

Minorities' Rights in India: An Appraisal

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Abstract

Minorities form an important fabric of cultural diversity of India which is a multi religious and multi lingual country. Albeit innumerable references to minorities to be found in, there is no generally accepted definition of the term "minority" in international legal instruments. The word "minority" is also not defined in Indian constitution but has been divided as religious and linguistic minorities. During the colonial period, minorities were referred to as 'depressed classes' and measured based on religion, untouchability and tribes but after the independence of India, partition of the British India played a crucial role in shaping the discourse on the majority- minority and the new criteria to describe minorities was based on numerical status and cultural identity.

The framers of the Constitution of India were acquainted to the complex character of the problems of minorities. They believed that healthy national consciousness would grow if the minorities are guaranteed liberty, equality, fraternity and justice. A balancing approach to bring equality in society was adopted and the cultural and educational rights of the minorities were incorporated in the Constitution of India. In order to fulfill the demands of Karachi Session and Cabinet Mission Plan of the pre partition India, which envisaged the preservation of religious and cultural minorities, the Constituent Assembly had consensus to provide certain rights to religious and linguistic minorities in the constitution of India but failed to provide political representation as a separate electoral and reservation in government employment on the basis of fulfillment of social backwardness criteria.

Many Committees set up time to time on minorities' issues have discussed the pathetic and miserable conditions of minorities at educational and social fronts in a candid manner. Riots against religious minorities occurred from time to time and the dominance of Hindi language over regional languages reflected the vulnerability of minority rights to uphold their rights of linguistic and cultural identity in India. Post Independence, minorities of India got certain rights to preserve the linguistic and cultural identity though despite of all the provisions in the constitution and right intentions of the government, the situation of minorities is still deplorable.

This paper presents the historical aspects of minorities' rights from colonial period to the present times in India and along with throws light on some of the divergence either ways with regard to the minorities in India. The paper also highlights the need to protect the basic human rights and freedoms without any discrimination of minorities in existing circumstances and a requirement of positive support from the state in the preservation of their distinctive characteristics, or partial or full autonomy.

Keywords: Minorities; Religion; Linguistic; Cultural; Political Safeguards; Constitutional Rights.

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Introduction

India is full of different religions, languages, cultures and customs. India has a composite culture which is based on combination of various religious traditions and social movements. From Aryans to Mughals, numerous invasions and incursions contributed to shape India as a multi religious and multi cultural country. Indian society is very rich in customs and traditions of different minority

communities in India. Being a multi religious, multi cultural and multi lingual country the minorities form an important fabric of cultural diversity in India.

Diversity is an important ingredient of democracy and minorities increase the beauty of democracy. The notion of minorities started in colonial period in India but post Independence incidents shaped the debate over minorities and forced the law makes to enact laws to protect their interests. Several rights have been guaranteed to minorities in the Constitution though not all the rights as demanded by the representatives of minorities were granted the Constituent Assembly. Many committees constituted by the government from time to time has detailed the awful conditions of the minorities from time to time, still today though minorities struggle to find a place in main stream in various fields.

Concept of Minority

Minority can be defined as a group that have a feeling of belonging to one common unit and a sense of oneness. The community is distinguished from the majority of the inhabitants or a group formed of common descent, language or religious faith and feeling themselves different in these respects from the majority of the inhabitants of the given political entity.

The U.N. sub commission on Prevention of Discrimination and Protection of Minorities has defined minority as under:-

1. The term 'minority' includes only those group of the population which possess and wish to preserve stable ethnic, religious or linguistic traditions or characteristics markedly different from those of the rest of the population;
2. Such minorities should properly include the number of persons sufficient by themselves to preserve such traditions or characteristics; and
3. Such minorities should be loyal to the state of which they are national. (Kyndiah, 2016)

The constitution of India nowhere defines the term 'minority'. The members of Constituent Assembly made no attempt to define the term while article 23 of the Draft Constitution, corresponding to present articles 29 and 30, was being debated, and presumably left it to the wisdom of the courts to supply the omission. In *Re Kerala Education Bill* case [1] , Supreme Court, through S. R. Das C.J.,

define minority first time as the minority means a "community, which is numerically less than 50 percent" of the total population. "The National Commission for Minorities Act, 1992 in the Section 2(c) of the act defined a minority as "a community notified as such by the Central government". Acting under the provision on October 23, 1993, the Central government notified the Muslim, Christians, Sikhs, Buddhist and Parsis (Zoroastrian) communities as minorities for the purpose of the Act. When the Central government listed these communities as minority it appears that numerical criterion was taken into consideration." (Kyndiah, 2016).

The Constitution of India establishes broadly two kinds of minorities i.e. religious and linguistic. Constitution has recognized to a number of languages in eighth schedule. At the time of the reorganisation of the States on the linguistic basis in 1956, a number of Uni-lingual States were formed. Although the states were formed on linguistic basis but each of the States came to have linguistic minorities as well. In each and every State beside the dominant language groups, several small different language groups are considered as linguistic minorities. These linguistic minorities have different mother tongue from the majority. Reorganisation of states on the basis of language minimizes the problem of linguistic minorities to a considerable extent and now they are recognised generally at state level.

National Minority Commission notified, Muslims, Christians, Buddhist, Sikhs and Parsis as religious minority communities under section 2(c) of National Commission for Minority Act, 1992. Sikhism and Buddhist, has originated in India only called as Indict religions. Rest of three i.e. Muslims, Christian and Parsis have their roots beyond India named as Non Indict religions. The historical basis of determining of majority or minorities in India has been the religion and therefore only religious minorities are recognised at national level today. Recently, Government notified the Jain community as a minority community in addition to five communities already notified under section 2 (c) of National Commission for Minority Act, 1992, on 27th January 2014. [2] Jain community fought for their minority status since long time. As recognised as a minority, Jains will get a share in central funds earmarked for welfare programmes and scholarships for the minorities. The community was already enjoying minority status in some states like Uttar Pradesh, Madhya Pradesh, Chhattisgarh and Rajasthan but the new decision extends that status across the country.

History of Minorities

During colonial period 'Depressed classes' were considered as minority group. However, it has been argued by the historians that Colonial administration did not display an anxiety to construct the minorities with a view to ensure their well being, but simply used them to manage India better. One does not see any specific 'development' activities or affirmative action for minority groups then as such. In British India, three types of minority communities were identified that were: religious minorities, Scheduled Castes, and backward tribes, for all of whom safeguards in different form had been provided.

The Majority- Minority discourse became rampant by the partition in 1947. In Constituent Assembly minorities were the hot discussion topic. Except some dissent voices, it was the common consensus that minorities must be protected to safeguard the democracy status of the country but to what extent the rights must be given was debatable. "The representative of most groups claiming special provisions in some form emphasized that group was a minority of some kind. So close was the identification of the term 'minority' with the notion of special treatment for a group that even those opposed to a continuation of the colonial system of minority safeguards employed the same language to justify their stand." (Bajpai, 1999). The representatives of minorities demanded especially the rights of political representation as separate electoral and reservation in government employment.

Speeches in the Constituent Assembly employed several variants of arguments from national unity, secularism, democracy and equality and justice in opposition to minority safeguards. Such safeguards were regarded as instruments of a colonial 'divide and rule' policy, deliberately fashioned by the duplicitous colonial rulers to create strife between different sections of the nation, to deny that India was a nation and to delay the transfer of power once it became inevitable. Oppositions of minority rights raised three main points in favour of their arguments such as: first, the minority rights were a threat to the political unity and integrity of the Country. Second, the concept of minority could be against common national identity. Third, it could promote group identities which would convert into group politics.

However, Congress out rightly pronounced in Constituent Assembly its commitment to the cultural, educational and linguistics rights of

religious and other cultural minorities, rights that were viewed as enabling minority groups protect and promote distinct cultural identities as promised in Karachi Session of Congress, 1931. Some secular voices of K.M Munshi, M Ananthasayanam Ayyangar, B.R Ambedkar, Jawahar Lal Nehru and others like minded members were stick to adopt the concept of minorities and to safeguard their rights.

"Elections were held to the Constituent Assembly in July 1946 in accordance with the Cabinet Mission Plan of 16 May 1946. The Plan had stipulated that 'the cession of sovereignty to the Indian people on the basis of a constitution framed by the assembly would be conditional on adequate provisions being made for the protection of minorities.'" (Rao, 1967). The consensus in Constituent Assembly to safeguard minorities rights were also made out to execute the Cabinet Mission's conditions.

Constitutional Rights for Minorities

In Constituent Assembly so many freedom fighters and national leaders such as Mahatma Gandhi, Jawahar Lal Nehru, B.R. Ambedkar and others duly acknowledged the existence of minorities and understood their cause. Because of their efforts, equal political rights were provided to them and distinct social, cultural, religious and economic status was recognised. The Constitution of India protected their religious and cultural rights under Articles 25 to 30.

After a long struggle against Britain's colonial rule, when the India subcontinent gets a status of independent country, then it becomes a pluralistic nation and welcomed religious and cultural diversity. At the time of partition it was estimated that there were 361 million people living within India's borders; of these people 315 million were Hindus, 32 million Muslims, 7 million Christians, 6 million Sikhs, one million Buddhists, 100,000 Parsians and a small minority of Jews. Therefore it was the need of the hour to save this multi-ethnicity of India, for which later on our Constitution has opted the way of secularism. (Ali, 2015).

In order to safeguard the rights of minorities, The Constitution of India guaranteed certain provisions such as-

1. Right to Equality: Prohibition of discrimination on ground of religion, race, Caste etc. [Article 14, 15, 16, 17]
2. Freedoms of Conscience, Free Profession, Practice and Propagation of Religion [Article 25]

3. Freedom to Manage Religious Affairs [Article 26]
4. Freedom as to payment of taxes for promotion of any particular religion [Article 27]
5. Freedom as to attendance at religious instruction or religious worship in certain 'educational minorities' institutions [Article 28]
6. Cultural and Educational right to minorities [Article 29 and 30]
7. Facilities for instruction in mother-tongue at primary Stage [Article 350 A]
8. Special officer for linguistic minorities [Article 350-B]

Broadly, the Indian Constitution prohibits any form of discrimination on the ground of religion, race, caste, sex or place of birth. It provides space for the religious and linguistic minorities to establish their own educational institutions as also institutes some other rights that would enable them to protect their distinct identity.

Committees on Minorities

From time to time so many committees have been constituted to study the social, political and economical conditions of minority communities of India. These committees confronted the issues of Minorities and mostly recommended for authentic steps to be taken to uplift them socially and economically.

Motilal Nehru Report 1928

The Motilal Nehru Report 1928 was a report by a committee headed by Pt. Motilal Nehru. This committee was created when Lord Birkenhead, Secretary of State of India asked the Indian leaders to draft a constitution for the country. The report discussed a prominent desire to afford protection to minorities and did allow for the reservation of minority seats in provinces having minorities of at least ten percent, but this was to be in strict proportion to the size of the community. [3]

The Sapru Report 1945

The committee was headed by TejBahadurSapru. The committee was established to solve out the break- down of the Gandhi-Jinnah talks on the communal issue and to resolves whole communal and minorities question from a constitutional and political point of view. Requirement of protection

of political liberties and rights, and establishment of a minority commission was recommended. [4]

Gopal Singh Committee Report 1983

Gopal Singh Committee Report in 1983 declared that "There was a "sense of discrimination prevailing among the minorities" and that it "must be eliminated, root and branch, if we want the minorities to form an effective part of the mainstream." It was observed that Muslims are a socially and educationally backward group requiring special measures to alleviate their backwardness [5].

National Commission for Minorities 1993

National Commission for minorities initially set up as a non statutory body through a home ministry resolution in 1978 with the aim to check the increasing incidents of violence and discrimination against minorities. With the enactment of National Commission of Minorities Act, 1992, it became a statutory body. The NCW was established as an institutional mechanism to monitor the working of constitutional safeguards provided for minorities in the constitution and in laws enacted by parliament and state legislature. In 2013, commission sent a letter to justice Verma and recommended that police must be more sensitized towards minorities and Legal codes must not be disequilibrium [6].

Sachar Committee Report 2005

Sachar committee chaired by Justice RajindarSachar recommended a set up of Equal Opportunity Commission to look into grievances of deprived groups like minorities. Committee found stark under representation of Muslims and systematic evidence to show that they are in many respects as disadvantaged as the lowest hindu caste groups [7].

Rangnath Mishra Report 2007

National Commission for Religious and Linguistic Minorities, also called as Rangnath Mishra Commission constituted in 2004 to look into various issues related to Linguistic and Religious minorities in India. It was chaired by Justice Ranganath Mishra. It recommended 10% quotas for Muslims and 5% for other minorities in government jobs and seats in educational institutions and for reservation of 8.4% out of existing OBC quota of 27% for minorities and SC reservation to dalit converts [8].

Kundu Committee Report 2014

The Kundu Committee is also known as the evaluating committee of the Sachar Committee constituted under the chairmanship of Dr. Amitabh Kundu. Sachar Committee analyzed the Social, Economic and Educational Status of Muslim community in India, However the Post Sachar Evaluation Committee named as Kundu Committee analyzed the implementation of the Sachar Committee report. As per the Kundu Committee report, "Muslims continue to be left out of both government jobs and the urbanisation wave. Moreover, the basic advantages of a better sex ratio and higher birth weight have been wasted due to a lack of health facilities in areas dominated by Muslims and a high school drop-out rate." [9]

Political Safeguards

Even though, the demands of political safeguard for minorities were raised but the same were denied. In Draft Constitution, political safeguard for minorities was incorporated but after debates and discussion in assembly, it was abolished in original document of Constitution. Three main concerns were put forward against separate electorates such as it was regarded as incompatible with national ideal of secular state. Other one was as it was considered as undemocratic practice as in colonial system, in which legislatures had been advisory bodies without decision making powers. Finally, separate electorates took as synonymous of political separatism which regarded as incompatible with political integrity of the country.

"The colonial policy of 'political safeguards' for minorities had been based on the notion that India was a conglomeration of communities rather than a nation and had a two-fold rationale." (Galanter, 1984). "Political safeguards were regarded as legitimate only for a temporary period and for a specific purpose, that of ameliorating the social and economic disabilities of the so-called 'backward' sections- the Scheduled Castes and Backward

Tribes. This marked a crucial shift in the basis of group preferential provisions from British colonial policy." (Bajpai, 1999).

Reservation was denied to minorities on the grounds as quotas were required to rectify the continuing effects of historical practices of discrimination against certain communities, to remedy the structural forms of discrimination that would persist even after equality of opportunity had been formally instituted and discriminatory practices outlawed (Galanter, 1984). The reservation was provided to schedule caste and schedule tribes as reparations of historical injustice. Thus, reservation was considered as compensation to the victims of past injustices. It was argued against the reservation for minorities as the reservation criteria was provided to SCs and STs especially because of their culture-related discrimination and economic disadvantage which they have coped up since long period of time. To minorities the representation and reservation was not provided because they have not faced such a social discrimination as the untouchables and tribes did.

Challenges for Minorities

Minorities are of about 19.4% of the total population in country. Table below shows the population of religious communities over period from 1961 to 2011.

Even though the population of Muslims has increased but the population of other minorities' community have been decreased drastically. The minority question has been quite controversial in India. The people of communal ideology mostly refuse to recognise the minority status and their distinct socio-cultural status.

"The minorities in India have lived under constant threat from Hindu majority government in power. This situation has been worst under the BJP government which represents Hindu fundamentalists who aims at establishing ram

Table 1: Population trends for major religious groups in percentage

Religious Group	1951	1961	1971	1981	1991	2001	2011
Hindu	84.1	83.73	82.73	82.30	81.53	80.46	79.80
Muslims	9.80	10.69	11.21	11.75	12.61	13.43	14.23
Christian	2.30	2.44	2.60	2.44	2.32	2.34	2.30
Sikh	1.79	1.79	1.89	1.92	1.94	1.87	1.72
Buddhist	0.74	0.74	0.70	0.70	0.77	0.77	0.70
Jain	0.46	0.46	0.48	0.47	0.40	0.41	0.37
Others	0.43	0.43	0.41	0.42	0.44	0.72	0.66

As per Census Report 2011

raj in the country. There have been hundreds of riots against Muslims and Christians since India became independence and hundreds of mosques and churches are demolished by the Hindu fundamentalists with the connivance of government." (Majid, 2015).

The Sikh Riots 1984, Bhagalpur riots 1989, Demolition of Babri Masjid 1992, Bombay Riots 1993 and the Gujarat Massacre 2002, Anti-Urdu riots in Bangalore 1994, Killing of Christians in Kandhamal District of Kerala, 2007, Muzaffarnagar riots 2013, and others incidents of such types keep the minorities under constant threat. People who are against minorities accuse secular political parties too as 'appeasement of minorities' and question their loyalty to the nation. Such people sometimes describe as one who came from outside are alien to India and Indian culture.

Recently, Forced conversion as Gharwapsi, Beef ban, Dadri incident and unreported killing and assault of minority community on the name of food culture and tradition has become a menace to the existence of minorities and risk for democracy as well. "The cow may be sacred to the upper castes, but not to the Christian, Dalits and Muslims. Food taboos of some higher castes do not end at beef. Beyond beef, eggs may not be sold publicly by court orders as it offends some castes sensibilities. Nor can school children bring food of their choice if it offends Hindus." (William, 1983).

The demand of dominance of Hindi over regional languages also reflects the vulnerability of linguistic minorities. Post independence, instead of all the safeguards provided by constitution and right intentions of the government, the situation of minorities is still deplorable.

Conclusion

Uniformity is not doable in a democracy like India. A true democracy will concede right to other to be 'other' and never believes in submitting but in the right to be different. Minorities in India must be accorded their due position in order to preserve the basic fabric of democracy. The representation of minorities in politics or in government services and at social and in education is far less than ideal. It is the beauty of Indian democracy that minority communities can claim their rights through judiciary as guaranteed in the Constitution. It is necessary that the sacrifices and hardships of

all minority communities and their contribution towards freedom and development of the country must be safeguarded and awarded by ensuring their representation in each and every field.

End notes:

1. 1959 1 SCR 995
2. http://ncm.nic.in/pdf/jains_minorities.pdf
3. https://en.wikipedia.org/wiki/Nehru_Report
4. https://archive.org/stream/saprucommittee035520mbp/saprucommittee035520mbp_djvu.txt
5. <http://muslimreservation.in/dr-gopal-singh-committee-report>
6. http://ncm.nic.in/pdf/Recommen_justice%20Verma.pdf
7. <http://www.prsindia.org/administrator/uploads/general/1242304423~Summary%20of%20Sachar%20Committee%20Report.pdf>
8. <http://ncm.nic.in/pdf/compilation.pdf>
9. <https://thepolicytimes.com/from-sachar-committee-to-post-sachar-evaluation-committee/>

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