



## The rights of minorities under the constitution of India: An analysis

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### Abstract

Constitution of India provides numerous rights to its citizens, some of them talks about Right to minorities. The founding father of the Constitution tried to satisfy the hope, aspiration and desire of the minority by safeguarding the educational rights of the minority. Preamble of Constitution itself talk about the purpose for framing the Constitution and it secure Justice- Social, Economic & Political, provide liberty of thoughts and worship, equality in status to secure the unity and integrity of India. Due to this reason framers of Indian Constitution incorporated various provisions in the Constitution as Fundamental Rights as well as on other places of Constitution.

Right of minorities are well defined under the Constitution on India but who constitute a minority is not defined anywhere under the Constitution. As Supreme Court of India is working as a final Interpreter of the Constitution under this power Court has provides its views on defining the term of minorities and the rights of minorities as well.

Through this paper researcher will try to find out all the constitutional provision regarding the rights of minorities and also the approach of Judiciary on it.

**Keywords:** rights, Indian constitution, judiciary

### Introduction

According to Mahatma Gandhi "The claim of a country to civilization depends on the treatment it extends to the minorities". The Constitution maker was aware about that so they provided adequate provision for safeguarding the status of minorities.

Constitution of India Provides 6 Fundamental Rights to its Citizen and Some rights to Non-Citizen as well. Some of them talks about Right to minorities.

The founding father of the Constitution tried to satisfy the hope, aspiration and desire of the minority by safeguarding the educational rights of the minority. At the fifth session of the Constituent Assembly of India, The Chairman (The Honorable Dr Rajendra Prasad) <sup>[1]</sup> assured the minorities that: "To all the minorities in India we give the assurance that they will receive fair and just treatment and there will be no discrimination against them. The religion, their culture and their language are safe and they will enjoy all the right and privileges of citizenship, and will be expected in their turn to render loyalty to the country in which they live and its constitution. To all we give the assurance that it will be our endeavour to end poverty and squalor and companions, hunger and disease, to abolish distinction and exploitation and to ensure decent condition of living".

### Definition of Minorities

Right of minorities are well defined under the Constitution on India but who constitute a minority is not defined anywhere under the Constitution. As Supreme Court of India is working as a final Interpreter of the Constitution under this power

Court held that if a community is less than 50% in the particular region to be considered as "minority". So according to that Christians, Muslims and Anglo Indian would be minorities in Kerala <sup>[2]</sup>.

But problem arises a community may be minor in a particular place but not in other places? This issue was further discussed in TMA Pai foundation case <sup>[3]</sup> in which it was clarified that minorities for the purpose of Article 30 could not have different meaning depending upon who was legislating the minority status i.e Union or State.

In *Bal Patil v Union of India* <sup>[4]</sup> it was held that the identification of a community as minority has to be done on a State basis and not all India basis. it was observed that the word minority has not be defined in Article 29 & 30 of the constitution but from Preamble and Art.25 to 30, it is clear that it refers to identifiable group of people who require protection from likely deprivation of their religious, cultural and educational rights by the community which are in majority.

The U.N Sub –Commission on Prevention of Discrimination of Minorities has defined minority as under:

1. The term "minority" includes only those non –documents group of the population which possess and wish to preserve stable ethnic, religious or linguistic traditions or characteristic 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 characteristic; and

<sup>2</sup> *In Re Kerala Education Bill AIR 1958 S.C.956*

<sup>3</sup> *AIR 2003 SC 355*

<sup>4</sup> *AIR 2005 SC172*

<sup>1</sup> C.A. Deb, Vol 5, P-2

3. Such minorities should be loyal to the state of which they nationals.

### Rights of Minorities and Constitutional Provisions

Preamble of Constitution itself talk about the purpose for framing the Constitution and it secure Justice- Social, Economic & Political, provide liberty of thoughts and worship, equality in status to secure the unity and integrity of India. Part III of Indian Constitution provides various rights to the minorities and justifies the aim and objectives of the Constitution of India. In the case of *Maneka Gandhi v Union of India*<sup>[5]</sup> - Justice Bhagwati Said- these Fundamental rights represent the basic value cherished by the citizen of India since the Vedic times. The aim of the Fundamental right to protect the dignity of the individuals. These rights are regarded as fundamental because they are most essential to the individual to live a life with full dignity. The object behind the inclusion of Part III is to establish a “Government of Law or Rule of Law and not of Man.

- Article 14 of Indian Constitution The state shall not deny, to any person equality before law or equal protection of law, within the territory of India. The concept equality does not mean absolute equality. It is a concept provides absence of any special privilege by reason of birth, creed etc in favour of individuals.
- Article 15 (1) directs the State not to discriminate against a citizen on ground only of religion, race, caste, sex and place of birth or any of them.
- Article 15 (2) prohibits citizen as well as State from making such discrimination with regard to access to shop, hotels and all the places of public entertainments, of public resorts, well, tanks, roads etc. It is to be noted that while clause (1) prohibits discrimination by the States but the Clause (2) prohibits both State as well as individuals. The object of Art 15 (2) is to eradicate the abuse of Hindu Social System.
- Article 15 (4)<sup>[6]</sup> enables the State to make special provisions for the protection of the interest of the Socially or Educationally backward classes of citizens.

In *State Of Madras v Champakam Dorairajan*<sup>[7]</sup> Madras Govt. has reserved seats in state medical and engineering colleges for different communities in certain proportions on the basis of religion, race and caste. The State defended the law on the ground that it is purported to promote the social justice for all sections of the people as required by Article 46 of Directive Principles of State Policy (DPSP). It was observed that the law was void because it classified students on the basis of caste and religion irrespective of merit. The Directive Principle of State Policy (DPSP) cannot override the Fundamental Rights. To modify the effect of the decision of the Supreme Court, Article 15 was amended by the 1<sup>st</sup> Amendment Act 1951

Thus under Article 15 (4), two things are to be determined:

- Who are socially and educationally Backward Class<sup>[8]</sup>?

<sup>5</sup> AIR 1978 SC 597

<sup>6</sup> inserted by Constitutional (1<sup>st</sup> Amendment Act) 1951 (which was the result of State of Madras v Champakam Dorai rajan AIR 1951),

<sup>7</sup> AIR 1951SC 226

<sup>8</sup> Article 340 empowers the President to appoint a commission to investigate conditions of socially and educationally backward classes. On the basis of the

- What is the limit of reservation?
- Article 15 (5)<sup>[9]</sup>: nothing in Article 15 or in 19 (1) (g) shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Schedule Caste and Schedule Tribe in so far as such special provision relate to admission to educational institutions including private educational institutions whether aided or unaided by the State, other than the minority educational institutions referred to in Article 30 (1).

This amendment has been enacted to nullify the effect of three decisions of the Supreme Court i.e. *T.M Pai Foundation v State of Karnataka*, *Islamic Academy v State of Karnataka*, *P.A Inamdar v State of Maharashtra*

In *T.M. A Pai Foundation v State of Karnataka*<sup>[10]</sup>: it was observed that State cannot make reservation of seats in admissions in privately run educational institutions. There the admission can be done on the basis of common admission test conducted by State and these institutions and on the basis of merit. In *Islamic Academy v State of Karnataka*<sup>[11]</sup>: the Court held that State can fix quota for admission to these educational institutions but it can't fix fees and also admissions can be done on the basis of common admission test and on the basis of merit.

In *P.A Inamdar v State of Maharashtra*<sup>[12]</sup> The court has overruled the Islamic Academy ruling “to the effect that the state could fix the quota for admission to private professional educational institutions. it was observed that State cannot make reservation of seats in admissions in privately run educational institutions. There the admission can be done on the basis of common admission test conducted by State and these institutions and on the basis of merit.

In *Balaji v State of Mysore*<sup>[13]</sup> it was observed that sub classification made by the order between backward classes & more backward classes was not justified under Article 15(4) reservation should be less than 50% because if it will be more than 50% than it will not be in favour of rest of the Society.

- Article 16 (1): there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.
- Article 16 (2): no citizen shall on ground only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for or discriminated against in respect of any employment or office under the State.
- Article 16 (4): nothing in this Article shall prevent the State from making any provision for the reservation of appointment or posts in the favour of any backward classes of citizens which in the opinion of State is not adequately represented in the service under the State. Art 16(4) will be applicable if –
  - a. The class of citizen is backward
  - b. Particular class is not adequately represented in the service of state

report of the commission the President may specify who are considered as backward classes

<sup>9</sup> added by 93<sup>rd</sup> Constitution amendments Act 2005

<sup>10</sup> AIR 2003 SC355

<sup>11</sup> AIR 2003 SC 3724

<sup>12</sup> AIR 2005 SC 3226

<sup>13</sup> AIR 1963 SC 649

- Article 16 (4- A) <sup>[14]</sup>: nothing in this Article shall prevent the State from making any provision for reservation (in the matters of Promotion, with consequential seniority, to any class <sup>[15]</sup> or classes of post in the service under the state in favour of the SC & ST which in the opinion of the State are not adequately represented in the service under the State.
- Article 16 (4- B) <sup>[16]</sup>: makes provision regarding any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause 4 or 4-A due to non-availability of eligible candidates. These vacancies will be considered as a separate class and be filled up in any succeeding year or years.
- Article 17: Abolition of Untouchability & its Practice in any form
- Article 21 “No person shall be deprived of his life or Personal liberty except according to procedural established by law.

A person can be deprived of his life and personal liberty if two conditions are satisfied-

- *firstly*, there must be a law and
- *secondly*, there must be a procedure prescribed by that law, provided that the procedure is just, fair and reasonable.

In *Meneka Gandhi v Union of India* <sup>[17]</sup> Justice Bhagwati observed “the expression personal liberty in Art 21 is of widest amplitude and it covers a verity of rights which go to constitute the personal liberty. Court says the procedure which is established must satisfy the requirement of NATURAL JUSTICE i.e. it must be just, fair and reasonable.

- Art. 25 (1) 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, practice and propagate religion.

Under Art25 (1) a person has a two-fold freedom: -

- a. Freedom of conscience
- b. Freedom to profess, practice and propagate religion.

The freedom of “conscience” is absolute inner freedom of the citizen related to his own relation with God in whatever manner he likes. When this freedom becomes articulate (explain clearly) and expressed in outward form it is to profess and practice religion.

- Article 26 Subject to public order, morality and health every religious denomination or any section thereof shall have the right-
- to establish and maintain institution for religious and charitable purposes
- To manage its own affairs in matter of religion
- To own and acquire movable and immovable property
- To administer such property in accordance with law
- 

- Article 29 (1) of the Indian Constitution gives protection to every section of the Indian Citizen residing in Indian Territory having a distinct language, script or culture by guaranteeing their right to conserve the same.
- Article 29(2) prohibits the denial of admission into educational institutions maintained by the State or receiving aid out of the State fund, on ground only of religion, race, caste, language or any of them.

Article 29 (2) is quite general and wide in term and applies to all citizen whether they belong to majority or minority group<sup>[18]</sup>.

- Art 30 (1): All minorities, whether based on religion or language shall have the right to establish and administer educational institution of their choice.
- Art 30 (2): prohibits the State in granting aid to educational institutions from discriminating against any educational institutions on the ground that it is under the management of a minority whether based on religion or language.

The right conferred by this clause on two types of Minorities-religious and linguistic minorities

In *St. Xavier's college v State of Gujrat* <sup>[19]</sup>, it was observed that the word establish indicates the right to bring into existence, while the right to administer an institution means the right to effectively manage and conduct the institutions.

Article 29 Extends to all sections of citizens, which will include the majority section also, While Article 30 confers the right only on minorities based on religion or language, Article 29 is a general right to conserve their distinct language, culture or script while Article 30 is Only the right to establish and administer educational institutions.

In *D.A.V College Bhatinda v State of Punjab* <sup>[20]</sup>: it was observed that the right of the minority to establish and administer educational institution of their choice includes the right to have a choice of medium of instruction also.

In *Naresh Agarwal v Bharat* <sup>[21]</sup>: the petitioners who were Hindu students were denied admissions to PG medical courses in AMU for the session 2005-06, challenged the validity of rule which declared the AMU a minority institution and allowed 50% reservation to Muslim Students. Allahabad high court held that AMU was not a minority institution and struck down the amendment made to this effect in the statute of AMU for reservation to Muslim students.

### **Provision Other Than Fundamental Right under Constitution of India**

- Art 38(1) provides that the State shall make great efforts to promote the welfare of the people by securing and protecting Social, Economic and Political Justice.
- Art 38(2) <sup>[22]</sup> The State shall in particular strive to minimize the inequalities in income, in status, facilities and opportunities not only amongst individuals but also

<sup>14</sup> 77<sup>th</sup> Amendment Act, 1995

<sup>15</sup> substituted by 85<sup>th</sup> Amendment Act 2001

<sup>16</sup> inserted by 81<sup>st</sup> Amendment Act 2000

<sup>17</sup> AIR 1978 SC

<sup>18</sup> Article 15 prohibits all kinds of discrimination while Article 29 Prohibits discrimination only in respect to admission to educational institutions

<sup>19</sup> AIR 1979 SC

<sup>20</sup> AIR 1971 SC 1731

<sup>21</sup> AIR 2006 Alld.

<sup>22</sup> inserted by 44<sup>th</sup> Amendment act

amongst group of people residing in different areas or engaged in different vocation.

This new clause Provide equality in all sphere of life.

- Article 51 (A)(e):To promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities to renounce practices derogatory to the dignity of women.
- According to Article 350: Every person shall be entitled to submit a representation for the redress of any grievance to any officer or authority of the union or a state in any of the languages used in the union or a state in any of the languages used in the union or in the state.
- Article 350 A provides Facilities for instruction in mother tongue at primary stage.
- Article 350 B talks about Special officer for linguistic minorities.
- Article 13 of the Constitution gives the power to Judiciary for the purpose of judicial review (post and pre Constitutional law).
- If State is framing any law in the Contradiction of Fundamental Right Citizen of India is having a right to go directly to the Supreme Court or High Court under Article 32 and 226 respectively for issuing a writ of appropriate nature if there is any violation of their fundamental right and under Article 226 for the violation of other Constitutional rights as well.

#### **Rights of Minorities as Human Right**

- Article 7 of Universal Declaration talks about equality before law
- Article 7 of Universal Declaration talks about prohibition of discrimination
- Article 21 (2) of Universal Declaration provides Equality of opportunity
- Art 3 of Universal Declaration provides protection of life and personal liberty
- Art 22 of Universal declaration provides right to social security
- Art 18 of U.D. gives Freedom of Conscience and religion
- Art. 23 (1) of UD provides right to work to just and favorable condition of work
- Art 23 (2) of UD gives right to equal pay for equal work

In *Keshwanand Bharti v State of Kerela* <sup>[23]</sup> 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* <sup>[24]</sup> 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.

In *Golak nath v State of Punjab* <sup>[25]</sup> justice Subba Rao said that Fundamental rights are the modern name for what have been traditionally known as natural right.

National Commission for Minority Educational Institutions Act, 2004 has been passed in the year 2004 for providing quality education to the minority. This act allows direct affiliation of minority educational institutes to central universities.

#### **Judicial Interpretation on Minorities Rights**

In *St. Xaviers college v State of Gujrat* <sup>[26]</sup> it was observed that the word establish indicates the right to bring into existence, while the right to administer an institution means the right to effectively manage and conduct the institutions. It was also held that the primary purpose of affiliation is that the students reading in the minority institutions will have qualification in the shape of degree necessary for a useful career in the life. Denial of the same would amount to make the fundamental right under Article 30 ineffective. The court also held that the university while granting affiliation can impose regulations on the institutions with respect to quality of education, syllabi health, laboratory or library etc.

In *D.A.V College Bhatinda v State of Punjab* <sup>[27]</sup>: it was held that the right of the minority to establish and administer educational institution of their choice includes the right to have a choice of medium of instruction also.

In *TMA Pai Foundation v State of Karnataka* <sup>[28]</sup>: Supreme Court observed that the State Govt. and Universities can't regulate the admission policy of unaided educational institution run by linguistic and religious minorities but State Govt. and universities can specify academic qualification for student and make rules and regulation for maintaining academic standards.

In *State of Maharashtra v Madhukar Narain* <sup>[29]</sup>: it was observed that the right to privacy is available even to a woman of easy virtue and no one can invade her privacy.

In *National human right commission v State of Arunachal Pradesh* <sup>[30]</sup> Supreme Court observed that the State is bound to protect the life and liberty of every being whether citizen or non-citizen. It is the constitutional duty of the State to safeguard the life, health and well-being of the Non-Citizen also.

#### **Conclusion**

It is very crystal clear that judiciary is working very effectively for protecting Minority rights not only under the interpretation for Article 29 & 30 but also making efforts to

<sup>23</sup> AIR 1973 SC

<sup>24</sup> AIR2000SC

<sup>25</sup> AIR 1967 SC

<sup>26</sup> AIR 1974 S.C.717

<sup>27</sup> AIR 1971 SC 1731

<sup>28</sup> AIR 2002 SC 355

<sup>29</sup> AIR 1991 SC

<sup>30</sup> AIR (1996) SC

provide Social and economic Justice to the minority section of the society and fulfilling the aim as enshrined in the Preamble of the Constitution of India.

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