



## Constitutional Protection of Minorities Interests in India

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**Abstract:** *The majority and minority in India problematic issues and have its long roots in the history. During the Constitution making process in the backdrop of history of communal conflict and pluralistic nature of Indian society the subject of minorities in India and constitutional protection for them was put utmost importance. Therefore, along with special constitutional provisions for the minorities, the founding father of the constitution provided for certain special rights to the certain classes such as scheduled caste, scheduled tribe, and minorities.*

### Introduction

Generally minorities are a group of people differentiated from other members by race, nationality, religion, language, culture and socio economic factors in the society in which they live. The United Nations Commission on prevention of Discrimination and protection of minorities has defined - the term minority which include only that non- documents group in a population which possess and wishes to preserve stable rethink, religious or linguistic traditions or characteristics markedly different from those of the rest of the population.<sup>1</sup> The constitution of India has granted unique privileges on the minorities but the phrase Minorities is not anywhere describe in the constitution. Article 366 of the Indian constitution which gives the definition for the most of constitutional phrases, it as well described the term minority. According to this Article the term minorities described as 'an Anglo Indian, Scheduled caste's and scheduled tribe's.

Therefore who constitute a minority and what are the decisive factors for its determination are the primary issue. At early stage of making constitution, in fact before constituent assembly, Nehru Report of 1928 favored protection of minorities, but it did not attempt to define the expression minorities.<sup>2</sup> The Sapru Report of 1945 which was meant for a minorities commission did not define the term minority. Dr. Ambedkar's report on States and minorities discussed the rights of minorities and protective measures in the constitution of free India.<sup>3</sup> But this report was restricted to the scheduled caste's and again without the apparent meaning of the expression minority.

The provisions under Indian constitutional made certain safeguards for the minorities and they have been enacted for doing social justice to them. These minority rights were measured as important for the unification of

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<sup>1</sup>Prof. M.P Jain, Indian Constitutional Law, Wadhwa Publisher Nagpur, 5th edition reprint 2006.

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<sup>2</sup> S.R. Myneni Constitutional-I Asia Law Book House

<sup>3</sup> Dr. J.N. Pandey, Constitutional Law of India, Central Law Agency, 43rd edition 2006.



minorities and majority one day into one.<sup>4</sup>

### Constitutional Safeguards and Minorities

In order to protect the right of minorities the following rights have been mentioned under Indian Constitution along with other general provisions.

- Right to Equality and Prohibition of discrimination on ground of religion, race. Caste etc.<sup>5</sup>
- Freedoms of Conscience, Free Profession, Practice and Propagation of Religion<sup>6</sup>
- Freedom to Manage Religious Affairs<sup>7</sup>
- Freedom as to payment of taxes for promotion of any particular religion<sup>8</sup>
- Freedom as to attendance at religious instruction or religious worship in certain 'educational minorities' institutions<sup>9</sup>
- Cultural and Educational right to minorities<sup>10</sup>
- Facilities for instruction in mother-tongue at primary Stage<sup>11</sup>
- Special officer for linguistic minorities<sup>12</sup>

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<sup>4</sup> P.M. Bakshi, The Constitution Law of India, Universal Law Publishing Company, 8th edition.

<sup>5</sup> Article 14, 15, 16, 17 of Indian Constitution

<sup>6</sup> Article 25 of Indian Constitution

<sup>7</sup> Article 26 of Indian Constitution

<sup>8</sup> Article 27 of Indian Constitution

<sup>9</sup> Article 28 of Indian Constitution

<sup>10</sup> Article 29 and 30 of Indian Constitution

<sup>11</sup> Article 350 A of Indian Constitution

<sup>12</sup> Article 350-B of Indian Constitution

### Right to Equality: Prohibition of discrimination on ground of religion, race: Caste etc.

Articles 14, 15 and 16 of the Constitution of India deal with the right to equality. Articles 17 are the special provision that abolishes untouchability and forbids its practice in any form. Right to equality before the law and equal protection of the law to all citizens irrespective of religion, race, sex and place of birth is one of the basic values of a secular democratic State.

Article 14 Equality before law. —

- The Constitution provides both aspects of equality to all persons, including aliens.
- The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

### Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth:

Article 15 reads:(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 shop, 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. (3) Nothing in this article shall prevent the State from making any special provision for women and children. (4) Nothing in this article or in clause (2) of article 29 shall prevent



the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled castes and the Scheduled Tribes.

### **Equality of Opportunity in Matter of Employment:**

According to Article 16 of Indian Constitution the following measures are taken for the interest of the minorities. they are:

- 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.
- 3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office (under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory) prior to such employment or appointment.
- 4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments, or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.
- 5) Nothing in this article shall affect the

operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.

Article 15 of the Constitution provides for a particular application of the general principle of equality embodied in Article Clause (1) of article 15 directs the State not to discriminate against any citizen on the ground only of religion, race, caste sex or place of birth or any of them. The prohibition contained in this clause applies to the State in dealing with citizens. Clause (2) of the article 15 prohibits the private individual as well as the State from inflicting any discrimination or disability with regard to citizen's access to shops, hotels etc., and all places of public entertainment and resort.<sup>13</sup>

### **Freedom of Religion for Minorities under Constitution**

Article 25 of the Indian Constitution provides that: Freedom of conscience and free profession, practice and propagation of religion. Article 25[1] a person has a twofold: [a] freedom of conscience, [b] freedom to profess, practice and propagate religion.

- 1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion.
- 2) Nothing in this article shall affect the

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<sup>13</sup> Article 15 of the Constitution



operation of any existing law or prevent the State from making any law—

- 3) Regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;
- 4) Providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

Explanation I.—the wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion.

Explanation II.—In sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.

### **Freedom of conscience**

The freedom of conscience' is absolute inner freedom of the citizen to mould his own relation with God in whatever manner he likes. Freedom of conscience' includes that the person has right to certain belief and doctrines concerning matter which he consider to be conducive to this spiritual well-being. Every individual has absolutely inner freedom of module his own relation with God in whatever manner he likes. The freedom of religion is the core of Indian culture. A person has been allowed by the Constitution of India to have faith in religious tenant of any sector community, Indian Constitution by guarantying freedom of conscience insured inner aspect of religious.

### **Profess and Practice religion**

To profess a religion means to declare freely and openly ones faith and belief. The word 'to profess and practice indicate that in India every persons has right to declare freely and openly his religious faith or belief and much a part of religion as faith or belief in particular doctrines. The expression right feely to profess and practice of his religion ' indicate that in India a person can declare freely and openly his religious faith and can freely practice his religion.

To practice religion is to perform the prescribed religious duties, rites and ritual, and to exhibit his religious belief and idea by such acts as prescribed by religious order in which he believes.

### **Freedom to Propagate Religion**

To propagate means to spread and publicize his religious view for the edification of others. But the word propagation only indicates persuasion and exposition without any element of coercion.<sup>14</sup> The right to propagate ones religion does not give a right to convert any person to one's own religion. The Constitution when finally adopted, accepted only the positive statements related to religious freedom as we have it in article 25 of the Constitution. Article 25 provides to all persons the right to propagate religion and article 26, which guarantees collective freedom of religion to denominations, or any section thereof, does not explicitly refer to the right for propagation.<sup>15</sup>

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[http://pd.cpim.org/2004/1226/12262004\\_ragesh.htm](http://pd.cpim.org/2004/1226/12262004_ragesh.htm)

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<http://www.sabrang.com/cc/archive/2005/s>



In the Shri Lakshmindra case<sup>16</sup>, the Supreme Court held that the heads of religious institutions had liberty to propagate their respective religious tenets because institutions acted only through human agencies.

### **Freedoms to Manage Religious affairs**

According to Article 26 of Indian Constitution this Freedom to manage religious affairs – subject

- To public order, morality and health, every religious denomination or any section thereof shall have the right;
- To establish and maintain institutions for religious and charitable purposes;
- To manage its own affairs in matters of religion;
- To own and acquire movable and immovable property; and
- To administer such property in accordance with law.

Under Article 26 every religious denomination or a section of it has the guaranteed right to establish and maintain institutions for religious and charitable purpose and to manage its own affairs in matters of religion. Rights are also given to such denominations or a section thereof to acquire and own movable and immovable properties and to administer such properties in accordance with law.<sup>17</sup>

The field of operation of Articles 25 and 26 differ to some extent in the sense that whereas former confers particular rights

on all persons, the latter is confined to religious denominations of sections thereof. Again whereas Article 25 is made subject to public order, morality and health as also to other provisions of Part III of the Constitution, Article 26 is made subject only to public order, morality and health.<sup>18</sup>

### **Freedom from Payment of Taxes for Promotion of 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. No religious instruction shall be provided in any educational institution wholly maintained out of State funds. Nothing in clause (1) shall apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution.<sup>19</sup>

No person attending any educational institution recognized by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto.<sup>20</sup>

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<http://www.eurac.edu/Press/Publications/Monographs/0059701.htm>

<sup>19</sup> Article 27 of the Indian Constitution

<sup>20</sup> Article 27 of the Indian Constitution

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<sup>16</sup> AIR 1954 SC 282

<sup>17</sup> Dr. Suresh Mane Indian Constitutional Law [Dynamics and New challenges]



### **Freedom from Attendance at Religious Instruction in Certain Educational Institutions**

Article 28 of the Constitution is specifically concerned with the question of religious instruction in three categories of educational institutions. It provides,

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

(2) Nothing in clause (1) shall apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution.

(3) No person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto.

D.V.A College, Julandhar Vs State of Punjab<sup>21</sup> saying that the provisioned not imply that religious instruction would be given. A provision for an academic study of, and research in, the life and teaching or the philosophy and culture of any great saint of India in relation to, or their impact on, the Indian and world civilization could not be considered as providing for religious instruction. The court stated that religious instruction is that; which is imparted for inculcating the tenet, the

ritual, the observance, ceremonies and mode of worship of a particular sector denomination'

In Aruna Roy V, Union of India<sup>22</sup>, the Supreme Court has ruled recently that article 28 does not ban a study of religious. The whole emphasis of Art, 28 is against imparting religious instruction. There is no prohibition on ' Study of religious philosophy and culture, particularly for having value based social life in a society which is degenerating for power, post or property. In a very recent case (popularly known as National Anthem case the Division Bench<sup>275</sup> of the Supreme Court has held that no person can be compelled to join in the singing of National Anthem against his will, if he has genuine conscientious religious objection. Such compulsion, according to the court would be volatile of the fundamental right guaranteed under Articles 19(1) (a) and 25 (1) of the Constitution.

### **Minorities Cultural and Educational Right**

In the present state of affairs, education is a costly sector in India as it is elsewhere. So, educational institutions need substantial grants by way of aid from the State. In this context, in dealing with education in the country, the Constitution guarantees to minorities the right to conserve their language, script and culture. The State also grants to all minority communities, whether based on language or religion, the right to establish and administer educational institutions of their choice.<sup>23</sup>

### **Protection of interest of minority**

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<sup>21</sup> AIR 1971 SC 1737

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<sup>22</sup> AIR 2002 SC 3176

<sup>23</sup> Article 29 and 30 of Indian Constitution





(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.

### **Right to minority to establish and administer education institution**

All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice. The State shall not, in granting aid to educational institutions, discriminate against any educational institution on ground that it is under the management of a minority, whether based on religion or language.<sup>24</sup>

Clause (1) of article 30 guarantees to all minorities the right to establish educational institutions of their choice and clause (2) of the same article saves educational institutions managed by minority communities from discrimination in giving State aid. This article is supplementary to clause (a) of article 26, which empowers religious denominations to establish institutions for charitable purposes.

The critical examination of the Kerala Education Bill 1957, *Rt. Rev. Bishop S.K. Patro vs State of Bihar*<sup>25</sup>; *State of Kerala v. Very Rev. Mother*

*Provincial*<sup>26</sup>; *St. Xavier College v. State of Gujrat*<sup>27</sup>; *Lily Kurian v. Sr. Lewina*<sup>28</sup>, and *All Saints high School v. Government of A.P.*<sup>29</sup> Justice Fazal Ali after an exhaustive analysis of the whole case law during the last two decades has summarized the scope and ambit of the fundamental right enshrined in Article 30(1) and propositions and principles that emerge as follows:

- Article 30(1) enshrines fundamental right of minority institutions to manage and administer the educational institutions which is completely in consonance with the secular nature of democracy and the Directives in the Constitution itself.
- The right under Article 30(1) is absolute, unfettered and unconditional unlike Article 19. It does not give a licence to maladministration so as to defeat the avowed object of the Article namely to advance excellence and perfection in the field of education. 3. Although the State or other statutory authorities have no right to interfere with the internal administration of management of the minority institution, but State can take regulatory measures to promote efficiency and excellence of the educational standards and issue guidelines for the purpose of ensuring the security of the services of the teachers or other employees of the institution.

The State or any university cannot at the same time, under the garb

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[http://pd.cpim.org/2004/1226/12262004\\_ragesh.htm](http://pd.cpim.org/2004/1226/12262004_ragesh.htm)

<sup>25</sup> AIR 1958 SC 956

<sup>26</sup> (1971) 1 SCR 734

<sup>27</sup> AIR 1974 SC 1389

<sup>28</sup> 1979 AIR 52

<sup>29</sup> 1980 AIR 1042



of adopting regulatory measures tend to destroy the administrative autonomy of the institution so as to render the right under Article 1) nugatory or illusory. The university is asked for affiliation and refuses the same without sufficient reason or try to impose conditions which would completely destroy the autonomous administration of the educational institution.<sup>30</sup> The introduction of an outside authority, however, high it may be either directly or through its nominee in the governing body or the managing committee of the minority institution to conduct the affairs of the institution would be violative of Article 30(1). There may not be any serious objection if a high official like the Vice-Chancellor or his nominee in administration particularly that part of it which deals with the conditions of service of the teachers yet such authorities should not be thrust so as to have a Controlling voice in the matter and thus overshadow the powers of the managing committee. The Government if satisfied that the powers of the governing body or managing committee are grossly abused it is entitled to curb such powers.<sup>31</sup>

Government or university is empowered to frame rules and regulations governing the condition of service of teachers in order to secure their tenure of service and to appoint a high authority armed with sufficient guidance to see that the said rules are not violated. Where a university enjoins an affiliated institution to adopt the courses

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<http://www.eurac.edu/Press/Publications/Monographs/0059701.htm>

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[http://pd.cpim.org/2004/1226/12262004\\_ragesh.htm](http://pd.cpim.org/2004/1226/12262004_ragesh.htm)

of study or the syllabi or the nature of books prescribed and holding of examination to test the ability of the students of the institution concerned is not violation of Article 30 of the Constitution. Setting up a high authority to supervise the teaching staff so as to keep a strict vigilance on their work and to ensure the security of tenure for them may be valid provided the concerned authority is provided with proper guidelines under the restricted field which they have to cover.<sup>32</sup> Before coming to any decision which may be binding on managing committee, the Head of the institution or the senior members must be associated and they should be allowed to have a positive say in the matter. If an outside authority enjoys absolute powers in taking decision without bearing them and such orders are binding on the institution, it will amount to violation of Article 30(1).

### Conclusion

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 should be endowed to minorities so that they can develop their personality to the maximum. In accordance to this view various articles in our constitutions and acts are being enshrined, so, that these minorities can compete majority. Among these articles article 30(1) and National Commission for Minority Educational Institutions Act, 2004 provides minorities to establish, administer educational institutes and to affiliate themselves to central universities.

<sup>32</sup> Dr. J.N. Pandey, Constitutional Law of India, Central Law Agency, 43rd edition 2006.





Thus, just on account of the minority identity of the management, an institute is to be accorded the minority status, irrespective of whether or not that particular institute is serving the interests of the minority community in its entirety. It is a well known fact that majority of the institutes established in the name of minorities are not serving the real interests of the minorities, especially those of the socially and economically underprivileged sections. Students are admitted on the basis of their money power and not on the basis of their merit or minority identity. That will further fasten this process and will serve the interests of the economic minority instead of the religious and linguistic minorities. So, in order to make these articles and acts free from ambiguity and illusionary nature help from Court should be taken in a view to remove this ambiguity. It is very important as development, equality, unity of our country relies on these articles and acts.

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