by institutions of general education set up by the majority?<sup>149</sup> These rights are further protected by Article 13 which declares that any law in violation of the Fundamental Rights will be declared to be void to the extent of such violation. And any case of such violation can be challenged in the High Court or Supreme Court where these matters are taken up with utmost urgency. Other important provisions include Article 46 which talks about the promotion of educational and economic interests of the Scheduled Castes, Scheduled Tribes and other weaker sections of the society. It states that the State shall protect these groups from all sorts of injustice and exploitation. Article 44 of the Constitution provides for a uniform civil code which means unifying all the personal laws of the Hindus, Christians, Muslims, Jains, Buddhists and Sikhs to have one set of secular laws that will apply to all citizens of India irrespective of their caste and community.<sup>150</sup> This is opposed by the minorities on the grounds that a uniform civil code will lead them to losing their identities. And thus, this article has not been implemented yet. There are many countries which do not provide equal rights to all its citizens. Examples include the Middle East, where the minorities don't even have the basic civil rights or Europe where they live under strictures.<sup>151</sup> Therefore, we should be thankful to the framers of our Constitution for giving special rights and protection to the minorities. However, only providing for protection in texts will not go a long way if such provisions are contradicted by the Government itself. Instances of such violation can be seen in the BJP governed states of Rajasthan, Gujarat, Madhya Pradesh and Haryana where Hindu rituals like those of Saraswati Vandana are being made compulsory in schools.<sup>152</sup> Also, attempts have been made to change the school curricula to bring it in line with the concept of a Hindu Rastra. This goes against the very basic structure of our Constitution as the word secular in the Preamble suggests that the Government does not uplift any religion. The provisions in the Constitution sometimes end up having a negative impact. One instance of this is that the extent to which these provisions favor Minorities forced the Ramakrishna Mission to apply for Minority Status. Other instances include the case of

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<sup>149</sup> Anonymous, *Conclusion*, CHAPTER IX,

[http://shodhganga.inflibnet.ac.in/bitstream/10603/8901/14/14\\_chapter%209.pdf](http://shodhganga.inflibnet.ac.in/bitstream/10603/8901/14/14_chapter%209.pdf)

<sup>150</sup> MANISH ARORA, *UNIVERSAL'S GUIDE TO LL.B. ENTRANCE EXAMINATION*, 2011-12, (21<sup>ST</sup> Ed.)

<sup>151</sup> Minhaz Merchnat, *Why Muslims and Christians are safer in India than most places on Earth*, DAILY OPINION, (June 2015), <http://www.dailyo.in/politics/secularism-islam-hindus-religion-persecution-tolerance-muslims-christians-safe-india/story/1/4090.html>

<sup>152</sup> Irfan Engineer, *Preamble, Secularism and Constitution*, MAINSTREAM WEEKLY, (2015)

*D.A.V. College, Bhatinda V. State of Punjab*, where the Supreme Court rejected the argument that Arya Samaj is a separate religion, which was made in order to claim the autonomy granted to religious minorities in respect of administering educational institutions.<sup>153</sup> The Constitution also clearly states that the Government should not pass any bill to benefit a specific religion. It is not only the Constitution, but also the criminal law of the country which contains provisions to ensure that activities which encourage enmity between different groups of people on grounds of religion are adequately punished. One such provision is under Section 153A of the Indian Penal Code (IPC). Also, Sections 123(3) and 123(3A) of the Representation of People Act, 1951, declares that soliciting of vote on the ground of religion is a corrupt practice.<sup>154</sup> Apart from various provisions in the Constitution and the criminal laws of the country, the Supreme Court has also time and again considered the scope of minority rights, as in the case of *Ahmedabad St. Xaviers College Society V. State of Gujarat*. The success of various development and welfare schemes of the Government is also questionable, and due to the failure of such schemes, these groups have not been able to contribute in the economic growth of the Nation commensurate to their number. Such unique schemes are provided to these minorities under the heads of “State Minority Benefit Schemes” and “Central Benefit Schemes for Minorities”.<sup>155</sup> If their problems are properly tackled, these groups can form an important part of the country’s population. To tackle their problems, governmental bodies are created which include the Ministry for Minority Affairs, the National Human Rights Commission and the National Commission for Minorities.<sup>156</sup> However, there is still a need to strengthen these institutions. The United States Commission on International Religious Freedom (USCIRF) urged the U.S. Government to assist the Government of India to undertake measures to make more effective efforts to halt violent attacks against religious minorities and enact policies to encourage religious tolerance in the country.<sup>157</sup>

In conclusion, it is not only the Government which needs to take the initiative, as Gandhi mentioned in his publication *Young India*, it is the majority groups which need to take the

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<sup>153</sup> Hon’ble Mr. K.G. Balakrishnan, *Democratic Citizenship*, INDIVIDUAL RIGHTS IN INDIA: A PERSPECTIVE FROM THE SUPREME COURT, (April, 2009), [http://supremecourtindia.nic.in/speeches/speeches\\_2009/presentation\\_at\\_roundtable\\_-\\_university\\_of\\_georgia.pdf](http://supremecourtindia.nic.in/speeches/speeches_2009/presentation_at_roundtable_-_university_of_georgia.pdf)

<sup>154</sup> Anonymous, *Info-bits related to Fundamental Duties*, FUNDAMENTAL DUTIES: PART IVA (ARTICLE 51A), (April 2014), <http://www.clearias.com/fundamental-duties/>

<sup>155</sup> Anonymous, INDIA FACTS, <http://indiafacts.co.in/list-discriminatory-bills-favouring-minorities-india/>

<sup>156</sup> Anonymous, *Status of Government Respect for Religious Freedom*, INDIA, <http://www.state.gov/documents/organization/171754.pdf>

<sup>157</sup> DIANE PUBLISHING, INTERNATIONAL RELIGIOUS FREEDOM (2010): ANNUAL REPORT TO CONGRESS 241, (2010)

initiative to take the minorities into their confidence. the Constitution of India has successfully considered the scope of minority rights. Such scope is also well defined with the help of various development and welfare schemes. These together have helped to promote the interests of minorities.