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## MINORITY RIGHTS IN INDIA : A CRITICAL ANALYSIS

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### ABSTRACT

Upliftment of minorities is an important concern in Indian society and for this concern cultural and educational rights provided in the Indian constitution acts as a virile tool for their growth and development, culture plays a key role for the palatable development of children belonging to community of minorities hence reason stands valid and important for the preservation of culture, script and language. Education holds the same firm stand as that of culture, education is also very important because progress and positive transformation of the society is not possible without education. The issue or problem for minorities is not of recent origin seeds have been sown by Britishers with the concept of divide and rule policy. Partition of country on the basis of religion and declaration of Islamic state were the outcome of long treacherous British rule. Country witnessed one of the greatest forced migrations in human history loot; genocide, plunder, untold suffering of women and a huge amount of destruction of the opposite community during partition are the scars on the body politics of Indian at the dawn of independence. After this mass destruction a separate Muslim state was formed but a considerable number of Muslim remained in India other communities likewise Anglo Indian, Indian Christians, Europeans, etc. opted India as their home land, people vested with the task of framing Indian constitution were aware of the fact that assurance of liberty of thoughts, belief, faith and worship has to be provided to religious minorities.

### INTRODUCTION

The Constitution of India does not provide any specific definition of minority. It is a legislative term used to describe smaller communities with specific religious beliefs or speak in specific languages. The law has termed these communities as religious minorities and linguistic minorities, respectively. India has a wide variety of languages, and there are numerous linguistic minorities in every state. People following six religious beliefs in India have acquired the status of religious minorities. The six religions are Islam, Christianity, Sikhism, Buddhism, Jainism, and Parsi. Each of these minority groups has its unique culture and religious activities. Under Indian Constitution,

the Act of protection of interests of minorities allow every member of the community to enjoy their rights as a citizen of India. The Constitution of India does not explicitly define the term "minority," leaving its interpretation open to legislative and judicial clarification. Broadly, a minority is understood as a community numerically smaller in population compared to the majority within a specific geographical or administrative context. In India, the term has been used to refer primarily to two categories: religious minorities, comprising groups practicing faiths different from the majority Hindu population, and linguistic minorities, which include individuals or communities whose mother tongue differs from the official

language of the state or region where they reside.

These classifications of minorities—religious and linguistic—are recognized under various provisions of the Constitution, including **Articles 29 and 30**, which safeguard the cultural and educational rights of minorities. For instance, Article 29 ensures the right of minorities to conserve their language, script, and culture, while Article 30 provides them the right to establish and administer educational institutions of their choice. Additionally, the **National Commission for Minorities Act, 1992**, officially identifies religious minorities such as Muslims, Christians, Sikhs, Buddhists, Jains, and Parsis, emphasizing their distinct identities and rights. Thus, while the Constitution does not provide a specific definition of "minority," its provisions and associated laws aim to protect and promote the rights of these groups, ensuring their cultural, linguistic, and religious freedoms in a diverse and pluralistic society.

### Historical background of minority rights in India

The historical background of minority rights in India, particularly regarding religious and cultural autonomy, is deeply rooted in the colonial period, the nationalist struggle, and the deliberations of the Constituent Assembly. Under British rule, policies such as the *Indian Councils Act of 1909* (Morley-Minto Reforms) institutionalized communal divisions by granting separate electorates to Muslims, which later extended to other groups through the *Communal Award* of 1932. This approach was criticized by many nationalist leaders who feared it would fragment Indian society. The freedom movement further highlighted minority concerns. The *Lucknow Pact* of 1916 between the Congress and the Muslim League recognized Muslim demands for separate electorates, aiming for Hindu-Muslim unity. However, the *Nehru Report* of 1928, which proposed dominion status for India, rejected separate electorates, leading to strong opposition from the Muslim

League, which insisted on greater safeguards for Muslims.<sup>1679</sup>

The Partition of India in 1947, accompanied by widespread communal violence, heightened concerns about minority protection in the new republic. In this context, the Constituent Assembly of India extensively debated minority rights. Leaders like Dr. B.R. Ambedkar, Jawaharlal Nehru, Sardar Patel, and Maulana Azad discussed how to balance individual rights with the need for cultural and religious autonomy. The main points of contention included the demand for separate electorates, which Ambedkar initially supported for Dalits, but later agreed to drop after the *Poona Pact* of 1932, following Gandhi's opposition. The Assembly also debated provisions related to religious freedom, cultural rights, and the rights of linguistic minorities. Ultimately, the Constitution of India guaranteed minority rights through provisions such as **Article 25-28**, ensuring freedom of religion, and **Article 29-30**, safeguarding cultural and educational rights. These articles reflected the Assembly's consensus that while India would uphold secularism and equality, it would also recognize and protect the cultural and religious identities of its diverse population. Several landmark case laws in India have interpreted and shaped the understanding of minority rights, especially concerning religious and cultural autonomy as enshrined in the Constitution. These judgments provide clarity on how constitutional provisions like **Articles 25-30** have been applied in practice.

### WHAT IS MINORITY?

Constitution of India holds the interpretation of minority as linguistic and religious. Constitution of India do not define the term minority, various reports such as motilal Nehru report (1928), sapru report(1945) mentioned various safeguard measures for minority interest but nowhere defined as to who will be a minority.

<sup>1679</sup>e-PG Pathshala, *Constituent Assembly Debates on Minority Rights*, [https://epgp.inflibnet.ac.in/epgpdata/uploads/epgp\\_content/human\\_rights\\_and\\_duties/09\\_human\\_rights\\_of\\_minorities/04\\_constituent\\_assembly\\_debates\\_on\\_minority\\_rights/et/7966\\_et\\_04.pdf](https://epgp.inflibnet.ac.in/epgpdata/uploads/epgp_content/human_rights_and_duties/09_human_rights_of_minorities/04_constituent_assembly_debates_on_minority_rights/et/7966_et_04.pdf) (last visited Apr. 13, 2025).



Article 30(1) mentions the term 'religious or linguistic minority' ,now over here **or** clearly specifies that minority can be either religious or linguistic ,it is nowhere mentioned to fulfill both the conditions , either of them is sufficient to state whether individual comes under the ambit of minority or not .

Now for the purpose of article 30(1) linguistic minority is one having a separate spoken language, a separate script is not required for that language because india is a diversified nation having different kind of languages throughout the country and many of which do not hold the separate script of their own, nonetheless people speaking such languages will be categorized as minority to claim protection under article 30(1).<sup>2</sup>

The constitution of India is using the term minority without defining it. **The kerala education bill**<sup>3</sup> supreme court stated that it is very easy to say that minority refers to any community which is numerically below 50%, but here the important question comes as 50 % of what?? Is it the entire indian population or of state or a part thereof? There are conditions that a community holds a majority position in a state but is in minority position in whole of india , may be a community is consolidated in a specific part of a country , and may thus be in majority there whereas it may be minority in whole of india. If we have to take a part of state , than question arises where to demarcate and what unit has to be considered- A district , town, municipality or its ward.

### CONSTITUENT ASSEMBLY DEBATE

The whole debate in that Constituent Assembly on article 23 of Draft Constitution which later formed the body of present article 29 and 30 revolve round this issue what rights could or should be conceded to minorities? The reference to minorities was a reference to none other than Indian minorities existing in India. The original draft of the fundamental rights

submitted to the Constituent assembly on April 16, 1947 by the SubCommittee on Fundamental Rights did not contain any provision corresponding to article 30(1) and did not even refer to the word minority. The letter submitted by K.M. Munshi to the Minorities Sub-Committee on the same date when, along with some other rights, the rights now forming part of article 30(1) was proposed, made a reference on the term "national minorities". The Drafting committee, however, sought, to make a distinction between the rights of any section of the citizen to conserve its language, script or culture and the right of the minorities based on religion or language to establish and administer educational institutions of their choice and for this the committee omitted the word „minority“ in the earlier part of the draft article 23 corresponding to article 29, while it retained the word in the latter part of the draft article 23 which now forms part of the article 30(1). B.R. Ambedkar sought to explain the reason for substitution in the Draft Constitution of the word minority by the words "any section" observing: It will be noted that the term minority was used therein not in the technical sense of the word "minority" as we have been accustomed to use it for the purpose of certain political safeguards, such as representation in the Legislature, representation in the service and so on. The word is used not merely to indicate the minority in the technical sense of the word, it is also used to cover minorities which are not minorities in the technical sense, but which are nonetheless minorities in the culture and linguistic sense. That is the reason why we dropped the word "minority" because we felt that the word might be interpreted in the narrow sense of the term when the intention of this House was to use the word Minority in a much wider sense so as to give cultural protection to those who were technically not minorities but minorities nonetheless.

<sup>2</sup> D.A.V. Coll., Jullundur v. State of Punjab, AIR 1971 SC 1737, 1742.

<sup>3</sup>Re Kerala Educ. Bill, 1957, AIR 1958 SC 956; 1959 SCR 995.

<sup>4</sup>V.N. Shukla, *Constituent Assembly Debate*

## National Commission for Minorities (NCM)

The National Commission for Minorities<sup>5</sup> (NCM) is an autonomous body established by the Indian government in 1992 under the National Commission for Minorities Act, 1992. The setting up of the Commission was envisaged in the Ministry of Home Affairs Resolution of 1978 for the enforcement and implementation of all the safeguards provided for the Minorities in the Constitution.

It is responsible for advising the central and state governments on matters related to the welfare and development of minority communities in Back India. Initially, five religious communities, Muslims, Christians, Sikhs, Buddhists, and Zoroastrians (Parsis), were notified as minority communities by the Union Government. Further, with the 2014 notification, Jains were also notified as another minority community.

The **National Commission for Minorities (NCM)** is structured in accordance with **Section 3 of the National Commission for Minorities Act, 1992**. The Commission is composed of **seven members** in total—this includes a **Chairperson**, a **Vice-Chairperson**, and **five other Members**. All these members are **nominated by the Central Government**. The individuals selected must be persons of **eminence, ability, and integrity**, ensuring that the leadership of the Commission is made up of competent and respected figures. Importantly, the Act mandates that **five out of the seven members, including the Chairperson, must belong to minority communities**. This provision ensures that minority communities are fairly represented and that the Commission is closely connected to the people it is meant to serve. Each member, once appointed, serves a **term of three years** from the date of assuming office. During this tenure, they are expected to carry out their duties without engaging in any activity that could conflict with their official

responsibilities. To maintain the ethical standards and integrity of the Commission, the Act provides specific grounds on which a member—including the Chairperson—can be **removed by the Central Government**. These grounds include if the person is **declared insolvent, engages in paid employment outside their duties, refuses to act or becomes incapable** of performing their functions, or is **declared of unsound mind** by a competent court. Furthermore, a member can also be removed if they are found to have **abused their office in a way that is harmful to public interest**, or if they are **convicted of an offence involving moral turpitude** and sentenced to imprisonment.

## POLITICAL ROLE OF NCM

Being a statutory body, the NCM should be unopinionated. Yet there have been various events when the NCM and State Minorities Commissions have straightforwardly taken political stands.

For instance, in September 1997, a teenaged tribal kid had been over and over sodomized by a Christian cleric in a Christian young men's lodging in Dumka, South Bihar. Whenever challenges, principally by maddened tribals, ejected in Dumka, the then NCM administrator Prof. Tahir Mahmood faulted the dissents for the sizeable BJP vicinity in Dumka. In December 1998, the NCM kept in touch with the Election Commission soliciting it to keep the utilization from words like "vote bank", "submission", "concessions" in reference to Minorities in the imminent Lok Sabha races. In July 1999, the NCM Chairman prescribed separately to the leaders of all major political gatherings that they ought to guarantee sufficient representation of minorities in Parliament and all State Legislatures. He asked political gatherings to guarantee finally 100 seats for Minorities in the following Lok Sabha. In August 1999, Rev. Dr. James Massey, Member NCM, utilized government transport to go to a public interview at St. Guardian angel's High School Meeting Hall, Ahmednagar, Maharashtra,

<sup>5</sup> Vajiram & Ravi, *National Commission for Minorities*, <https://vajiramandravi.com/upsc-exam/national-commission-for-minorities/> (last visited Apr. 13, 2025).

where the prospective Parliamentary and Assembly races were talked about. Dr. Massey urged the Christian group to play a dynamic and critical part in the inevitable races and solicited the individuals from the congregation "to vote in favor of such persons who will battle against Fascism, Brahminism and Manuvad and secure poor people, the dalits and minimized from such 'isms'." Such proclamations were made at the said question and answer session and leaflets requesting that Christian voters stop from voting in favor of BJP and to vote in favor of Congress-I and the Nationalist Congress Party were circled. Dr. Massey was captured u/s 125 of the Representation of People's Act, 1951, which manages 'an endeavor to advance on grounds of religion - group - sentiments of contempt between various classes of the nationals of India'. In Tamil Nadu, crossing all cutoff points of respectability, the Chairman of the State Minorities Commission who was a Christian evangelist, effectively battled for the neighborhood administering party in the 1999 General Elections.

## CONCLUSION

The educational right given to religious and linguistic minorities under article 30 of the constitution is not well defined. For a concept to be operative it entails an attempt at definition. One can speculate that by merely stating the term "minority" in the constitution the framers expected its conception to be sort of self-explanatory. But with the passage of time, the changing social milieu and the varied contexts requiring its application have rendered a semblance of constancy in its conception imperative. The constitutional ambiguity in this regard has given leeway for judicial vacillation, which has further confused the general populace with regards to its cognition. "The constitution is silent in this respect and it is ironical for this definition as it has to be the state priori for a notion to be valuable in practice." The Apex Court in India attempted to outline the word "minority" as community which is statistically less than the fifty per cent of the total population. The court added "that minority

has to be dogged in relation to the specific legislation which is required to be implemented". If that is a national law, the minorities have to be determined in relation to national the population. The debates inside the constituent assembly suggest a tolerant attitude of the state towards the minorities. This elucidates the opinion of the constitution makers not to offer the promised fundamental rights automatically but to make minorities emphasise their demands. Even the wording of the article was kept vague in order to facilitate regular interpretation by the courts, taking into account the historical and spatial requirements of the nation and equation between the minority and majority—a responsibility, which the courts are fulfilling at regular interval. Although this would justify non definition in the constitution, one has to remember that the judiciary's role generally follows the implementation or execution process and therefore a constitutional exposition of the concept would better serve practical purposes. And it would also bound the judicial interfering thereby according to the idea a much needed consonance in belief and practice. The Status quo on the former hand would boost what has come to be recognized as legal populism. As far as the interpretation of article 30 is concerned, three trends can be noticed. Firstly, the judgments are contextual, hence, many times are different, reflecting the personal convictions of the judges. This makes the elucidation of this article vague and issue to the constant struggle among the minorities and the state. Secondly these judgments are more liberal with the linguistic minorities than with religious ones and, thirdly, they reflect a trend towards gradually reducing the scope of article, giving space to the governmental regulation and control. Example can be given of conjunctive use of the term "establish" with "administration". Such an approach has deprived many minority communities the benefit of the rights due to them. Yet another example can be given of the use of concepts like "maladministration" and "excellence". As can be seen in both, the



Stephen and the Pai cases, judges are influenced by “melting pot” theory working towards building uniformity in the practice and laws. Further putting together article 29(2) and 30(1) reduces the benefits promised to the minorities through article 30. It is true that article 29(1) and article 30(1) overlap, but the former cannot limit the width of the latter. The scope of article – 30 repose on the fact that “right to establish as well as administer educational institution of their own choice is guaranteed only to linguistic or the religious and secular minorities, and except these no further sections of individuals has such a right”.

We can thus conclude that it is appropriate time for the parliament to define the term “minority” and the scope of article 30 so that time and again the right granted to minorities under article 30 to establish and administer educational should not be put to the tests of judicial interpretation.

