



## MINORITY RIGHTS IN THE CONSTITUTION OF INDIA

\*Vineeth Thomas

Doctoral Fellow, Department of Politics and International Studies, Pondicherry University,  
Puducherry, India

### ARTICLE INFO

#### Article History:

Received 29<sup>th</sup> March, 2017  
Received in revised form  
14<sup>th</sup> April, 2017  
Accepted 26<sup>th</sup> May, 2017  
Published online 30<sup>th</sup> June, 2017

#### Key Words:

India,  
Religion,  
Communalism,  
Minorities,  
Indian Constitution.

### ABSTRACT

The term minority is a well versed one in the various arenas of life and academic circle. As per Oxford English dictionary, the literal meaning of minority is, "The smaller number or part, especially a number or part representing less than half of the whole." A more detailed and living explanation for the minority can be found in the scholarly works of academicians. According to Louis Wirth, a renowned Sociologist minority group is "a group of people who, because of their physical or cultural characteristics, are singled out from the others in the society in which they live for differential and unequal treatment, and who therefore regard themselves as objects of collective discrimination." India is a land of diversities housing large varieties of people with different culture, language, religion, caste, race, tribes, costumes, food habits, way of living, standard of living, party affiliations' so and so. Within this diversity, when it comes to religion, Hinduism is the majority religion in India with its 79.80 % population. India also has minority religions like Islam, Christianity, Jainism, Buddhism, Parsi, Sikhism etc. This numeral difference in the strength of believers of various religions is a fertile ground for communal violence and riots. This also makes the minorities vulnerable to the attacks of the majority religion and its believers. India has an inglorious history and legacy of many communal clashes and ferocity. Partition of India is a prominent example for justifying India's faded heritage on accounts of intolerant religious sentiments. Keeping the fresh memories of bloodshed communal riots and mutinies, the founding fathers and framers of Indian constitution were very particular and cautious to include such provisions in Indian Constitution, which can stop the communal violence and safeguard the rights of the minorities. In this context, this piece of paper intends to throw some light on various provisions of Indian constitution that are aimed at preventing communal insurgences, protecting the minority rights and keeping up the social morals of secularism and brotherhood. This paper also intends to analyse how minorities are being treated in the Constitution of India.

#### \*Corresponding author:

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Citation: Vineeth Thomas. 2017. "Minority rights in the constitution of India", *International Journal of Development Research*, 7, (06), 13445-13449.

## INTRODUCTION

It is a well acknowledged fact that India is a land of diversities. In the words of William J. Duiker, "A land of diversity India was and still is a land of diversity, which is evident in its languages and cultures as well as in its physical characteristics. India possess an incredible array of languages. It has a deserved reputation, along with the Middle East as the cradle of religion."<sup>1</sup>In the academic circle and international relations, India is crowned as the largest democracy in the world.

Democracy is a widely accepted way of political life of nation states whose legacy dates back to ancient Greek times and where each and every citizen of the state has their role and participation, directly or indirectly, in the day to day to political administration and decision-making process. It is a form of government whose foundation is strongly laid on the ideal pillars of justice, liberty, equality and rule of law making it as a universally accepted modus operandi for inclusive public administration and political system. Therefore, most of the Western scholars admired democracy more than any other form of governance. For instance, Larry Diamond and Gi-Wook Shin in their edited book opined that, "democracy is

<sup>1</sup>William J. Duiker, *The Essential World History*, Volume 1.(USA : Cengage Learning, 2010),p.30

the best form of government or the most preferred political system.”<sup>2</sup> But this does not mean that democracy is the ultimate one or all-wise. There are many who believed that in spite of admiring positive characteristics, democracy is not immune to minus, loopholes and cardinal paradoxes. Keeping this in mind Winston Churchill once said, “Democracy is the worst form of government except all the other forms that have been tried from time to time.”<sup>3</sup> J.S Mill found flaws in the basic structure and administration of democracy whereby the interests of the minority groups are being sacrificed as democracy stands for majority rule. J. S. Mill calls this phenomena as 'tyranny of majority'<sup>4</sup>

A government adopting democratic political system is based upon the criteria of majority. This put forward a slew of questions to rational and idealist political philosophers and common mass. What about the people and mass who did not vote for the ruling party, who do not belong to the religious background of government in rule and whose views and ideas are in contradiction with the majority in society? This makes the minority vulnerable to the attacks and atrocities of the majority classes. Thus in a democratic country like India it is quite natural and normal that minorities will sense insecurity and panic domination of the majority. In a multifaceted society, therefore, it is obvious that the minorities would clamour and petition constitutional safeguards for protecting their rights and privileges. It is a widely acknowledged truth that individual liberty and human rights have ample space and recognition in the working atmosphere of democracy. Democracy is “purported to be the political framework in which human rights are best safeguarded.”<sup>5</sup> It has constructed a political system and form of government where the rights and freedom of citizens are valued more than anything else. The same democracy which is based liberty, justice and equality also has a supplementary duty of upholding a balance between the rights and liberty of individual and groups. This pinpoints the importance of extending openings to groups to preserve their diverse and unique identities as well as ensuring ample space to individuals to advance and mature their personalities and potentialities to its brim.

## DEFINING MINORITIES

Minorities are generally those sect of people who are less in number and evidently stand distinct and unique from the majority. On accounts of their lesser strength, they tends to become more conscious about their rights and privileges and claims for constitutional rights and safeguards for their protection and upliftment. Louis Wirth opined that, “A minority is a group of people who because of their physical or cultural characteristics, are singled out from others in the society in which they live for differential and unequal treatment and who, therefore, regard themselves as objects of collective discrimination. Further, minority status carries with it an exclusion from full participation in the life of the society”.<sup>6</sup> Capotorti defined minority as,

“A group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members being nationals of the State possess ethnic, religious or linguistic characteristic different from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion and language.”<sup>7</sup>

## MINORITY AND MULTICULTURALISM IN INDIA

In retort to the continuous claims by the minority people even in the forward and developed first world countries and an in-depth link between the minorities difficulties and mass human rights violations throughout the world sparked a new thinking and deliberations in the academic circles which predominantly focussed on the politics and culture of minority and majority. This opened the door for the systematic and scientific examination of a concept called ‘multiculturalism’ in democratic theories. The political scientists started thinking scholarly insights and understandings about the existence of minorities in majority society and the importance of special rights, privileges and concessions to enable the minority to safeguard their distinct and unique identities of religion, caste, language, culture etc.<sup>8</sup>

Democracy and minorities are supplementary and complementary in nature as “we cannot have a democracy without minorities”<sup>9</sup> and “where there is no democracy the question of minorities as such cannot arise.”<sup>10</sup> The complementary and supplementary character of democracy and minorities act as a litmus test of success of a democracy. A diverse country like India can claim real success of democracy if the minorities sheltering in India enjoy maximum security, protection and confidence. Franklin Roosevelt highlights this datum and presages that “no democracy can long survive which does not accept as fundamental to its very existence the recognition of the rights of minorities.”<sup>11</sup>

India is socially, economically and ethnically a mosaic of diversity. “Under the traditional caste system, which still plays a key role in the society and in politics, there are at least, 3000 castes and 25000 sub castes in India. The country has 22 officially recognised languages that together constitute a mere fraction of more than 1500 mother tongues known to exist, 33 of which are spoken by more than 100,000 people.”<sup>12</sup> “There are 4635 identifiable communities diverse in biological traits, dress, language, forms of worship, occupation, food habits and kinship patterns in India. These communities derive roots from a mixed ancestry that includes the Proto-Australoid, Paleo-Mediterranean, Caucasian, Negroid and Mangoloid.”<sup>13</sup> It is a matter of flaunting to claim diversities in a society but it is not an easy job balance and maintain unity among these diversities.

<sup>7</sup>Capotorti’s definition about minorities in his article ‘minorities in 1985.

<sup>8</sup> Michael Freeman, *Human Rights, An Interdisciplinary Approach* (Cambridge: Polity Press, 2003), p. 116.

<sup>9</sup> Humayun Kabir, *Minorities in a Democracy* (Calcutta: Firma K.L. Mukhopadhyaya, 1968), pp. 6-8.

<sup>10</sup> Ibid.

<sup>11</sup> Soli J. Sorabjee, "Minorities: National and International Protection", in Iqbal A. Ansari, (ed.), *Readings on Minorities, Perspectives and Documents* (New Delhi: Institute of Objective Study), Vol. I, p.166.

<sup>12</sup> Carolyn M. Byerly, *The Palgrave International Handbook of Women and Journalism* (London: Palgrave, 2016), p.385.

<sup>13</sup> See John Dayal, *A Matter of Equity: Freedom of Faith in Secular India* (New Delhi :Anamika Publishers, 2007), p.13

<sup>2</sup>Larry Diamond, Gi-Wook Shin, *New Challenges for Maturing Democracies in Korea and Taiwan* (Stanford :Stanford University Press, 2014)

<sup>3</sup> Andrew Heywood, *Politics* (London :Macmillan, 1997), p.65

<sup>4</sup> Stefan Collini (ed.), John Stuart Mill; *On Liberty and Other Writings* (Cambridge :Cambridge University Press, 1989), p.8

<sup>5</sup>Trenton Fervor, *The Myth of American Democracy* (USA: iUniverse, 2013), p.30.

<sup>6</sup> Louis Wirth, "The Problem of Minority Groups" in Ralph Linton (ed.), *The Science of Man in the World Crisis* (New York: Columbia University Press, 1945), P. 347.

The political system of such a country will have the daunting task of addressing conflicts and disagreements emerge out of the competing and diagonally opposing interests and aspirations.<sup>14</sup> In India, the status and privileges of minorities has a unique and distinct connotation as it is “a confederation of minorities.”<sup>15</sup> The social, cultural, linguistic and cultural pluralism in India created a vicious circle for the peaceful co-existence of various identities. This also made the minorities vulnerable to the dominating whims and wishes of the majority. The demands and clamouring by the minorities in India for protection of their rights and identities are a serious headache for the Indian democracy. The “loggerhead between the minorities and majorities in India has a long dated history dating back to several centuries.”<sup>16</sup> The chronicles of India’s freedom struggle against the British imperialism and colonialism has many instances of communal riots whose culmination can be seen in the partition of the country, which has far reaching consequences on the minority rights.<sup>17</sup>

### CONSTITUENT ASSEMBLY ON MINORITY RIGHTS

Avowed to set up socio-economic and political set up which was conducive for the peaceful co-existence of diverse identities and communities of the country, the framers of Indian constitution was cautious to draft a constitution for the country that quench the thirst for national unity while accommodating the individual aspirations and demands of individual communities. After a lot of debates and discussions, the constituent assemble finally adopted a constitution which did not offer any special political right to any religious minority, except Anglo-Indians.<sup>18</sup> Keeping up the neutrality and impartiality of the state in religious affairs, the country was declared secular<sup>19</sup> Equality of opportunity and equality before law has been extended to every citizens of the country as per the provisions of the Indian constitution.<sup>20</sup> Indeed the Constitution of India does not offer any distinct and exclusive rights to minorities barring some rights concerning their language, culture and education.<sup>21</sup> This does not mean that the Constituent Assembly and Constitution of India were blindfolded to the upliftment process of the socially backward and historically discriminated and deprived sections of the society. It has incorporated various provisions and amendments for amelioration of the weaker sections of society.<sup>22</sup> An inspection of minority rights as detailed in the Constitution divulges that the minorities descend their rights predominantly from four sources:

#### The Preamble of the ‘Indian Constitution’

The preamble of the Indian Constitution begins as, “WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute

India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC....”<sup>23</sup> The preamble has authoritatively declare that India is a secular county. When the Constitution of India was passed in 1950, the word secular was not there in the preamble. It was through the 42<sup>nd</sup> amendment of the Indian Constitution, in 1976, the term secular was inculcated in the preamble. This does not mean that before its addition, the constitutional framers did not want India to be secular. It is just that in 42<sup>nd</sup> amendment, secularism was more explicitly proclaimed. Earlier, the secular characteristics of the country was pronounced implicitly through the Articles from 25 to 28, dealing with right to freedom of religion. The constitution of India personifies the positive aspect of the term secularism, ie, “all religions in our country (irrespective of their strength) have the same status and support from the state.”<sup>24</sup> This also means that no religion will be treated as national or state religion and no special privileges will be given to a particular religion. Every religion will have equal stature and respect in front of Indian state. In this regard Neera Chandhoke rightly observed: “It is not surprising that secularism in the Indian polity as a response to our conditions and mode of thought came to be conceptualized as Sarva Dharma Sambhava or equality of all religions.”<sup>25</sup>

### Part III of the Indian Constitution

Part III of the Indian Constitution contains the cardinal part of Indian constitution. It is in this part, from article 12-35, Fundamental Rights are enshrined. In this matter, it was the Constitution of USA which gave inspiration to the constitutional framers to create detailed and justiciable fundamental rights. The benefits and privileges guaranteed under fundamental rights are entitled to all the citizens of the country without any discrimination. The dignity of the individual, the equality of society, protection of larger public interest and safeguard of national unity are ensured by the provisions of fundamental rights. Since the rights are guaranteed and protected by the constitution, the supreme law of the country, they are called as fundamental rights. Since these rights are equal to everyone, minorities too have the coverage of it. In this context following are the fundamental rights that ensure security and safeguard the rights and privileges of minorities of the country.

Article 14 of the Indian Constitution articulates that, “The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.” As per this provision, every citizen of the country will be have equal access and protection of law. No one will be seen a bit higher than the other in legal jurisprudence. Nevertheless Article 15(4) reads, “Nothing in this Article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the scheduled castes and the scheduled tribes.” This article gave constitutional authorisation to the government machineries to make any special provisions for the advancement of the backward sections of the society.

In the Gopal Singh Committee Report and the Sachar Committee Report the educational and economic

<sup>14</sup> Abdul Rahim P. Vijapur, Ajay Kumar Singh and Kumar Suresh, *Pluralism, Minorities, National Integration, Problems and Prospects* ( New Delhi, South Asian Publishers, 1997), p.5

<sup>15</sup> Moin Shakir, *Politics of Minorities Some Perspectives* ( New Delhi :Ajanta Publications, 1980), p.33

<sup>16</sup> Yakov Gilinskiy, Thomas Albert Gilly, Vladimir Sergevnin(eds), *The Ethics of Terrorism: Innovative Approaches from an International Perspective* (Springfield :Charles C Thomas Publisher, 2009),p.21

<sup>17</sup> B. Shiva Rao, *The Framing of India's Constitution, A Study* (Uttar Pradesh: Universal Law Publishing,1967)p. 77

<sup>18</sup> Article 331 and 333 of the Indian Constitution gives special political representation for Anglo Indian communities.

<sup>19</sup> Constitution (Forty-Second Amendment) Act, 1976.

<sup>20</sup> Article 14-18 of the Indian Constitution

<sup>21</sup> Articles 29 and 30 of the Indian Constitution

<sup>22</sup> Articles 15 (4) (5) and 16 (4) provides special provisions like reservation for weaker sections.

<sup>23</sup> Preamble, Indian Constitution

<sup>24</sup> Rakesh Dwivedi, G.S in 60 Days (New Delhi: Tata McGraw-Hill Education, 2010), p.3.8.

<sup>25</sup> Neera Chandhoke, *Beyond Secularism, The Rights of Religious Minorities* (New Delhi: Oxford University Press, 1999), p.42.

backwardness of the Muslims were underpinned. Various states in India like Kerala, Tamil Nadu etc extends the benefits and coverage of reservation to Muslims as well, who belongs to the minority section of Indian society.

Article 19 of the Indian Constitution expresses that, "All citizens shall have the right

- To freedom of speech and expression;
- To assemble peaceably and without arms;
- To form associations or unions;
- To move freely throughout the territory of India;
- To reside and settle in any part of the territory of India and
- To practise any profession, or to carry on any occupation, trade or business"

These freedoms are the hallmarks of a successful political democracy. They are the linchpin for one's over all development and peaceful and fruitful existence in a human society. For the advancement and progress of minorities, these freedoms of expression, assembly, union, movement, profession, settlement etc are quintessential. If these freedoms are not constitutionally ensured, the minority rights have the chances of getting suppressed by the majority sections of the society.

Article 25 of the Indian Constitution voices that, "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, practise and propagate religion." This right gives the freedom to an individual to follow, practice and spread religion of individual choice. State cannot impose or curb any particular religious convention or tradition. This gives a kind of immunity to minorities from the attacks of majority religions of the country.

Article 26 of the Indian Constitution states that, "Subject to public order, morality and health, every religious denomination or any section thereof shall have the right

- To establish and maintain institutions for religious and charitable purposes;
- To manage its own affairs in matters of religion
- To own and acquire movable and immovable property; and
- To administer such property in accordance with law."

These rights protects and guarantee the collective rights of a religion. This will give a safety and protection to the communal rights and privileges of minority religions.

Article 27 of the Indian Constitution utters that, "No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination " This ensures that state is not spending the public money for the welfare and upliftment of a particular religion at the cost of many including minority religions. When a government is formed who is having affiliation to majority religion, chances of minority religions, beings secluded and sidelined are higher. But the provisions of article 27 is a block to this kind of biased tendencies.

Article 28 of the Indian Constitution tells that, "No religious instruction shall be provided in any educational institution wholly maintained out of State funds." This article ensure that no fully/partially state funded educational institution compel anyone to follow religious instructions. This will also protect the minorities from any attempt of the majority religious educational institution to compulsorily follow their religious instructions.

Article 29 of the Indian Constitution says that, "(1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.(2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them." This is one of such article which explicitly and exclusively deals about the minorities of the country. These articles provide a helping hand for the minorities to defend and safeguard their distinct language, culture and script.

Article 30 of the Indian Constitution states that, "(1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice. (2) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language." This article gives the right to the minorities to start and manage educational institution and prevent state from showing discrimination while granting aid to educational institution.

### **Directive Principles of State Policy'**

'Directive Principles of State Policy' are those directives and reminders that a state of India should keep in mind while legislating laws, framing policies and executing the same. Articles 36 to 51, deals with the 'Directive Principles of State policy'. Along with 'Fundamental Rights', 'Directive Principles of State Policy' formulate the heart and soul of Indian political system and public administration. In this regard Granville Austin has termed, "the Directive Principles and the Fundamental Rights as the Conscience of the Constitution."

Directly or indirectly, Directive Principles of State Policy do have articles and provisions that act as a safety measure for the rights of minorities in India. Some of them are following

- Article 38 states that, "The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life." Here by reminding state to ensure various dimensions of justice, the rights of minorities are also being secured.
- Article 39 asks state to ensure free legal assistance and equal justice of various dimensions. This will give a warranted support for the rights of the minorities.
- Article 46 appeals State to take necessary measures and actions that promote with educational and economic advancement of the weaker sections of the people. Keeping this in mind, government has introduced many policies like reservation, scholarships, loans, skill

development trainings etc for the weaker sections of the society including the minorities.

- Article 49 cautions “state to protect the monuments and places and objects of national importance.” This will help to shield and preserve the historical monuments of the minorities in the country from the risks of spoliation, defacement, demolition, deletion, discarding or export.
- Article 51 demands state to adhere and follow to international treaties and laws. Many of these treaties at international level, including that of UN, pinpoint towards an inclusive, socially just and equal society by respecting individual liberty.

### Miscellaneous Articles in Indian Constitution

Apart from the aforesaid provisions and safeguards provided in the Preamble, Fundamental Rights and Directive Principles of State Policy, there are some other articles scattered in the Indian Constitution which openly or silently speak about the rights and privileges of minorities in India. Some of them are as follows:

- Article 347 talks about special provision of giving power to the President to officially recognise a language, which is being spoken by the substantial population. This can act as a defense for the languages of minority people.

- Articles 331, 333, 334, 336 and 337 have the special provisions of “guaranteeing representation of Anglo-Indians in Union and State legislatures through nominations if needed, special provision for the community in certain services, and special provision with respect to educational grants for their benefit.”
- Article 350(B) has the provision of appointing a ‘Special Officer for linguistic minorities’ by the President “whose duty shall be to investigate all matters relating to the safeguards provided for linguistic minorities under this Constitution and report to the President upon those matters.”

### Conclusion

The Indian Constitution is a treasure where minorities can find various articles and provisions that safeguard their rights and privileges. The Constitution of India is an archetypal instance of accommodating and adjusting various claims of people belonging to multifaceted cultures and identities. In Indian Constitution, there are many ways through which the minorities safeguard their rights. These include the ideals enshrined in the ‘preamble’, ‘Fundamental Rights’, ‘Directive Principles of State Policy’ and various other articles and provisions. Therefore it is crystal clear that, Indian Constitution has significant role and is important source of guaranteeing the rights and privileges of the minorities in India.

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