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## **IN THE CLASSROOM OF DIVERSITY: EDUCATIONAL RIGHTS AND MINORITIES IN INDIA**

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### **ABSTRACT**

This comprehensive paper explores the historical underpinnings and constitutional dimensions of minority rights in India. Tracing the nation-state's early tendencies toward homogeneity influenced by European nationalism, the narrative critiques the exclusion of minority identities. It examines the nuanced role of the freedom movement, where the struggle against British rule necessitated a unified front while inadvertently fostering distinct regional and communal identities.

Dr. B.R. Ambedkar's pivotal role in the Constituent Assembly, emphasizing the importance of protecting India's pluralistic nature, adds depth to the historical analysis. The paper delves into the challenges minorities face, such as issues of identity, security, and equity, and scrutinizes the ambiguity in defining "minority."

Moving beyond the historical context, the study dissects constitutional provisions safeguarding minority rights, including Articles 14, 15, and 21. Article 14's commitment to equality before the law, Article 15's prohibition of discrimination based on various grounds, and Article 21's recognition of the right to life and personal liberty are examined in the context of minority protection.

Highlighting the complex dynamics between linguistic and religious minorities, the paper elucidates legal interpretations from landmark cases. It underscores the multifaceted nature of the term "minority" in India and the challenges in its application, shedding light on the need for a nuanced understanding within the constitutional framework.

### **INTRODUCTION**

India is a nation characterized by its diverse population, encompassing various ethnicities, religions, and cultures. According to the Census of India in 2011, out of a total population of 1,028 million, the majority, constituting 80.5%, practiced Hinduism, while 13.4% adhered to Islam, 2.3% followed Christianity, 1.9% identified with Sikhism, 0.80% were Buddhists, and

0.4% were Jains. Moreover, about 6 million people had followed different belief systems, inclusive of tribal religions, as their faith.<sup>1</sup>

India is geographically surrounded by nations that have strong affiliations with specific religions; for instance, Pakistan and Bangladesh have Islam as their official religion, Nepal is predominantly Hindu, and Sri Lanka grants special recognition to Buddhism. In contrast, India follows a secular ideology, meaning that its government is committed to treating all religious communities impartially. Under this principle, every religious group has the fundamental rights to freely profess, propagate, and practice their faith. India's rich diversity in terms of culture, ethnicity, and religion is an integral aspect of the nation, with secularism serving as a cornerstone of its democratic identity. Minorities Rights Day, observed on December 18th, underscores the importance of safeguarding the rights of minority communities. To comprehend these constitutional rights, it is essential to first define what constitutes a minority.

The Indian Constitution mentions the term 'minority' only twice, primarily in the context of religious, linguistic, and ethnic minorities. Consequently, the authority to determine which groups qualify as minorities rests with the government. Presently, India officially recognizes six religious communities as minorities: Muslims, Christians, Sikhs, Buddhists, Zoroastrians (Parsis), and Jains. Additionally, the recognition of linguistic minorities is within the purview of individual states.<sup>2</sup>

In its literal sense, 'minority' refers to the smaller portion, representing less than half of the whole. However, the Indian Constitution does no longer rigidly outline this term. Instead, 'minority' is used comparatively to analyse the dynamics between various groups within a democratic framework. The Supreme Court has sought to clarify the meaning of 'minority' in the context of Article 30 in several cases. It is important to dispel misconceptions about minority rights; they do not bestow special privileges on minority groups but recognize their vulnerability and the need for upliftment.<sup>3</sup>

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<sup>1</sup>Press information bureau, government of India, ministry of home affairs, RGI releases Census 2011 data on Population by Religious Communities, 25 August 2015

<sup>2</sup>Dr. Subhash Kashyap, CONSTITUTIONAL LAW OF INDIA, Eastern Book Company, 2012.

<sup>3</sup>M. P. Jain, INDIAN CONSTITUTIONAL LAW, 8<sup>th</sup> Ed., Lexis Nexis (India), 2018.

One significant challenge arises from the ambiguity in determining who qualifies as a minority due to the absence of clear legal guidelines. Consequently, this issue often requires resolution through judicial interpretation and decisions in the absence of a well-defined framework.

### **AIMS AND OBJECTIVES**

The aim of this research paper is to comprehensively examine the constitutional rights and socio-political dynamics of minority groups in India, with a focus on religious and linguistic minorities. The research seeks to provide an in-depth understanding of the challenges faced by these minority communities and the legal framework in place to protect their rights. The key objectives of the paper are:

- To historicize the constitutional rights of minorities in India and analyse the evolution of the concept of the Indian nation-state with a focus on its treatment of minority identities and aspirations.
- To understand the term “minority” in the Indian context, exploring its various dimensions, including religious, linguistic, cultural, and script-based minorities, and the complexities involved in defining minority status.
- To examine the constitutional provisions and legal safeguards that protect the rights of minority communities, focusing on key articles such as Article 14 (Equality before Law), Article 15 (Prohibition of Discrimination), Article 21 (Right to Life and Personal Liberty), Article 25 (Freedom of Religion), Article 26 (Freedom to Manage Religious Affairs), Article 29 (Protection of Interests of Minorities), and Article 30 (Right of Minorities to Establish and Administer Educational Institutions).
- To analyse the challenges and issues faced by minority communities in India, including issues related to identity, security, and equity, and to assess the impact of discrimination and social disparities on these communities.
- To explore the implications of minority rights in India and their role in promoting diversity, inclusivity, and social cohesion within the nation.

## **RESEARCH METHODOLOGY**

This paper is completed with the assistance of research from a variety of secondary sources such as reports, journals, papers, as well as a few original sources such as government websites. The fundamental Methodology of research is used throughout the research paper.

## **RESEARCH QUESTIONS**

1. How have the constitutional rights of minorities in India evolved over time, and what historical factors have influenced their development?
2. How is the term “minority” defined and understood in the Indian context, and what are the key criteria for granting minority status to a group or community?
3. What are the constitutional provisions and legal safeguards that protect the rights of minority communities in India, and how are these provisions applied in practice?
4. What is the role of minority rights in promoting diversity, inclusivity, and social cohesion within the Indian nation-state, and how can these rights be strengthened to better protect the interests of minority communities?

## **SCOPE AND LIMITATIONS**

This research paper explores the constitutional rights and legal safeguards pertaining to minority communities in India, with a specific focus on religious and linguistic minorities. It delves into the historical evolution of India's approach to diversity and the challenges faced by these communities, while also evaluating the legal framework in place to protect their rights. Additionally, the paper provides recommendations to strengthen the protection of minority rights, encompassing legislative actions, awareness campaigns, and initiatives for economic empowerment and education.

The research paper focuses on exploring the constitutional rights and challenges faced by minority communities in India, with an emphasis on religious and linguistic minorities. It provides historical context, discussing the impact of India's nation-building process on minority identities and the role of the freedom movement. The paper delves into key constitutional articles and rights while addressing issues of identity, security, and equity encountered by minorities. However, it is constrained by a lack of primary research, relying

majorly on secondary sources, potentially missing recent developments. It does not comprehensively cover regional variations, cultural contexts, and the feasibility of implementing suggested improvements, leaving the multifaceted issue of minority rights in India only partially examined.

### **HISTORICISING THE CONSTITUTIONAL RIGHTS OF MINORITIES**

Critics of the Indian nation-state's approach to its pluralistic society often argue that the concept of India as a nation-state drew inspiration from European nationalism<sup>4</sup>. Initially, European nations aimed for homogeneity, emphasizing the creation of strong, culturally uniform national communities. This approach made them intolerant of diversity in any form. Postcolonial critics contend that India followed a similar trajectory, leading to a nation-building process dominated by the ideal of homogenous communities. Consequently, they argue that the concept of the Indian nation has largely excluded minority identities and aspirations. <sup>5</sup>They view the political practices in India as divisive, sectarian, and unable to fulfil the promised “participatory parity” for all individuals and agencies within the nation. The predominance of Hindu majoritarian identity was seen as the national identity, hindering equitable resource distribution and recognition of culturally distinct social groups. This situation resulted in the emergence of micro-identities, as many groups found themselves neither fully integrated into nationalism nor entirely free from the constraints of the nation-state. This dynamic gave rise to numerous communities and groups that were considered “minorities” or marginalized within modern Indian society.

The freedom movement in India played a dual role in shaping regional and community consciousness. On one hand, it emphasized loyalty to the concept of a united India in the struggle against British rule, which subordinated the aspirations of various regions to develop into separate nationalities. Behind the apparent war among communities advocating for a united Indian nation and British rulers highlighting the variety of castes, communities, tribes, and linguistic groups became the underlying reality that India was striving for country wide unity towards the British while concurrently consolidating various linguistic and cultural communities into different ethnic and communal entities.

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<sup>4</sup> Chatterjee P., “Empire and Nation: Selected Essays” CUP (2008), pp. 1-20.

<sup>5</sup>Nirja Gopal Jayal, “Ethnic Diversity and the Nation-State”, JOURNAL OF APPLIED PHILOSOPHY, Vol.10, No.2, 1993, pp. 147-53, at p.147

Recognizing this complexity, members of the Constituent Assembly emphasized the need for provisions to accommodate pluralism, although this subject was a matter of debate and disagreement. Dr. B.R. Ambedkar, specially, articulated the importance of acknowledging and shielding the country's pluralistic nature during the Constituent Assembly meeting discussions.<sup>6</sup>

*“To diehards who have developed a kind of fanaticism against minority protection I would like to say two things. One is that minorities are an explosive force which, if it erupts, can blow up the whole fabric of the state. The history of Europe bears ample of appalling testimony to this fact. The other is that the minorities in India have placed their existence in the hands of the majority. In the history of negotiations for preventing the partition of Ireland, Redmond said to Carson “ask for any safeguard you like for the Protestant minority but let us have a United Ireland”. Carson’s reply was “Damn your safeguards, we don’t want to be ruled by you.” No minority in India has taken this stand. They have loyally accepted the rule of majority and not political majority. It is for majority to realise its duty not to discriminate against minorities. Whether the minorities will continue or vanish must depend upon this habit of the majority. The moment the majority loses the habit of discriminating against the minority, the minorities can have no ground to exist. They will vanish.”<sup>7</sup>*

Dr.B.R. Ambedkar’s speech, as cited here, underscores the significance of attaining a nationalist goal of establishing a 'nation-state' through constitutional agreement, especially in situations where there isn't a pre-existing cultural cohesion among the population.

### **UNDERSTANDING “MINORITY”**

In the context of historical events, this paper will investigate the constitutional rights of minority groups in India. The Indian constitution, as well as international human rights treaties, acknowledge the need for affirmative action or positive discrimination to promote the well-being and advancement of minority communities. Despite the fact that the constitution strictly prohibits all forms of discrimination, the political establishment has sometimes manipulated these legal and constitutional safeguards for its own political objectives. Key players have used the same regulations designed to provide greater protection

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<sup>6</sup>Narang, A.S., “Ethno- Nationalism and Minorities”, INDIA IN NATION AND MINORITIES: INDIA’S PLURAL SOCIETY AND ITS CONSTITUENTS, 1996, pp.68

<sup>7</sup>ShabnumTejani, “INDIAN SECULARISM: A SOCIAL AND INTELLECTUAL HISTORY”, IUP (1890), PP. 187

for minorities to argue that minorities, being fellow citizens of the country, should be treated on an equal footing with all other citizens, as they are also equally subject to the law.<sup>8</sup>

Hence, the analysis will extend beyond the established constitutional framework to explore how these rights have been applied to address the intricate issue of “minority problems” in India.

Defining the term “Minority” presents a unique challenge, particularly in a multi-ethnic and multicultural nation like India. The question arises: On what basis can a group or society be granted minority status, with the state and its religious beliefs or doctrines playing a central role? To qualify as a minority institution, the group in question must not hold dominant power. However, this broad classification of minorities can be rather simplistic. It is important to understand that the concept of minorities in India goes beyond merely identifying non-dominant groups based on numerical strength. It primarily involves comprehending the intricate dynamics between various groups in different contexts and their relationship with the state and democratic institutions.<sup>9</sup>

The Constitution recognizes (i) religious minorities, (ii) linguistic minorities, (iii) cultural minorities, and (iv) minorities with their own script.

To provide a more precise definition and delve into the term “minority,” the constitutional term “minority” is not explicitly defined. In a literal sense, it refers to a “non-dominant group.” It is a relative term, indicating smaller numbers, portions, or groups. This interpretation was issued by the Supreme Court in the case of *T.M.A. Pai Foundation v. State of Karnataka*<sup>10</sup>, where an 11-judge Constitutional bench of the Supreme Court delved into this fundamental question. Some argue that since India's state reorganization has occurred along linguistic lines, the basis for determining minority status should be the state rather than the entire country.

In the case of *Bal Patil v. Union of India*<sup>11</sup>, a three-judge bench of the Supreme Court clarified that, as per the constitutional framework, a minority refers to an identifiable group of people or community deserving protection from potential deprivation of their religious, cultural, and educational rights by other communities.

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<sup>8</sup>Dr.SubhashKashyap, CONSTITUTIONAL LAW OF INDIA, Eastern Book Company, 2012.

<sup>9</sup>Dr. J. N. Pandey, CONSTITUTIONAL LAW OF INDIA, 13<sup>th</sup> Ed., Central Law Agency, 2022

<sup>10</sup> AIR 2003 SC 355

<sup>11</sup> AIR 2005 SC 3172

Minorities can be broadly categorized into two groups:

1. Linguistic Minorities
2. Religious Minorities

Linguistic minorities, as defined in Article 30(1), must have a distinct spoken language that doesn't require the use of a separate script. They should be identified by their own language, rather than another language they wish their younger generations to learn.<sup>12</sup>

In the case of *AngloIndian Schools v. Association of Aids to Anglo-Indian Schools*<sup>13</sup>, it was established that a group whose language is one of the official languages of the state can still be recognized as a minority community. Therefore, just because English is one of the official languages of West Bengal doesn't negate the Anglo-Indian community, which primarily uses English, from being considered a minority community.

When referring to minority based on religion, it means that adherence to one of the various religions, as opposed to a specific sect or part of a religion, must be the sole and fundamental criterion for minority status.

In the case of *BalPatil v. Union of India*<sup>14</sup>, it was determined that a religious minority should be distinct and separate from the majority, with unique identities. For instance, Muslims, Christians, Jains, Buddhists, and similar religious groups are considered religious minorities. However, in the case of *Bramchari Sidheswar Shai v. State of West Bengal*<sup>15</sup>, the Supreme Court ruled that the Ramakrishna religion couldn't claim to be a religious minority because it was not sufficiently distinct and separate from the Hindu religion, and therefore did not qualify for the fundamental rights under Article 30(1).

#### **(A) Issues faced by minorities**

The following are some of the major issues that minorities in India face:

1. Issue of Identity.
2. Issue of Security.
3. Issue Related to Equity.

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<sup>12</sup>M. P. Jain, INDIAN CONSTITUTIONAL LAW, 8<sup>th</sup> Ed., Lexis Nexis (India), 2018.

<sup>13</sup> AIR 1995 Cal. 194

<sup>14</sup> AIR 2005 SC 3172

<sup>15</sup> AIR 1995 SC 2089



### 1. Issue of identity

Variations in society, cultural practices, historical experiences, and backgrounds lead to a disproportionate burden on minorities, resulting in challenges when it comes to adapting and integrating with the broader population.

### 2. Issue of security

Minorities may additionally develop an experience of insecurity about life, possessions, and well-being as a result of variations in identification and a relatively small population in comparison to the rest of society. When there is conflict between the majority and the minority, the feeling of uneasiness may also get worsen.

### 3. Issue related to equity

Minorities may experience disadvantaged of the benefits of development opportunities as a result of prejudice at instances. Due to the distinction in identity, the minority community develops a sense of unfairness.

## **RIGHTS OF MINORITIES: A CONSTITUTIONAL ASPECT**

### **A. ARTICLE 14 : EQUALITY BEFORE LAW**

*“The State shall not deny to any person equality before law or the equal protection of the law within the territory of India.”<sup>16</sup>*

Article 14 imposes a duty on the State to ensure the welfare of all individuals within India's borders, not just citizens. This article guarantees equal protection and equality to every person, regardless of their citizenship status or natural/artificial identity. It expressly forbids discrimination based on factors such as caste, religion, race, gender, and more. Article 14 firmly states that no one can be deprived of their rights in any aspect of life.

In the case of *National Legal Service Authority v. Union of India*<sup>17</sup>, it was clarified that the term “person” in Article 14 encompasses not only men and women but also includes hijras and transgender individuals.

<sup>16</sup>Article 14, CONSTITUTION OF INDIA, 1950

<sup>17</sup> AIR 2014 SC 1863

This article holds great significance in a diverse country like India due to its rich culture and traditions. Historically, people faced discrimination and mistreatment based on their caste. Lower castes were denied access to the same wells used by higher-caste individuals, and they were not allowed to sit on certain benches designated for higher religious classes.<sup>18</sup>

Observing these injustices, Mahatma Gandhi expressed deep concern and dedicated himself to the welfare of such individuals. He referred to these people as “Harijans,” which translates to “God’s children.” Several movements aimed at empowering “Harijans” were also carried out.<sup>19</sup>

Hence, “equality before the law” signifies the absence of special privileges for any specific person or group, and it serves as a critique of arbitrary government power. It is essentially a concept focused on ensuring fairness and equal treatment, representing a rejection of preferential treatment for any particular individual or class.

### **B. ARTICLE 15: PROHIBITION OF DISCRIMINATION ON GROUNDS OF RELIGION, RACE, CASTE, SEX OR PLACE OF BIRTH**

This article provides a specific practical applicability of the vast concept of equality of treatment stated in Article 14. Article 15 protects citizens entirely from discrimination, and non-citizens cannot claim the protections of this article.

Article 15 Clause (1) states that “*the state shall not discriminate against any person on the basis of religion, race, caste, sex, place of birth, or any of them.*” The meaning of the term “discriminates” is used to denote “to make a negative distinction with regards to; to distinguish unfavourably from others.” It involves an adverse prejudice.<sup>20</sup>

Discrimination against one individual includes discrimination in favour of another. As a result, the term includes comparison. Where two citizens are placed more or less similarly in all material dimensions, any governmental action that disadvantages one of them alone constitutes discrimination under the meaning of article 15.

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<sup>18</sup>Dr.SubhashKashyap, CONSTITUTIONAL LAW OF INDIA, Eastern Book Company, 2012.

<sup>19</sup>M. P. Jain, INDIAN CONSTITUTIONAL LAW, 8<sup>th</sup> Ed., Lexis Nexis (India), 2018.

<sup>20</sup>Ibid

In Article 15(2), it states that *“no citizen shall, on the grounds only of religion, race, caste, sex, place of birth or any of them, be subjected to any disability, liability, restriction or condition with regards to - (a) Access to shops, public restaurants, hotel and places of public entertainment: or (b) The use of well, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of state funds or dedicated to use of general public.”*<sup>21</sup>

Article 15(2) is a specific application of the fundamental anti-discrimination principle outlined in clause (1) while the initial clause bars discrimination against citizens in all situations, the second clause specifically addresses discrimination related to the use or access of the public places mentioned therein.

The purpose of Article 15(2) is to safeguard against the risk of widespread and persistent discrimination, particularly in a diverse country like India. Its objective is to eradicate the injustice stemming from the historical Hindu caste system, which marginalized a segment of Hindus as untouchables and restricted their entry into public places.

Clauses (1) and (2) are excluded in Article 15(4). Furthermore, it states that *“Nothing in this article or in clause (2) of article 29 shall prevent the state from making any special provision for advancement of any socially or educationally backward classes of citizen or for Schedule Castes and Schedule Tribes.”*<sup>22</sup>

The court reaffirmed and drew upon a rule established by a 9-judge bench of the Supreme Court in the case of *Indra Sawhney v. Union of India*<sup>23</sup>. It clarified that the state government held the authority to determine policies regarding reservations in postgraduate medical courses within the state. Merely because the Indian government has provisioned reservations for SC (Scheduled Caste) and ST (Scheduled Tribe) candidates, it doesn't compel the state to do the same. The court emphasized that the decisions made by the Government of India in this matter could not be automatically enforced in the selection process when the state government has regulatory powers. The court reasoned that each state could independently make its own decisions regarding reservations based on various reasons.<sup>24</sup>

The term “backward classes” is not explicitly mentioned in the Constitution. Nevertheless, Article 340 of the Constitution empowers the President to appoint a commission to

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<sup>21</sup>Dr.SubhashKashyap, CONSTITUTIONAL LAW OF INDIA, Eastern Book Company, 2012.

<sup>22</sup>Dr. J. N. Pandey, CONSTITUTIONAL LAW OF INDIA, 13<sup>th</sup> Ed., Central Law Agency, 2022

<sup>23</sup>(3) SCC 217

<sup>24</sup>Dr.SubhashKashyap, CONSTITUTIONAL LAW OF INDIA, Eastern Book Company, 2012.

investigate the social and educational circumstances of India's backward classes. Upon receiving the commission's reports, the President may specify which classes will be recognized as backward.

The definitions of "Scheduled Caste" and "Scheduled Tribes" can be found in Article 366, specifically in clauses (24) and (25), respectively.<sup>25</sup>

### **C. ARTICLE 21: RIGHT TO LIFE AND PERSONAL LIBERTY**

Article 21 states that no one shall be deprived of his life or personal liberty in accordance with the legal procedure. This right has been regarded as the most organic and progressive clause in our living constitution, and the foundation head of our laws.

In highlighting the importance of life and personal liberty, a Supreme Court constitutional panel in *Kehar Singh v. Union of India*<sup>26</sup> stated: "To any civilised society, there can be no attributes more important than the life and personal liberty of its members..." These two characteristics have a basic advantage over all other aspects of political and social order...

Article 21 guarantees two rights: (a) the right to life and (b) the right to personal liberty.

Article 21 forbids deprivation of the aforementioned rights except in accordance with the legal procedure. Article 21 protects against discrimination on the basis of caste, creed, sex, and so on, as well as deprivation of rights and the ability to live a free life solely on this basis.<sup>27</sup>

### **RIGHT TO FREEDOM OF RELIGION**

#### **A. ARTICLE 25 : FREEDOM OF CONSCIENCE AND FREE PROFESSION, PRACTICE AND PROPAGATION OF RELIGION**

Clause (1) of Article 25 upholds the principle that all individuals have an equal entitlement to the freedom of conscience. This encompasses the right to shape one's relationship with God in a manner that aligns with personal beliefs. This provision safeguards the right to hold and

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<sup>25</sup>Dr. J. N. Pandey, CONSTITUTIONAL LAW OF INDIA, 13<sup>th</sup> Ed., Central Law Agency, 2022

<sup>26</sup> AIR 1989 SC 653

<sup>27</sup>Dr. J. N. Pandey, CONSTITUTIONAL LAW OF INDIA, 13<sup>th</sup> Ed., Central Law Agency, 2022

maintain religious beliefs, protecting any sincere and genuinely held convictions. It was notably upheld in the case of *Bijoe Emmanuel v. State of Kerala*<sup>28</sup>.

Article 25(1), individuals possess the right to profess their religion openly. This includes making a public proclamation of one's religious beliefs and the admission into religious orders. Furthermore, it encompasses the act of openly declaring one's faith and confidence in a specific religion. The case of *Ozair Hussain v. Union of India*<sup>29</sup>, clarified that practicing religion extends beyond theoretical beliefs to include the performance of religious responsibilities, rights, and ceremonies. This provision safeguards not only religious beliefs but also actions carried out in the name of faith, allowing individuals to practice their beliefs meaningfully.

Thus, it is not confined to theory but also includes rites and observances. It not only safeguards. Religious freedom is protected, but so are acts performed in the name of faith. It allows individual to practise the belief and opinion which he holds in a meaningful manner.

Additionally, there is right to propagate religion, to propagate religion is to spread and make public one's religious beliefs. The right to hold public meetings for the purpose of spreading one's faith is granted under Article 25(1), as observed by the Supreme Court in *Srilakshmana v. The state of A.P.*<sup>30</sup>

Article 25(2) empowers the state to regulate or restrict secular activities related to religious practices, such as commercial, financial, or political activities. This regulatory authority is constitutionally valid, even if it appears to conflict with the rights granted by Article 25(1). However, such regulations apply to activities that are not fundamental to religion. For instance, a provision requiring temple management to provide the government with an audit report does not violate the rights conferred by article 25 or 26.<sup>31</sup>

Explanation (1) acknowledges that wearing and carrying Kirpans is considered a profession of the Sikh religion. Consequently, it recognizes the inherent right of Sikhs to wear and carry Kirpans as an integral part of their faith.

Explanation (2) expands the definition of "Hindu" to include Sikhs, Jains, and Buddhists for the purposes of Article 25.

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<sup>28</sup> AIR 1987 SC 748

<sup>29</sup> AIR 2003 Del. 103

<sup>30</sup> AIR 1996 SC 1414

<sup>31</sup> Dr. J. N. Pandey, CONSTITUTIONAL LAW OF INDIA, 13<sup>th</sup> Ed., Central Law Agency, 2022

**B. ARTICLE 26: FREEDOM TO MANAGE RELIGIOUS AFFAIRS**

This article provides “*subject to public order, morality and health, every religious denomination or any section thereof shall have the rights – (a) To establish and maintain institutions for religious and charitable purposes. (b) To manage its own affairs in matter of religion. (c) To own and acquire movable and immovable property and, (d) To administer such property in accordance with law.*”<sup>32</sup>

A religious denomination is a group founded on a specific faith. In the case of *S.P Mittal v. Union of India*<sup>33</sup>, it was argued that the terms “religious denomination” and “religion” in Article 26 of the Indian Constitution should be understood in the context of the concept of religion.

**Right to Establish and Maintain Institutions:** Article 26(a) protects the right of every religious group to establish and manage institutions for religious and charitable purposes. In the *T.M.A Pai Foundation v. State of Karnataka*<sup>34</sup>, Karnataka case, it was established that this right under Article 26(a) is a collective right accessible to all religious denominations, whether they are in the majority or minority. It allows both majority and minority communities to establish and operate charitable organizations, including educational institutions.

**Right to Manage Religious Affairs:** The term “religious affairs” encompasses religious practices, rites, and ceremonies essential for religious worship. It covers matters of doctrine, belief, and actions carried out in the practice of religion. This includes guarantees for rituals, observances, ceremonies, and modes of worship that are integral to religion. However, only practices that are found to be essential and integral parts of a religion are included, as observed in the case of *Venkataramana v. State of Mysore*<sup>35</sup>

**Property Ownership and Administration [Articles 26(c) and 26(d)]:** Article 26(c) grants the right to own and acquire movable and immovable property to a religious group or any of its components. Article 26(d) further extends this right by allowing the denomination to administer such property in accordance with the law. It's important to note that the entitlement in Article 26(c) is distinct from the guarantee in Article 26(b) regarding the administration of religious affairs. While Article 26(b) guarantees fundamental rights, the

<sup>32</sup>Dr. J. N. Pandey, CONSTITUTIONAL LAW OF INDIA, 13<sup>th</sup> Ed., Central Law Agency, 2022

<sup>33</sup> AIR 1983 SC 1

<sup>34</sup> AIR 2003 SC 355

<sup>35</sup> AIR 1958 SC 255

right in Article 26(c) can be subject to restrictions imposed by a law passed by a competent legislature.

## **CULTURAL AND EDUCATIONAL RIGHTS**

### **A. ARTICLE 29: PROTECTION OF INTERESTS OF MINORITIES**

Article 29(1) of the Indian Constitution affirms the right of every group of people residing in India, or any part thereof, which has its distinct language, script, or culture, to preserve and protect these elements. This means that Article 29(a) safeguards the right to conserve one's own language, script, and culture, and it extends to the privilege of working towards their preservation. In the case of *D.A.V College Jullundur v. State of Punjab*<sup>36</sup>, the Supreme Court ruled that the establishment of Gurunanak Dev University in Amritsar, which aimed to promote Punjabi language and culture, did not violate Article 29(1).<sup>37</sup>

The Court held that promoting the majority language did not equate to suppressing minority languages or scripts. Article 29(2) specifies that no citizen can be denied admission to educational institutions maintained by the state or receiving state aid solely on the basis of religion, race, caste, language, or any such factors in combination. This provision guarantees every citizen the right to admission to state-maintained or state-aided institutions, and no citizen can be refused admission on the aforementioned grounds. In the case of *State of Bombay v. Bombay Educational Society*<sup>38</sup>, a government order that barred individuals whose first language was not English from enrolling in schools using English as the medium of instruction was struck down as it violated Article 29(2).

### **B. ARTICLE 30: RIGHT OF MINORITIES TO ESTABLISH AND ADMINISTER EDUCATIONAL INSTITUTIONS.**

Article 30 of the Indian Constitution asserts that “all minorities, whether based on religion or language, have the right to establish and administer educational institutions of their choice.”

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<sup>36</sup> AIR 1971 SC 1731

<sup>37</sup> M. P. Jain, *INDIAN CONSTITUTIONAL LAW*, 8<sup>th</sup> Ed., Lexis Nexis (India), 2018.

<sup>38</sup> AIR 1954 SC 561

Article 30(1) ensures that all linguistic and religious minorities possess the “right to establish” and “right to administer” educational institutions of their “choice.” This privilege is exclusive to minorities, whether they are defined by religion or language.

A Linguistic Minority is one that must have its own spoken language, although it is not required to have its own script. A Religious Minority, conversely, signifies that the primary characteristic of the minority should be the adherence to one of various religions, rather than being a part of or sect within a religion.<sup>39</sup>

Article 30 is primarily regarded as a means of protecting minority rights and is subject to regulatory oversight. Its aim is to ensure equality with the majority, rather than bestowing them with superior advantages. In the case of *A.P. Christian Medical Educational Society v. Govt. of Andhra Pradesh*<sup>40</sup>, the Supreme Court highlighted that the objective of Article 30(1) is:

*“...to give minorities a sense of security and a feeling of confidence is not merely guaranteeing the right to profess, practise and propagate religion to religious minorities but also to conserve their language, script and culture to linguistic minorities...”<sup>41</sup>*

The Supreme Court aimed to provide minority children with the finest general and professional education available, preparing them to be valuable members of society and enabling them to enter the world fully equipped. It is not necessary for minorities to obtain prior approval to establish an educational institution.

Clause (1A) was introduced through the 44th Amendment Act to protect the property rights of educational institutions established and administered by a minority. It states that “when making any law for the compulsory acquisition of property of an educational institution established and administered by a minority, as referred to in clause (1), the State must ensure that the compensation prescribed by or determined under such law is not less than the compensation prescribed by or determined under such law for such acquisition.”

In the case of *St. Joseph's College v. Union of India*<sup>42</sup>, a Constitutional bench of five judges held that clause (1A) of Article 30 signifies that after its introduction, there must be a specific statute related to the forced acquisition of educational institution property.

<sup>39</sup>M. P. Jain, *INDIAN CONSTITUTIONAL LAW*, 8<sup>th</sup> Ed., Lexis Nexis (India), 2018.

<sup>40</sup> AIR 1986 SC 1490

<sup>41</sup>Ibid



Article 30(2) stipulates that *“the State shall not discriminate against any educational institution under the management of a minority, whether based on religion or language, in providing aid to educational institutions.”*

### **MISSCELLNEUOUS PROVISIONS**

Article 38 mandates that the state should establish a just social order encompassing social, economic, and political justice while striving to reduce disparities in income, social standing, amenities, and opportunities.

Article 39 outlines provisions for offering free legal aid and ensuring impartial justice at various levels. It instructs the state to ensure the livelihood of all citizens and to distribute material resources equitably for the common good. It also seeks to prevent the concentration of wealth, promote fair compensation for equivalent work, and facilitate the development of children by providing opportunities and facilities.

Article 46 discusses Gandhian principles, which empower the state to take necessary measures to promote the educational and economic progress of disadvantaged segments of the population and protect them from social injustice and exploitation.

Article 347 grants the President the authority to officially recognize a language spoken by a substantial number of people.

Articles 331, 333, 334, 336, and 337 establish special provisions for the participation of Anglo-Indians in Union and State legislatures.

Article 350(B) pertains to the appointment of a Special Officer for linguistic minorities.<sup>43</sup>

### **SUGGESTIONS**

Certainly, here are some simple suggestions for Indian authorities to improve the protection of minority rights:

To begin, authorities must constantly examine and amend current laws and policies, including constitutional provisions, to guarantee that minority communities' rights are adequately

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<sup>42</sup> AIR 2002 SC 195

<sup>43</sup>M. P. Jain, INDIAN CONSTITUTIONAL LAW, 8<sup>th</sup> Ed., Lexis Nexis (India), 2018.

protected. This encompasses both legislative actions and strengthening constitutional safeguards.

Furthermore, conducting national awareness campaigns is essential. These efforts should strive to educate the public on the importance of minority rights, to develop tolerance, and to embrace diversity and multiculturalism as essential components of India's national identity.

Furthermore, in order to protect minority rights, authorities should set up special tribunals or processes that are easily accessible and effective in dealing with situations of discrimination and violence.

Transparency and accountability are vital components of minority rights protection. It is important to put in place a solid data gathering system to track the socioeconomic situation, educational attainment, and representation of minority communities. Making this information public improves openness.

Employment, education, housing, and public services must all be covered by anti-discrimination legislation. There should be no tolerance for discrimination based on religion, race, or other minority traits under this Act.

Affirmative action programmes should also be expanded and improved in order to increase representation and opportunity for historically marginalised groups within minority communities. This can be accomplished by targeted policies and reservations.

Efforts to maintain and promote minority populations' cultural heritage, languages, and traditions must be actively supported by funds, and official recognition.

It is critical to protect religious freedom for all communities and to respond quickly to religious intolerance or hate crimes. Promoting interfaith discussion and understanding can aid in the development of religious tolerance.

To strengthen minority rights, authorities should establish and implement economic empowerment programmes, such as skill development initiatives and increased credit access, with the purpose of improving minority groups' economic well-being.

Eventually, authorities should prioritise enhancing educational quality and accessibility for minority students. Scholarships and facility upgrades for minority-run educational institutions are examples of such initiatives.

**CONCLUSION**

*India boasts a rich tapestry of cultural and religious diversity spanning from Punjab to West Bengal, Assam to Kerala, Madhya Pradesh to Telangana. This vast diversity means that within the country, numerous communities can be in the majority or minority, potentially leading to biases among the majority and concerns among the minority communities.*

However, the architects of our constitution took all these factors into account and were resolute in addressing them to create a constitution that would ensure equality between minorities and majorities, instil a sense of security, and foster a feeling of belonging to the nation.

They introduced Fundamental Rights, ensuring equal rights for all citizens without regard to caste, creed, or race. Additionally, special rights were granted to minorities, guaranteeing their cultural and educational freedoms, alleviating their anxieties about potential discrimination by the majority communities.

At the same time, they were careful to ensure that majority groups did not feel prejudiced against minorities or deprived of certain rights, making fundamental rights uniform for everyone.

Thanks to these principles, our country remains robust today, thriving despite its unique and diverse cultural and religious diversity. We may be Hindus, Muslims, Christians, Sikhs, and more, but above all, we are proud to be INDIANS.

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