

RESEARCH REPORT ON: Protection of rights of Religious and Linguistic Minorities

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1) Introduction

"... The promotion and protection of the rights of persons belonging to national or ethnic, religious and linguistic minorities contribute to the political and social stability of States in which they live".

According to the constitution of India, two types of communities are considered as Minority Communities in the country. First one is Religious Minority community and second one is Linguistic Minority community. Here is a brief introduction to the religious and linguistic minority communities in India, and their constitutional rights.

Khanda: Religious symbol of Sikhs

Khanda: Religious symbol of Sikhs Followers of all the religions except Hinduism are considered as in religious minorities on national and state level. This includes following religions: Muslims Christians Sikhs Buddhists Jains and Parsis.

Apart from above major religious communities in India, there are small numbers of Jews and Bahais. Religious minorities get special benefits, especially in the field of education and educational institutions. Minority communities can establish their own educational institutions, and can reserve 50% seats of the students for own community members. In addition, they can recruit 100% staff from their own community. Beside this, scholarships and other help is offered to minority students by Central and state Governments. Business loans with a very low interest is also offered to young entrepreneurs from minority communities. There is a 15 point development program for minorities from the Prime Minister of India.

Jains are now in the central list of minorities, and now Central Government have declared this status for the community. In few states, Hindus are considered as minority community as their population is lesser than the main stream community there.

Linguistic minorities are those who have different first language than the first language of majority of the people in that state. Thus, for example, Gujarati speaking people living in Maharashtra are linguistic minorities in Maharashtra and Marathi speaking people living in Gujarat are linguistic minorities in Gujarat. Such minority communities enjoy some special benefits in that state, especially in educational fields.

In India, there are Minority commissions on national and state levels. The commissions look into various matters related to minorities. Central Government of India established The Minority Commission of India under National Commission for Minorities Act, 1992. The Commission is a constitutional body and has a Chairperson, a Vice Chairperson and 5 members. Besides The Minority Commission of India, there are State Minority Commissions in following states of India: Andhra Pradesh , Assam , Bihar, Chattisgarh, Delhi , Jharkhand, Karnataka, Maharashtra, Madhya Pradesh, Manipur, Rajasthan, Tamil Nadu, Uttarakhand, Uttar Pradesh and West Bengal.

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2) CONSTITUTIONAL PROVISIONS REGARDING RELIGIOUS AND LINGUISTIC MINORITIES

Article 14: The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

Article 15: (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

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

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

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

[(5) Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to

educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30.]

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

Article 25: (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, practise and propagate religion.

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law—

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

(b) 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.

Article 26: Subject to public order, morality and health, every religious denomination or

any section thereof shall have the right—

- (a) to establish and maintain institutions for religious and charitable purposes;
- (b) to manage its own affairs in matters of religion;
- (c) to own and acquire movable and immovable property; and
- (d) to administer such property in accordance with law.

Article 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.

Article 350A: It shall be the endeavour of every State and of every local authority within the State to provide adequate facilities for instruction in the mother-tongue at the primary stage of education to children belonging to linguistic minority groups; and the President may issue such directions to any State as he considers necessary or proper for securing the provision of such facilities.

3) POSITION OF RELIGIOUS AND LINGUISTIC MINORITIES

IN INDIA

RELIGIOUS MINORITIES

India is perhaps the largest and most plural society in the world where people speak an array of languages and use a wide range of scripts. All the major religions – Buddhism, Christianity, Hinduism, Islam, Sikhism, and Zoroastrianism - have an enormous number of followers in India. India is the world's most complex and comprehensively pluralistic society, home to a vast variety of castes, tribes, communities, religions, languages, customs and living styles. *The People of India* project of the Anthropological Survey of India estimated there are nearly 4,599 separate communities in India with as many as 325 languages and dialects in 12 distinct language families and some 24 scripts. Few Indians are not immigrants, most people have come to a particular part from another part, may be from a neighbouring district, state, more occasionally from distant parts of India. Just to illustrate the complexity of culture, most households in India speak two to three languages. The mosaic of identities that constitute the meaning of Indianness is on display on Republic Day every year. The National Anthem emphasizes diversity in a similar manner. The first verse is a series of names of different geographic regions, ethnicities and cultures. India is hailed as Punjab, Sindh, Gujarat, Maratha, Dravida, Utkala, Banga in the same verse. The Indian subject is thus someone who is at once some other thing at the same time.

India was thus among the first major democracies in the world to recognize and provide for the right of cultural collectivities - diverse religious and linguistic communities living in the

country. The Constitution created an institutional structure and principles that would allow diverse people to live together as citizens of India. The Indian state is based on a Constitution whose secular character has been reaffirmed by an amendment to its Preamble. Confronted with an array of demands from various groups, the Constitution articulates a four-fold response to define the constituent elements of secularism. First, the principle of religious freedom, which gives to every citizen the right to freedom of conscience and the right to profess, practice and propagate religion. Second, the Constitution does not recognize the special status of any religion. Third, the principle of non-discrimination on grounds of caste, place of birth, residence or religion guarantees equal citizenship. Fourth, these rights must be subject to public interest and public order, which requires religions to yield to regulation in the interests of social welfare and reform.

Article 25, 27 and 28 guarantee religious freedom -. Article 25 provides that 'subject to public order, morality and health... all persons are equally entitled to freedom of conscience and the right to freely profess, practice and propagate religion.' Under Article 27, 'no person is 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.' Under Article 28(3), 'no person attending any educational institution... shall be required to take part in any religious instruction or to attend any religious worship that may be conducted in such institution". Articles 14, 15(1), and 29(2) guarantee equality of citizenship. Article 29 is the multicultural clause, which allows minorities to conserve their language and culture. Article 15(1) states that the state shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth. Article 16(1) and (2) provide an equal opportunity for all citizens in matters of employment or appointment to any office under the state. Article 30(1) provides that: 'All minorities, whether based on religion, or language, shall have the right to establish and administer educational institutions of their choice.'

This response was compelled by three overriding factors specific to India. The first was the magnitude of India's diversity. There is no society in the contemporary world with such staggering cultural diversity as India. These numerous diversities had to be accommodated if India was to become a nation. The secular pluralist state, if you will, is therefore, a fundamental condition of nationhood. Second, the partition of India on religious lines in 1947, especially the bloody aftermath of deteriorating Hindu-Muslim relations, made secularism a necessity. The

partition meant that Pakistan might become a homeland for Muslims, but India would remain a home for Hindus, Muslims, Christians and others, and though Pakistan was a Muslim state, there were a very large and significant minority of Muslims in India who had to be accommodated within the nation.

In India no unified law applies to all citizens in respect of marriage and divorce. The Indian legal system is pluralistic in at least two ways. It is pluralistic in the sense that there are distinct personal laws for adherents of different religious faiths. A state sponsored system of codified law and civil and criminal courts coexist with a family court system. Compared to non-discrimination policies towards lower castes, the recognition of personal laws, presents a problem, however, as state policies of accommodation end up reinforcing inequalities and hierarchies within the community. The Shah Bano case¹ and the Muslim Women Protection of Rights on Divorce Act, 1986 showed the limitations of Indian pluralism, how the commitment to cultural rights can sometimes endorse practices that violate gender justice as also the constitutionally sanctioned rights of equal citizenship. Moreover, recognition of Muslim personal laws, does not guarantee that Muslims will be treated with respect or dignity. More importantly, it does not follow that Muslims should have a right to laws that are unjust to women. All personal laws have to be judged by a benchmark of equality. Generally speaking personal laws deny women the rights that communities claim for themselves in relation to the state, autonomy, selfhood and access to resources. The crux of the problem is the prima facie incompatibility of personal laws with the available standards of justice and equality. We need to consider what are the limits of cultural rights of communities; should these be determined by constitution makers, states or communities; should there be a set of individual rights which can under no circumstances be trumped by cultural rights of communities? Women's rights must be enforced irrespective of the group to which women belong. The state must enforce the exercise of such rights no matter how incompatible they are with personal law or customary practices of any group.

LINGUISTIC MINORITIES

¹ Mohd Ahmad Khan v. Shah Bano Begum And Ors 1985 SCR (3)844

The term linguistic minority or minorities has not been defined. If the country is taken as a unit, all who speak a language other than Hindi can be treated as linguistic minorities but not so if the State is taken as the unit. Within a State, there may be minorities who speak a language or languages other than the language spoken by the majority in that State. Dialects of a language spoken in a State may proliferate the number of minorities. However, as mentioned earlier, it has been settled in *TMA Pai V. Union of India* (2002) that a linguistic minority is determinable with reference to the State as a unit.

Part XVII of the Constitution is devoted to 'official language'. Chapter I of Part XVII, comprising articles 343 and 344 deal with the official language of the Union. Chapter II thereof deals with regional languages. Article 345 of the Constitution provides that subject to the provisions of articles 346 and 347 the Legislature of a State may by law adopt any one or more of the languages in the State or Hindi as language or languages to be used for all or any of official purposes. Article 347 provides that on a demand being made in that behalf, the President may, if he is satisfied that a substantial proportion of the population of a State desire the use of any language spoken by them to be recognised by that State, direct that such language shall also be officially recognised throughout that State or any part thereof for such purpose as he may specify. Article 347 can, thus, be treated as a specific measure directed towards linguistic minorities inhabiting a State facilitating preservation, and even propagation, of such a language. Read in conjunction with article 347, article 350 also affords protection to the language spoken by linguistic minorities. It provides that every person shall be entitled to submit a representation for the redress of any grievance to any officer or authority of the Union or a State in any of the languages used in the Union or in the State, as the case may be.

Article 350-A of the Constitution contains a specific measure of protection of linguistic minorities. It provides that "it shall be the endeavour of every State and every local authority within the State to provide adequate facilities for instruction in the mother-tongue at the primary stage of education to children belonging to linguistic minority groups; and the President may issue such direction to any State as he considers necessary or proper for securing the provision of such facility". Article 350-A, thus, is an amplification of the cultural and educational rights guaranteed under article 29(1) and article 30(1). Under article 29(1), a linguistic minority has the fundamental right to conserve its own language. Article 350-A directs every state to provide

facilities for education at the primary stage in the language of a linguistic minority for the children belonging to such a community. Read with article 45, article 350- A provides an important policy direction to the State for preservation of the language of linguistic minorities.

Article 350-B provides for appointment of a Special Officer for linguistic minorities by the President. It shall be the duty of the Special Officer to investigate all matters relating to the safeguards provided for linguistic minorities under the Constitution and report to the President upon those matters at such intervals as the President may direct. All such reports are required to be laid before each house of Parliament, and also sent to the Governments of States concerned. The provisions of article 350-B have to be read in conjunction with the rights conferred on religious minorities under Chapter III of the Constitution, more specifically articles 29 and 30.

The applicability of Protection of Civil Rights Act, 1955 to non-Hindus and agreed that all cases of untouchability related offences regardless of religion fall within the purview of the Act. It was felt that the provisions of Prevention of Atrocities (SC/ST) Act, 1989 need to be extended so as to cover OBCs, Minorities or the socially and economically backwards to protect them from discrimination and atrocities by non-backward sections of society.

The provisions of Article 29 and 30 and felt that a comprehensive law is required to protect and safeguard the rights of minorities mentioned in these two Articles of the Constitution. The existing guidelines of Ministry of Human Resource Development and National Commission for Minorities need to be updated and incorporated in an elaborate law which will be overriding in so far as setting up and administration of minority educational institutions is concerned. The proposed law should ensure due and proper implementation of articles 29-30 including all their clauses in letter and spirit.

India's linguistic diversity is even more bewildering. There are as many as 1,652 languages and dialects spoken. India has 18 officially recognized languages. Within a decade of India's independence in 1947, the language issue threatened to tear apart the national fabric. Linguistic movements in various parts of the country posed a serious threat to India's unity and integrity. However, the political leadership showed exemplary political wisdom and foresight by not only recognizing all major languages as national languages, but also creating linguistic states. The Reorganization of States Act of 1956 sets up linguistically homogeneous state units, thereby

recognizing the validity of language as a basis for forming a distinct group. India has thus provided an exemplary model for resolving the language problem.

The first reorganization had undoubtedly extended the democratic dispensation by creating many new centers of regional power with autonomous jurisdiction. It corrected the centralising bias of the Indian Constitution. The first reorganization was based on accommodation of ethno-linguistic and cultural communities, which have since then occupied a pre-eminent place in Indian politics and in the Indian model of governance. But that was the only way India could integrate its diversity and its democratic character. While the first reorganization affected the Indian nation as a whole, the second effort at federal reorganization focused on one region, i.e., the Northeast. The first was guided by the need to federalize the union on an identifiable basis. The second was motivated by concerns over national and territorial security in the Northeast. Electoral calculations were no doubt important in the 1970s, but they were not the only reasons for the division of Assam. While the first reorganization breathed life into the governance model of relational control and interlocking balances, the second reorganization sought to protect that design by giving new states a stake in India's territorial integrity.

As the ethno-linguistic communities are, by and large, mostly territorially rooted, territorial solutions in the form of different degrees of statehood have worked. Statehood and other such demands are predicated on collective or group of ethnic communities. The Indian Constitution makes the conservation and cultivation of such, the fundamental right of every citizen of India. Article 29 (1) says that any section of the citizens of India having a distinct language, script or culture of its own shall have the fundamental right to conserve the same. This means that if a cultural minority wants to preserve its own language and culture, the state cannot by law impose on it any other culture belonging to the local majority. Both religious and linguistic minorities are protected by this provision. The constitution also defines a positive, directional role for the state in this respect. It directs every state (federal unit) to provide adequate facilities for instruction in the mother tongue at the primary stage of education of children belonging to linguistic minority groups, and empowers the President to issue proper direction to any state.²

² Article 350A

In recent years, the 28 states of India's federal system have played a more prominent role in India's public life. Not least has been their contribution to helping India live peacefully with difference. In a world where armed strife has increasingly taken the form of civil war and ethnic cleansing, India's federal system has helped to keep cultural and ethnic peace. State autonomy and statehood for territorially based regional/linguistic identities remains the most comprehensive method of political recognition of identity in India, and the key to India's multicultural federalization. The essence of the statehood demand has always been the congruence between federal political boundaries and the ethno-linguistic boundaries of the people. At the heart of such demands remains the urge for decentralization and autonomy for the protection of identity and for development. The political processes which have accompanied the legal-constitutional ones are often protracted negotiations between the governments (Union and state), and the ethnic movements, and the resultant bipartite or tripartite "Ethnic Peace Accords" are signed, and honoured by subsequent legislation, for institutionalizing peace in the shape of democratic local governing bodies. Given the complex diversity of this vast country, coupled with regional imbalances, social and economic inequalities and mass poverty, statehood provides an institutional framework of autonomy and decentralization which may respond better to the need for development and identity.

On the other hand, splitting up existing federal units and creating new ones is only one of the many strategies that democracies can deploy to contain ethnic conflicts. Over the past five decades since independence, the Indian governments have entered into various ethnic accords (as for example, that between the Rajiv Gandhi government and Sikh and Assamese militants in the mid-eighties), created Regional Councils straddling several state units (as in the Northeast), and constituted district level Autonomous Councils to address the needs of smaller ethnic regions surrounded by competing ethnic communities. Other strategies range from federal arrangement to the inclusion of nationalities based on a layered sovereignty. The special constitutional status granted (Article 370) to include the state of Jammu and Kashmir within the Indian union is an example of the latter. While each strategy has a variable record of ethnic containment, the creation of new state units is easily the most successful one in India.

Over the past fifty years the world's largest democracy, has developed an affirmative action programme, which by any standards is unprecedented in both its scope and extent. These

policies are a system of quotas designed to increase opportunities in employment, education and legislatures for lower castes. In India social inequality goes beyond caste-based discrimination; it revolves around three main axes, which include caste and tribal status, religion and gender, yet, caste remains the crux of reservation policies. The Constitution in Article 16(4) permits the state to make '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.' After independence the state, following the dictates of the Constitution, sought to eliminate the effects of historical disadvantage by bringing in reservations for identified Scheduled Castes and Scheduled Tribes in governments and legislatures. In Part XVI (Special Provisions Relating to Certain Classes), the Constitution provided for the reservation of seats in the legislatures as also in public employment and educational institutions funded by the state; and for the creation of a body to monitor all these safeguards. These policies reserve government jobs, college and university admissions, and legislative seats for groups officially identified as backward, that is, members of Scheduled in government jobs for the scheduled castes and tribes has to some extent guaranteed their participation in public employment. It has given them an influential presence in national and state legislatures. Though the government's position was that only these two groups are entitled to reservations, it has been extended to the Other Backward Classes (OBCs) in education and public employment since 1994. The rationale of the Mandal Commission (1990) was to break the upper caste monopoly on government jobs and the professions, unchanged by two centuries of modern education and nearly half a century of democracy.

Large sections of Indians, including the most backward *dalits*, have acquired a new sense of dignity and self-respect, and have used political mobilization and access to the state to assert and promote their interests at all levels of political life. What we have witnessed is a greater inclusion of the lower strata of the people at the local, state, and national levels in a process that can be described as the transfer of power from the upper castes to the lower castes with major political consequences. At the turn of the twenty-first century, lower-caste chief ministers are no longer rare, and at least one national cabinet had almost no upper caste members. The logic of one person, one vote in free and fair elections has put power in the hands of the more numerous lower castes. Strong central governments based on sturdy one-party majorities in the Lok Sabha have given way to precarious coalitions that must cater to state parties in order to survive.

One of the biggest challenges of our time is how do we learn to live in proximity to difference – different skin colours, different beliefs, and different ways of life. How do we peacefully talk to and negotiate with people with whom we may violently disagree? This is not easy but increasingly necessary in the contemporary world with so much movement of peoples, cultures and ideas. In this regard, the Indian experience offers some helpful lessons for diverse societies. The Indian experience shows that a delicate balance has been struck between individual and collective rights, the forces of centralization and decentralization, and the accommodation of diversity and universalism in society. At the same time, the Indian experience also highlights the limits of pluralism and diversity as a state driven approach. The Indian underlines the need to be wary of the idea of respect for all diversities and pluralities when we know that all identities, cultures and communities are not homogeneous or equal and hence do not deserve accommodation. Also neither pluralism nor multiculturalism adequately allow for the fact that identities change and so do group formations, and new identities emerge. The point is that the privileging of difference creates an unbridgeable distance between groups and this stands in the way of equal respect and can sometime sanction exclusion and discrimination. Moreover, when the need for cultural difference becomes an end in itself, it reinforces inequalities and undermines the pursuit of the general interest and common good. Multiculturalism does not address the tension between identity and belonging on the one hand and the requirements of individual autonomy and equality on the other. The crucial question is whether we can claim and justify the right to a way of life on behalf of the whole community and at the same time deny the individual the exercise of the same right. The question is simply this: how much difference is to be defended and when does upholding difference mean that the dominant sections become the arbiters of life of the people. While it is important to reduce the sense of disadvantage and vulnerability, but this must be done in ways that does not erase the possibility of transcultural universals, and not in a way that would replace the power of the state with that of the community.

4) MINORITIES IN INDIA

The Constitution of India uses the word ‘minority’ or its plural form in some Articles – 29 to 30 and 350A to 350 B – but does not define it anywhere. Article 29 has the word

“minorities” in its marginal heading but speaks of “any sections of citizens.... having a distinct language, script or culture.” This may be a whole community generally seen as a minority or a group within a majority community. Article 30 speaks specifically of two categories of minorities – religious and linguistic. The remaining two Articles – 350A and 350B relate to linguistic minorities only.

In common parlance, the expression “**minority**” means a group comprising less than half of the population and differing from others, especially the predominant section, in race, religion, traditions and culture, language, etc. The Oxford Dictionary defines ‘Minority’ as a smaller number or part; a number or part representing less than half of the whole; a relatively small group of people, differing from others in race, religion, language or political persuasion”. A special Sub-Committee on the Protection of Minority Rights appointed by the United Nations Human Rights Commission in 1946 defined the ‘minority’ as those “non-dominant groups in a population which possess a wish to preserve stable ethnic, religious and linguistic traditions or characteristics markedly different from those of the rest of population.”

As regards religious minorities at the national level in India, all those who profess a religion other than Hindu are considered minorities since over 80 percent population of the country professes Hindu religion. At the national level, Muslims are the largest minority. Other minorities are much smaller in size. Next to the Muslims are the Christians (2.34 percent) and Sikhs (1.9 percent); while all the other religious groups are still smaller. As regards linguistic minorities, there is no majority at the national level and the minority status is to be essentially decided at the State/Union Territory level. At the State/Union Territory level – which is quite important in a federal structure like ours – the Muslims are the majority in the State of Jammu and Kashmir and the Union Territory of Lakshadweep. In the States of Meghalaya, Mizoram and Nagaland, Christians constitute the majority. Sikhs are the majority community in the State of Punjab. No other religious community among the minorities is a majority in any other State/UT.

The National Commission for Minorities Act, 1992 says that “Minority for the purpose of the Act, means a community notified as such by the Central Government”- Section 2(7). Acting under this provision on 23-10- 1993, the Central Government notified the

Muslim, Christian, Sikh, Buddhist and Parsi (Zoroastrian) communities to be regarded as “minorities” for the purpose of this Act.

TMA Pai Foundation & Ors v. State of Karnataka and Ors (2002)

The Supreme Court has held that for the purpose of Article 30 a minority, whether linguistic or religious, is determinable with reference to a State and not by taking into consideration the population of the country as a whole. Incidentally, ‘Scheduled Castes’ and ‘Scheduled Tribes’ are also to be identified at the State/UT level. In terms of Article 341 to 342 of the Constitution, castes, races or tribes or parts of or groups within castes, races or tribes are to be notified as Scheduled Castes or Scheduled Tribes in relation to the State or Union Territory, as the case may be.

The State Minorities Commission Acts usually empower the local governments to notify the minorities e.g. **Bihar Minorities Commission Act, 1991, Section 2(c); Karnataka Minorities Commission Act 1994, Section 2(d); UP Minorities Commission Act 1994, Section 2(d); West Bengal Minorities Commission Act 1996, Section 2(c); A.P. Minorities Commission Act 1998, Section 2(d). Similar Acts of M.P. (1996) and Delhi (1999), however, say that Government’s Notification issued under the NCM Act, 1992 will apply in this regard – M.P. Act 1996, Section 2(c); Delhi Act 1999, Section 2(g); Section 2(d).** In several States (e.g. Himachal Pradesh, Jharkhand, Madhya Pradesh, Maharashtra, U.P. and Uttarakhand), Jains have been recognised as a minority. The Jain community approached the Supreme Court seeking a direction to the Central Government for a similar recognition at the national level and their demand was supported by the National Commission for Minorities. But the Supreme Court did not issue the desired direction, leaving it to the Central Government to decide the issue (Bal Patil’s case, 2005). In a later ruling, however, another Bench of the Supreme Court upheld the UP Law recognising Jains as a minority (Bal Vidya’s case, 2006).

5) RIGHTS OF MINORITIES

The **Universal Declaration of Human Rights 1948** and its two **International Covenants of 1966** declare that “all human beings are equal in dignity and rights” and prohibit all kinds of discrimination – racial, religious etc. The UN Declaration against all Forms of Religious Discrimination and Intolerance 1981 outlaws all kinds of religion-based discrimination. The UN Declaration on the Rights of Minorities 1992 enjoins the States to protect the existence and identity of minorities within their respective territories and encourage conditions for promotion of that identity; ensure that persons belonging to minorities fully and effectively exercise human rights and fundamental freedoms with full equality and without any discrimination; create favourable conditions to enable minorities to express their characteristics and develop their culture, language, religion, traditions and customs; plan and implement national policy and programmes with due regard to the legitimate interests of minorities; etc.

In India, Articles 15 and 16 of the Constitution prohibit the State from making any discrimination on the grounds only of religion, race, caste, sex, descent place of birth, residence or any of them either generally i.e. every kind of State action in relation to citizens (Article 15) or in matters relating to employment or appointment to any office under the State (Article 16). However, the provisions of these two Articles do take adequate cognizance of the fact that there had been a wide disparity in the social and educational status of different sections of a largely caste-based, tradition-bound society with large scale poverty and illiteracy. Obviously, an absolute equality among all sections of the people regardless of specific handicaps would have resulted in perpetuation of those handicaps. There can be equality only among equals. Equality means relative equality and not absolute equality. Therefore, the Constitution permits positive discrimination in favour of the weak, the disadvantaged and the backward. It admits discrimination with reasons but prohibits discrimination without reason. Discrimination with reasons entails rational classification having nexus with constitutionally permissible objects. Article 15 permits the State to make “any special provisions” for women, children, “any socially and educationally backward class of citizens” and Scheduled Castes and Scheduled Tribes. Article 15 has recently been amended by the Constitution (Ninety-third Amendment) Act, 2005 to empower the State to make special provisions, by law, for admission of socially and educationally backward classes of citizens or Scheduled Castes/Tribes to educational institutions including private educational institutions, whether aided or unaided by the State, other than

minority educational institutions. Article 16, too, has an enabling provision that permits the State for making provisions for the reservation in appointments of 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”. Notably, while Article 15 speaks of “any socially and educationally backward class of citizens” and the Scheduled Castes and Scheduled Tribes without qualifying backwardness with social and educational attributes and without a special reference to Scheduled Castes/Scheduled Tribes, Article 16 speaks of “any backward class of citizens”.

The words ‘class’ and ‘caste’ are not synonymous expressions and do not carry the same meaning. While Articles 15 and 16 empower the State to make special provisions for backward “classes”, they prohibit discrimination only on the ground of ‘caste’ or ‘religion’. In other words, positive discrimination on the ground of caste or religion coupled with other grounds such as social and educational backwardness is constitutionally permissible and, therefore, under a given circumstance it may be possible to treat a caste or religious group as a “class”. Therefore even though Article 15 does not mention minorities in specific terms, minorities who are socially and educationally backward are clearly within the ambit of the term “any socially and educationally backward classes” in Article 15 and ‘any backward class’ in Article 16. Indeed, the Central Government and State Governments have included sections of religious minorities in the list of backward classes and have provided for reservation for them. The Supreme Court in *Indira Sawhney & Ors. Vs. Union of India*,³ has held that an entire community can be treated as a ‘class’ based on its social and educational backwardness. The Court noted that the Government of Karnataka based on an extensive survey conducted by them, had identified the entire Muslim community inhabiting that State as a backward class and have provided for reservations for them. The expression ‘backward classes’ is religion-neutral and not linked with caste and may well include any caste or religious community which as a class suffered from social and educational backwardness.

Though economic backwardness is one of the most important – or, perhaps, the single most important – reasons responsible for social and educational backwardness alone of a class, the Constitution does not specifically refer to it in Articles 15 and 16. In *Indira Sawhney*

³ AIR 1993 SC 477

case⁴, the Supreme Court had observed– “It is, therefore, clear that economic criterion by itself will not identify the backward classes under Article 16(4). The economic backwardness of the backward classes under Article 16(4) has to be on account of their social and educational backwardness. Hence, no reservation of posts in services under the State, based exclusively on economic criterion, would be valid under clause(1) of Article 16 of the Constitution.”

It is, however, notable that in the chapter of the Constitution relating to Directive Principles of State Policy, Article 46 mandates the State to “promote with special care the educational and economic interests of the weaker sections of the people..... and shall protect them from social injustice and all forms of exploitation. This Article refers to Scheduled Castes/ Scheduled Tribes “in particular” but does not restrict to them the scope of “weaker sections of the society”

Article 340 of the Constitution empowered the President to appoint a Commission “to investigate the conditions of socially and educationally backward classes” but did not make it mandatory.

6) LEGISLATIONS FOR THE PROTECTION OF RIGHTS OF RELIGIOUS AND LINGUISTIC MINORITIES

Legislations such as **the Protection of Civil Rights Act, 1955** [formerly known as Untouchability (Offences) Act, 1955] **and the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989** have been enacted by the Central Government to protect persons belonging to Scheduled Castes and Scheduled Tribes from untouchability, discrimination, humiliation, etc. No legislation of similar nature exists for minorities though it may be argued that, unlike the latter Act. viz, the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act 1989, the former Act, viz, the Protection of Civil Rights Act, 1955 is applicable across the board to all cases of untouchability related offences regardless of religion. Therefore, if a Scheduled Caste convert to Islam or Christianity (or any

⁴ AIR 1993 SC 477

other person) is subjected to untouchability, the perpetrators of the offences may be proceeded against under the provisions of the Act. However, no precise information is available in regard to the Act being invoked to protect a person of minority community. The law enforcing agencies appear to be harbouring a misconception that the Protection of Civil Rights Act, 1955 has been enacted to protect only Scheduled Castes against enforcement of untouchability related offences. There is, thus, a case for sensitising the law enforcement authorities/agencies in this regard. Having said that, one cannot resist the impression that the Protection of Civil Rights Act, 1955 has failed to make much of an impact due to its tardy implementation notwithstanding the fact that the offences under this Act are cognizable and triable summarily. The annual report on the Protection of Civil Rights Act for the year 2003 (latest available) laid on the Table of each House of Parliament u/s 15A(4) of the Act reveals that only 12 States and UTs had registered cases under the Act during that year. Out of 651 cases so registered, 76.04 percent (495) cases were registered in Andhra Pradesh alone. The number of cases registered in nine States/UTs varied from 1 to 17. Only in three States, the number of cases registered exceeded 20. The report also reveals that out of 2348 cases (out of 8137 cases including brought/forward cases) disposed off by Courts during the year, a measly 13 cases constituting 0.55 percent ended in conviction. This appears to be a sad commentary on the state of affairs in regard to investigation and prosecution. To say that the practice of untouchability does not exist in 23 remaining States/UTs would be belying the truth that is known to the world. It only denotes pathetic inaction on the part of law enforcing agencies. The provisions of the Protection of Civil Rights Act need to be enforced vigorously with a view to ensuring that the law serves the purpose it has been enacted for.

With a view to evaluating progress and development of minorities, monitoring the working of safeguards provided to them under the Constitution and laws, etc. the Central Government had constituted a non-statutory **Minorities Commission in 1978. In 1992, the National Commission for Minorities** was enacted to provide for constitution of a statutory Commission. The National Commission for Minorities was set up under the Act in 1993. The functions of the Commission include: (a) evaluating the progress of the development of minorities under the Union and States; (b) monitoring the working of the safeguards provided in the Constitution and in laws enacted by Parliament and the State Legislatures; (c) making

recommendations for the effective implementation of safeguards for the protection of the interests of minorities by the Central Government or the State Governments; (d) looking into specific complaints regarding deprivation of rights and safeguards of the minorities and take up such matters with the appropriate authorities; (e) causing studies to be undertaken into problems arising out of any discrimination against minorities and recommend measures for their removal; (f) conducting studies, research and analysis on the issues relating to socio-economic and educational development of minorities; (g) suggesting appropriate measures in respect of any minority to be undertaken by the Central Government or the State Government; and (h) making periodical or special reports to the Central Government on any matter pertaining to minorities and in particular difficulties confronted by them.

A Constitution Amendment Bill, viz. the Constitution (One Hundred and Third Amendment) Bill, 2004 has been introduced so as to add a new article, viz. Article 340A to constitute a National Commission for Minorities with a constitutional status. A Bill to repeal the National Commission for Minorities Act, 1992 has simultaneously been introduced.

In terms of Section 13 of the Act, the Central Government shall cause the annual report together with a memorandum of action taken on the recommendations contained therein, in so far as they relate to Central Government, and the reasons for non-acceptance, if any, of any recommendation.....as soon as may be after the reports are received to be laid before each House of Parliament.

In the absence of a definite time frame for laying the annual report of the Commission, there has been considerable delay in tabling the annual reports of the Commission in the Parliament. The National Commission on Minorities has submitted twelve (12) annual reports for the years 1992-93 to 2004-05. The annual reports for the years 1996-97, 1997-98, 1999-2000, and 2003-04 have been tabled in the Parliament only recently, some as recently as in the winter session 2006 of the Parliament. Therefore, there appear to be a case for amendment of the Act so as to provide for a reasonable time frame for the recommendations to be laid, along with memorandum of action taken before the Parliament/State Legislature. It may be advisable to incorporate a suitable provision in the Constitution Amendment Bill laying down definite time frame for laying the annual reports of the Commission on the tables of both Houses of Parliament along with action taken notes.

According to the provisions of Clause(9) of article 338 and 338A, the Union and every State Government shall consult the National Commission for Scheduled castes and the National Commission for Scheduled Tribes on all major policy matters affecting the Scheduled Castes and the Scheduled Tribes, respectively. Such a consultation is mandatory and can be construed to be an important constitutional safeguard for Scheduled Castes and Scheduled Tribes. A corresponding provision does not exist in the National Commission for Minorities Act, 1992. In the absence of such a provision the Government of the day may or may not consult the National Commission for Minorities on major policy matters impacting minorities, depending on exigencies. Therefore, the National Commission for Minorities Act, 1992 needs to be suitably amended with a view to incorporating in it a provision analogous to the provision in article 338(9) and 338A(9). This may instill a sense of confidence amongst minorities about protection of their interests.

While we are on safeguards, it should be noted that a very important mechanism of ensuring the welfare of Scheduled Castes is constitution of a Parliamentary Committee on Scheduled Castes. The successive Committees have been doing yeoman's work towards safeguarding the interests of Scheduled Castes. Such a mechanism (of monitoring effective implementation of the constitutional and legal provisions safeguarding the interest of minorities and, also, implementation of general or specific schemes for the benefit of minorities by Government and its agencies/ instrumentalities) is expected to be an effective step for ensuring the welfare of religious minorities.

The National Commission for Minority Educational Institutions Act, 2004 was enacted to constitute a Commission charged with the responsibilities of advising the Central Government or any State Government on any matter relating to education of minorities that may be referred to it, looking into specific complaints regarding deprivation or violation of rights of minorities to establish and administer educational institutions of their choice, deciding on any dispute relating to affiliation to a scheduled University and reporting its findings to the Central Government for implementation. The Act was extensively amended in 2006 (Act 18 of 2006), inter alia, empowering the Commission to enquire suo moto or on a petition presented to it by any minority educational institution (or any persons on its behalf) into complaints regarding deprivation or violation of rights of minorities to establish and administer an educational

institution of its choice and any dispute relating to affiliation to a University and report its finding to the appropriate Government for its implementation. The Act also provides that if any dispute arises between a minority educational institution and a University relating to its affiliation to such University, the decision of the Commission thereon shall be final.

The Commission discussed the provisions of the Act as amended and felt the need to make clear-cut, concrete and positive recommendations for improving and streamlining the provision of the Act.

7) OTHER CONSTITUTIONAL SAFEGUARDS

The other measures of protection and safeguard provided by the Constitution in Part III or elsewhere having a bearing on the status and rights of minorities are: (i) Freedom of conscience and free profession, practice and propagation of religion (Article 25) (ii) Freedom to manage religious affairs (Article 26) (iii) Freedom as to payment of taxes for promotion of any particular religion (Article 27) (iv) Freedom as to attendance at religious instruction or religious worship in certain educational institutions (Article 28) (v) Special provision relating to language spoken by a section of the population of a State (Article 347) (vi) Language to be used in representations for redress of grievances (Article 350) (vii) Facilities for instruction in mother tongue at primary stage (Article 350A) (viii) Special Officer for linguistic minorities (Article 350 B)

Article 29

Article 29 and 30 deal with cultural and educational rights of minorities. Article 29 provides that: **(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, and **(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.

Unlike article 30, the text of article 29 does not specifically refer to minorities, though it is quite obvious that the article is intended to protect and preserve the cultural and linguistic identity of the minorities. However, its scope is not necessarily confined to minorities. The protection of article 29 is available to “any section of the citizens residing in the territory of India” and this may as well include the majority. However, India is a colourful conglomeration of numerous races, religions, sects, languages, scripts, culture and traditions. The minorities, whether based on religion or language, are quite understandably keen on preserving and propagating their religious, cultural and linguistic identity and heritage. Article 29 guarantees exactly that. There may appear to be some overlapping in language and expressions employed in article 15(1) and 29(2). However, article 15(1) contains a general prohibition on discrimination by the State against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them; whereas article 29(2) affords protection against a particular species of State action, viz, admission into educational institution maintained by the State or receiving aid out of State funds.

Article 30

Article 30 is a minority-specific provision that protects the right of minorities to establish and administer educational institutions. It provides that “all minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice”. Clause (1-A) of the article 30, which was inserted by the Constitution (Forty-fourth Amendment) Act, 1978 provides that “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”. Article 30 further provides that “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 and language”.

It would be worthwhile to note that minority educational institutions referred to in clause(1) of article 30 have been kept out of the purview of article 15(4) of the Constitution which empowers the State to make provisions by law for the advancement of any socially and educationally

backward classes of citizens or SCs/STs in regard to their admission to educational institutions (including private educational institutions), whether aided or unaided.

Articles 29 and 30 have been grouped together under a common head namely, “Cultural and Educational Rights”. Together, they confer four distinct rights on minorities. These include the right of: **(a)** any section of citizens to conserve its own language, script or culture; **(b)** all religious and linguistic minorities to establish and administer educational institutions of their choice; **(c)** an educational institution against discrimination by State in the matter of State aid (on the ground that it is under the management of religious or linguistic minority); and **(d)** the citizen against denial of admission to any State-maintained or State-aided educational institution.

Article 29, especially clause (1) thereof, is more generally worded, whereas article 30 is focused on the right of minorities to (i) establish and (ii) administer educational institutions. Notwithstanding the fact that the right of the minority to establish and administer educational institutions would be protected by article 19(1)(g), the framers of the Constitution incorporated article 30 in the Constitution with the obvious intention of instilling confidence among minorities against any legislative or executive encroachment on their right to establish and administer educational institutions. In the absence of such an explicit provision, it might have been possible for the State to control or regulate educational institutions, established by religious or linguistic minorities, by law enacted under clause(6) of article 19.

8) POSITION OF MINORITIES AROUND THE WORLD

i) WHO ARE MINORITIES?

The term minority rights embodies two separate concepts: first, normal individual rights as applied to members of racial, ethnic, class, religious, linguistic or sexual minorities, and second, collective

rights accorded to minority groups. The term may also apply simply to individual rights of anyone who is not part of majority decision.

Civil rights movements often seek to ensure that individual rights are not denied on the basis of membership in a minority group, such as global women's rights and global LGBT rights movements, or the various racial minority rights movements around the world (such as African-American Civil Rights Movement (1955-1968)).

ii) HISTORY OF RELIGIOUS AND LINGUISTIC MINORITIES AROUND THE WORLD

The issue of minority rights was first raised in 1814, at the Congress of Vienna, which discussed the fate of German Jews and especially of the Poles who were once again partitioned up. The Congress expressed hope that Prussia, Russia, and Austria would grant tolerance and protection to the minorities, which ultimately they disregarded, engaging in organised discrimination. The Congress of Paris in 1856 paid special attention to the status of Jews and Christians in the Ottoman Empire. In Britain William E Gladstone made outrage regarding the massacres of Bulgarians by the Ottoman Empire a major campaign issue and demanded international attention. The Congress of Berlin in 1878 dealt with the status of Jews in Romania, especially, and also Serbia, and Bulgaria. On the whole these 19th century congresses failed to impose significant reforms. Russia was especially active in protecting Orthodox Christians, and Slavic people under the control of the Ottoman Empire. Persecution or discrimination against specific minorities was increasingly the subject of media attention, and the Jews began to organize to protest the programmes in Russia. However there was little international outrage regarding other minorities, such as the blacks in the southern United States. No one paid much attention to the attacks on Armenians until it became large-scale genocide in 1915, and even then nothing was done.

The first minority rights were proclaimed and enacted by the revolutionary Parliament of Hungary in July 1849. Minority rights were codified in Austrian law in 1867.

iii) Minority rights at the PARIS PEACE CONFERENCE OF 1919

At the Versailles Peace Conference the Supreme Council established 'The Committee on New States and for the Protection of Minorities'. All the new successor states were compelled to sign minority rights treaties as a precondition of diplomatic recognition. It was agreed that although the new states had been recognized, they had not been 'created' before the signatures of the final Peace Treaties. The issue of German and Polish rights was a point of dispute as Polish rights in Germany remained unprotected, in contrast to rights of German minority in Poland. As with most of the principles adopted by the League, the Minorities Treaties were a part of the Wilsonian idealist approach to international relations, and as with the league itself, the Minorities Treaties were increasingly ignored by the respective governments, with the entire system mostly collapsing in the late 1930s. Despite the political failure they remained the basis of international law. After World War II the legal principles were incorporated in the UN Charter and a host of international human right treaties.

iv) MINORITY RIGHTS UNDER INTERNATIONAL LAW

Minority rights, as applying to ethnic, religious or linguistic minorities and indigenous peoples, are an integral part of international human rights law. Like children's rights, women's rights and refugee rights, minority rights are a legal framework designed to ensure that a specific group which is in a vulnerable, disadvantaged or marginalised position in society, is able to achieve equality and is protected from persecution. The first post-war international treaty to protect minorities, designed to protect them from the greatest threat to their existence, was **the UN Convention on the Prevention and Punishment of the Crime and Genocide**.

Subsequent human rights standards that codify minority rights include the **International Covenant on Civil and Political Rights (Article 27)**, the **United Nations Declaration on the Rights of Persons belonging to national or ethnic, Religious and Linguistic minorities**, two **Council of Europe treaties (the Framework Convention for the protection of National Minorities and the European**

Charter for Regional or Minority Languages), and the Organization for security and co-operation in Europe (OSCE) Copenhagen Document of 1990.

Minority rights cover protection of existence, protection from discrimination and persecution, protection and promotion of identity, and participation in political life. For the rights of LGBT people, the Yogyakarta Principles has been approved by the United Nations Human Rights Council and for the rights of persons with disabilities, the Convention on the Rights of Persons with Disabilities was adopted by the United Nations General Assembly.

To protect minority rights, many countries have specific laws and/or commissions or ombudsman institutions (for example the Hungarian Parliamentary Commissioner for National and Ethnic Minorities Rights).

While initially, the United Nations treated indigenous peoples as a sub-category of minorities there is an expanding body of international law specifically devoted to them, in particular Convention 169 of the International Labour Organisation and the UN Declaration on the Rights of Indigenous Peoples (adopted 14 September 2007).

In 2008 a declaration on LGBT rights was presented in the UN General Assembly, and in 2011 a LGBT rights resolution was passed in the United Nations Human Rights Council.

v) ROLE OF NATIONAL MINORITIES IN THE LAW OF EUROPEAN UNION

The direct role of the European Union in the area of protection of national minorities is still very limited. The EU has relied on general international law and a European regional system of international law (based on the Council of Europe, Organisation for Security and Co-operation in Europe, etc.) and in case of necessity accepted their norms. But the “de-economisation integration”, which started in the 1990s, is changing this situation. The political relevance of national minorities protection is very high.

Now (2009), although protection of the national minorities has not become a generally accepted legally binding principle of the EU, in several legal acts issues of national minorities are mentioned. In external relations protection of national minorities became one of the main criteria for cooperation with the EU or accession.

9) EDUCATIONAL RIGHTS OF MINORITIES IN INDIA

Each society is an amalgamation of distinct cultures and religious communities who cherish their identities and rightly wish to preserve them. Correspondingly one can notice the division of population into a majority and several minorities on the basis of religious as well as ethnic cultural communities. Though everyone should have the right to protect, preserve and practice their beliefs, the minorities often feel neglected and looked down upon. Therefore it is essential that for the protection of minority, their distinct religious and cultural identities are preserved. The basic object of such minority protection is to instill confidence in them, create a feeling that they will never be overrun by the majority and to homogenize the pluralities in a civil society and to integrate minorities fully and equally into the national life of the state characterized by the ethos and interest of majority.

The history shows that there can be no stable equilibrium in any country so long as an attempt is made to crush a minority or to force it to conform to the ways of the majority. The largest democracy of the world is also said to be the house of the most diverse societies in the world. It has people from all the major religions. Although the Hindus constitutes an overwhelming majority, but there is a considerable number of Muslims, Christians, Parsees, Buddhist and Jains religions too. The diversity in India is noticed on various fronts other than religion and culture such as language. Diversity is coupled with linguistic diversity. In addition to that there are also a number of Scheduled tribes and certain unidentified communities which are internally heterogeneous. All these make India a country which has not only religious but also linguistic and cultural diversity.

The guardian of the state, the constitution provides certain fundamental tenets, chief among them being the rule of law, equality and special provisions for certain vulnerable groups. The Constitution of India envisages a secular. It visualizes a state offering justice, social economic and political to all the citizens. Freedom of Speech and Expression and the Right to Form Association and Union are guaranteed to all. The Indian Constitution made India a sovereign, socialist, secular, democratic, republic consisting of a representative government deriving its power from the people and exercising the same through representatives freely chosen by and who are responsible to the people. The Government is run by a majority party and political

power is distributed between them. The rights guaranteed by the Constitution are available to all the citizens irrespective of distinction of any kind. But for the protection of minority so that they are not hampered by the majority, the constitution went a step further by adopting a separate group of articles to infuse confidence in the minority communities of this country.

The term minority occurs only in Articles 29 and 30 of the Constitution. Article 30 recognizes the right of a minority whether based on religion or language to establish and administer educational institutions of their choice and prohibits the state from discriminating against any educational institutions on the ground that it is under the management of a minority. The concept of minority though not define by the Constitution occurs again in Article 29 of the Constitution where the right of any section of the citizens residing in the territory of India" to „conserve“ its distinct language, script or culture is protected. Moreover Article 25 to Article 28 of the Constitution protects the religious and cultural of the minorities.

i) Purpose of granting Cultural and Education Rights to the Minority in India

India is a land of myriad ethnic, religious, caste and linguistic minorities affiliated to distinct belief systems, sub-cultures and regions. Integration of these diverse communities, some large enough to aspire to a regional homeland and others content to remain as part of the Indian state has been a central preoccupation of Indian governments since 1947.

It is important to understand the condition of the minority in the present and past scenario. Despite the several efforts by the government to improve the condition of the minority, constitutional guaranteed rights, different institution and commission established to monitor, failed. Minority faces discrimination, violence and atrocities. These cults have come into the light many times whether it is Gujarat riots where more than 2000 Muslims were killed, or following Indira Gandhi assassination led to the murder of 3000 Sikhs in Delhi. Atrocities against dalits in Bihar, Jharkhand, Maharashtra Gujarat, and in north eastern part of the India is very common. We can see the results of this kind of ruthless discrimination in Maharashtra in recent days. The purpose to guarantee these rights and to distinguish them from majority was not creating such discrimination but to make them able, to diffuse them with the majority. Even the

foreigner residing in India and forming the well defined religious and linguistic minority also fall under the preview of this Article. 'Persons belonging to minorities have the right to participate effectively in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live, in a manner not incompatible with national legislation.'

Before moving ahead we have to ponder over some of the concepts which are important. First and foremost what is minority? Second what are the rights guaranteed to them? Who guarantee them these rights? For what purpose these rights are bestowed to them? Is it serving its requisite end?

Minority Rights In India

The constitution of India guarantees different rights to the minority. These are cultural and educational rights which have been guaranteed under Article 29 and 30.

ii) Article 29- Protection of interests of minorities-

(1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.

The application of this Article is upon person having a distinct language, script or culture of its own and it takes into the consideration two types of minority one linguistic and other religious minority. If they have the same can be protect it. This right includes the rights "to agitate for the protection of the language." It also not subject to any reasonable restriction like other fundamental rights and hence it is an absolute right. Under Article 29(1) any school or university can promote education in regional language as far as it is done for minor and language of the minor.

In D.A.V school, Jullundur v. state of Punjab⁵ the above provision was challenged on the ground that the college administered by the religious minority i.e. Arya Samaj and affiliated university would be compelled to study the religious teaching of the Guru Nanak and this would amount to violation of the Article 29. Supreme court declined the view and said that

⁵ AIR 1971 SC 1737

the there is no mandate in the provision for compelling affiliated colleges either to study religious teaching of the Guru Nanak, or to adopt in any way the culture of the Sikh. If the university includes the teaching and life of the saint for the research and philosophical it cannot be said that the affiliated colleges are being required to compulsorily study his life and teaching.

The provision meant that for the promotion of the majority language minority should not be stifled. If anybody does it will be trespass on the rights of the sections of the citizens who have distinct language or script and which they have a right to conserve through their own educational institutions. So the minority institution affiliated to the Guru Nanak University to teach in the Punjabi language, or in any way impeding their rights to conserve their language, script or culture.

(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.

This Article is wide and unqualified. It confers a special right not on the minority but to the majority also for the admission in the state maintained or aided educational institution. If it would be only limited to the minority it would mean that majority has no right for the admission in the state maintained or aided educational institution. This is very clear through these provision that in any case no one can discriminate on the ground of the language, caste or religion. Whether it is state maintained education institute or private aided institution. Now it is important to know the application of the above Article. Dispute of its application was firstly arisen **in State of Maharashtra v. Champakam**⁶ Communal G.O. of the state of Madras allotted seats in medical and engineering college in the proportionately to the several communities. A Brahmin candidate who could not be admitted to the engineering college challenged the G.O. as being inconsistent with the Article 29(2). Supreme Court held that the classification on the ground of the caste was inconsistent with the provision of the Article. Even though petitioner has got much higher marks than those who secured by non Brahmin who were admitted in the seats allotted to them, he could not admitted in any institution. The reason was that he was Brahmin. In another case Supreme Court denied the view that intake of students on the ground language is

⁶ AIR 1951 SC 226

violating of the fundamental rights. In instant case Bombay Government by an order banned the admission of those whose language is not English to a school using English as a mode of instruction. Argument advanced by the state was that by doing it is trying to promote national language. Court said that the view is right but could not be upheld as it is violating of the fundamental rights. So there should not be any discrimination on ground of language in matter of admission which has been clearly stated by the Hon'ble Supreme Court of the India.

Dividing states in two regions and then allocating seats for medical and engineering college in the state between these regions does not violate Article 29(2). Refusal of admission on grounds of not possessing requisite academic qualification or because anyone was expelled for the indiscipline. Reservation for rural student passing class out of VIII was held bad decision in *Suneel Jitley v. State of Haryana*⁷. Supreme Court said that basis of reservation was irrational. As student from the rural area can study in urban area still he would have been preferred. While a student of urban area could have been studied in rural area and could have become entitled for reservation. Also the education up to VIII standard does not make any difference to medical education. Hence there was no nexus between the classification and object sought to achieve.

iii) Relationship between Article 29(2) with article 15(1) and 15(4)

Article 15(1) prohibits discrimination on grounds of religion, race, sex, caste or place of birth. Still there is significant differences between these two articles, 15(1) protects all citizen against discrimination by the state where as Article 29(2) extends protection against the state, or anybody who denies the right conferred. Article 15(1) is much broader than the 29(2) as it covers numerous conditions where as article 29(2) only deal with the protection against only one wrong namely denial of admission in state aided or maintained educational institute. Article 15(1) broader than 29(2), whenever second one is not applicable the first one is apply.

⁷ 1984 AIR 1534, 1985 SCR(1) 272

Article 15(4) was added by first amendment of the constitution. It was introduced for the advancement of the socially and educationally backward classes of citizen or of SC and ST. Rights guaranteed under Article 29(2) is limited by the Article 15(4) as it has provision of reservation in an educational institute for some section of the Indian citizen.

If state prescribe some percentage of reservation in any educational institute for a certain section of the people under Article 15(4), but not increases more than the prescribed limited than reservation of the rest cannot be set aside as it would be violating of the fundamental right under article 29(2). Any reservation of seats in an educational institute seats not justified under Article 15(4) cannot be valid.

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

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

(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 (i), 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.

The benefit of Article 30(1) extends only to linguistic or religious minorities and not to any other section of the Indian citizens. Article here state linguistic and religious minority. Here minority means that community which is less than 50 percent of the total population with the respects of the population of the state.

The words in the article administer and established in the Article 30(1) have to be read together. This means that the religious minority will have the right to establish the educational institution and can administer it only. If it established by the other community or by any other person then they cannot claim the right under this article. Like Aligarh Muslim university was established by the statutory provision and hence cannot be designated as minority educational institute.

The minority factor to attract Article 30(1) is the establishment of the institution established by the minority concerned. The Supreme Court has observed in **Azeez Basha v Union of India**⁸. Article 30(1) postulates that the religious community will have the right to establish and administer education institute of their choice meaning thereby where religious minority establishes an education institution, it will have the right to administer institute of their choice provide that they have established them not otherwise. It has to be proved by producing satisfactory evidence that the institution was established by the minority claiming to administer it. The onus of the proof lies on one who asserts an institution is a minority institution. It is sole decision of the court to decide whether the institution is minor or not. Even the government has recognized it as minor institute.

In *Yogendra Nath Singh v. State of Uttar Pradesh*⁹ the Government recognized an institution as minor institution. This order was challenged in the high court through a writ petition. Looking into the antecedent history of the institution right from its inception, the court decide that the institution was not established as minority institution, and, therefore, it could not granted the minority status even though it presently it was managed by the minority community. Under this Article both the condition “established and managed” should be read together and absence of even one would unfit the institution for the status of the minority institution.

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.

Article 30(2) bars the state, while granting aid to educational institution on the ground that it is under the management of a linguistic or a religious minority. Government aided educational institute should not be discriminated by the state on the ground that it is under the management of a minority, whether based on religion or language. Minority educational institute are entitled to get financial assistance much the same way as the educational institutions run by the majority community. This does not mean that the minority educational institution can claim state as a matter of right. But there should not be discrimination while providing financial assistance.

⁸ AIR 1968 SC 662

⁹ 1999(2) AWC 1563, (1999) 2 UPLBEC 1318

The Above rights have been granted by the Constitution with certain underlying purpose. Being India as a secular state to maintain it and let the minority to mix with the main stream society. And can also help in the development of the country. Other reason is that India is a country of diverse culture, and everybody is equal. Hence they have the equal opportunity to preserve it. As Supreme Court in *St. Xavier College v. State of Gujarat*¹⁰ pointed out that the spirit behind the provision of the following article is conscience of the nation that the minorities, religious as well as linguistic, are not prohibited from establishing and administering educational institutes, of their choice for the purpose of giving their child the best general education to make them complete man and women of the country. The minorities have been given protection to preserve and strength the integrity of the country. The sphere general secular education will develop the commonness of boys and girls of India. This is the true spirit of liberty, equality and fraternity through medium of education. The minority will fell isolated and separated if they are not given these rights. General secular education will open doors of perception and act as the natural light of mind for our countrymen to live in the whole. The rights to administer have been given to the minority, so that it can mould the institution as it thinks fit, and accordance with its idea how the interest of the community in general, and institution in particular, will be best served.

iv) Inter – Relationship of Articles 29(2) and 30(1)

The framers of the constitution never intended that Article 29(2) to act as restraint on the content of the right articles 30(I). The way in which Article 29(2) came to assume its final shape in the Constituent Assembly in an interesting story. Originally the present Article 29(2) was part of the integrated scheme devised to protect educational interests of religious and linguistic minorities. The simple object of what now constitutes Articles 29(2) was to protect minorities from being discriminated against in regard to admission into state educational institutions. The recommendation of the minorities Sub-Committee made on April 19, 1947 for being incorporated as fundamental rights in the Constitution contains a provision in clause in which

¹⁰ AIR 1974 SC 1389

read: No minority whether based on religion, community or language shall be deprived of its right or discriminated against in regard to the admission into state education institutions. Since they have not done so, it becomes obvious that the intention of the framers was not to treat article 29(2) as an exception to article 30.

10) MEASURES SUGGESTED FOR THE WELFARE OF RELIGIOUS MINORITIES

I wish to clarify, at the outset, that whatever recommendations of a general nature (for all minorities) i am making here are not only for the communities notified as “minorities” by executive action under the **National Commission for Minorities Act 1992** but for all religious minorities – large or small – including the Hindus in the Union Territory of Lakshadweep and the States of Jammu & Kashmir, Meghalaya, Mizoram, Nagaland and Punjab.

I recommend that in the matter of criteria for identifying backward classes there should be absolutely no discrimination whatsoever between the majority community and the minorities; and, therefore, the criteria now applied for this purpose to the majority community – whatever that criteria may be – must be unreservedly applied also to all the minorities.

As a natural corollary to the aforesaid recommendation i recommend that all those classes, sections and groups among the minorities should be treated as backward whose counterparts in the majority community are regarded as backward under the present scheme of things. I further recommend that all those classes, sections and groups among the various minorities as are generally regarded as ‘inferior’ within the social strata and societal system of those communities – whether called ‘zat’ or known by any other synonymous expression – should be treated as backward. To be more specific, that all those social and vocational groups among the minorities who but for their religious identity would have been covered by the present net of Scheduled Castes should be unquestionably treated as socially backward, irrespective of whether the religion of those other communities recognises the caste system or not. I also recommend that those groups among the minorities whose counterparts in the majority community are at present covered by the net of Scheduled Tribes should also be included in that net; and also, more

specifically, members of the minority communities living in any Tribal Area from pre-independence days should be so included irrespective of their ethnic characteristics.

11) MEASURES SUGGESTED FOR THE WELFARE OF LINGUISTIC MINORITIES

In my opinion the concept of 'backwardness' is to be confined in its application to religious minorities as it has no relevance for the linguistic minorities.

The latter may be facing some other problems like discrimination and denial of constitutional rights in practice, but no linguistic group may be regarded as backward by itself. Therefore, no recommendation criterion for identifying 'socially and economically backward classes' among the linguistic minorities. I am, of course, conscious of the fact that those linguistic minority groups who keep their education restricted to their own language are often handicapped in the matter of competing with others in respect of educational development and economic advancement. To address this problem i am recommending some specific welfare measures, but would not like to identify language as one of the criteria for identifying backward classes among the people.

12) MEASURES OF WELFARE FOR MINORITIES INCLUDING RESERVATION

As democracy is a game of numbers, the numerically weaker sections of the citizenry in any society may and often do get marginalised by the majority. This is eminently true of the religious minorities in India where the society remains intensively religious and religion- conscious and the religious minorities live with a predominant religious community accounting for over 80 percent of the national population. In such a situation legal protection from the hegemony and preponderance of the majority community becomes a pressing need of the religious minorities as

a whole, and not just that of the ‘backward’ sections among them. To provide such necessary protection by law we do have in the Constitution a **Directive Principle of State Policy, Article 46**, which speaks of “weaker sections of the people” – notably without subjecting them to the condition of backwardness – and mandates the State to “promote with special care” the educational and economic interests of such sections. It is keeping this in mind that i am making certain recommendations for the religious communities as such – though we are, of course, also recommending some special measures for the socially and educationally backward sections among the minorities.

We all have a convinced opinion that backwardness – both social and economic – actually emanates from educational backwardness. I am, therefore, making certain measures for the educational advancement of the religious minorities – especially the Muslims and the Neo-Buddhists - who were identified under the National Education Policy of 1986 as educationally most backward among all the religious communities of the country.

As regards linguistic minorities, they are entitled to certain reliefs under some specific provisions of the Constitution, and it is in accordance with those provisions that i am recommending some welfare measures also for them.

13) EDUCATIONAL WELFARE MEASURES

I further clarify that by the word ‘education’ and its derivatives as used below we mean not only general education at the primary, secondary, graduate and postgraduate levels, but also instruction and training in engineering, technology, managerial and vocational courses and professional studies like medicine, law and accountancy. All these subjects and disciplines – as also the paraphernalia required for these like libraries, reading rooms, laboratories, hostels, dormitories etc, -must be there for the advancement of education among the minorities.

As the meaning and scope of Article 30 of the Constitution has become quite uncertain, complicated and diluted due to their varied and sometimes conflicting judicial interpretations, i recommend that a comprehensive law should be enacted without delay to detail all aspects of

minorities' educational rights under that provision with a view to reinforcing its original dictates in letter and spirit.

The statute of the National Minority Educational Institutions Commission should be amended to make it wide-based in its composition, powers, functions and responsibilities and to enable it to work as the watchdog for a meticulous enforcement of all aspects of minorities' educational rights under the Constitution.

As by the force of judicial decisions the minority intake in minority educational institutions has, in the interest of national integration, been restricted to about 50 percent, thus virtually earmarking the remaining 50 percent or so for the majority community – i strongly recommend that, by the same analogy and for the same purpose, at least 15 percent seats in all non- minority educational institutions should be earmarked by law for the minorities as follows: (a) The break up within the recommended 15 percent earmarked seats in institutions shall be 10 percent for the Muslims (commensurate with their 73 percent share of the former in the total minority population at the national level) and the remaining 5 percent for the other minorities. (b) Minor adjustments inter se can be made in the 15 percent earmarked seats. In the case of non-availability of Muslim candidates to fill 10 percent earmarked seats, the remaining vacancies may be given to the other minorities if their members are available over and above their share of 5 percent; but in no case shall any seat within the recommended 15 percent go to the majority community. (c) As is the case with the Scheduled Castes and Scheduled Tribes at present, those minority community candidates who can compete with others and secure admission on their own merit shall not be included in these 15 percent earmarked seats.

As regards the backward sections among all the minorities, i recommend that the concessions now available in terms of lower eligibility criteria for admission and lower rate of fee, now available to the Scheduled Castes and Scheduled Tribes, should be extended also to such sections among the minorities. Since women among some minorities – especially the Muslims and Buddhists – are generally educationally backward, we recommend the same measure for them as well and suggest that other possible measures be also initiated for their educational advancement. In respect of the Muslims – who are the largest minority at the national level with a country-wide presence and yet educationally the most backward of the religious communities – i recommend

certain exclusive measures as follows: (i) Select institutions in the country like the Aligarh Muslim University and the Jamia Millia Islamia should be legally given a special responsibility to promote education at all levels to Muslim students by taking all possible steps for this purpose. At least one such institution should be selected for this purpose in each of those States and Union Territories which has a substantial Muslim population. (ii) All schools and colleges run by the Muslims should be provided enhanced aid and other logistic facilities adequate enough to raise their standards by all possible means and maintain the same. (iii) The Madarsa Modernisation Scheme of the government should be suitably revised, strengthened and provided with more funds so that it can provide finances and necessary paraphernalia either (a) for the provision of modern education up to Standard X within those madarasas themselves which are at present imparting only religious education or, alternatively, (b) to enable the students of such madarasas to receive such education simultaneously in the general schools in their neighbourhood. The Madarsa Modernisation Scheme may, for all these purposes, be operated through a central agency like the Central Wakf Council or the proposed Central Madarsa Education Board. (iv) The rules and processes of the Central Waqf Council should be revised in such a way that its main responsibility should be educational development of the Muslims. For this purpose the Council may be legally authorised to collect a special 5 percent educational levy from all waqfs, and (ii) to sanction utilisation of waqf lands for establishing educational institutions, polytechnics, libraries and hostels. (v) In the funds to be distributed by the Maulana Azad Educational Foundation a suitable portion should be earmarked for the Muslims proportionate to their share in the total minority population. Out of this portion funds should be provided not only to the existing Muslim institutions but also for setting up new institutions from nursery to the highest level and for technical and vocational education anywhere in India but especially in the Muslim- concentration areas. (vi) Anganwaris, Navodaya Vidyalayas and other similar institutions should be opened under their respective schemes especially in each of the Muslim-concentration areas and Muslim families be given suitable incentives to send their children to such institutions.

As regards the linguistic minorities, i recommend the following measures: (a) The law relating to the Linguistic Minorities Commissioner should be amended so as to make this office responsible for ensuring full implementation of all the relevant Constitutional provisions for the

benefit of each such minority in all the States and Union Territories. (b) The three-language formula should be implemented everywhere in the country making it compulsory for the authorities to include in it the mother-tongue of every child – including, especially, Urdu and Punjabi – and all necessary facilities, financial and logistic, should be provided by the State for education in accordance with this dispensation. (c) Members of those linguistic minority groups whose education is limited to their mother tongue and who do not have adequate knowledge of the majority language of the region should be provided special facilities in the form of scholarships, fee concession and lower eligibility criteria for admission to enable them to acquire proficiency in the regionally dominant language. (d) Urdu-medium schools should be provided special aid and assistance – financial and otherwise – to enhance and improve their efficiency, standards and results.

Reservation

Since the minorities – especially the Muslims – are very much under-represented, and sometimes wholly unrepresented, in government employment, I recommend that they should be regarded as backward in this respect within the meaning of that term as used in Article 16 (4) of the Constitution – notably without qualifying the word ‘backward’ with the words “socially and educationally” – and that 15 percent of posts in all cadres and grades under the Central and State Governments should be earmarked for them as follows: (a) The break up within the recommended 15 percent shall be 10 percent for the Muslims (commensurate with their 73 percent share of the former in the total minority population at the national level) and the remaining 5 percent for the other minorities. (b) Minor adjustment inter se can be made within the 15 percent earmarked seats. In the case of non-availability of Muslims to fill 10 percent earmarked seats, the remaining vacancies may be given to other minorities if their members are available over and above their share of 5 percent; but in no case shall any seat within the recommended 15 percent go to the majority community. Yet, should there be some insurmountable difficulty in implementing this recommendation, as an alternative I recommend that since according to the Mandal Commission Report the minorities constitute 8.4 percent of

the total OBC population, in the 27 percent OBC quota an 8.4 percent sub-quota should be earmarked for the minorities with an internal break-up of 6 percent for the Muslims (commensurate with their 73 percent share in the total minority population at the national level) and 2.4 percent for the other minorities – with minor adjustments inter se in accordance with population of various minorities in various States and UTs. The reservation now extended to the Scheduled Tribes, which is a religion-neutral class, should be carefully examined to assess the extent of minority presence in it and remedial measures should be initiated to correct the imbalance, if any. The situation in Meghalaya, Mizoram, Nagaland and Lakshadweep which are minority- dominated and predominantly tribal, as also such tribal areas/districts in Assam and all other States, is to be especially taken into account in this respect. The judicial reservation recently expressed in several cases about the continued inclusion of the creamy layer in various classes enjoying reservation, inclusive of the Scheduled Castes and Scheduled Tribes, should be seriously considered for acceptance as a State policy.

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14) Conclusion

Almost all States have one or more minority groups within their national territories, characterized by their own ethnic, linguistic or religious identity which differs from that of the majority population. Harmonious relations among minorities and between minorities and majorities and respect for each group's identity is a great asset to the multi-ethnic and multi-cultural diversity of our global society. Meeting the aspirations of national, ethnic, religious and linguistic groups and ensuring the rights of persons belonging to minorities acknowledges the dignity and equality of all individuals, furthers participatory development, and thus contributes to the lessening of tensions among groups and individuals. These factors are a major determinant etc. of stability and peace.

The protection of minorities has not, until recently, attracted the same level of attention as that accorded other rights which the United Nations considered as having a greater urgency. In recent years, however, there has been a heightened interest in issues affecting minorities as ethnic, racial and religious tensions have escalated, threatening the economic, social and political fabric of States, as well as their territorial integrity.

Discrimination which affects minorities in a negative manner - politically, socially, culturally or economically - persists and is a major source of tension in many parts of the world. Discrimination has been interpreted to "imply any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, ..., language, religion, ..., national or social origin, ..., birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms". The prevention of discrimination has been defined as the "... prevention of any action which denies to individuals or groups of people equality of treatment which they may wish".

Discrimination has been prohibited in a number of international instruments that deal with most, if not all, situations in which minority groups and their individual members may be denied equality of treatment. Discrimination is prohibited on the grounds of, *inter alia*, race, language, religion, national or social origin, and birth or other status. Important safeguards from which individual members of minorities stand to benefit include recognition as a person before the law, equality before the courts, equality before the law, and equal protection of the law, in addition to the important rights of freedom of religion, expression and association.

Special rights are not privileges but they are granted to make it possible for minorities to preserve their identity, characteristics and traditions. Special rights are just as important in achieving equality of treatment as non-discrimination. Only when minorities are able to use their own languages, benefit from services they have themselves organized, as well as take part in the political and economic life of States can they begin to achieve the status which majorities take for granted. Differences in the treatment of such groups, or individuals belonging to them, is justified if it is exercised to promote effective equality and the welfare of the community as a whole. This form of affirmative action may have to be sustained over a prolonged period in order to enable minority groups to benefit from society on an equal footing with the majority.

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