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CRITICAL APPRAISAL OF IMPLEMENTATION ON OF RIGHTS OF MINORITIES IN NORTH-EAST INDIA

AUTHORED BY:- PRADNYA VIJAYKUMAR PATIL

INTRODUCTION

● **Minority** - The word 'minority' used in English is derived from the Latin word 'minor'. It is suffixed with 'eti', which literally means 'small in number'. According to the United Nations, any group or community that is not socially, politically, and economically dominant and is small in number is considered a minority group. In the third part of the Indian Constitution, the fundamental rights have been clarified which are the rights of the minorities. But there is no definition of minority in the constitution. The Motilal Nehru Report (1928) expressed a major desire to protect minorities but lacked sufficient explanation. The Sapru Report (1945) also proposed, inter alia, a Commission on Minorities, but it did not define minorities.

Historical background

The substantive resolution moved by Pandit Jawaharlal Nehru in the Constituent Assembly on 13 December 1946 was unanimously adopted by the Constituent Assembly on 22 January 1947. In this resolution, it was decided that government mechanisms would be adopted for the benefit of minority communities, remote backward areas, and tribals. Dr. Ambedkar, while in the Drafting Committee of the Constitution, brought up the discussion on the word minority. In this discussion, Ambedkar says, 'The word minority is only technically a minority. It is necessary to understand it in a broader sense than them.' He had argued for the need for cultural protection of this broad minority group.

The Drafting Committee of the Constitution in 1948 framed various provisions and laws under the name Special Provisions relating to Minorities and contained in Part XIV and Articles 292-301. Important changes were made in the provisions for the special rights of minorities, in which minorities had no special rights except in cultural and educational subjects. It is further to be noted that no provision has been made in the Constitution for reserved seats for religious minorities in the Legislature and public services.

The rights granted to minorities in India by the Constitution protect the people of the group from being discriminated against on the basis of their ethnic, cultural, linguistic, or religious identity. Persons belonging to minority groups are expected to be able to learn and use their language, to use their own names, to preserve their identity, and to express it freely. Hence, the rights granted to minorities by the Constitution guarantee these groups equality, protection of fundamental freedoms, non-discrimination, protection from violence on the basis of different identities, and participation in political and public life. It also guarantees the possibility of cooperation with other communities and organizations within states and across borders. Minority rights are an integral part of human rights. The main objective is that by using these special rights, the minority and majority communities should coexist peacefully and help each other to build a better future.

Rights of Minority Community

The basic fundamental rights given to the minority community in the Constitution of India include cultural and Educational rights is included.

Article 29. Protection of the interests of the minority classes

- (1) Any group of citizens living within the territory of India or any part thereof having its own distinct language, script, or culture shall have the right to preserve it.
- (2) No citizen shall be denied admission to any educational institution run by the State or aided by State funds solely on the grounds of religion, race, caste, language or any of these.

Article 30. Right of minority classes to establish and administer educational institutions.

- (1) All classes who are in the minority on the basis of 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 class as specified in clause (1), the State shall, by reason of the amount fixed by or under such law for the acquisition of such property, restrict the right guaranteed under that clause or It will make sure that it is such amount that it will not be canceled.
 - (2) In granting aid to educational institutions, the State shall not discriminate to the detriment of an educational institution on the ground that it is under the management of a class that is a minority on the basis of religion or language.

Who is the minority?

Article 30 (1) of the Constitution uses the terms 'linguistic' or 'religious' minority. Minorities can be either linguistic or religious. They need not be both a minority as well as a linguistic minority. Religious A linguistic minority for the purpose of Article 30 (1) is a people whose independent speech is the language. Even that language is not said to have a separate script. There are many languages in India, that have no such script of their own, but still the speakers of such languages can be classified as linguistic minorities by claiming the right under Article 30

(1) 3 36.

The word 'minority' has been used in the constitution without defining the word 'minority' precisely. The National Commission for Minorities Act, 1992 also does not provide a clear definition by which the Center can designate a community as a minority. In the context of the Kerala Education Bill, the Supreme Court held that it is simplistic to say that a minority means a community comprising less than 50%. But in what context exactly is the 50% number? This question is important here. Is that percentage in proportion to the whole population of India or in proportion to the number of a State, or in respect of some particular part thereof? A majority community in a state is likely to be a minority in the whole of India. A community may be concentrated in one part of a state and thus be a majority there, even if it is a minority in the state as a whole. If a state is to be included, where to draw the 50% limit, and what unit to consider for it? This is the question – e.g. District, city, municipality, or subdivision thereof.

However, the Supreme Court has not definitively ruled on this issue. But in the context of the particular law challenged, the Court has preferred who is a minority. Thus if a State Act is subject to reference to the State as a whole, the unit minority must be determined in reference to the State population as a whole. At such a time Any community, language, or religion, that is numerically less than 50 percent of the total population of the State, shall be deemed to be a minority for the purpose of Article 30 (1). Therefore, the Christian community, which is 22 percent of the population in Kerala, has been given minority status.

Those on the basis of language and religion

Having minority status, they get a certain percentage reservation in government jobs, cheap loans from banks, scholarships for students, and priority in admissions to educational institutions with minority status. For example, Jamia Millia Islamia University has been granted the status of a religious minority institution. Here almost 50 percent of seats are reserved for students from the

Muslim community. There is no caste-based reservation quota here. Therefore, there is a continuous struggle and controversy by various groups across the country to get minority status. To date 6 religions namely Islam, Christianity, Buddhism, Sikhism, Parsi, and Jainism have got minority status at the national level. The central government gave this status to Jainism in 2014, while others got it in 1993.

Important court judgments in this context

The case of *St. Stephen's College v Delhi University* challenged the preference given to Christian students at St. Stephen's College. Subsequently, it was decided that half of the seats in the selection process would be reserved for minority communities and the remaining half would be based on merit.

T.M.A. Pai Foundation v. State of Karnataka

The dispute in this case is specifically in relation to Article 30. It concerned the question of how to choose the state or the entire country as the unit for determining the status of religious or linguistic minorities. An eleven-judge bench was constituted to adjudicate this question. The majority held that language is the main basis for the establishment of different States, for the purposes of Article 30, the factor of linguistic minority must be determined in relation to the State in which an educational institution is sought to be established. The 6-judge majority held that only the State can determine the status of religious or linguistic minorities and that religious and linguistic minorities, which are accorded common status in Article 30, should be considered state-wise. Also, the court opined that any rule made in the national interest of minority educational institutions must be applicable to all educational institutions.¹

D.A.V. In College v. State of Punjab, the Court held that while it is not necessary in terms of Article 29(1) to inquire whether all Hindus in the Punjab as well as the Arya Samaj speak Hindi as a dialect, there is no doubt that the Arya Samaj has an independent script. It differs from the Gurmukhi script used by the majority Sikh community in Punjab. This script is the Devanagari script. Therefore, they are entitled to the right under Article 29 (1). Because they are a religious minority and constitute a group of citizens with a distinct script under Article 30 (1). The Court² held that the term linguistic minority for the purpose of Article 30 (1) must have at least one distinct language spoken. There is no need to have a separate script even for those who speak that

¹ <https://indiankanoon.org/doc/512761/>

² <https://indiankanoon.org/doc/1596466/>

language as a linguistic minority. There are languages in this country, which have no such script of their own, but the people who speak those languages would still be linguistic minorities, entitled to the protection of Article 30(1).

4) In the case of the Kerala State Education Bill, the court opined that

1) An educational institution for a minority To get the special rights that are available, to other communities

- No need to deny access to members.

2) It is not necessary that an institution run by a religious minority should impart only religious education or that an institution run by a linguistic minority should teach only language.

5) The Supreme Court in the case of Managing Board of the Milli Takimi Mission Bihar and others v. State of Bihar held that the minority communities have a fundamental right to run their institutions and it is as important as any other right granted to the nation's citizens. Refusal of recognition of these institutions by the Government without proper and sufficient reason is a violation of the right guaranteed under Article 30 (1) of the Constitution.

Hindu Minority Question

Ashwini Kumar Upadhyay has filed a petition in the Supreme Court challenging the validity of the 'National Commission for Minorities Act, 1992' and the 'National Commission for Minority Educational Institutions. Upadhyaya's petition raised some important points, according to which groups such as Muslims, Christians, Sikhs, Buddhists, and Parsis are counted as minorities at the national level. But in the states of Ladakh, Mizoram, Lakshadweep, Kashmir, Nagaland, Meghalaya, Arunachal Pradesh, Punjab, and Manipur, Jews, Bahais and followers of Hinduism are real minorities. As they do not get minority status, they are not able to establish and manage educational institutions according to their choice. This has endangered the fundamental rights of the 'minority' communities at the state level. Also, the rights given to minorities under Article 29-30 were suppressed by the majority community of that state are going Because the Center has not notified them as 'Minority' under the NCMEI (National Commission for Minority Educational Institutions) Act. On the other hand, in a Muslim-majority state³

Their population is equal to that of Lakshadweep (96.58%) and Kashmir (96%). It is also

³<https://indiankanoon.org/doc/61362539/#:~:text=It%20is%20now%20well%20settled,or%20favouring%20any%20particular%20religion.>

significant in some states like Ladakh (44%), Assam (34.20%), Bengal (27.5%), Kerala (26.60%), Uttar Pradesh (19.30%) and Bihar (18%). . They can establish and manage educational institutions of their choice in these states. While the Christian population is the majority in Nagaland at 88.10%, Mizoram at 87.16% and Meghalaya at 74.59%, and in Arunachal, Goa, Kerala, Manipur, Tamil Nadu and West Bengal, where they are not the majority, but have significant populations. They can establish educational institutions and administer the same. Also Sikhs are in majority in Punjab, where they can set up their educational institutions. But Hindus who are a minority in these states are deprived of this right as they do not have minority status.

Upadhyay's petition further states that as per the 2011 census, there are eight states across the country where Hindus have become a minority by population. These are states where the Hindu population is less than fifty percent. It includes Manipur (31.39 percent), Punjab (38.40 percent), Arunachal Pradesh (29 percent), Jammu and Kashmir (28.44 percent), Meghalaya (11.53 percent), Nagaland (8.75 percent), Lakshadweep (This includes the states of Mizoram (2.5 percent) and Mizoram (2.75 percent).

The petitioner has demanded in the Supreme Court that T.M.A. In this case, the Court of Nationality has decided that minorities can be determined not at the level, but at the state level. Therefore, state-wise, where Hindus are a minority, they should get the same rights as minorities.

In 2016, the Maharashtra government granted this status to Jews in their state by exercising the right of states to grant minority status to various minority groups in that state. The states of Karnataka and Gujarat have also given such status to some linguistic groups. But local politics in India seem to be standing in the way of minority status for Hindus. For example, in Nagaland, where Christians are the majority (87%), Hindus (8%) are a minority. Majority understand if concessions are made to Hindus as Christian understanding is decisive in local politics

will be upset and will suffer in the elections. This is actually suppressing the fundamental rights of the minority Hindu community. Similar is the situation of Hindus in the states of Punjab and Manipur...

As the local politics is in the hands of the majority, some states are trying to resolve this dispute in the courts. But unless Hindus and other religions get the minority rights accorded to them by the constitution in the state where they are a minority, the controversy will continue to rage. In all this, new serious questions are being raised due to the suppression of the fundamental rights and the position of the minority groups in the social life.