

CULTURAL AND EDUCATIONAL RIGHTS OF MINORITIES: A DISCUSSION

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Abstract

‘Equality’ is a prospect no country can survive without. It’s also something that can never be achieved completely. In a developing country like India, which is a mixed bag of cultures, the rights of the minority groups matter a lot. Since around 19% of India’s population belongs to the minority group¹, their development and progress is vital for the overall development of the nation.

It is estimated that around 142 million children are denied education in India. This is more than the total population of Japan.

The educational rights and the cultural rights of the minorities are also to be dealt with. Are the legislations currently trying to do justice to the minorities efficient enough? What did the framers of the constitution have in mind when they framed the constitution? The laws that currently legislate the welfare of minorities are prospective in nature. But how far prospective are they? The legislations have been interpreted amicably by the ‘temples of justice’² in India to increase or widen their³ scope and to ensure that justice is done in all aspects.

¹ According to the census conducted by the Government of India in 2011, Available at <https://web.archive.org/web/20150825155850/http://www.censusindia.gov.in/2011census/C-01/DDW00C-01%20MDDS.XLS>

² Term denoting Courts of Law.

³ Here ‘their’ refers to the legislations governing the welfare of minorities in India.

INTRODUCTION

The Indian Constitution ensures '*justice; social, economic and political*' to all its citizens. It has established a judiciary that functions on the basis of equity and good conscience. The intelligent Indians who drafted the constitution created various provisions in it to ensure the protection of the backward classes. They made sure that the religious and ethnic minorities were safeguarded and also made sure that the economically backward people would be protected.

India, in the preamble of the constitution, declares herself to be a secular state meaning the state has no official religion that is imposed on its citizens no matter how overwhelming their majority is.

Article 29 of the Constitution of India is,

"Protection of interests of minorities:

- (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 article expressly forbids discrimination on the grounds of race, religion, caste, language, in admission to educational institutions of their own. India is a country of diverse cultural and ethnic societies. Under this Article, the minorities have been given the unrestricted rights to promote and preserve their own culture. Article 29 also provides the linguistic and religious minorities the right to establish and manage educational institutions of their own. But, discrimination is prohibited, and hence, the doors of all such educational institutions that are run by the government or receive funds from the government are open to all groups of Indians.

Article 30 of the Constitution of India is,

Right of minorities to establish and administer educational institutions

- (1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.*
- (1A) In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.*

(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

Article 30 is vital to the protection of the minorities. Under this Article, the minorities have been given the right to establish and administer educational institutions of their choice. In matters of granting aids, the state cannot discriminate against educational institutions established and managed by the minorities. Such educational institutions are however, under the guidance of the state educational authorities since they have been given the right to manage the institutions, not mismanage them.⁴

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 will receive the same treatment and there shan't be any kind of discrimination. Every citizen of India will get equal employment opportunities in the government offices.

Article 25 of the Constitution of India guarantees freedom of religion to every citizen of India. This article of the constitution ensures that the members of the religious minority community are allowed to follow their respective religion without any hindrance.

It is now clear that a minority group can maintain an educational institution and reserve a certain number of seats in that institution only for students belonging to its group.⁵

The minority rights in India are comparatively very secure. They protect the rights of the institutions in the most precise way possible without harming the interest of the rest of the citizens of India.

DISCUSSION

"It may be asked how a man can be at once free and forced to conform to wills which are not his own. How can the opposing minority be both free and subject to laws to which they have not consented?"

- Jean Jacques Rousseau

Any version of democracy that neglects the existence of minorities is not only inadequate but also ineffective.

These cultural and educational rights that are granted to the minorities are a vital necessity for the upliftment of the minority communities in India. Culture defines us; it defines the way we live and behave; and that is why, the preservation of minority culture, language and religion

⁴ As given in the *obiter dictum* of J. S. N. Variava in the case of TMA PAI Foundation & Ors vs. State of Karnataka & Ors.
AIR (2003) SC 355

⁵ This contention was cleared in the case of TMA Pai Foundation & Ors vs. State of Karnataka & Ors.
AIR (2003) SC 355

is so un-ignorable. A community changes only when its mindset changes and its mindset changes only when it's educated. Therefore, to ensure the development and transformation of the minority communities, we must ensure their education. The idea of giving the backward classes some special privilege is not meant to hurt the sentiments of the other classes or to treat them unequally but, instead to foster to the minorities' sense of security.

MINORITY

Before we reflect upon the rights of the minorities, let us reflect on what is minority?

The term 'minority' has not been defined in the constitution. The honourable Supreme Court of India in *Kerala Education Bill*⁶ which was referred to it by the then President of India under Article 143(1), held that, 'minority' means,

"Community, which is numerically less than 50 percent of the total population"

In another case, *A. M. Patroniv v. Kesavan*⁷, a divisional bench of the Kerala High Court held that

"Since the word 'minority' has not been defined in the constitution, and in the absence of any special definition, any community, religious or linguistic, which is numerically less than 50% of the population of the state concerned, is entitled to fundamental right guaranteed under Article 30 of the Indian Constitution."

In the case of *D. A. V College, Bhatinda v. State of Punjab and Others*⁸ the honourable Supreme Court of India held that,

"What constitute a linguistic or religious minority must be judged in relation to the State inasmuch as the impugned Act was a State Act and not in relation to the whole of India."

In the case of *T. M. A. Pai Foundation v. State of Karnataka*⁹, CJ Kirpal said that,

"A linguistic and religious minority are covered by the expression 'minority' under Article 30 of the constitution. Linguistic lines, therefore for the purpose of determining minority, the unit will be the state and not the whole of India. Thus religious and linguistic minorities, who have been put at per Article 30 have to be considered State wise."

In *St. Stephen's College v. University of Delhi*¹⁰, the apex court of India held that,

"The minority under Article 30 must necessarily mean those who form a distinct or identifiable group of citizens of India."

⁶ AIR 1958 SC 956

⁷ AIR 1965 Ker. 75 at p. 76

⁸ 1971 (Supp) SCR 677

⁹ AIR 2003 SC 355 at p. 418

¹⁰ AIR 1992 SC 1630

One of the most important cases was *Bal Patil v. Union of India*¹¹, where the court held that,

*“The central government had to exercise its power for identification of minority group not merely on the recommendation of the commission but on consideration of the social, cultural and religious conditions of the community in such state. **Statistical data produced to show that a community is numerically a minority cannot be the sole criterion.** If it is found that a majority of the members of the community belong to the affluent class of industrialists, businessmen or professionals and propertied class, it may not be necessary to notify them as minority under the Act and extend any special treatment or protection to them as minority under the Act.”*

These minority rights are not just recognised under the Indian Constitution but also under various international treaties, declarations and conventions.

CULTURAL RIGHTS

The Right to Culture is given even under the Universal Declaration of Human Rights.¹² Article 27 of the Universal Declaration of Human Rights says:

1. *Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.*
2. *Everyone has the right to protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is author.*

The expression “everyone has the right freely to participate in the cultural life of the community” implies that it is duty of governments not merely to respect the right of everyone to participate in the cultural life of the community but also to provide everyone with the effective means of participating in the cultural life.¹³

Even under the *International Covenant on Economic, Social and Cultural Rights*, the cultural rights of a person are recognised. Article 15 of the Covenant¹⁴ says,

1. *The State parties to the present covenant recognize the right of everyone.*
 - (a) *To take part in cultural life.*
 - (b) *To enjoy the benefits of scientific progress and its applications.*
 - (c) *To benefit from the protection of the moral and material interests resulting from any scientific literary or artistic production, of which he is the author.*

¹¹ AIR 2005 SC 3172

¹² Article 27 of the Universal Declaration of Human Rights.

¹³ Dr. U Chandra, Human Rights, 7th Ed. 2007, p-228.

¹⁴ International Covenant on Economic, Social and Cultural Rights

The Right to Culture, mentioned under the Universal Declaration of Human Rights¹⁵ and the International Covenant on Economic, Social and Cultural Rights events are granted and respected irrespective of caste, creed, race, religion or sex.

Though none of these conventions stress particularly on the rights of the minorities, article 27 of the International Covenant of Civil and Political Right states that,

“In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minority shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.”

EDUCATIONAL RIGHTS

Article 26(1) of the UDHR emphasizes that everyone has the right to education. It also says that education should be free, at least in the fundamental stages. It emphasizes that elementary education is compulsory. Also, sub clause 2 of Article 26 says that,

“Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups and shall further the activities of the United Nations for maintenance of peace.”

Clause 3 of the same article of the same convention¹⁶ says that parents have a prior right to choose the kind of education that shall be given to their children.

Under the International Covenant on Economic, Social and Cultural Rights also, education has been immensely emphasized upon. Article 13(1) of this convention says,

“They further agree that education shall enable all person to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial ethnic or religious groups and further the activities of the United Nations for the maintenance of peace.”¹⁷

Sub clause 2 of Article 13¹⁸ says that,

- (a) Primary education shall be compulsory and available free to all.*
- (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means and in particular by the progressive introduction of free education.*

¹⁵ Hereinafter referred to as “UDHR”

¹⁶ Article 26 of the Universal Declaration of Human Rights.

¹⁷ Here ‘They’ refers to the states party to the treaty.

¹⁸ Of the International Covenant on Economic, Social and Cultural Rights.

- (c) *Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education.*
- (d) *The development of a system of school at all level shall be actively pursued, an adequate fellowship system shall be established and the material conditions of teaching staff shall be continuously improved.*

Article 5 of the International Covenant on the Elimination of all form of Racial Discrimination stresses on the right of education to everyone without distinction as to the race, colour and national or ethnic origin.

RIGHTS OF MINORITIES ACCORDING TO INDIAN CONSTITUTIONAL PERSPECTIVE

‘India is a melting pot of cultures’

- Jawaharlal Nehru

Our First prime minister, ‘Chacha’ Jawarlal Nehru said that India was a melting pot of cultures. He took pride in telling that because even though Indians comprised of so many different cultures, we all existed together in a symbiotic environment. We first belonged to our country and then our ethnic groups. But, after independence, these ethnic groups shed the essence of togetherness and started vying for cultural dominance. Some cultures who were very few in number or who were ostracised traditionally were never given an opportunity to grow. The framers of our constitution, who foresaw this made sure to safeguard the interests of these minority groups. At the Fifth Session of the Constituent Assembly, the Chairman, the first President of Independent India, Dr. Rajendra Prasad 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 in any form 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 its companions, hunger and disease, to abolish distinction and exploitation and to ensure decent condition of living.”

Dr. B R Ambedkar, the Chairman of the Drafting Committee stated in the Constituent Assembly that,

“It is wrong for the majority to deny the existence of the minorities to perpetuate. A solution must be found which will serve the double purpose. It must recognize the existence of the minorities to start with. It will also be such that it will enable majorities to merge some day into one”.

Along with article 29 and 30 of the Indian Constitution, Article 350A and 350B also help in empowering the minorities in the country.

Article 350A states that,

It shall be the endeavour of every State and of every local authority within the State to provide adequate facilities for instruction in the mother tongue at the primary stage of education to children belonging to linguistic minority groups; and the President may issue such direction to any state as he considers necessary or proper for securing the provision of such facilities.

This article enables the minority groups to preserve their language; indirectly enabling them to preserve their culture and tradition thereby fostering their growth and security.

And Article 350B states that,

- (1) There shall be a special officer for linguistic minorities to be appointed by the President.*
- (2) It shall be the duty of the special officer to investigate all matters relating to the safeguards provided for linguistic minorities under this constitution and report to the President upon those matters at such intervals as the President may direct, and the President shall cause all such reports to be laid before each House of President, and sent to the governments of States concerned.*

This Article ensures that the maxim of ‘*parens patriae*’ is upheld. The officer thus appointed for the minority group will ensure that the government fulfils its promises and also ensures that the government hears about the problems faced by the respective community.

CONCLUSION

Our constitution and its framers believed that our diversity was our strength.

Even though there are International treaties and conventions upholding the notion of ‘Human Rights’ all around the world; and despite many countries participating and signing such memorandums, it has been still observed that these have not been completely effective. In developing countries like India, where the enforcement of law is not very easy due to ethnic diversity, there still prevails many kinds of inequality; economic, cultural and ethnic.

Elementary education in India, is not just imparted by government schools, but is also imparted by private ones. It is generally observed that the education provided by the private entities is much better and effective than the education provided by the government schools. Also, the private schools are English Medium based whereas the government ones are usually the respective state-mother tongue based.

Reservation also hasn’t been much helpful in uplifting the minorities. Many of them have lost the urge to strive. They are content just after they cut the minimum criteria for acquiring merit from reservation. Very few strive to acquire the maximum merit without reservation. Reservations have sculpted their minds to depend on reservations for everything; be it education, jobs or food for living. This isn’t helping them progress in any way.

It is estimated that 142 million children in India are denied access to primary and secondary education due to inadequate schools or social and family conditions. That number is bigger than the entire population of Japan.¹⁹

There is a need for the development of clear guidelines for the exercise of regulatory powers by the states. The government should strive to strike a balance between the legislation in the country and the norms set by the international community.

¹⁹ Ashok Malik, “Set Priorities”, The Times of India, Kolkata, Sep 17, 2010, p. 18