

CONSTITUTIONAL PROVISIONS TO PROTECT THE RIGHTS OF MUSLIM MINORITIES: AN OVERVIEW

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Abstract-- India is home to diverse religious, cultural and linguistic sects. This makes India the third largest pluralistic nation in the world, with a multitude of minority sects and groups. Naturally, in pursuit of creating an egalitarian society amidst all the diversities that exist, the Constitution guarantees and enshrines various rights and privileges to these 'religious and denominational minorities' across the length and breadth of the Constitution. These guarantees are not just political in nature, but also seek to create an enabling environment to preserve the scriptures, culture and linguistic treasures of these minorities. In this article, the author seeks to identify and highlight the Constitutional provisions guarding the minority rights of Muslims in particular.

Key Words-- minorities, safeguards, muslims, religious, linguistic, diversity.

INTRODUCTION

India has a composite population. The Indian society lacks homogeneity insofar as there exists numerous religious, cultural and linguistic groups. There are followers of the Hindu, Muslim and Christian religions. There are Parsis, Sikhs, etc. Each major religion comprises within itself a number of 'religious denominations and sects'.¹ The founding fathers of the Indian Constitution believed that in order to be a true welfare state various fundamental rights should be endowed to citizens, so as to develop a sense of equality and unity amidst all the diversity that exists in the country.

In India, the minority generally consists of Christians (2.5%), Sikhs (2%), Jain (1%) and Muslims (12%), which makes it the world's third largest diverse and pluralistic nation.² The majority consists of Hindus whose population includes more than 80% of India's population. India is a secular state but in virtual sense it is an utopian concept because in a country where more than 80% of population consists of one single religion, it is quite difficult to provide equal status to minorities. The Constitution has given recognition to a number of languages in the Eighth Schedule. While, most of the language groups have states of their own, each of these states has linguistic minority groups as well.³ The patterns of culture vary from place to place. There are the Anglo-Indians, a community based on racial, religious and linguistic factors. Besides, there are sections of people like the Scheduled Castes, the Scheduled Tribes and other socially, educationally and economically weaker sections of the people who not only need protection from exploitation, but even positive and special help from the state for amelioration of their miserable conditions. The framers of the Indian Constitution, accordingly, faced a very complicated task in devising suitable safeguards to meet the needs and aspirations of these various sections, groups and classes of the people.⁴

At this outset, the Indian Constitution is committed to achieve this equality of citizens and casts the responsibility on the State to preserve, protect and assure the rights of minorities whether based on **religion** or language, culture or socio-economic factors so as to give them a sense of security. Though

¹SINHA, MANOJ KUMAR. "Minority Rights: A Case Study of India." *International Journal on Minority and Group Rights*, vol. 12, no. 4, 2005, pp. 355–374. JSTOR, www.jstor.org/stable/24675308.

² Found at: http://ncm.nic.in/Profile_of_NCM.html

³ M. P. Jain, " Safeguards to Minorities: Constitutional Principles, Policies and Framework", *Law & Social Inquiry*, vol. 33, no. 3, 2008, pp. 631–672. JSTOR, www.jstor.org/stable/20108777.

⁴ *Id.*



specifically the Constitution does not categorize the Muslims as a specific class of persons expressly in the Constitution, the provisions safeguarding the rights of Muslim Minorities can be analysed under the generic protection accorded to minorities as a whole. Supplementing and directing these generic safeguards to Muslim Minorities is the National Commission for Minorities (NCM) set up under the National Commission for Minorities Act, 1992 by the Central Government which expressly recognizes and notifies six religious communities, viz; Muslims, Christians, Sikhs, Buddhists, Jains and Zoroastrians (Parsis) to be minority communities.⁵ This makes it manifestly clear that Muslim community is recognized as a minority and thus is privileged to have a wide spectrum of safeguards as guaranteed by the Constitution.

IDENTIFYING MINORITIES

Minorities are generally those sect of people who are less in number and evidently stand distinct and unique from the majority. However, the Indian Constitution does not define 'minorities'. It only states that minorities can be either based on language, script or culture.⁶ Even the National Commission for Minorities only defines minorities as those communities as notified by the Central Government.⁷ Minorities mean those who are numerically less as compared to the others. On accounts of their lesser strength, they tend to become more conscious about their rights and privileges and claim for constitutional rights and safeguards for their protection and upliftment.⁸ Louis Wirth opined that, "A minority is a group of people who because of their physical or cultural characteristics, are singled out from others in the society in which they live for differential and unequal treatment and who, therefore, regard themselves as objects of collective discrimination."⁹ Further, minority can be defined as, "A group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members being nationals of the State possess ethnic, religious or linguistic characteristic different from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion and language."¹⁰ The Supreme Court held, in a landmark judgment that, given its dynamic nature, minorities, rather than being defined have to, "...Religious or linguistic minorities are to be determined only in relation to the particular legislation which is sought to be impugned."¹¹

THE CONSTITUTIONAL PROVISIONS SAFEGUARDING THE RIGHTS OF MUSLIM MINORITIES

Constituent Assembly on Minority Rights: The framers of Indian constitution was cautious to draft a constitution for the country that quench the thirst for national unity while accommodating the individual aspirations and demands of individual communities. Especially in the background of the wounded emotional crises post the Partition. Following a lot of debates and discussions, the constituent assembly adopted a Constitution which did not offer any special political right to any minority solely based on

⁵ Found at: http://ncm.nic.in/Profile_of_NCM.html

⁶ See, Article 29.

⁷ See, §2(c) National Commission on Minorities Act, 1992.

⁸ MISRA, AMALENDU. "Hindu Nationalism and Muslim Minority Rights in India." *International Journal on Minority and Group Rights*, vol. 7, no. 1, 2000, pp. 1–18. JSTOR, www.jstor.org/stable/24675146.

⁹ Louis Wirth, "The Problem of Minority Groups" in Ralph Linton (ed.), *The Science of Man in the World Crisis* (New York: Columbia University Press, 1945), P. 347.

¹⁰ Soli J. Sorabjee, "Minorities: National and International Protection", in Iqbal A. Ansari, (ed.), *Readings on Minorities, Perspectives and Documents* (New Delhi: Institute of Objective Study), Vol. I, p.166

¹¹ D. A. V. College Bathinda, Etc vs State Of Punjab & Ors 1971 AIR 1731

Religion, but on three grounds of *language, culture and script*.¹² Keeping up the neutrality and impartiality of the state in religious affairs, the country was declared to be secular.¹³ Equality of opportunity and equality before law has been extended to every citizens of the country as per the provisions of the Indian constitution. It has also incorporated various provisions and amendments for amelioration of the weaker sections of society.¹⁴

The following outlines the framework of safeguards available to the Minorities in general which can be extrapolated to be applicable to Muslim Minorities considering the Notification of the Central Government recognizing Muslim community to be a minority in India.¹⁵

The Preamble: The Preamble of the Indian Constitution begins as, “WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC....”¹⁶ The Preamble has authoritatively declare that India is a secular county. The word ‘Secular’ was added through the 42nd Amendment of the Indian Constitution, in 1976, thus explicitly recognizing that which was implicitly in Articles 25 to 28, which guarantees the right to freedom of religion. The Constitution of India personifies the positive aspect of the term secularism, ie, “*all religions in our country (irrespective of their strength) have the same status and support from the state.*”¹⁷ This also means that no religion will be treated as national or state religion and no special privileges will be given to a particular religion. Every religion will have equal stature and respect in front of Indian state.¹⁸

Fundamental Rights: Part III of the Indian Constitution contains the cardinal part of Indian Constitution. It is in this part, from Articles 12-35 that the fundamental Rights are enshrined. They are justiciable rights made available against the State. The benefits and privileges guaranteed under fundamental rights are entitled to all the citizens of the country without any discrimination. The dignity of the individual, the equality of society, protection of larger public interest and safeguard of national unity are ensured by the provisions of fundamental rights.¹⁹ In this context, following are the fundamental rights that ensure security and safeguard the rights and privileges of minorities in the country.

Article 14 of the Indian Constitution articulates that, “The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.” As per this provision, every citizen of the country will be have equal access and protection of law. No one will be seen a bit higher than the other in legal jurisprudence. Nevertheless *Article 15(4)* reads, “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.” This article gave constitutional authorization to the government machineries to make any special provisions for the advancement of the backward sections of the society.

In the *Gopal Singh Committee Report* and the *Sachar Committee Report* the educational and economic backwardness of the Muslims were stressed.²⁰ Various states in India like Kerala, Tamil Nadu etc have

¹² BHANOT, PANKAJ. “Minorities in India.” *International Journal on Group Rights*, vol. 1, no. 2, 1993, pp. 137–157. JSTOR, www.jstor.org/stable/24674448

¹³ *Id.*

¹⁴ Noorani, A. G. “Protecting Minority Rights.” *Economic and Political Weekly*, vol. 35, no. 12, 2000, pp. 969–969. JSTOR, www.jstor.org/stable/4409042.

¹⁵ *Supra*, at 5.

¹⁶ See, Preamble, Indian Constitution

¹⁷ *S. R. Bommai v. Union of India* 1994 AIR 1918

¹⁸ M. P. Jain, Indian Constitutional Law, LexisNExis Butterworth, 12th Edn, Reprint (2012), at p. 897.

¹⁹ *Id.* At p. 672.

²⁰ Found at: http://ncm.nic.in/Profile_of_NCM.html.



subsequently extended the benefits and coverage of reservation to Muslims as well, who belong to the minority section of Indian society.²¹

Article 19 of the Indian Constitution expresses that, “All citizens shall have the right to freedom of speech and expression; to assemble peaceably and without arms; to form associations or unions; to move freely throughout the territory of India; to reside and settle in any part of the territory of India and to practise any profession, or to carry on any occupation, trade or business”. These freedoms are the hallmarks of a successful political democracy. They are the linchpin for one’s over all development and peaceful and fruitful existence in a human society.²² For the advancement and progress of minorities, these freedoms of expression, assembly, union, movement, profession, settlement etc are quintessential. If these freedoms are not constitutionally ensured, the minority rights have the chances of getting suppressed by the majority sections of the society.

Article 25 of the Indian Constitution voices that, “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.” This right gives the freedom to an individual to follow, practice and spread religion of individual choice. State cannot impose or curb any particular religious convention or tradition.²³ This gives a kind of immunity to minorities from the attacks of majority religions of the country.

Article 26 of the Indian Constitution states that, “Subject to public order, morality and health, every religious denomination or any section thereof shall have the right to establish and maintain institutions for religious and charitable purposes; to manage its own affairs in matters of religion; to own and acquire movable and immovable property; and to administer such property in accordance with law.” These rights protects and guarantee the collective rights of a religion. This will give a safety and protection to the communal rights and privileges of minority religions.²⁴

Article 27 of the Indian Constitution utters that, “No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination.” This ensures that state is not spending the public money for the welfare and upliftment 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 sidelined are higher. But the provisions of Article 27 is a block to this kind of biased tendencies.²⁵

Article 28 of the Indian Constitution tells that, “No religious instruction shall be provided in any educational institution wholly maintained out of State funds.” This article ensure 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.

Article 29 of the Indian Constitution says 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.(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

²¹ *Id.*

²² MISRA, AMALENDU. “Hindu Nationalism and Muslim Minority Rights in India.” *International Journal on Minority and Group Rights*, vol. 7, no. 1, 2000, pp. 1–18. JSTOR, www.jstor.org/stable/24675146.

²³ *Supra*, at 18.

²⁴ *Id.*

²⁵ *Supra*, at 14.



them.” This is one of such article which explicitly and exclusively deals about the minorities of the country. These articles provide a helping hand for the minorities to defend and safeguard their distinct language, culture and script.²⁶

Article 30 of the Indian Constitution states that, “(1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice. (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.” This article gives the right to the minorities to start and manage educational institution and prevent state from showing discrimination while granting aid to educational institution.²⁷

DIRECTIVE PRINCIPLES OF STATE POLICY

Directive Principles of State Policy’ are those directives and reminders that a state of India should keep in mind while legislating laws, framing policies and executing the same.²⁸ Articles 36 to 51, deals with the ‘Directive Principles of State policy’. Along with Fundamental Rights, Directive Principles of State Policy formulate the heart and soul of Indian political system and public administration.²⁹ In this regard Granville Austin has termed, “the Directive Principles and the Fundamental Rights as the Conscience of the Constitution.”³⁰

Directly or indirectly, Directive Principles of State Policy do have articles and provisions that act as a safety measure for the rights of minorities in India.

Article 38 states that, “The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.” Here by reminding state to ensure various dimensions of justice, the rights of minorities are also being secured.³¹

Article 39 asks state to ensure free legal assistance and equal justice of various dimensions. This will give a warranted support for the rights of the minorities.

Article 46 appeals State to take necessary measures and actions that promote with educational and economic advancement of the weaker sections of the people. Keeping this in mind, government has introduced many policies like reservation, scholarships, loans, skill development trainings etc for the weaker sections of the society including the minorities.³²

Article 49 cautions “state to protect the monuments and places and objects of national importance.” This will help to shield and preserve the historical monuments of the minorities in the country from the risks of spoliation, defacement, demolition, deletion, discarding or export.

Article 51 demands state to adhere and follow to international treaties and laws. Many of these treaties at international level, including that of UN, pinpoint towards an inclusive, socially just and equal society by respecting individual liberty.³³

²⁶ *Supra*, at 18.

²⁷ *Id.*

²⁸ *Supra*, at 18.

²⁹ *Minerva Mills v. Union of India* AIR 1980 SC 1789

³⁰ Granville Austin, *The Indian Constitution: Cornerstone of a Nation*, Universal Law Publishing, at p. 54.

³¹ *Supra*, at 18.

³² *Id.*

³³ *Supra*, at 18.



MISCELLANEOUS ARTICLES IN INDIAN CONSTITUTION

Apart from the aforesaid provisions and safeguards provided in the Preamble, Fundamental Rights and Directive Principles of State Policy, there are some other articles scattered in the Indian Constitution which openly or silently speak about the rights and privileges of minorities in India. Some of them are as follows:

Article 347 talks about special provision of giving power to the President to officially recognize a language, which is being spoken by the substantial population. This can act as a defense for the languages of minority people.

Articles 331, 333, 334, 336 and 337 have the special provisions of “guaranteeing representation of Anglo-Indians in Union and State legislatures through nominations if needed, special provision for the community in certain services, and special provision with respect to educational grants for their benefit.”

Article 350(B) has the provision of appointing a ‘Special Officer for linguistic minorities’ by the President “whose duty shall be investigate all matters relating to the safeguards provided for linguistic minorities under this Constitution and report to the President upon those matters.”³⁴

CONCLUSION

The Indian Constitution is a treasure where minorities can find various articles and provisions that safeguard their rights and privileges. The same applies to Muslim minorities. The Constitution of India is an exemplary instance of accommodating and adjusting various claims of people belonging to multifaceted cultures and identities. In the light of the above, it is clear that the Indian Constitution has contemplated many ways through which the minorities can safeguard their rights. Though there remains a lot to be achieved, one cannot turn a blind eye for the safeguards that exist today.

³⁴ *Supra*, at 18.