

## CONSTITUTIONAL GOVERNANCE AND PROTECTION OF MINORITIES

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The fundamental law of the land is its constitution and therefore the subject of constitution law is of paramount importance. Constitutional law describes the framework of governance of a nation. It assigns various powers and privileges to the government and further structures into three main organs i.e. Legislature; Executive and Judiciary. The study of Constitutional Law provides interpretation of various provisions and also lays down the power to amend with the changing needs of the citizens.

Man by nature is a social animal. He has to be dependent upon others to satisfy or fulfill his needs and demands. Codes of conduct or rules are significant to control the relationships of one man with the other to ensure peace and order within a society. The Constitution of India is the longest written constitution of any sovereign country in the world containing 144 articles, in 22 parts, 12 schedules and 118 amendments with 146,385 words in English language. The philosophy of Indian Constitution and the objectives of governance have been enshrined in the preamble of the constitution which sets out the guiding purpose and principles of the document.

It expressly guarantees each of its citizens the Liberty to worship or to have faith in any religion. India is a secular state; it does not uplift or degrade any particular religion. It stands for the right to freedom of religion for all the citizens in discriminatory. Explain the meaning of 'secularism' as adopted by India, Alexander Owies has written, "secularism is a part of the basic of the Indian Constitution and it means equal freedom and respect for all religions."<sup>1</sup> Mentioning the Preamble of our Law of the Land, the utmost priority given to its people is worth mentioning. India follows a parliamentary form of government. It is the largest democracy where the interests of its citizens are reflected while framing of policies, statutes and treaties. The census of 2011 data indicated that Hinduism is professed by majority of population. The Hindu is majority in states and Union Territories except Manipur, Arunachal Pradesh, Nagaland, Mizoram, Meghalaya, Lakshwadeep, Punjab and Jammu and Kashmir. As regards to the religious minorities are those who profess a religion other than Hinduism.

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<sup>1</sup> M. Laxmikanth, Indian Polity, 4<sup>th</sup> edition, Mc Graw Hill Education

The Muslims is the largest religious minority followed by Christians, Sikhs, Buddhists, Jains and Parsis.<sup>2</sup>

The ratios between the minority and majority groups often create conflicts as a result of which the internal peace and functioning of a nation gets affected. The topic of “minorities” interests has been used in almost every other day of our lives. This can be very much observed during the time of elections politicians in order to get votes, make many promises for the upliftment and promotion of the rights and interests of minorities.

Before I put my views on explain what are the different problems faced by the minority population in context of education, livelihood, social status etc, it is pertinent to answer certain questions. Who are minorities? Which community fits under the definition of minorities? What is their existence in the country? What rights are guaranteed by statutes for their upliftment and growth? These questions and responses to them have been a subject of number of studies and lengthy debates in forums where the protection of minorities are addressed. However no definite answer to this has been able to convince yet. The reason is that when we see the term “minorities” as a whole we also note that not each of these lists is subjected to discrimination or inequality. Some of them are working as well as residing with the majority group of Indian population while there are some others who are separated by the dominants, while few others are scattered and some are living under extreme poor conditions. It is significant to note the various kinds of minorities. Let us try and understand each of them in brief.

*Ethnic or Racial Minorities:* Society is the mixture of various cultures, traditions and religions. One human is in some or the other way different from its neighbor. Similarly there can be persons belonging to different ethics and races. Thus we can see that one race which is different from the race of majority automatically comes under the minority group.

*Religious Minorities:* This kind comprises of people who profess and have faith or belief in a religion which is not similar to the religion professed by majority of population. For Example India is a Secular state and gives a right to each of its citizens to follow any religion of their choice and that is why we have a population who follows Hinduism and a Muslim population who follows Islam.

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<sup>2</sup> Available at: [www.shillongtimes.com/2016/01/09/who-are-minorities-under-indian-law](http://www.shillongtimes.com/2016/01/09/who-are-minorities-under-indian-law)

*Gender Minorities:* From the heading itself it is clear that such kind refers to an imbalanced ratio between men and women. Women acquire often a subordinate status to that of men. Whenever we discuss about the gender minorities at National as well as International level, we are not confining our views to male and female. We also take into account Lesbians, Gay, Bisexual and Transgender people. The acronym LGBT is currently used to identify these groups together and has been popular in the late 19<sup>th</sup> century.

*Age Minorities:* Any society, irrespective of its diversification, is dominated by the ones who have been a part of the previous generation. Most of the rules of conduct to govern the society reflect their influential role in the framework. So here children, who are bound to follow such rules, can also be understood as a part of minority circle with regards to age.

*Disabled Minorities:* In the recent years there had been several movements for promoting the rights of Disabled persons has created a lot of awareness and has drawn attention towards the disabled minorities. They are not only face disadvantaged from their body but from the society as well. Lastly

Though the constitution of India does not define the term minorities but Ministry of Minority Affairs in India, the apex body which works for safeguarding their rights, recognizes Muslims, Jains, Sikhs, Buddhists and Parsis as religious communities of minority.<sup>3</sup>

A good constitution ensures a better future because it is the fundamental law of the country which assigns and directs the government how to function. The prominent beauty of our Constitution is that it was drafted by a Constituent Assembly which makes it above the Parliament. Thus, it imparts 'constitutional supremacy' and not 'parliamentary supremacy'. The idea of appointing a constituent assembly of India was proposed in 1934 by M. N. Roy who was born in a Brahmin family. It is worth mentioning the important figures, among 389 members, of the constituent assembly. Dr. B.R. Ambedhkar, Sanjay Phakey, Jawaharlal Nehru, C.Rajagoplalchari, Rajendra Prasad, Sarsar Vallabhbhai Patel, Maulana Abul Kalam Azad, Sandip Kumar Patel, Shyama Prasad Mukherjee, Nalini Rajan Ghosh and Balwantrai Mehta. There were more than 30 members of SC and Parsis were represented by H.P. Modi.<sup>4</sup> We can also trace the existence of a committee that worked for minorities then, even before the constitution was framed. This was headed by Harendra Coomar Mookerjee, who was a

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<sup>3</sup> Available at: [https://en.wikipedia.org/wiki/Ministry\\_of\\_Minority\\_Affairs](https://en.wikipedia.org/wiki/Ministry_of_Minority_Affairs)

<sup>4</sup> Available at: <http://en.wikipedia.org/wiki/constituent-assembly-of-india>

Christian. Apart from this, some of the important women members were Sarojini Naidu, Durgabai Deshmukh, Rajkumari Amrit Kaur & Vijayalakshmi Pandit.<sup>5</sup> It can imply that during the period when the constitution was drafted every aspect of each society was taken into consideration. There were a total of 389 members belonging to different religion, faith and class which helped in the contemporary time so resolve certain conflicts. The concern for minority section was very much thought upon and was worked accordingly by our great leaders and framers. The role of constitution is to achieve certain objectives. Once the people have chosen their form of government, they have the right to limit the government officials, who may not depot to such rules. With the doctrine of Separation of Powers and Checks & Balances the unregulated and arbitrariness on the side of government is prevented to a great extent. Legislature has the power to laws and policies which can fulfill the aspirations of citizens. The other branch i.e. The Executive enjoys the administrative power of executing the laws. The Judiciary has a very significant role in imparting justice to those who seek for it. Adoption of a federal form of system, promotes the division of powers and the subjects among the Central, Provincial and regional level. It prevents the one branch from overburdening. This structure helps in improving efficiency in dealing with national issues. Federalism is exemplified by signifying countries like U.S.A; Australia; Britain; Canada; Brazil as a model in understanding.

The experience of sixty years of constitutional governance helps us in understanding the working of the constitution in general and role of judiciary in particular. Given range and extents of crimes in our society, there is a need to expand the judiciary. The substantial context of “constitutionalism” states that a government must function in accordance with the provision laid down in its constitution which means that actions of a government must reflect constitutionality in its performance. There is no exhaustive attribute to prove whether a country follows the philosophy of constitutionalism. However there have been certain requisites evolved with leading cases whose presence can imply constitutional governance of the nation. These are as follows:

Preamble

Rule of Law

Separation of Powers

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<sup>5</sup> Available at: [www.parliamentofindia.nic.in/debate/facts.htm](http://www.parliamentofindia.nic.in/debate/facts.htm)

## Judicial Review

In case of *Keshavanand Bharti v. State of Kerala*<sup>6</sup>, 13 judges largest bench of Indian constitutional history rejected previous contentions and declared that Preamble is a part of Indian Constitution.

## PROBLEMS OF THE MINORITIES

A constitutional government must also protect the rights of the minority. While many decisions in a constitutional government are made with the consent of majority, minorities and individuals cannot lose their right to say their grievance on the same platform. There are certain difficulties faced by the minority section of India many a times. Let us look into some of the common yet pertinent problems:

*Problem of providing protection:* Need for security and protection is very often felt by the minorities. Especially in times of communal violence, caste conflicts, observance of festivals and religious functions on a mass scale, minority groups often seek police protection. Government in power also finds it difficult to provide such a protection to all the members of the minorities. It is highly expensive also. State governments which fail to provide such protection are always criticized. For example, the Rajiv Gandhi Government was severely criticized for its failure to give protection to the Sikh community in the Union Territory of Delhi on the eve of the communal violence that broke out there soon after the assassination of Indira Gandhi in 1984. The Gujarat State Government was criticized for its inability to provide protection to the Muslim minorities in the recent [Feb. Mar. – 2002] communal violence that burst out.

*Problem of Identity:* Because of the differences in socio-cultural practices, history and backgrounds, minorities have to grapple with the issue of identity everywhere which give rise to the problem of adjustment with the majority community.

*Failure to promote Secularism:* Almost all political parties including the Muslim League claim themselves to be secular. But in actual practice, no party is honest in its commitment to secularism; purely religious issues are often politicized by these parties. Similarly, secular issues and purely law and order problems are given religious colors. These parties are always waiting for an opportunity to politicalise communal issues and take political advantage out of

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<sup>6</sup> AIR 1973 SC 1461

it. Hence, the credibility of these parties in their commitment to secularism is lost. This has created suspicion and feeling of insecurity in the minds of minorities.

*Problem relating to the Introduction of Common Civil Code:* Another major hurdle that we find in the relation between the majority and the minority is relating to the failure of Governments which have assumed power so far, in the introduction of a common civil code. It is argued that social equality is possible only when a common civil code is enforced throughout the nation. Some communities, particularly the Muslims oppose it. They argue that the imposition of a common civil code, as it is opposed to the “Shariat” will take away their religious freedom. This issue has become controversial today. It has further widened the gap between the religious communities.

### **CONSTITUTIONAL PROVISIONS FOR MINORITIES IN INDIA**

For the protection of the interests of minorities, constitution of India has envisaged certain provisions. These are discussed under the Part III, IV and IV-A viz. fundamental rights; Directive principles of state policy and fundamental duties respectively. The Indian Constitution ensures Justice, social, economic and political to all its citizens. It lays down provisions for protecting and promoting the rights and interests of religious and ethnic minorities as well as socially and economically disadvantaged classes such as the SC & ST. It has been discussed much in my paper about the secular nature adopted by India through 42<sup>nd</sup> Amendment Act of 1976. Article 29 gives the religious and linguistic minorities’ right to establish and manage educational institutions of their own. The minorities have been given the unrestricted rights to promote and preserve their own culture. Indeed, India is a country of diverse cultural groups and she is keen to preserve her cultural diversity. Thus for example, even though, Hindi is made the official language of India, primary education everywhere is given in the mother tongue. Article 29 expressly forbids discrimination on grounds of race, religion, caste, language, in admission to educational institutions run by the state or receiving aids from the state. This means that the doors of all educational institutions run by government or receiving funds from the state are open to all groups of Indians. Linguistic, religious or ethnic minority students cannot be denied admission to such educational institutions.

Article 30 is vital to the protection and preservation of rights of the minorities. The minorities have been given the right to establish and administer educational institutions of their choice.

The state also cannot discriminate against educational institutions established and managed by the minorities in matters of granting aids. Such educational institutions however must receive state recognition. The state educational authorities have the right to regulate such educational institutions because the “right to manage does not include the right to mismanage.”

Article 16 guarantees that in matters of public employment, no discrimination shall be made on grounds of race, religion, caste or language etc. This means that in matters of public employment, all Indians are placed on a footing of equality. Every citizen of India will get equal employment opportunity in government offices.

Article 25 of the Indian constitution guarantees freedom of religion to every individual. This article of the Indian constitution ensures that the members of the religious minority community have the unhindered right to follow their own religion. The state regulates the practice of a religion only when and to the extent it disturbs public peace.

Union government has enacted legislations to work on this issue. The Ministry for Minority Affairs, the National Human Rights Commission (NHRC), and the National Commission for Minorities (NCM) are governmental bodies created to investigate allegations of religious and other forms of discrimination and make recommendations for redress to the relevant local or national government authorities. Although NHRC recommendations do not have the force of law, central and local authorities generally followed them. The NCM and NHRC intervened in several instances of communal tension, the enactment of ‘anti conversion’ legislation in several states, and incidents of harassment and violence against minorities. Such intervention included high profile cases, such as the 2002 anti-Muslim violence in Gujarat and the 2008 attacks against Christians in Orissa. The national government earmarked approximately 26 billion rupees (\$552 million) for 2010-11 - an increase of 50 percent from the prior year – for the Ministry of Minority Affairs. On March 17, the Ministry of Minority Affairs informed parliament that the NCM had received 2,268 complaints in 2008-2009, compared to 1,508 complaints received in 2007-2008. The Muslim community submitted the most complaints. Despite government efforts to foster communal harmony, some extremists continued to view ineffective investigation and prosecution of attacks on religious minorities as a signal that they could commit such violence with impunity, although numerous cases were in the courts at the end of the reporting period. The government introduced the Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill in the Rajya Sabha, the upper house

of parliament, in 2005. A parliamentary standing committee rejected the bill and called for a new law that provided for speedy prosecution; strict punishment for perpetrators of sectarian violence; and quick justice, relief, rehabilitation, and compensation for victims and survivors. The country established a National Commission for Minority Education Institutions that was empowered to resolve disputes and investigate complaints regarding violations of minority rights, including the right to establish and administer educational institutions.<sup>7</sup>

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<sup>7</sup> Available at: <https://www.state.gov/documents/organization/171754.pdf>