

Cosmopolitan Indian Social Set Up and Definition of Minority under Indian Constitution: A Study of Judicial Approach

Abstract

India has a composite population and Indian society mirrors a multicultural universe of diverse religious, ethnic, caste and linguistic groups. India's religious and linguistic diversity are phenomenal, and the concerns of each religious and linguistic group are peculiar to itself. Some of these groups are microscopic but still they want to preserve their own distinctive culture, religion or language. The framers of the Constitution bestowed considerable thought and attention upon the minority problem in all its facets and protected their interests through fundamental rights contained under Article 29 and 30. However, definition of term 'minority' has always been a matter of debate since commencement of Indian Constitution.

Keywords: Diversity, Minority, Religious, Linguistic.

Introduction

Almost all States have one or more minority groups within their national territories, characterized by their own ethnic, cultural, linguistic or religious identity which differs from that of the majority population. Harmonious relation of one minority with the other and between the minorities and majorities is a great asset to the multi-ethnic and multi-cultural diversity of global society. It is of prime importance that each citizen has respect for individual group's identity. Meeting the aspirations of national, ethnic, cultural, religious and linguistic groups and ensuring the rights of persons belonging to minorities acknowledges the dignity and equality of all individuals.¹

Objectives of the Study

The objectives can be summarized as follows:-

1. To study the diversity of Indian society.
2. To study the aspirations of various groups to protect their identity.
3. To study the role of Indian Constitution in striking the balance amongst interests of minorities.
4. To study the problem of definition of term 'minority' being grey area under Indian Constitution.
5. To study the role of Indian judiciary in defining the term 'minority'.
6. To study the kinds of 'minorities' protected under Indian Constitution.

Complexity of Indian Society

India has a composite population and Indian society mirrors a multicultural universe of diverse religious, ethnic, caste and linguistic groups.² In India, there are eight major religion and myriad creeds, twenty-two official languages and 325 recorded mother tongues, a mosaic of castes and sub-castes classified by the People of India project into 4,635 largely endogamous communities, sixty socio-cultural sub-regions and fifteen distinct agro-climatic zones. More than 8 per cent of the population comprises indigenous people. India's 130 million Muslim population makes it the third largest Muslim population in any political unit in the world.³ Many of these are not homogeneous and exist in a system of unique and particularized hierarchy which privileges some groups and disadvantages others.⁴ The Indian society lacks homogeneity in so far as there exists numerous religious, cultural and linguistic groups.⁵ According to census 2011, of the total population of 121 crores, Hindus make up 79.8 percent, Muslim constitute 14.2, Christians 2.3, Sikh 1.7, Buddhists 0.7 and Jains 0.4 percent. Other religious persuasions, and religion not stated constitute 0.9 and 0.1 percent respectively.⁶ Each major religion comprises



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within itself a number of religious denominations and sects.⁷ Hinduism commonly understood as a majority religion in internally divided into numerous sub-castes and excludes Dalits or former untouchables from its hierarchical order. Similarly, Sikhs are divided into scheduled caste and non scheduled caste, Jats and other high caste groups, whereas Muslims who share a common religion, are differentiated on the basis of language, religion and class. Indian Christians, who convert from low castes or tribes, are identified with particular regions or languages.⁸ Interestingly, both Buddhists and Jains though closely connected to Hinduism show no keenness to identify with it; in fact Buddhists prefer to define themselves differently from Hinduism. Another significant but heterogeneous mass of population which is exclusive to India's cultural heritage is that of the tribes, spread over several parts of the country and stratified into primitive, settled and westernized categories. Arguably, Dalits constitute the most distinctive and adaptive social group in India and represent characteristics of tradition and modernity. As a disadvantaged status group, Dalits are posited in opposition to the upper caste Hindus as well as the Other Backward Classes of the same religion. Other less visible miniscule communities like the Bahais, Jews and Zoroastrians also form part of India's cultural landscape. It is important to point out that religious minorities in India differ in their sources of origin: Buddhism, Jainism and Sikhism are protest religions of Hinduism, Islam and Christianity are the conquest religions, while Bahais, Jews and Parsis are in the category of migrant religions.⁹

India's linguistic diversity too is phenomenal, and the concerns of each linguistic group are peculiar to itself. Some dominant languages are recognized in the Constitution, others contend for a similar status even as numerous mother tongues continue to remain in oblivion. Adding complexity to India's cultural mosaic are the critical variables of context, group structure and location, which result in fluid minorities and majorities rather than permanent ones. Change in context transforms group status from majority to minority and vice versa. Tamils, Malayalis and Bengalis convert into minorities when placed outside their cultural homeland or original habitat, a status also asserted by Other Backward Classes when they feel distant from dominant groups. Religion, language, caste and tribal linkages are equally crucial in defining cross-cultural boundaries and situating groups as disadvantaged, deprived, peripheral or exclusive. Self ascription therefore, as majority or minority is an act aimed at seeking recognition or redress. Self recognition urge is exemplified by assertive claims of the so called Hindu majority that it constitutes the core of Indian society, to which the minorities must conform. Demand for redress on the other hand may arise out of fears of assimilation, domination, mutual suspicion and competition for a share of local resources among groups. In states across India, this phenomenon has given rise to nativist or sons of the soil movements like insider-outsider, deshi-videshi and, local and foreigner. One can cite examples from states like

Assam in the north east where local Assamese population felt dominated by an influx of illegal Muslim Bangladeshi immigrants who threatened to monopolize agricultural land, professional occupations and political power in the state. Consequently, local discontent led to a mass movement against foreigners in the 1970s. In another state of Maharashtra, since the 1960s, Shiv Sena, a political party inspired by native Maratha community has led a 'Sons of the Soil' movement, which espouses the cause of Maratha community by seeking expulsion of outsiders under the banner, 'Maharashtra for the Marathas'. Interestingly, India's cultural pluralism intersects with legal pluralism to lend a web like intricacy to society. Because modern democratic institutions which introduced uniform legal system in the country and transformed people from subjects to citizens did not result in the disappearance of traditional legal structures that governed the life of communities in India, resulting in a dual system of law where a codified, modern legal system, coexists with the traditional uncoded, religious system.¹⁰

The framers of the Indian Constitution, accordingly, faced a very complicated task in devising suitable safeguards to meet the needs and aspirations of various sections, groups and classes of the people. Some of these groups are microscopic but still they want to preserve their own distinctive culture, religion or language. The framers of the Constitution bestowed considerable thought and attention upon the minority problem in all its facets. They tried to do their very best to safeguard the interests of the various minority groups whether based on religion, language, culture or socio-economic factors so as to give them a sense of security.¹¹

Constitutional Provisions for Minorities

In India, Constitution which embodies the philosophy of distributive justice with a strong determination to build up a new and independent nation which will ensure the triumph of justice, liberty, equality and fraternity to every citizen,¹² provides protection to minorities in following words:-

Cultural and Educational Rights

Article 29

(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

(1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice. (1A) In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause. (2) The State shall not, in granting aid to

educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

Thus, Articles 29 and 30 guarantee cultural and educational rights of religious and linguistic minorities. While, Article 29(1) secures to every section of citizens, residing in the territory of India, the right to conserve its own language, script or culture, Article 30(1) guarantees to every religious or linguistic minority, the right to establish and administer educational institutions of their choice.¹³

Meaning of 'Minority' Under Indian Constitution

The expression 'minorities' has been employed only at four places in the Constitution. The headnote of Article 29 uses it. Then, 'minorities or minority' have been employed in the headnote of Article 30 and clauses (1) and (2) of Article 30. Interestingly, no definition of the term minority is given in the Constitution.¹⁴ The architects of the Indian Constitution guaranteed to minorities all necessary rights and freedoms but have nowhere defined the expression "Minority". There is no parliamentary legislation either defining a 'minority.' The definition¹⁵ of 'minority' given under the National Commission of Minority Act, 1992 is in fact not a definition as such but only a provision enabling the Central Government to identify a community as a 'minority' which in the considered opinion of the Central Government deserves to be notified for the purpose of protecting and monitoring its progress and development through the Commission.¹⁶

The expression "minority" has been derived from the Latin word "minor" and the suffix 'ity', which means "small in number". According to Encyclopedia Britannica minorities means "group held together by ties of common descent, language or religious faith and feeling different in these respects from the inhabitants of a given political entity".¹⁷ The term 'minority' although is not defined in the Constitution. Literally, it means a non-dominant group. It is a relative term and is referred to represent the smaller of two numbers, sections or groups.¹⁸ A minority is a group that is numerically smaller than the majority in society. This basic definition is, however, not enough. Since the criterion of numbers, though essential but is not a sufficient for any definition of a minority, we need to go further. The second component of the definition is that the group concerned must be non-dominant in the given society. A group can be conceptualised as a minority, when its values and worldviews are either not reflected at all, or insufficiently reflected both in the public sphere and the Constitution of societal norms. Both these factors reinforce each other. Thus, marginalisation and exclusion are most important yardsticks to determine minority status. The Sachar Committee, for instance, brought to fore the non-dominant status of Muslims. Indeed, minorities are groups that possess distinct and stable ethnic, religious and linguistic characteristics. The crucial point is that (i) these characteristics differ from the rest of the population, and (ii) that these groups wish to preserve their distinctive identity. The definition of a minority is thus

relational to the majority in terms of numbers, of domination or the lack of domination, of possessing distinctive characteristics, and in terms of its desire to preserve these characteristics even if they conflict with the sensibilities of the majority.¹⁹

Judicial Opinion on Definition of Minority

Who is a minority under Constitution? Which community fits into the definition of minority? Who are the beneficiaries of minority rights? These questions and the possible responses thereto have been subject of number judicial pronouncements wherein minority protection has been addressed.²⁰

In *re the Kerala Education Bill*,²¹ the Supreme Court observed that while it was easy to say that the minority meant a community which was numerically less than 50% the important question was: 50% of what – the entire population of India or of a State or of a part thereof? Without deciding the matter definitely, the Supreme Court observed that minority was to be determined only in relation to the particular legislation which was being challenged. If it was a State law, a minority would be determined in relation to the population of the State. Where a law passed by the State Legislature extends to the whole of the State, minority for the purpose of Articles 29 and 30 would be determined in relation to the population of the State. Where a law passed by the State Legislature extends to the whole of the State, minority for the purpose of Articles 29 and 30 would be determined by reference to the entire population of that State. Accordingly, it was held in *re Kerala Education Bill*,²² that Christians, Muslims and Anglo Indians would be minorities in the State of Kerala.

Subsequent to the *Kerala Education Bill*²³ case, the Apex Court has consistently held that with regard to a State law, the unit to determine a religious or linguistic minority can only be the State.²⁴

In *T.M.A.Pai Foundation v. State of Karnataka*,²⁵ a Constitution Bench of eleven learned Judges of the Supreme Court considered the fundamental issue again. It has been held that since the reorganisation of the States in India has been on linguistic lines, for the purpose of determining the "minority", the unit will be the State and not the whole of India.

In *Bal Patil v. Union of India*,²⁶ a three-Judge Bench of the Apex Court explained that "minority" as understood from constitutional scheme signified an identifiable group of people or community who were seen deserving protection from likely deprivation of their religious, cultural and educational rights by other communities who happened to be in majority and likely to gain political power in democratic form of Government based on elections. Reiterating the observations made in *T.M.A.Pai Foundation*²⁷ case, the Court held that identification of a community as minority, has to be done on a State basis. The power of the Central Government has to be exercised not merely on the basis and recommendations of the National Commission for Minorities, but on considerations of the social, cultural and religious conditions of the community in each State.

The Supreme Court has consistently maintained that minorities are to be defined on the

basis of numerical inferiority only and it is the state in relation to which the minority status is to be determined. There has been no deviation from the above principle laid in *the Kerala Education Bill case (1957)*²⁸. The 11-judge bench of the apex court in the *T.M.A. Pai Foundation (2002)*²⁹ case again explicitly held that in the absence of any special definition of "minorities", any community, religious or linguistic, which is numerically less than 50 per cent of the population of the state is entitled to recognition as minority. So, in the states of Nagaland, Mizoram, Meghalaya, Arunachal Pradesh, Manipur, Jammu & Kashmir and Punjab, Hindus on the basis of numerical inferiority test are entitled to religious minority status. In fact, in *N. Ammad (1998)*,³⁰ the apex court had held that minority status is a matter of fact and does not need state recognition or declaration.³¹

The insertion of, new Entry 25³² relating to 'Education' in List III of the Seventh Schedule by the Constitution (42nd Amendment) Act, 1976, enabling Parliament to legislate in relation to "education", with respect to the Apex Court ruled, has not, in any way, changed the position. The "minority" for the purpose of Article 30, the Court has ruled, could not have different meanings depending upon who was legislating.³³

The Court referred to the Draft Articles, the Debates in the Constituent Assembly, the subsequent amendments made to the Constitution, viz., Articles 350A, 350B,³⁴ which in unambiguous terms, the Court said, show that minority status of a group of persons had to be determined, on the basis of population of a State or Union Territory.³⁵

Since both the religious and linguistic minorities have been put at par in Article 30, the Court ruled that the position with regard to the religious minorities was similar. It has thus, been held that for the purpose of determining the minority, whether linguistic or religious, the unit will be the State and not the whole of India.³⁶ This statistical criterion prevail with Kerala High Court also which in *A.M. Patroni v. Kesavan*³⁷ defined minority to mean the same thing as it meant to the Supreme Court.

The 'definition' refers to group of individual who are particularly smaller as the majority in a defined area. It however does not indicate as to what factor of distinction, subjective or objective are to be taken as the test for distinguishing a group from the rest. Thus, while considering 'minority', a numerically smaller group, as against the majority in a defined area, some place emphasis upon certain characteristics commonly possessed by the members constituting the minority and, to them, these characteristics serves as objective factors of distinction. In this sense the term used to cover "racial, religious or linguistic sections of the population within a State which differ in these respects from the minority of these respects from majority of the population."³⁸

Kinds of Minority Protected Under Indian Constitution

Linguistic Minority

A linguistic minority for the purpose of Article 30(1) of one which must have a separate spoken language and that language need not have a distinct script. In India, a number of languages are spoken having no script of their own. And, people speaking such a language having no script of its own, constitute a linguistic minority for the purposes of Articles 30(1).³⁹ A linguistic minority is to be determined with reference to the language spoken by the community wants its children to study.

A community whose language is one of the official languages of the State, can, as yet, be a minority community. Thus, only because English is one of the official languages of the State of West Bengal, the same does not mean that the Anglo-Indian community whose language is English, cannot be termed to be a minority community.⁴⁰

Religious Minority

A minority based on religion means that the only and principal basis of minority must be adherence to one of the many religions and not a sect or part of the religion. A minority based on religion should be restricted only to those religious minorities, for example, Muslims, Christians, Jains, Buddhists, Sikhs, etc. which have their identity separate from the majority, namely, the Hindus. Thus, Jain Swetamber Terapanthi Sect is held to be a religious minority since it possesses a faith different from the Hindu religion. Likewise, Jains and Sikhs have been held to be minorities based on religion within the meanings of Article 30(1) in the Union Territory of Delhi.⁴¹ The Supreme Court in the *DAV College case*⁴² held the Hindus as minority in the state of Punjab. Punjab & Haryana did hold that Sikhs are not a minority in Punjab. When Jains who were already having the religious minority status in a number of states such as UP, Uttarakhand, Maharashtra, MP and Chhattisgarh and about whom the National Minority Commission had made positive recommendation for the conferment of minority status wanted such a status from the central government.

Conclusion

To sum up, it can be said that although Constitutional makers by not defining the term 'minority' had left the same to open for interpretation. However, time and again, Courts in India has categorically laid down the criteria for invoking the protection guaranteed under Article 30 which aims at harmonising the conflicting interest of various minorities mentioned above and furtherance of protection guaranteed. The Supreme Court became highly regressive in the *Bal Patil case*⁴³ and made certain observations which were nothing short of rewriting minority jurisprudence.

The three-judge Bench observed: "It was not in contemplation of the framers of the Constitution to add to the list of religious minorities....Ideal of a democratic society, which has adopted right of equality as its fundamental creed, should be elimination of majority and minority and so called forward and backward classes". The court directed

the minority commission to eliminate minorities. In fact, when Jains protested their inclusion in definition of 'Hindu' in Article 25 on January 31, 1950, Pt Nehru had clarified in writing that Jains are a distinct religious minority.

The Constitution nowhere says that the minorities should assimilate with the majority. Appeasement of minorities was a motivated propaganda of rightist forces. All communities, including Hindus, are fully entitled to rights both as religious as well as linguistic minorities. The constitution does not believe in the 'melting pot' theory, but for a 'salad bowl' concept where distinctive identities of all groups are to be celebrated and preserved. Heterogeneity, not homogeneity, describes India. Unity in diversity is our cherished constitutional value and same should not be diluted under any circumstances.

End Notes

1. Available at: http://shodhganga.inflibnet.ac.in/bitstream/10603/38230/8/08_chapter%202.pdf
2. Karuna Thakur, "Multicultural context, Identity Politics and State in India" 21 RJSS 25(2013)
3. Rita Manchanda (ed.), *States in Conflict with their Minorities: Challenges to Minority Rights in South Asia 8* (Sage Publications, New Delhi, 2010)
4. Supra note 2
5. Bhrigu Nath Pandey, *Socio-Legal Study of Cultural and Educational Rights of the Minorities* (A.P.J. Publishing Corporation, New Delhi, 2000)
6. Available at: <http://www.theshillongtimes.com/2016/01/09/who-are-minorities-under-indian-law/>
7. Supra note 5
8. Myron Weiner, *The Indian Paradox: Essays in Indian Politics* 50(Sage Publishers, India, 1998)
9. T. K. Oommen, *State and Society in India: Studies in Nation Building* 209(Sage Publishers, India, 1990)
10. Supra note 2
11. Supra note 5
12. Basu Durga Das Dr, *Commentary on the Constitution of India; Lexis Nexis Butterworths Wadhwa- Nagpur, Eighth Edition 2008, p. 132.*
13. Narendra Kumar, *Constitutional Law of India 433*(Allahabad Law Agency, Allahabad, 9th edn., 2015)
14. Available at: <https://www.tribuneindia.com/news/comment/hindu-us-too-a-minority-in-some-states/497188.html>
15. Section 2 (c) defines minority as a community notified as such by the Central Government. Acting under the provision on October 23, 1993, the Central Government notified Muslims, Christians, Sikhs, Buddhist and Parsis communities as minorities for the purposes of the Act. When Central Government listed these communities as minorities, it seems that the numerical criterion was taken into consideration.
16. Supra note 1
17. Supra note 1
18. *Pramati Education & Cultural Trust v. Union of India* AIR 2014 SC 2114
19. Supra note 14
20. Supra note 1
21. AIR 1958 SC 956
22. AIR 1958 SC 956
23. Id
24. *D.A.V. College v. State of Punjab* AIR 1971 SC 1737
25. AIR 2003 SC 355
26. AIR 2005 SC 3172
27. Supra note 25
28. Supra note 21
29. Supra note 25
30. *N. Ammad vs The Manager, Emjay High School & others* decided on 07.09.1998
31. Supra note 14
32. Entry 25 relates to "Education", at all levels.
33. Supra note 13
34. While Article 350A requires the States to provide facilities for instructions in mother tongue at the primary stage of education, Article 350B provides for the appointment by the President of a Special Officer for linguistic minorities.
35. *T.M.A.Pai Foundation v. State of Karnataka* AIR 2003 SC 355
36. Supra note 13 at 437
37. AIR 2004 Ker 75
Available at: <http://www.legalservicesindia.com/articles/judi.htm>
38. *D.A.V.College, Jullundhar v. State of Punjab* AIR 1971 SC 1737
39. *Associations of Teachers in Anglo-Indian School v. Association of Aids of Anglo-Indian School* AIR 1995 Cal. 194
40. *Ibid.* In *Bal Patil v. Union of India* AIR 2005 SC 3172, a three-Judge Bench of the Supreme Court ruled that the so-called minority communities like Sikhs and Jains were not treated as part of wider Hindu community which had different sects, sub-sects, faith, modes of worship and religious philosophies. The Court explained that Hinduism could be called a general religion and common faith of India whereas Jainism was a special religion formed on the basis of quintessence of Hindu religion. Jainism has been held to be a reformist movement amongst Hindusim, like Brahamsamajis, Aryasamajis or Lingayats.
41. Supra note 24
42. Supra note 26