



## Constitutional provisions of minorities: an overview in India

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### Abstract

India is one of the only two regions of the world where a great human civilization took birth several millennia ago and has survived more or less uninterrupted to this day. Geographically, India is not as vast as China; India has been always a land of great multitudes<sup>1</sup>. Religious minorities in India, particularly Christians and Muslims, suffer religious persecution daily, even despite nominal protection granted under India's Constitution. Belying any constitutional claim of religious freedom, both federal and state legislation include "anti-conversion" laws which work to the detriment of religious minorities *only*; reconversion to Hinduism escapes regulation. Moreover, law enforcement consistently fails to grant protection for religious minorities, even where the laws seemingly grant a scintilla of religious freedom. In many cases, reports indicate that law enforcement has been obviously complicit in the persecution.

Since the days of the Indus Valley Civilization, Indian culture has been the product of a synthesis of diverse cultures and religions that came into contact with the enormous Indian sub-continent over a very long stretch of time. As Jawaharlal Nehru writes, there is "an unbroken continuity between the most modern and the most ancient phases of Hindu thought extending over- three thousand years." The rights of man have been the concern of all civilizations from time immemorial. "The concept of the rights of man and other fundamental rights was not unknown to the people of earlier periods." The Babylonian Laws and the Assyrian laws in the Middle East, the "Dharma" of the Vedic period in India and the jurisprudence of Lao-Tze and Confucius in China, have championed human rights throughout the history of human civilization.

The Indian concept perceives the individual, the society and the universe as an organic whole.

**Keywords:** The concept of rights, fundamental rights, the babylonian laws, assyrian laws in the middle east, the "dharma" of the vedic period in india and the jurisprudence of lao-tze

### Introduction

#### Origin of Human Rights in India

The Buddhist doctrine of non-violence in deed and thought says Nagendra Singh "is a humanitarian doctrine par excellence, dating back to the third century B.c." Jainism too contained similar doctrines. According to the Gita, "he who has no ill will to any being, who is friendly and compassionate, who is free from egoism and self sense and who is even-minded in pain and pleasure and patient" is dear to God. It also says that divinity in humans is represented by the virtues of non-violence, truth, freedom from anger, renunciation, aversion to fault-finding,

Compassion to living being, freedom from covetousness, gentleness, modesty and steadiness -the qualities that a good human being ought to have. The historical account of ancient Bharat proves beyond doubt that human rights were as much manifest in the ancient Hindu and Islamic Civilizations as in the European Christian civilizations. Ashoka, the prophet Mohammed and Aktar cannot be excluded from the genealogy of human rights.

India is a secular country with no officially recognized religions. India's Constitution provides that "all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion," subject to public order, morality and health. The Constitution explicitly prohibits discrimination on the basis of religion. Article 19 of the Constitution further protects freedom of speech, expression and association. Additionally, Article 51 imposes a positive duty on citizens to "promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious...diversities."

However, recent federal and state laws directly counter the freedom that the Constitution provides, resulting in widespread persecution towards religious minorities<sup>[2]</sup>.

The Constitution of India denotes minorities as religious and linguistic. Though the word minority has not been defined in the Constitution. The Motilal Nehru Report (1928) showed a prominent desire to afford protection to minorities, but did not define the expression. The Sapru Report (1945) also proposed, inter alia, a Minorities Commission but did not define Minority. The U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities has defined minority as under:

- 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 characteristics markedly different from those of the rest of the population;
- Such minorities should properly include the number of persons sufficient by themselves to preserve such traditions or characteristics; and 3) Such minorities should be loyal to the state of which they are nationals.

The National Commission for Minority Educational Institutions Act, 2004 as amended time and again in 2006 and 2010 (for short the „Act“) has been enacted to safeguard the educational rights of the minorities enshrined in Article 30(1) of the Constitution. The Act defines "minority" under Section 2 (f) as for the purpose of this Act, means a community notified as such by the Central Government. Furthermore, as regards the indicia to be

prescribed for grant of minority status certificate, a reference to Section 2(g) of the Act has become inevitable as it defines a Minority Educational Institutions. Section 2 (g) is as under: - “Minority Educational Institution” means a college or an educational institution established and administered by a minority or minorities [3].

### Who are the minorities?

The Constitution of India uses the word ‘minority’ or its plural form in some Articles – 29 to 30 and 350A to 350B – but does not define it anywhere. Article 29 has the word “minorities” in its marginal heading but speaks of “any sections of citizens having a distinct language, script or culture”. This may be a whole community generally seen as a minority or a group within a majority community. Article 30 speaks specifically of two categories of minorities – religious and linguistic. The remaining two Articles – 350A and 350B – relate to linguistic minorities only.

In common parlance, the expression “minority” means a group comprising less than half of the population and differing from others, especially the predominant section, in race, religion, traditions and culture, language, etc. The Oxford Dictionary defines ‘Minority’ as a smaller number or part; a number or part representing less than half of the whole; a relatively small group of people, differing from others in race, religion, language or political persuasion”. A special subcommittee on the protection of minority rights appointed by the United Nations Human Rights Commission in 1946 defined the ‘minority’ as those “non-dominant groups in a population which possess a wish to preserve stable ethnic, religious and linguistic traditions or characteristics markedly different from those of the rest of the population.”

As regards religious minorities at the national level in India, all those who profess a religion other than Hindu are considered minorities, since over 80 per cent [of the] population of the country professes the Hindu religion. At the national level, Muslims are the largest minority. Other minorities are much smaller in size. Next to the Muslims are the Christians (2.34 per cent) and Sikhs (1.9 per cent); while all the other religious groups are still smaller. As regards linguistic minorities, there is no majority at the national level and the minority status is to be essentially decided at the state/union territory level. At the state/union territory level – which is quite important in a federal structure like ours – the Muslims are the majority in the state of Jammu and Kashmir and the union territory of Lakshadweep. In the states of Meghalaya, Mizoram and Nagaland, Christians constitute the majority. Sikhs are the majority community in the state of Punjab. No other religious community among the minorities is a majority in any other state/UT [4].

Since the late nineteenth century, special provisions had been instituted by the colonial state as well as by some princely states for a vast array of groups designated as minorities or ‘backward’. During the deliberations of the Constituent Assembly, the framework of state policies of minority preference came to be fundamentally redefined. Under the Indian Constitution of 1950, preferential provisions in legislatures and government employment were restricted mainly to the Scheduled Castes and ‘backward’ tribes. The concepts and ideals espoused by politicians in support of their positions have rarely been the subject of sustained scholarly analysis. This neglect appears to stem from at least two sorts of reasons. First, the routine

invocation of ideals like ‘democracy’, ‘social justice’ and ‘secularism’ in political debate appears to suggest that the meanings of these terms are self-evident or agreed-upon. Yet, closer investigation reveals that behind familiar appeals to concepts such as ‘secularism’ or ‘democracy’ in political discourse, there are often complex and divergent conceptions of these concepts [5].

Cultural and educational rights are granted by the Constitution to religious and linguistic minorities to provide them with confidence and security that they can establish and administer educational institutions of their choice to protect their language, culture and script, or otherwise promote the welfare of their community by imparting quality education. Crucially, while population numbers provide us with an administratively convenient strategy to determine the minority status and could even have a significant bearing on the power relation in which the minority community stands vis-à-vis other communities, other factors of disadvantage, vulnerability and discrimination are also relevant to the conceptualisation of ‘minority’. Thus, we argue that for a proper interpretation of Article 30, it should be divided into negative and positive components. The negative component is attracted when the government enacts an offending law which imposes, for example, a medium of instruction or syllabus or any other measure that fetters the administrative autonomy of these institutions. For this, the numerical method of determining a minority is adequate. The positive component, on the other hand, is needed when the state recognises a community as ‘minority’ and its school as a ‘minority educational institution’. This component combines both quantitative and qualitative factors in interpreting a community’s position in a power relationship, in a given context. At this stage, we cannot list out these mechanisms with any exactitude. Yet, one could reasonably suggest that a purposive inquiry is called for while granting certificates of minority status to different educational institutions. The promoters of such institutions could be asked to explain the ‘minority character’ of these institutions and elaborate how the institution would promote the ‘welfare’ of its community. This, we believe, could be helpful in achieving the much needed coherence in the realm of educational rights of minorities, since an ambiguous conceptualisation could easily lend itself to incongruous application. To restate, we are neither recommending any amendment to the Constitution nor any change in the unit for determination of minority [6].

### Issue of Equity in Identity and Empowerment

Indian Constitution is perceived by many as not only secular but multicultural as well. Besides, Indian Constitution recognises Christian minority and rites that has been described above. Yet there is discrimination in the form of equity relating to identity and empowerment. Because of being Christians there is restriction and reinterpretation of the Article 25 and 26. Because of being Christian there has been violation of the Article 29 and there has been violence on the Christian community. Because of being converted Dalit Christian they do not have same privilege of empowering by education as enjoyed by the non-Christian Dalits, thereby violation of the Articles 15, 29 and 47. Because of being converted Dalit Christian they do not have the same privilege of empowering them with Government job enjoyed by non-Christian Dalit Violation of Article 16.

Because of being Dalit they do not have the same privilege non-Christian Dalit enjoy in reservation of seat in the Parliament and State legislatures, Municipality and Panchayats violation of Articles 330 and 332. Because of being Christian Educational Institution there has been effort reinterpret the management of the education institution under Article 26.

The States of Arunachal Pradesh, Rajasthan, Madhya Pradesh, Himachal Pradesh, Jarkhand, Orissa and Tamil Nadu have passed laws restricting or prohibiting conversion. In 1977, the Supreme Court of India ruled in *Rev. Stanislaus vs. Madhya Pradesh* that the right to propagate religion did not include the right to convert others to one's own religion. In other words, Article 25(1) granted the right to evangelize, but not to proselytize. In 2003, ruling on certain provisions of the Orissa Freedom of Religious Act (1967), the Supreme Court observed: "What Article 25 (1) grants is not the right to convert another person to one's own religion, but to transmit or spread one's religions by an exposition of its tenets. By propounding a thesis "One people, One Nation and One Culture," effort of this group is to denounce the pluralistic traditions of Indian culture, the richness of its diversity and the spiritual contribution of its varied faiths.

The final attack is on Christian witness also it is designed not just to break the spirit but to weaken Christian faith. Foreign Christian missionaries have been also targets of attacks. In a well-publicised case, Graham Staines, an Australian Missionary working among lepers, was burnt to death while he was sleeping with his two small sons in his station wagon in Orissa village in January 1999. Such violence on foreign missionary continues on other parts of India too. In its annual human rights report for 1999, the United States Department of State criticised India for "increasing societal violence against Christians." The report listed over 90 incidents of anti-Christian violence ranging from damage of religious property to violence against Christian pilgrims. Between July 2000 to December 2007 there has more than 263 attacks on Christians in Orissa, Karnataka, Tamil Nadu, Madhya Pradesh, Jharkhand, Chattisgarh, Uttarakhand and Uttarpradesh. In some of the acts violence include forcible conversion of converted Christians back to Hinduism, distribution of threatening literature and destruction of Christian cemeteries.

In August 1950 the Dalit or Schedule Cast Christian encountered major discrimination when the President of India issued an order through the Ministry of Law which states: "Notwithstanding anything contained in paragraph 2 no person who professes a religion different from the Hindu or the Sikh religion shall be deemed to be a member of a Scheduled Caste." Christian organization like National Christian Council, Catholic Bishop Council and Catholic Regional Committee of Nagpur all sought for removal of discrimination but without success. In 1984 and 1985 two petitions of Christian Dalits was before seeking remove of discrimination. In its judgment the Court affirmed not only that the Constitution enjoins upon the President also to specify which Castes or which parts of those castes are to be considered Scheduled Castes and only Parliament can change the President's decision, but that the caste system is a phenomenon peculiar to Hindu (not Indian) society. Since the President knew that Hindu and Sikh Dalits suffered from serious disabilities and backwardness, he could limit constitutional protection to them. Thus religion was used as

criterion in 1950 to define the Schedule Caste and according to it only those backward castes (socially, educationally, and economically) who professed Hindu religion shall be considered in the category of Schedule Caste. On the basis of this criterion all other people professing Islam, Christianity and Buddhism were left out<sup>[7]</sup>.

The experience of the past five decades has underlined the need to accommodate cultural diversities in the public arena. But the path India has pursued has also drawn attention to the problems that we may confront in realizing this goal of accommodation. The cumulative experience has yielded some valuable lessons that we should reflect upon as we confront issues of peaceful coexistence in democratic politics today. The common tendency when addressing questions of cultural diversity is to treat given communities as near-natural groups, with clearly identified boundaries that demarcate. Similarly, when we speak of cultural diversity, it is usually assumed that the communities to be accommodated are empirically given and there is little room for dispute there. These are assumption in the contemporary discourse on cultural diversity that must be scrutinized and interrogated<sup>[8]</sup>.

The United Nations treaty-based human rights system includes procedures through which members of minorities can seek protection of their rights. This chapter describes eight major international human rights treaties which deal respectively with civil and political rights; economic, social and cultural rights; racial discrimination; children's rights; women's rights; torture; the rights of persons with disabilities; and migrant workers' rights. The first section outlines the system of State reporting common to all human rights treaties and suggests ways in which minorities and their representatives can raise their concerns before international treaty bodies. The second section describes the complaint mechanisms available under six of the treaties to individuals who believe that their rights have been violated<sup>[9]</sup>.

### Conclusion

The Indian Constitution is a document rich in human rights jurisprudence. This is an elaborate charter on human rights ever framed by any State in the world. Part III of the Indian Constitution may be characterised as the 'Magna Carta' of India. The Judiciary in India plays a significant role in protecting human rights. The Indian Courts have now become the courts of the poor and the struggling masses and left open their portals to the poor, the ignorant, the illiterates, the downtrodden, the have-nots, the handicapped and the half-hungry, half-naked countrymen

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