



# **LAWS AND POLICIES TO PROMOTE THE RIGHT OF MUSLIM MINORITIES IN INDIA: ISSUES AND CHALLENGES**

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## **INTRODUCTION**

India has always embraced diversity, becoming a vast ocean of cultures, religions, ethnicities, beliefs and practices. With such diversity, it becomes necessary to give each community their due, without inciting any conflicts. This plethora of diversity in our democratic nation makes the minority communities at times vulnerable, calling for sturdy laws to protect their rights. Moreover, it becomes the duty of the state to ensure that human rights are available to all citizens, irrespective of caste, colour, or creed.<sup>1</sup> However, the Indian Constitution does not define the term 'minorities'. It only delineates them on the basis of language, script or culture.<sup>2</sup> Even the National Commission for Minorities only defines minorities as those communities as notified by the Central Government.<sup>3</sup> Through a government notification the Central Government has thus expressly recognized and notified the following six religious communities, viz; Muslims, Christians, Sikhs, Buddhists, Jains and Zoroastrians (Parsis) to be minority communities.<sup>4</sup> At this outset, Muslim community constitutes around 14% of the total Indian population.<sup>5</sup> In terms of numbers they exceed 200 million, yet still **constitute to be a minority community**.

The Constitution of India strives to achieve a harmony between all the communities by ensuring "justice, social, economic or political" to all citizens and declaring itself to be a secular state.<sup>6</sup> In furtherance of achieving this noble end, the Constitution itself and the successive governments have time and again identified, provided various rights to these minority communities. In this paper, an attempt is made to collate and identify all the enabling laws and policies existing for the safeguarding of rights of Muslim minorities in particular.

## **LAWS AND POLICIES: MUSLIM MINORITIES**

A brief reference to **the Constitution** leads one to the guarantees made available to the Minorities in Part III and Part IV. Specifically, the following fundamental rights and freedoms are covered<sup>7</sup>: Preamble of the Constitution declares India to be a secular state. In *Articles 15 and 16*, the Constitution equality of opportunity by prohibiting all sorts of discrimination on the grounds of race, **religion**, caste, sex, descent, place of birth or residence in matters of access to public places and public employment. Further, it enables the State to make special provisions for the sake of 'socially and educationally backward classes' of citizens.<sup>8</sup> Between *Articles 25 and 28*, the right to profess, practice and propagate any religion has been guaranteed to every person. It allows the minority communities to follow their beliefs and practices, in all its permutations and combinations or facets without any

<sup>1</sup> M. P. Jain, "Safeguards to Minorities: Constitutional Principles, Policies and Framework", *Law & Social Inquiry*, vol. 33, no. 3, 2008, pp. 631–672.

<sup>2</sup> Article 29, Indian Constitution

<sup>3</sup> See, §2(c) National Commission on Minorities Act, 1992.

<sup>4</sup> Found at: [http://ncm.nic.in/Profile\\_of\\_NCM.html](http://ncm.nic.in/Profile_of_NCM.html)

<sup>5</sup> *Id.*

<sup>6</sup> Preamble, Indian Constitution

<sup>7</sup> Found at: [http://ncm.nic.in/Profile\\_of\\_NCM.html](http://ncm.nic.in/Profile_of_NCM.html)

<sup>8</sup> Articles 15 and 16, Indian Constitution

hindrance, however, as long as it does not hamper public order, morality and health of any person.<sup>9</sup> More specifically, Article 29 and 30 provide the citizens with the right to conserve their language, script and culture; Article 30 is pivotal to the protection of minority rights in India. It provides the minorities the right to establish and administer educational institutions with the larger goal of giving them an allowance to preserve their cultural heritage.<sup>10</sup> Further, provision for facilities for instruction in mother-tongue during primary school education is ensured<sup>11</sup>, while also entrusting with a Special Officer to over the rights of Linguistic Minorities.<sup>12</sup> Among the **Specific Laws applicable for Muslim Minorities**, the following hold prominence. *The Dargah Khwaja Saheb Act* provides for the constitution of a Dargah Committee to manage Dargah Sharif in Ajmer, a place of religious prominence for the Muslims. The Dargah Committee, appointed by the Government, manages donations, takes care of the maintenance of the shrine, and runs charitable institutions like dispensaries, and guest houses for the devotees.<sup>13</sup>

*The Wakf Act 1995*, along with the Amendment Act of 2013 ensure another set of important rights to the Muslims. The legal meaning of Waqf is the detention of specific thing in the ownership of waqf and the devoting of its profit or products "in charity of poor or other good objects". Through this Act, the Government has made provisions for the appointment of a Mutawalli, a legal guardian entrusted to ensure that Wakf profits are utilized towards the right end. It is also given a pious recognition and perpetual endowment that is free from tax as an enabling provision.<sup>14</sup>

Through the Ministry of Minority Affairs, various schemes and policies are implemented to empower minorities in all spheres of the Socio-Economic milieu. In matters of **Educational Empowerment** an array of *scholarship schemes* are in existence. Pre-Matric & Post - Matric Scholarship Scheme; Merit-cum-Means based Scholarship Scheme; Maulana Azad National Fellowship (MANF) Scheme and the like.<sup>15</sup> Through a scheme called *Naya Savera* - Free Coaching and Allied Scheme for the candidates / students belonging to Minority Communities to ensure their competition in National Level Entrance exams is made available. Inorder to encourage the highly talented student pool to pursue higher studies in their chosen fields of interest, through *Padho Pardesh*, a scheme of Interest Subsidy on Educational Loans for Overseas Studies is provided.<sup>16</sup> Through *Nai Udaan* support is provided for Minority Students clearing Prelims conducted by UPSC, State Public Service Commissions (PSCs) and Staff Selection Commission until they can sustain themselves, during the course of the preparation.<sup>17</sup> **Economic Empowerment** is guaranteed by implementing various Skill Development policies such as the *Seekho aur Kamao (Learn & Earn)*,<sup>18</sup> *USTTAD* (Upgrading the Skills and Training in Traditional Arts/ Crafts for Development),<sup>19</sup> whereby the traditional artisans are given special training and incentive kits. *Nai Manzil*<sup>20</sup> aims to provide education and skill training to the youth from Minority Communities, especially from the strife stricken Jammu & Kashmir regions, thus giving then a new lease of life

<sup>9</sup> Article 25 - 28, Indian Constitution

<sup>10</sup> *Supra* at 1.

<sup>11</sup> Article 350A, Indian Constitution

<sup>12</sup> Article 350B, Indian Constitution

<sup>13</sup> *Found at:* <http://www.minorityaffairs.gov.in/acts/durgah-khawaja-saheb-act>

<sup>14</sup> *Found at:* <http://www.minorityaffairs.gov.in/acts/wakfamendment-act2013>

<sup>15</sup> *Found at:* <http://www.minorityaffairs.gov.in/schemesperformance>

<sup>16</sup> *Found at:* <http://www.minorityaffairs.gov.in/schemesperformance/free-coaching-and-allied-scheme-minority-communities-students>

<sup>17</sup> *Found at:* <http://www.minorityaffairs.gov.in/schemesperformance/support-students-clearing-prelims-conducted-upscsscstate-public-service-commissionpsc-etc>

<sup>18</sup> *Found at:* <http://www.minorityaffairs.gov.in/schemesperformance/seekho-aur-kamaolearn-earn-scheme-skill-development-minorities>

<sup>19</sup> *Found at:* <http://www.minorityaffairs.gov.in/schemesperformance/usttad-upgrading-skills-and-training-traditional-arts-crafts-development>

<sup>20</sup> *Found at:* <http://www.minorityaffairs.gov.in/schemesperformance/nai-manzil-social-assesment-and-social-management-framework>



to start afresh. At the same time, entrepreneurial talents of these communities are encouraged by providing concessional credit through National Minorities Development and Finance Corporation (*NMDFC*).<sup>21</sup> The **Infrastructural Development** needs are met by *Pradhan Mantri Jan Vikas Karyakaram (PMJVK)* under which provisions for better socio economic infrastructural facilities to the minority communities particularly in the field of education, health & skill development has been ensured; the larger agenda of the same being to lessen the gap between the national average and the minority communities with regard to backwardness parameters.<sup>22</sup> Through other **Special Schemes** such as *Nai Roshni* leadership qualities are imbibed among the minority populace, specifically the women folk.<sup>23</sup> *Hamari Dharohar* schemes attempts to the preserve rich heritage and culture of minority communities, through financial concessions.<sup>24</sup> Particularly, for **Waqf Management**<sup>25</sup>, through *Qaumi Waqf Board Taraqqiati* scheme computerization of records and strengthening of State Waqf Boards is planned. Likewise, *Shahari Waqf Sampatti Vikas Yojana* provides Grants-in-Aid to Waqf – Development of Urban Waqf Properties. *Haj subsidy* is planned and accorded prime care and importance year on year by all the successive governments.<sup>26</sup>

Most importantly, when it comes to **personal laws**, the Muslim community in India is governed by the Classic Muslim law as well as various legislations including the *Shariat Application Act, 1939* the *Dissolution of Muslim Marriages Act, 1939* the *Massalman Wakf Validating Act*, the *Wakf Act, 1995*, the *Muslim Women (Protection of Rights on Divorce) Act, 1986* giving them enough leeway to govern their private matters as per their essential religious tenets.<sup>27</sup>

### MUSLIM MINORITY RIGHTS: ISSUES AND CHALLENGES

From the very beginning, post-Independence, successive governments have been actively engaged in ameliorating the conditions of these linguistic/ religious minorities. The above discussed laws and policies specifically in force to enable the Muslim minorities, considering their number and variety, should have placed them in a considerable advantage. In other words, after Indonesia and Pakistan, India which has the third largest Muslim population in the world,<sup>28</sup> with such numbers and statistics should have had its Muslim populace in the country's mainstream, be it the economic front, social front, educational front. But, it is saddening that in all these fronts which measures the status of a community, Muslims in India are still distantly backward.<sup>29</sup>

It can thus be inferred that, though there exists very promising laws and policies to safeguard the rights of Muslim Minorities, in implementing and actually delivering them to the last mile beneficiaries has faced many a hardships. A close analysis of the problem has identified the following **issues and challenges** in not letting the Muslims Minorities to wholly benefit from the said laws and policies.

An important factor which contributes adversely to all round development of the community is that the entire community is scattered over the country and are not a majority in any state of India except Jammu. They are spread over Uttar Pradesh, Bihar, West Bengal in the North and Kerala and Tamil Nadu in the south in considerable numbers but are a minority in each state. There is stratification in the community itself with

<sup>21</sup> Found at: <http://nmdfc.org/>

<sup>22</sup> Found at: <http://www.minorityaffairs.gov.in/pradhan-mantri-jan-vikas-karyakram-pmjvk-0>

<sup>23</sup> Found at: <http://www.minorityaffairs.gov.in/schemesperformance/nai-roshni-scheme-leadership-development-minority-women>

<sup>24</sup> Found at: <http://www.minorityaffairs.gov.in/schemesperformance/%E2%80%9Chamari-dharohar%E2%80%9D-scheme-preserve-rich-heritage-minority-communities-india-under-overall-concept>

<sup>25</sup> Found at: <http://www.minorityaffairs.gov.in/schemesperformance/computerization-records-state-wakf-boards>

<sup>26</sup> Found at: <http://www.minorityaffairs.gov.in/schemesperformance>

<sup>27</sup> 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](http://www.jstor.org/stable/24675146).

<sup>28</sup> Noorani, A. G. "Protecting Minority Rights." *Economic and Political Weekly*, vol. 35, no. 12, 2000, pp. 969–969. *JSTOR*, [www.jstor.org/stable/4409042](http://www.jstor.org/stable/4409042)

<sup>29</sup> <http://www.minorityaffairs.gov.in/reports/sachar-committee-report>



regards to the language spoken Urdu/Hindi in the northern belt and Malayalam/Tamil in the Southern Belt.<sup>30</sup> This has led to a peculiar situation wherein a broad based policy or law cannot deliver the requisite results vis-à-vis the Muslim minority in India.

Another prominent challenge has been the express *exclusion of Muslim Dalits from the Prevention of Atrocity Act, 1989*: Dalit Christians and Dalit Muslims are excluded from the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, adopted in 1989, which aims at dissuading violence by providing harsher punishment for persons committing offences against individuals protected under this Act. As stressed by the UN Special Rapporteur on arbitrary executions, this exclusion not only prevents them from securing reservations, but it also excludes them from the protection of this law on a discriminatory basis.<sup>31</sup>

Before the colonial rule in India, *personal laws* were widely applied in India, including Hindu laws, Muslim Laws, and Jewish Laws. The British also used the policy of non-interference with these personal laws. Post Independence India has allowed for the matters related to marriage, divorce, succession and family affairs to be mostly governed by the personal laws specific to the certain communities. Likewise, in case of Muslim community, the marriages, divorces and adoption are governed as per the Mohammedan Law. However, in the recent past there have been some serious meddling with their personal matters, vis-à-vis under the guise of Fundamental Rights. In particular, the judgment of *Mohammad Ahmed Khan v. Shah Bano Begum*<sup>32</sup> came to be seen as major bone of contention between various Muslim Organizations and other sects advocating for women's rights. In this case, it was held that Section 125 of the Criminal Procedure Code will supersede the Muslim Law. Due to fervent protests, the Government then passed the Muslim Women (Protection of Rights on Divorce) Act, 1986 preventing Muslim Women from obtaining any relief under Section 125 of the Criminal Procedure Code. Subsequently, the Supreme Court in *Shayara Bano*<sup>33</sup> case, in early 2019 has declared the practise of Triple Talaq (talaq-e-biddat) as unconstitutional. Following which, recently, the Parliament has passed the Muslim Women (Protection of Rights on Marriage) Bill, 2019, thereby criminalizing the practice of instant Triple Talaq. With the penal provision of the bill i.e. a Muslim husband declaring instant Triple Talaq can be imprisoned for up to three years.<sup>34</sup> This has severely damaged the emotions of the orthodox muslims who claim that their voice is not here. Divorce being a civil matter, previously governed by Personal Laws is now being made a criminal offence. Their personal rights have been unjustly encroached upon.

Another stereotype against the Muslim minorities is that they are primarily engage themselves in Anti-Social activities. According to 2015 statistics from the National Crimes Records Bureau, more than 67% of those in India's jails are defendants under trial, 25% of whom were in prison for over one year. **Muslims**, Dalits, and Adivasis make up 55% of India's defendant population, but only a combined 39% of the country's total population. This is a startling issue of *minorities in detention*. Overrepresentation of minorities in India's prisons reflects deeper institutional bias against minorities in relation to law enforcement, with severe manifestations including cases of encounter killings' and physical abuse by authorities, especially in conflict areas such as Jammu & Kashmir.<sup>35</sup>

Further, with more than 20,000 NGOs blocked from receiving foreign funds under the strict regulations of the Foreign Contribution (Regulation) Act in December 2016, *NGOs and minority rights defenders*, who were the only voice to represent the cause of the minorities, has seriously impaired efforts to protect and promote

<sup>30</sup> Ghazi, Mahmood Ahmad. "Islamic Shari'ah and the Question of Minorities." *Policy Perspectives*, vol. 6, no. 1, 2009, pp. 63–77. *JSTOR*, [www.jstor.org/stable/42909225](http://www.jstor.org/stable/42909225).

<sup>31</sup> ALI, MANJUR. "Indian Muslim OBCs: Backwardness and Demand for Reservation." *Economic and Political Weekly*, vol. 47, no. 36, 2012, pp. 74–79. *JSTOR*, [www.jstor.org/stable/41720114](http://www.jstor.org/stable/41720114).

<sup>32</sup> [1985 (1) SCALE 767]

<sup>33</sup> *Shayara Bano v. Union of India*, Writ Petition (C) No. 118 of 2016

<sup>34</sup> <https://www.prsindia.org/billtrack/muslim-women-protection-rights-marriage-bill-2019>

<sup>35</sup> *Supra* at 28.



minority rights.<sup>36</sup> Thus, Muslim minorities because of the stereotype against them are at the forefront to be victims of communal, civil violence across the country.

In addition to this, *access to justice* for minority victims of communal violence is frequently obstructed at various stages – from initial filing of a case to prosecution – for reasons such as trust in authorities, destruction of evidence and intimidation. This is often linked to degrees of state complicity involved with these incidents, as well as deeper institutional bias against minorities within the criminal justice system<sup>37</sup>. Aid distributed to victims of mass violence against religious minorities has been categorised as '*ex gratia*', and therefore voluntary, lacking recognition of legal obligation on the part of the state to "make available adequate, effective, prompt and appropriate remedies, including reparation."<sup>38</sup> Levels of aid received by victims of mass violence such as Nellie (1983), Delhi (1994), Gujarat (2002), and Muzaffarnagar (2013) have widely differed, and overall have been grossly inadequate to meet victims' needs, non-compensatory, and slow to be distributed, resulting in long-term inter-generational implications.<sup>39</sup>

## CONCLUSION

India might be called a "melting pot" of cultures, but there are times when the pot gets too hot and starts brimming with the danger of communal riots, civil strife, victims of identity stereotypes. India seems to have somewhat stagnated when it comes to communal tension. Though the law provides adequate measures for the protection of the Muslim minority rights, but the minority communities still face a lot of difficulty in climbing the ladders of success and development as there is no proper enforcement and implementation of these laws. Nevertheless, looking at the population of this great nation, it is not surprising that there are conflicts within the communities. But, what is surprising is the fact that India, being diverse at each and every step, has brought together so many different communities and the minorities have not lost their voice in conundrum.

The secularism of the nation needs to be protected and the rights of minority should not pale beside the rights of majority. Protection of minority can be achieved through proper enforcement of the laws related to minority communities, keeping the spirit of democracy alive as well as balancing it with Individual's rights. The minorities, linguistic or religious, can resort to the various constitutional and legislative provisions available to them to protect their rights in an efficient manner, so that they can be in the forefront of the socio-economic milieu.

<sup>36</sup> Noorani, A. G. "Representing Minorities." *Economic and Political Weekly*, vol. 42, no. 3, 2017, pp. 195–195. JSTOR, [www.jstor.org/stable/4419152](http://www.jstor.org/stable/4419152)

<sup>37</sup> *Id.*

<sup>38</sup> <https://minorityrights.org/advocacy-statements/actions-indian-government-respect-minority-communities-universal-periodic-review>

<sup>39</sup> SINHA, 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](http://www.jstor.org/stable/24675308).