



A Socio Legal Study on Promoting and Protecting Minority Rights

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ABSTRACT

Minority rights are based on the recognition that minorities are in a vulnerable situation in comparison to other groups in society, namely the majority population, and aim to protect members of a minority group from discrimination, assimilation, prosecution, hostility or violence, as a consequence of their status¹. It should be highlighted that minority rights do not constitute privileges, but act to ensure equal respect for members of different communities. These rights serve to accommodate vulnerable groups and to bring all members of society to a minimum level of equality in the exercise of their human and fundamental rights.

INTRODUCTION

In the case of St Xavier, Justice HR Khanna was asked a similar question to which he articulately replied that idea of giving some special rights to the minorities is not to have a kind of a privileged or pampered section of the population, but to give to the minorities a sense of security and a feeling of confidence. He believes that by giving minorities certain privileges will bring about equilibrium. It is important to understand that minorities are vulnerable communities which require special attention and protection so that they receive the same rights enjoyed by the majority. The protection of the rights of minorities is not appeasement; rather, it's a practical imperative and a legal obligation.

Moreover, by recognising minority rights, the framers of Indian Constitution ensured to reduce the probability of cultural assimilation and to maintain diversity and rich heritage of pluralism. Unfortunately, this idea of a pluralistic India is under attack today and it is our duty to stand steadfastly to protect it.

Presently, things have moved to a critical phase where priests are resorting to prayers to save the secular fabric and democratic principles recognised in the Indian Constitution. The root cause of this problem lies in assertion of 'cultural nationalism' which is dangerous for both Indian plurality and religious minorities. It leaves no kind of respectful space for others and calls for cultural conformity. The right not to be discriminated against is paramount in protecting the rights of persons belonging to minorities in all regions of the world. Minorities everywhere experience direct and indirect, de jure and de facto discrimination in their daily lives.

RESEARCH OBJECTIVE

1. To Study Right To Minority
2. To Study Position Of Minority Educational Institutions
3. To Study Judicial Trends On Right To Minority
4. To Study Legal Provisions On Right To Minority
5. To Study Currant Issue Faced By Minority Community In India.

There is need to detoxify and sensitise the citizens about minority safeguards. Minority safeguards are needed to achieve the goal of substantive equality and to preserve their distinct identity and culture. Minorities need special safeguards to save themselves from oppression, persecution and forceful assimilation.

INTERNATIONAL LAWS ON PROTECTION OF MINORITY RIGHTS

The two basic principles of International law are non-discrimination and human rights law. These principles proscribes any kind of restriction, distinction, exclusion which results in impairing of nullifying the recognition, enjoyment or exercise by all persons on an equal footing, of all rights and freedom.²

In *Keshwanand Bharti v State of Kerala*³ Supreme Court observed that the universal declaration of Human Rights may not be a legally binding instrument but it shows how India understood the nature of Human Right at the time of the Constitution was adopted.

In *Chairman Railway Board & others v Ms Chandrima Das*⁴ Supreme Court observed that the declaration has the International recognition as the moral code of conduct having been adopted by the general assembly of the united nations. The applicability of the universal declaration of human rights and principles thereof may have to be read if need be, into the domestic jurisprudence. In a number of cases the declaration has been referred to in the decision of the Supreme Court and the State High Courts

Some may argue that minority should not be granted special privileges but as per the **International Convention on the Elimination of All Forms of Racial Discrimination** permits the execution of special measures to secure the advancement of racial or ethnic groups and such protection as is necessary to ensure that these groups enjoy their basic human rights and fundamental freedoms.⁵

The **General Assembly resolution** 47/135 of 18 December 1992 adopted the United Nations Declaration on the Rights of Minorities by unanimity. This declaration is the main reference document for minority and grants various rights to persons belonging to minorities.⁶ It provides for protection by the State of their existence and identity and that they have the right to their own culture and profess their own religion inter alia.. Under Article 2(1) of this declaration, minorities shall have the right to practice their religion, enjoy their culture and use their own language in both public and private settings without any kind of discrimination.

Article 3 of this declaration guarantees persons belonging to minorities the right to exercise their rights individually and in community with others without discrimination.⁷

The **International Covenant on Civil and Political Rights** is the only global treaty that includes a provision that specifically refers to minority rights. Article 27 provides that In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.⁸ This article protects the rights of persons belonging to minorities to their national, ethnic, religious or linguistic identity, or a combination thereof, and to preserve the characteristics which they wish to maintain and develop

The **UN High Commissioner for Human Rights**, on the foundation of principle of equality and non-discrimination, strives to promote and protect the Human Rights of all, everywhere. Thus to protect the special rights of minority community is an integral responsibility and priority of the High Commissioner. Therefore it can be said that the High Commissioner is responsible for the promotion and implementation of the principles laid down in the Minorities Declaration and to engage in a dialogue with Governments concerned for that purpose⁹

Article 2(2) of the **International Covenant on Economic, Social and Cultural Rights** mentions that “the States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

The **Convention on the Rights of the Child** in Article 30 explicitly provides that “in those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is 17 indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language”.

INDIAN CONSTITUTION AND MINORITY RIGHTS

The framers of Indian constitution were cautious to draft a constitution for the country that quench the thirst for national unity while accommodating the individual aspirations and demands of individual communities¹⁰. Indeed the Constitution of India does not offer any distinct and exclusive rights to minorities barring some rights concerning their language, culture and education.¹¹ This does not mean that the Constituent Assembly and Constitution of

² International Convention on the Elimination of All Forms of Racial Discrimination, art. 1 (1).

³ *Keshwanand Bharti v State of Kerala*, AIR 1973 SC.

⁴ *Chairman Railway Board & others v Ms Chandrima Das*, AIR 2000 SC.

⁵ Art. 1, para. 4. See also art. 2, para. 2.

⁶ chap. I, sect. C.. In addition, the Working Group considered the Minority Profile and Matrix, which provides a checklist of issues and measures based on the provisions and principles contained in the United Nations Minorities Declaration and the Commentary (E/CN.4/Sub.2/AC.5/2006/3).

⁷ [United Nations declaration rights minorities](http://www.unhcr.org/refugees/declarationrightsminorities).

⁸ <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

⁹ *Promoting and Protecting Minority Rights: A Guide for Advocates*, United Nations, Office of the High Commissioner, Geneva and New York, 2012.

¹⁰ *Minority Rights in the Constitution of India* by Vineeth Thomas.

¹¹ Articles 29 and 30 of the Indian Constitution.

India were blindfolded to the upliftment process of the socially backward and historically discriminated and deprived sections of the society. It has incorporated various provisions and amendments for amelioration of the weaker sections of society.¹²

The Constitution provides two sets of rights of minorities which can be placed in 'common domain' and 'separate domain'. The rights which fall in the 'common domain' are those which are applicable to all the citizens of our country. The rights which fall in the 'separate domain' are those which are applicable to the minorities only and these are reserved to protect their identity.

Common Domain

Part III of the Constitution

- **Article 14:** Right to 'equality before the law' and 'equal protection of the laws'¹³

As per this provision, every citizen of the country will have equal access and protection of law. No one will be seen a bit higher than the other in legal jurisprudence.

- **Article 15(4):** Authority of State to make 'any special provision for the advancement of any socially and educationally backward classes of citizens' (besides the Scheduled Castes and Scheduled Tribes)¹⁴

This article gave constitutional authorisation to the government machineries to make any special provisions for the advancement of the backward sections of the society.

- **Article 25:** People's freedom of conscience and right to freely profess, practice and propagate religion¹⁵ – subject to public order, morality and other Fundamental Rights

This right gives the freedom to an individual to follow, practice and spread religion of individual choice.¹⁶ State cannot impose or curb any particular religious convention or tradition.¹⁷ This gives a kind of immunity to minorities from the attacks of majority religions of the country.

- **Article 26:** Right of 'every religious denomination or any section thereof – subject to public order, morality and health – to establish and maintain institutions for religious and charitable purposes, 'manage its own affairs in matters of religion', and own and acquire movable immovable property and administer it 'in accordance with law'¹⁸

These rights protect and guarantee the collective rights of a religion. This will give safety and protection to the communal rights and privileges of minority religions

- **Article 27:** Prohibition against compelling any person to pay taxes for promotion of any particular religion¹⁹
This ensures that state is not spending the public money for the welfare of a particular religion at the cost of many including minority religions. When a government is formed who is having affiliation to majority religion, chances of minority religions, beings secluded and side-lined are higher. But the provisions of article 27 is a block to this kind of biased tendencies.

- **Article 28:** People's 'freedom as to attendance at religious instruction or religious worship in educational institutions' wholly maintained, recognized, or aided by the State.²⁰

This article ensures that no fully/partially state funded educational institution compel anyone to follow religious instructions. This will also protect the minorities from any attempt of the majority religious educational institution to compulsorily follow their religious instructions.

CONCLUSION

The experience of minorities across the globe shows that they are among the most disadvantaged, marginalised and vulnerable groups in society. They are often discriminated against and subjected to injustice. Their exclusion from power is often combined with the denial of dignity, identities and cultures. Tragically, they are often subjected to physical violence and even genocide takes place against them.

What should be given preference? Equality or Privilege? It is unfortunate that people believe that minority rights are special privileges which are not available to the majority. They argue that the fundamental principle of democracy is equality where all persons are to be treated as equal, whether they

¹² Articles 15 (4) (5) and 16 (4) provides special provisions like reservation for weaker sections.

¹³ Article 14 of the Indian Constitution.

¹⁴ Article 15 of the Indian Constitution.

¹⁵ Article 25 of the Indian Constitution.

¹⁶ *Ratilal Panachand Gandhi v. State of Bombay*, AIR 1954 SC 388: 1954 SCR 1055.

¹⁷ *Punjabrao v. D.P. Meshram*, AIR 1965 SC 1179: (1965) 1 SCR 849.

¹⁸ Article 26 of the Indian Constitution.

¹⁹ Article 27 of the Indian Constitution.

²⁰ Article 28 of the Indian Constitution.

belong to majority or minority. They are also of the belief that these concessions and rights can have a severe bearing on the national integration. This leads to distrust between the majority and minority communities.

SUGGESTIONS

- To provide a sense of security and the feeling of confidence to the minorities by giving special rights and privileges in a democratic country.
- Regular checks and balances safeguards and guarantees to protect the rights of minorities in terms of cultural and educational rights and others must be done.
- Recommendations from educational institutions that are run by minorities are to be taken to guarantee Article 29 and 30 to the minorities.
- Students from non-minority groups should not be forced to attend any prayers in educational institutions.

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