

human rights of the people. We have to see if they safeguard, or protect the human rights uniformly or favour the haves and have-nots differently. We have to wait and see whether the changes brought about by Act 5 of 2009 to Sections 41 and 41A leads to

arrest by consent or lead to arrest by class selection. The authors approach may not be correct. It is a view point or the perspective for discussion of the esteemed readers. There cannot be any difference of opinion that when untruth reigns the truth cannot triumph.

MINORITIES UNDER INDIAN CONSTITUTIONAL LAW

By

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The expression “minority” has been derived from the Latin word “minor” and suffix “ity” which means “small in numbers”. 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.

According to *Encyclopaedia Britannica* minorities means “group held together by ties of common decent, language or religious faith and feeling different in these respects from the inhabitant of a given political entity.”

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*”.

The Constitution does not define the terms ‘minority’, nor does it lay down sufficient indicia to the test for determination of a group as minority.

The framers of the Indian Constitution made no efforts to bring it within the confines of a formulation. Even in the face of doubts being expressed over the advisability of leaving vague justiciable rights to undefined minorities, the members of the Constituent Assembly made no attempt to define the term while Article 23 of the Draft

Constitution, corresponding to present Articles 29 and 30, was being debated, and, presumably left it to the wisdom of the Courts to supply the omission.

In *Re Kerala Education Bill* where the Supreme Court, through S.R. Das, CJ, suggesting the techniques of arithmetic tabulation held that “minority means a “community” which numerically less than 50 percent of total population”

In *A.M. Patroni v. Kesavan*, a Division Bench of the Kerala High Court held that the word “Minority” is not defined in the Constitution, and in the absence of special definition, any community religious or linguistic – which is numerically less than 50 percent of the population of the State concerned, is entitled to fundamental right guaranteed by Article 30 of the Constitution.

In *D.A.V. College, Bhutinda v. State of Punjab and others*, the Supreme Court held that “what constitute a linguistic or religious minority must be judge in relation to the State inasmuch as the impugned Act was a State Act and not in relation to whole of India”.

The U.N. *Sub-Commission on Prevention of Discrimination and Protection of Minorities* has defined minority as under:

- (1) 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;

- (ii) Such minorities should properly include the number of persons sufficient by themselves to preserve such traditions or characteristics; and
- (iii) Such minorities should be loyal to the State of which they are nationals.

On a close analysis of Constitution we find that minorities have been conferred several rights which can be either placed in a common or separate domain. The rights which fall in the 'common domain' are those which are those which are applicable to the minorities only and these are reserved to protect their identity.

Though the Constitution of India uses the term 'Minorities' at two places under Articles 29 and 30, it does not define the word 'Minority' anywhere and left it for the wisdom of future generation deliberately as the country had just come over the traumatic shock of communal violence and partition, and a growing tendency was visualized where different group, sect, religion were claiming special rights under different notion of 'minority' concept, endangering national unity.

Relationship between Articles 29 and 30

Article 29 protects the rights of only Indian Citizens while Article 30 doesn't refer to citizenship as a pre-condition. While any section of the Indian Citizens including the majority can invoke Article 29(1), Article 30 is available to only religious and linguistic minorities.

There is a close affinity between Articles 29(1) and 30. A minority community can best conserve its language, script or culture through educational institutions, for it is through education that the language and culture of the minority can be inculcated into the impressionable minds of children of the community.

The right to establish and maintain educational institutions of its choice by a minority is there for concomitant to its right to conserve its distinctive language, script or culture, and that is what is envisaged by Article 30(1). But it doesn't mean that only such minority institutions is entitled to the protection under Article 30 as is exclusively engaged in the conservation of minority language, script or culture and that an institution of general, educational, established by a minority cannot claim such protection.

The Supreme Court ruled that Articles 29 and 30 create two separate rights and that the width of Article 30(1) cannot be cut down by introducing in it considerations on which Article 29(1) is based.

The advantage of Article 30 is available to all minority educational institutions and not only to those whose object is to conserve or promote the language of the minority. Article 29(1) gives general protection to minorities to conserve their language, script or culture while Article 30(1) gives them a special right to establish institutions of their choice.

The constitution expressly recognizes only two kinds of minorities *i.e.*, religious and linguistic, however several special provisions for weaker sections like SC/ST, women, disables *etc.*, suggest that it also recognizes economic, sexual and vulnerable minorities.

India represent an unparalleled diversity where

- (a) six major religions- Hinduism, Islam, Sikhism, Christianity, Buddhism and Zoroastrianism;
- (b) two major language families, Aryan and Dravidian, with eighteen official languages and innumerable dialects and tribal tongues;
- (c) three racial strains, Aryan, Dravidian, and Proto-Australoid;
- (d) and over two thousand castes, hierarchically ranked, endogamous and occupational are found.

Thus in a pluralistic society as of ours any monolithic definition of nationalism is bound to create a situation of conflict between the majority and the minorities.

Religious Minorities

Minorities in India are confined to religious connotations. Hindus are regarded to be the Majority while Muslims, Sikhs, Parses, Anglo Indians and Christians are identified as religious minorities.

Linguistic Minorities

So far as linguistic minority is considered India has more than 1650 mother tongues, belonging to five different language families. They are rationalized into 216 mother tongues, and grouped under 114 languages by the 1991 Census. The Constitution of India originally listed fourteen languages Assamese, Bengali, Gujarati, Hindi, Kannada, Kashmiri, Malayalam, Marathi, Oriya, Punjabi, Sanskrit, Tamil, Telugu, and Urdu, into its Eighth Schedule in 1950. Since then, this has been expanded thrice, to include Sindhi, Konkani, Manipuri and Nepali, Bodo, Santhali, Maithili and Dogri. The other languages form the linguistic minorities.

Economic Minorities

Scheduled Castes and Scheduled Tribes mainly constitute economic minorities in India. They are presently facing several problems because of their socio-economic conditions. The main causes for vulnerability amongst Scheduled Caste are interconnected such as – economic dependency on upper castes, landlessness, joblessness, occupational diseases, illiteracy, malnutrition, inability to access public utilities *etc.*... which results in their physical, psychological, emotional, and cultural abuse.

Minorities based on Age

Improved medical knowledge has enabled the significant growth of elderly people above

60 years who now constitute a significant vulnerable minority; their vulnerability occurs due to physical disability, illness, death of spouse, increased economic dependency on dependants for access to food, clothing and healthcare. Children and aged people are vulnerable because of their age. So far as children are concerned their vulnerability is associated with their gender, caste, poor economic condition of parents, lack of nutritious food, health care *etc.*

Minority based on Disability and Migration

There are about 21.9 million disabled populations in India which faces several kind of vulnerability depending upon the nature of disability. Amongst such disability the worst kind of problems are faced by people suffering from mental disabilities. Five out of ten leading causes of disability and premature death worldwide are due to psychiatric conditions.

Women as Minority

Women form a special class of minority who has low status as compared to men in Indian society and are considered generally political minority. They have little control on the resources and on important decisions related to their lives.

Despite of some ups and downs recent celebration of 67th Independence Day in accordance with the settled democratic principles itself marks that multi-religious, multi-cultural, multi-lingual, and multi-racial Indian society, has been interwoven into an innate unity by the common thread of national integration where aspirations of minorities as well as those of majorities have been successfully achieved by adopting several constitutional, legal and progressive administrative policies.

However over the years the increasing majoritarianism and minoritarianism in Indian society as reflected in several communal violence and violent separatist or autonomy

movement based on religion language ethnicity has divided the nation and affected the welfare and development of the society to a greater extent. Absence of a clear concept of minority under constitution has given ample chances for the orthodox people and judiciary to narrow down its broader concept and limiting it only upto the religious and linguistic minorities while excluding several other minorities like minorities

based on economic, political, sexual vulnerabilities. They are still vulnerable and have a very limited sharing in community development.

Thus, India needs a system with a strong centre having equally strong political will to ensure that there is no discrimination in the rights of its citizens on the basis of majority and minority.

POWERS OF INDIAN COURTS TO SET ASIDE FOREIGN AWARD

By

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The convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, 10 June 1958, is described as the most successful treaty in private international law. The main action contemplated by the New York Convention is the recognition and enforcement of foreign arbitral awards, *i.e.*, arbitral awards made in the territory of another State. It is recognized as principle that a party seeking enforcement of a foreign award needs to supply to the Court;

- (a) The arbitral award; and
- (b) The arbitration agreement.

According to the New York Convention, if a party seeking enforcement of the award prefers to base its request for enforcement on the Country's Domestic Law on enforcement of foreign awards or bilateral or other multilateral treaties in force in the country where it seeks enforcement, it is allowed to do so by virtue of the so-called more-favorable-right-provision of Article VII, Paragraph 1.

The recognition of foreign award in a third country can be enforced after the execution of the Arbitral Award in that particular country. Section 46 of the A&C Act, 1996 provides the criterion as to when such foreign award would be binding on

the parties. According to the said section, any foreign award which would be enforceable shall be treated as binding for all purposes on the persons as between whom it was made, and may accordingly be relied on by any of those persons by way of defence, set off or any other purpose in any legal proceeding in India. Therefore, an Award may be recognized without being enforced, but if it is enforced, then it is necessarily recognized.

Since the recent century India has been holding sovereign judicial powers in the international arbitration circles due to its Courts' powers to set aside foreign seated awards, despite the New York convention. The Indian Supreme Court ruled in the *'Bharat Aluminium Co. v. Kaiser Aluminium'* case, that Part I of the Indian Arbitration Act does not apply to the international commercial arbitration awards issued outside India. Practically, this means that Indian Courts will no longer have power to set aside such awards. Until now, this power was applicable unless the arbitration agreement excluded it. This power is in continuance with regard to the awards issued in India.

This power has been used to set aside awards passed by authority of other countries that conflicted with the Indian law are contrary to public policy and thus unenforceable. With