



Constitution and the rights of minorities

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Abstract

The Indian Constitution grants citizens various rights, one of which is the right to minorities. By guaranteeing the minority's educational rights, the founding fathers of the Constitution attempted to satisfy the minority's hope, aspiration, and longing for land. The objective for establishing the Constitution is stated in the Preamble, and it is to achieve social, economic, and political justice, as well as freedom of thought and worship and equality of status in order to maintain India's unity and integrity. Like a result, the framers of the Indian Constitution included such articles as Fundamental Rights as well as other locations in the Constitution. Minorities' rights are well stated in the Indian Constitution, yet who constitutes a minority is not mentioned elsewhere in the Constitution. As the Supreme Court of India serves as the last interpreter of the Constitution, it has expressed its views on defining the term "minorities" as well as minorities' rights. The goal of this article is to uncover all of the constitutional provisions concerning minorities' rights, as well as the judiciary's response to them.

Keywords: minorities, rights, constitution, justice

Introduction

Because the founders of the Constitution were aware of this, they made proper provisions to protect minorities' rights. The Indian Constitution guarantees citizens six fundamental rights, as well as some rights to non-citizens. Some of them discuss minorities' rights. By guaranteeing the minority's educational rights, the founding fathers of the Constitution attempted to satisfy the minority's hope, aspiration, and longing for land. "To all the minorities in India, we provide the assurance that they would receive fair and reasonable treatment and that there will be no discrimination against them," said the Chairman (The Honorable Dr Rajendra Prasad) at the fifth session of the Constituent Assembly of India. Their religion, culture, and language will be protected, and they will be entitled to all of the rights and privileges that come with citizenship, as well as the expectation that they will be loyal to the country in which they live and its constitution. To all, we pledge that we will make every effort to eradicate poverty, squalor, and their companions, hunger, and sickness, to eliminate discrimination and exploitation, and to establish a reasonable standard of living."

Rights of Minorities and Constitutional Provisions

In order to protect India's unity and integrity, the Preamble states that the Constitution's goal is to achieve social, economic, and political justice, as well as freedom of thought and worship and equality of position. Part III of the Indian Constitution establishes specific rights for minorities and defends the Constitution's goals and objectives. In the case of *Maneka Gandhi v Union of India*, Justice Bhagwati stated that these fundamental rights have been treasured by Indian residents since Vedic times. The Fundamental Right exists to protect people's dignity.

These rights are regarded as fundamental because they are required for a person to live a full and dignified life. The inclusion of Part III is meant to establish a "Government of Law or Rule of Law, not of Man." Article 14 of the Indian Constitution The state shall not deny any individual within India's territory equality before the law or equal protection under the law.

"Perfect equality" is not always implied by the phrase "equality." It's a principle that assures that people don't get special treatment because of their race, religion, or other considerations.

- Article 15 (1) directs the State not to discriminate against 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) enables the State to make special provisions for the protection of the interest of the Socially or Educationally backward classes of citizens.

State of Madras v Champakam Dorairajan Madras Govt. has reserved seats in state medical and engineering colleges for different communities in certain proportions based on religion, race, and caste in State of Madras v Champakam Dorairajan Madras Govt. has reserved seats in state medical and engineering colleges for different communities in certain proportions based on religion, race, and caste in State of Madras v Champaka The government supported the law, claiming that it aims to promote social fairness for all individuals, as required by Article 46 of the Directive Principles of State Policy (DPSP). The law was found to be unconstitutional since it classified students based on caste and religion rather than merit. The Fundamental Rights cannot be overridden by the Directive Principle of State Policy (DPSP). The 1st Amendment Act 1951 altered Article 15 to modify the effect of the Supreme Court's ruling. As a result, two things must be determined under Article 15 (4): Who are the socially and educationally disadvantaged?

- Article 15 (5): 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.

The purpose of this amendment is to overturn three Supreme Court decisions: T.M Pai Foundation v State of Karnataka, Islamic Academy v State of Karnataka, and P.A Inamdar v State of Maharashtra. It was held in T.M. A Pai Foundation v State of Karnataka that the state could not create reservations for seats in privately run educational institutions. Admission might be granted based on a shared admission test administered by the state and these institutions. The Court concluded in Islamic Academy v State of Karnataka that the state can set quotas for admission to certain educational institutions but not fees, and that admissions can be made on the basis of a common entrance test or merit. In the case of P.A. Inamdar v. Maharashtra, The Islamic Academy judgement "to the effect that the state could determine the quota for admission to private professional educational institutions" has been overturned by the court. It was pointed out that the government cannot establish reservations for seats at privately run educational institutions. Admission can be made on the basis of a common admission test administered by the state and these schools, as well as merit. In Balaji v State of Mysore, it was held that the division formed by the order between backward classes and more backward classes was not justified under Article 15(4) reservation should be less than 50% because if it is more than 50%, it will not be in the best interests of the 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 9 added by 93rd Constitution amendments International Journal of Law 33.
- Article 16 (4-A): 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 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): 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 nonavailability 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 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 theybelong tomajorityor minoritygroup.
- 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.

This paragraph grants religious and linguistic minorities the freedom to self-determination. In the case of St. Xaviers College v. State of Gujarat, it was noted that the word establish denotes the right to create, whereas the right to administer an institution denotes the right to efficiently manage and govern the institution. Article 29 extends to all groups of citizens, including the majority. While Article 30 only confers the right to establish and administer educational institutions on minorities based on religion or language, Article 29 is a general right to preserve their distinct language, culture, or script, whereas Article 30 only confers the right to establish and administer educational institutions on minorities based on religion or language. In D.A.V College Bhatinda v State of Punjab, it was held that a minority's freedom to create and govern an educational institution of their choice includes the right to choose their medium of instruction as well. In Naresh Agarwal v Bharat, the petitioners, who were Hindu applicants refused admission to PG medical programmes at AMU for the 2005-06 academic year, challenged the constitutionality of a provision that declared AMU a minority university and permitted Muslim students 50 percent reservation. The Allahabad high court ruled that AMU was not a minority institution and overturned the change to the AMU law that provided for Muslim student reservation.

Provision other than funda mental 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) The State shall in particular strive to minimize the inequalities in income, in status, facilities and opportunities not only amongst individuals but also 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

The Supreme Court stated in *Keshwanand Bharti v State of Kerela* that while the Universal Declaration of Human Rights is not a legally enforceable document, it demonstrates how India viewed the nature of human rights at the time the Constitution was formed. The Supreme Court noted in *Chairman Railway Board & others v Ms Chandrima Das* that the declaration has international acceptance as a moral code of behaviour, having been accepted by the United Nations General Assembly 23 times. If necessary, the applicability of the Universal Declaration of Human Rights and its principles to domestic jurisprudence may be required. In a number of cases, the Supreme Court and State High Courts have alluded to the declaration in their decisions. Fundamental rights are the modern designation for what has traditionally been known as natural rights, according to justice Subba Rao in *Golak nath v State of Punjab*. In 2004, the National Commission for Minority Educational Institutions Act was passed in order to provide quality education to minorities. This act allows minority educational institutes to be directly affiliated with central universities.

Judicial Interpretation on Minorities Rights

In the case of *St. Xaviers College v. State of Gujarat*, it was held that the phrase establish denotes the right to create, whereas the right to administer an institution denotes the right to efficiently manage and govern the institution. It was also said that the fundamental goal of affiliation is for students studying in minority institutions to obtain a qualification in the form of a degree, which is required for a useful vocation in life. The denial of the same would render Article 30's fundamental right ineffective. The court also found that while providing affiliation, the university has the authority to impose requirements on the institutions regarding educational quality, syllabi, health, laboratories, and libraries, among other things. It was established in *D.A.V College Bhatinda v State of Punjab* that the minority's freedom to create and run educational institutions of their choosing includes the right to choose their language of instruction as well. The Supreme Court held in *TMA Pai Foundation v State of Karnataka* that while the state government and universities cannot regulate the admission policy of unaided educational institutions run by linguistic and religious minorities, they can specify academic qualifications for students and make rules and regulations to maintain academic standards. In the case of *State of Maharashtra v Madhukar Narain*, it was held that even a woman of easy virtue has the right to privacy, and that no one can intrude on her privacy. The Supreme Court held in *National Human Rights Commission v State of Arunachal Pradesh* that the state is obligated to defend the life and liberty of all people, whether citizens or non-citizens. The State has a fundamental obligation to protect the life, health, and well-being of non-citizens as well.

Conclusion

Minorities' rights are well stated in the Indian Constitution, yet who constitutes a minority is not mentioned elsewhere in the Constitution. It is apparent that the judiciary is working extremely hard to preserve minorities' rights, not only under the interpretation for International Journal of Law 35 but also to give social and economic justice to the minority segment of society, as stated in the Preamble of the Indian Constitution.

References

1. All India reports (Supreme Court Judgements)
2. AIR 1978 SC 597 6 inserted by Constitutional (1 st Amendment Act) 1951 (which was the result of *State of Madras v Champakam Dorai rajan* AIR 1951),
3. AIR 1951SC 226 8 Article 340
4. Basu Das Durga. Introduction to the Constitution of India
5. Bakshi PM. The Constitution of India
6. Constituent Assembly Debates.
7. Minority Discourse in India: Narrating Centers & Peripheries by P. John Joseph Kennedy
8. Books from same Author: P. John Joseph Kennedy
9. Pandey JN. Constitutional Law of India
10. Seervai HM. Constitutional Law of India
11. State and Minorities: What are their Rights and how to Secure them in the Constitution of Free India, by Dr B R Ambedkar
12. Shukla's Constitution of India