

AMOGHVARTA

ISSN : 2583-3189



An Overview of The Indian Constitution Regarding Minority Rights

Abstract

Minorities' sense of fear stemmed from their vulnerable status in society, which led to the granting of rights to them. As a result, minorities began to seek rights, which the Constituent Assembly refused. Instead, Article 30 was created, which came with no limits for minorities. But it was crucial for minorities to understand that the privileges accorded to them were subject to the law, and this understanding prompted the Supreme Court to step in on behalf of minorities. The Supreme Court has established the standards and scope of Article 30, which grants minority communities the right to create and run educational institutions for the benefit of their community, via a number of instances. Article 30's goal is to stop the majority from passing laws that deny the rights of minorities. The fragile status of minorities in society was the reason behind the Supreme Court's action.

ORIGINAL ARTICLE



Author

Dr. Pravin Kumar Singh

Principal

S.M Law College

Chandausi, Sambhal, Uttar Pradesh, INDIA

Key Words

Minorities, Rights of Minorities, Educational Institutions, Autonomy.

Introduction

A minority is defined as “an ethnic, religious, or linguistic group, fewer in number than the rest of the population” in Article 27 of the International Covenant on Civil and Political Rights and subsequent jurisprudence. A minority is a group that differs from the majority due to linguistic, ethnic, or cultural traits. Second, a minority is a group that often aspires to both preserve and strengthen its unique identity.

As a result, State-wise consideration must be given to linguistic and religious minorities, who have been treated equally under Article 30. This suggests that although if Punjabis are not minorities in the State of Punjab and are part of the national minority, they would be treated as such in the State of Andhra Pradesh. In Punjab, the majority Hindu population would also be numerically minority. Prof Zoya Hassan in her Article *Defining Minorities*¹ feels that defining minorities at State level would limit the notion of minorities, entailing as it does the adoption of an essentially statistical concept of minorities.

The characteristics that make the minority groups distinctive and vulnerable are language, religion, culture, and gender etc., The Minority communities shall be determined in relation to their power equations with the majority community.

India's postcolonial Government has long been hailed as a success storey, with its population enjoying religious tolerance and freedom of speech, making it the largest democracy in the world. It appears to have

avoided the military dictatorships that befell so many former colonies, and in spite of many indications of sectarian strife, it remains the world's largest democracy."² proclaimed that every Indian citizen is completely equal under the law, regardless of their religious beliefs, and served as the foundation for the country's partition. In the new nation state, we have witnessed the hegemonic paternalism of the dominant religious groups, which has defined its practises and traditions as separate from both the West and the vast majority of marginalised people it had pledged to democratise, despite such commitments to equality and an inclusive society. The emergence of fundamentalist movements, strong sense of community within each group, and sectarian identities that felt cut off from one another have all followed from this constellation. Conflicts and friction between the majority and minority communities have arisen in several regions of India as a result of the country's recent political events. Consequently, the issue of minority group rights and identity protection became essential to India's political debate.

What is a Minority?

Minorities are classified as religious and linguistic in the Indian Constitution. Despite this, the Constitution does not define the term "minority." Although it did not define it, the Motilal Nehru Report (1928) made clear that minorities should be given security. A commission on minorities was also suggested in the Sapru Report (1945), albeit the term "minority" was not defined. Minorities are defined as follows by the U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities:

1. Only those members of the population without official documentation who have stable ethnic, religious, or linguistic traditions or distinctive features that set them apart from the majority are considered members of the "minority";
2. These minorities ought to appropriately comprise the amount of individuals who are sufficient in and of themselves to maintain such customs or traits; and
3. These minority ought to be devoted to the nation they call home.³

The purpose of the National Commission for Minority Educational Institutions Act, 2004 (also known as the "Act") is to protect the educational rights of minorities as stated in Article 30(1) of the Constitution. It was revised numerous times in 2006 and 2010. Section 2(f) of the Act defines "minority" as a community that has received notification from the Central Government, as long as the Act is applied. Furthermore, since Section 2(g) of the Act establishes a Minority Educational Institution, it is now necessary to refer to it when discussing the indicators that must be met in order to obtain a certificate of minority status. The following is stated in Section 2(g): - "Minority Educational Institution" refers to a college or other educational facility that was founded and is run by a minority group.

To begin with, an ordinance was enacted to create the National Commission for Minority Educational Institutions (NCMEI). The National Commission for Minority Educational Institutions Ordinance 2004 (No. 6 of 2004) was notified on November 11, 2004, by the Department of Secondary and Higher Education, Ministry of HRD, Government of India. The Commission was subsequently established by a notification issued by the Ministry of HRD on November 16, 2004, with its headquarters located in Delhi. A commission has been set up specifically to preserve and defend minorities' rights to create and run the educational institutions of their choice. This Commission has been given the authority of a Civil Court, making it a quasi-judicial entity. It is led by a chairman who served as a Delhi High Court judge and two members who would be chosen by the central Government. The three duties of the Commission are consultative, recommendatory, and adjudicatory.⁴

Constituent Assembly Debate

Article 23 of the Draft Constitution, which eventually became articles 29 and 30, was the subject of much discussion in the Constituent Assembly. The main question was: What rights could or should be granted to minorities? When minorities were mentioned, it was only referring to the minority of Indians who still live in

India. The Subcommittee on Fundamental Rights did not include any provisions similar to article 30(1) in the first draught of the fundamental rights that it delivered to the Constituent assembly on April 16, 1947. The draught did not even mention the word minority. The term “national minority” was mentioned in a letter filed by K.M. Munshi to the Minorities Sub-Committee on the same day that the rights that are currently included in article 30(1) were proposed together with a few other rights. To differentiate between the rights of any segment of the population to preserve its language, script, or culture and the rights of minorities based on religion or language to create and run educational institutions of their choosing, the Drafting Committee removed the word “minority” from the earlier draught article 23 section corresponding to article 29 but kept it in the later draught article 23 section that now forms part of article 30. (1).⁵

Power of Government to Regulate Minority Run Educational Institution

Interaction between the Government and the institution’s management is essential to its administration. Due to the disparity in interests between the two, many conflicting situations arise. Government regulation of minority-run educational institutions is within its authority. It is not an unqualified right for members of linguistic and religious minorities to run the educational institutions of their choosing. The only function that the fundamental right under article 30(1) would serve in that situation, according to Justice Reddy J, is to allow minorities to create their own institutions, set their own curricula, offer instruction in the subjects of their choice, administer exams, and grant degrees or diplomas. Article 30(1) rights are therefore subject to regulations. Regulations are required to ensure an orderly, efficient, and sound administration, just as they are required to preserve the educational character and content of minority institutions. In Kerela education bill, the Supreme Court ruled that the fundamental right guaranteed to all minorities under article 30(1) to create and run educational institutions of their own choosing does not negate the state’s argument that, in exchange for aid, the state cannot impose reasonable regulations to guarantee the quality of the institutions. Further in case of *Sidhrajibhai v. State of Gujarat*⁶ Supreme Court invalidated the regulation which directed teachers training college maintained by the minority community to reserve 80 percent of seats in the college for the nominees of the district and municipal board teachers. The regulation further stated that the state would withdraw or withhold the grant-in-aid and recognition awarded to the college in the event that the college disobeyed the regulation. The court ruled that regulations could be implemented to stop educational institutions from being housed in unsafe environments or from opening and operating without certified teachers. Regulations that are so made in the genuine interests of public order, morality, health, sanitation, and discipline, as well as instruction efficiency, may be enforced.

The St. Xavier’s College case outlines the extent of authority over minority-affiliated schools. Chief Justice Ray asserts that the Government has the authority to control educational programmes, teacher qualifications and appointments, student health and hygiene, and laboratory and library facilities. The court also discussed actions that would promote excellence, efficiency, and uniformity in matters of education. The court further declares that “the right to administer cannot evidently encompass right to maladminister” in addition to the requirements of merit, excellency, and consistency.

The Supreme Court was asked to rule in the case of St. Stephens College v. University of Delhi on whether the Government could impose regulations on minority-run colleges that grant admission through interviews rather than just qualifying exam scores. In this instance, the college administration was subject to state-imposed limitations that required it to provide admission only based on the grades received in the qualifying exam. However, the management interviewed applicants for college admission in addition to reviewing their grades. The Supreme Court noted that it would be a violation of the rights of the minority community as protected by article 30(1) of the Constitution if St. Stephens College were not allowed to conduct interviews in order to choose candidates for admission. The court decided that any regulations the state placed on minorities should be advantageous to the organisation or to the people who join these kinds of organisations.⁷

Historicising the Constitutional Rights of Minorities

The idea that India is a nation-state originated with European nationalism, according to many who

critique the Indian nation-state and its relationship to pluralistic society.⁸ The European polities were initially dedicated to maintaining homogeneity and forging robust, homogeneous national communities; as a result, they have become extremely irritated with any indication of diversity. Postcolonial opponents contend that since India followed a similar course, the nation's ideals have always been subjugated to the desires of homogenous people, leaving little room for minority identity and aspirations to thrive.⁹ The "participatory parity" that was promised to all the individuals and groups that comprise the Indian population as a whole was not achieved by the divided and sectarian Indian political system. As the Hindu majoritarian identity became the dominant national identity, it hindered the fair distribution of resources and denied culturally diverse social groups the acknowledgment they rightfully deserved. Because of the situation, these communities were torn between belonging to the nation-state and not belonging to nationalism. This served as a nursery for several micro-identities as a result.¹⁰ Many communities and groups became known as "minorities, marginalised, obviously excluded/subalternized, these groups even though formed a part of the Indian nation-state but were excluded or at most subordinately included in the modern Indian society" as a clear outcome of all these political whims.

In light of this, the liberation movement had a dual impact on the development of this kind of local and regional consciousness. On the other hand, it seems to have suppressed the desire of the people in the different regions to become distinct ethnicities by evoking a stronger allegiance to Indian motherhood in a united fight against British tyranny. In general, the reality that India was developing its national unity against the British while the various linguistic and cultural groups were being consolidated into distinct ethnic and communal groups was what lay behind the apparent struggle between the communities with their slogan of India-a United Nation and the British rulers who highlighted the multiplicity of castes, communities, tribes, and linguistic groups.

Conclusion

Article 30 of the Constitution grants religious and linguistic minorities the right to an education, although this right is not clearly defined. A concept must seek to be defined in order to be operational. It is possible to surmise that the writers of the constitution anticipated that the word "minority" would be self-explanatory just by virtue of its usage. However, as time has gone on, the shifting social landscape and the variety of settings in which it must be used have made some degree of consistency in its design necessary. The general public's cognitive confusion has been exacerbated by the judicial vacillation allowed by this constitutional uncertainty. It is paradoxical that the constitution says nothing in this regard because an idea cannot be useful in practise unless it is defined first.

As an alternative, the Indian Supreme Court sought to define a "minority" as a "community, which is numerically less than 50 percent" of the overall population. The court went on to state that a minority must be assessed in light of the specific legislation that is being considered for implementation. In the event that the law is state-based, the minority population must be taken into account. The discussions in the Constituent Assembly suggest that the state has a tolerant stance toward minorities. This clarifies the position of the drafters of the constitution, who chose to force minority to articulate their claims rather than automatically granting them the guaranteed fundamental rights. Even the article's wording was intentionally ambiguous to enable the courts' regular interpretation, which takes into account the nation's historical and geographical requirements as well as the balance between the minority and majority. The courts are responsible for carrying out this interpretation on a regular basis. This might excuse the concept's absence from the constitution, but keep in mind that the judiciary's function usually comes after the process of implementation or execution, thus a constitutional explanation of the idea would be more useful in real-world scenarios. Additionally, it would restrict judicial meddling, giving the idea much-needed principle and practise coherence. On the other side, maintaining the status quo would promote "judicial populism."

Regarding the judicial interpretation of article 30, three discernible patterns emerge. First of all, because the decision is contextual, it frequently reflects the judges' personal convictions and is therefore diverse. Because of this, the article's meaning is ambiguous and vulnerable to ongoing conflict between the state and minorities. Second, compared to religious minorities, these rulings are more lenient toward linguistic minorities. Third, they show a trend of progressively narrowing the article's purview to provide room for Governmental supervision and control. An illustration of the term "establishes" used in conjunction with "administration" is provided. Numerous minority communities have been denied the benefits of their legal rights as a result of this strategy. One further illustration of the application of terms like "maladministration" and "excellence" is available. Judges are impacted by the "melting pot" notion, which aims to create uniformity in the laws and practises, as demonstrated by the Stephen and Pai instances. Combining articles 29(2) and 30(1) further diminishes the benefits that article 30 guarantees to minorities. While there is some overlap between article 29(1) and article 30(1), the former cannot restrict the latter's breadth. Article 30's scope stems from the fact that no other group of citizens is granted the same right to create and manage educational institutions of their choosing as linguistic or religious minorities.

We can therefore draw the conclusion that it is time for the parliament to define what constitutes a "minority" and the parameters of article 30, so that the right that minorities are granted to establish and manage educational institutions under that article will not be subject to arbitrary judicial interpretations.

References

1. Zoya Hassan, Defining Minorities, *The Hindu Daily* Dated: 14-07-2007.
2. Shabnum Tejani, 'Defining Secularism in the Particular: Caste and Citizenship in India 1909-1950' [2013] Religion and Politics section of the American Political Science Association, 705.
3. Bakshi P. M., (2005) "*The Constitution of India*", Delhi, Universal Law Publishing Company, pp. 66- 70.
4. <http://ncmei.gov.in/default.aspx> last visited on 20 Nov, 2023.
5. Shukla "Constituent Assembly Debate" p 890, 2003.
6. Sidrajibhai v. State of Gujarat, AIR 1963 SC540.
7. Supreme Court Journal 2002 vol.1 p38.
8. See, Menon, N., & Menon, N. (2010). Introduction. In Chatterjee P. (Author), *Empire and Nation: Selected Essays* (pp. 1-20). Columbia University Press. Retrieved from <http://www.jstor.org/stable/10.7312/chat15220.4>.
9. Nirja Gopal Jayal (1993), 'Ethnic Diversity and the Nation-State', *Journal of Applied Philosophy*, vol.10, no.2, pp. 147-53, at p.147.
10. Aloysius G, (2010) Dalit-Subaltern Self-Identifications: Iyothee Thassar & Thamizhan, *Critical Quest*, New Delhi.

====00====