

Rights of Religious Minorities: A Comparative Study



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Abstract

In India being a developing nation is currently facing many challenges and the caste system being one of them. In today's time one of the major road blocks to this equality is the caste system. All country in the world include person belonging to national or ethnic, religious and linguistic, minorities, enriching the diversity of the societies. Although a great variety of minority situations exist, common to all it is the fact that to often minorities face multiple form of discrimination resulting in marginalization and exclusion. Achieving effective participation of minorities and ending their exclusion require that we embrace diversity through the promotion and implementation of international human right standard. The protection of the right of the minorities is provided under Article-27 of the International Coregent on Civil and political right and Article 30 of the convention on the Right of the Children.

However the United Nations Declaration on the right of person belonging to National or Ethnic Religious and linguistic minorities is the document which sets essential standard and offers guidance to states in adopting appropriate legislative and other measure to secure the right of person belonging to minorities overall, states, through their commitments under treaty law and minorities themselves. This paper is an attempt to analyze the Rights of Religious Minorities which are provided in Constitution.

Keywords: Minorities, International Law, Human Rights, Constitution of India, Supreme Court, Article, Fundamental Rights.

Introduction

History Background of Religious Minority

"Minorities in all regions of the world continue to face serious threats, discrimination and racism and are frequently excluded from tacking part fully in the economics, Political, Social and Cultural life available to the majorities in the country or Societies where they live"¹

--- Navanethem Pillay

The issue of minority right was first raised in 1814 at the congress of vienna, which discussed the fact of German Jews and especially of the poles who were once again partitioned up. the congress of Paris in 1856 paid special attention to the status of Jews and Christians on the ottoman Empire. The Congress of Vienna expressed hope that Purssia, Russia, and Austria, would grant tolerance and protection to their minorities. Which ultimate they disregard. Engaging in organized discrimination Britain William & Gladstone made outrage regarding the massacres of Bulgarian by the ottoman empire a major issue and demanded international attention in Berlin Congress 1878, delt with the states of Jews in Romania, especially and also Serbia, and Bulgaria on the whole these 18 century congress failed to impose significant reforms. No one paid much attention to the attack on American Unit it became in large-scale genocide in 1915 and even them nothing was done. The first minority right were proclaimed and enacted by revolutionary parliament of Hungry in July 1849. Minority Right were codified in Austrian Law 1867.

Minority Right in Enternational Law

The concept of minority and majority on relatively recent in international law, although distinction among communities have obviously existed throughout history. Although this was not generally based on any reorganization of minority right parse.

The Legue of Nations

The end of the first world war minority issue became central concern for the league of Nation. A series of so called minority treaties

was adopted to protect certain specified group, addressing many of their key concerns.

The United Nation

The charter of the United Nation makes no mention of minority right parse, but it does include several provisions on human rights, including Article 1(3), which identify as one of the purpose of the united Nation the achievement of International Corporation. "In promoting and encouraging respect for human right and for fundamental freedom for all without distinction as the sex language or religion.

Provision Relating to Treaty Bodies

International Covenant on Civil and Political Right 1976

In ICCPR that includes a provision that specifically refers to minority Right. Article 27:- "In those states in which ethnic, religious or linguistic minorities exist, persons, belonging to such minorities shall not be denied the right in community with the other member of their group to enjoy their own culture, to profess and practice their own religion or to use their own language"

A number of other rights in the covenant to particularly relevant Article, 1, 21, 12, 17, 18, 19, 20, 22, 25 and 26 to the minorities.

International Covenant on Economic Social and Cultural Righ 1976

The ICESCR 1976 clearly set out these particular right, it allows state grater flexibility in now they implement them than does the International Covenant on Civil and political right described provision:

Article 2 of ICESCR of the covenant recognized that state have different capacities to provide service such as health care and higher education At the sometime Article 2 (1) established that each state party has committed it self "to take step to maximum of the available resources, with a view to achieving progressively the full realization of the right recognized in the present covenant including particularly the adoption of legislative measures" and Article 3,6,7,11,12,13,14,15, relating to the protection of other Minority Rights.

Right of Minorities in Indian Consitution

The Indian constitution ensure "Justice, social economic and political" to all citizens.

The Indian constitution has adopted measure for the protection of the right of the religious and ethic minorities and of the socially and economically disadvantage class such as scheduled castes and scheduled tribes.

The Indian constitution enshrines various provision for the protection of the right and interest of the minorities.

Preamble reference to secularism reject elimination or religious identity.

Article 25 (1) guarantees of every person the freedom of conscience and the right to profess, practice and propagate religion. the judgment of for reaching importance in the National Anthem case the Supreme Court has held that "no person can be compelled to sing the National Anthem if he has genuine conscientious religious objection"

Article 26 recognize existence of various religious communities and their demonization sikhs have fundamental right to carry and wear kripa. Article 26 to maintain institution for religious and charitable purpose and manage its own affairs in matter of religion and to own and acquire movable and immovable property maintain in to administer such property in accordance in law.

Article 27 Provides that no person shall be compelled to pay any tax for the promotion or maintenance of any particular religion or religious denomination.

Article 28 to provide freedom as to attendance at religious interaction or religious worship in certain educational institution.

Article 28 mention four type of educational institutions:-

1. Institutions wholly maintained by the state.
2. Institutions that are receiving by the state.
3. Institutions that are receiving aid out of the state fund.
4. Institution that are administered by the state. but are established under any trust or endowment.

Article 29 to 30 to provide cultural and educational right.

Article-29 Protect the citizens residing in the territory of India or any part thereof having a district language, script or culture of its own shall have the right to convene the same and no citizen shall be denied admission into any educational institution maintained by the state or receiving aid out of state fund on ground only of religion. Race, cost language or any of them.

Article 30 Provide Right of minorities to establish and administer education institutions:-

TMA Foundation Vs. State of Karnatak²

In this case it has been held that the government and universities cannot regulate the admission and appointment policies of an unaided minority education institution yet they can specify academic qualification for student and teacher and make rules and regulation for maintaining academic standards.

Relationship between Article 29(1) and 30(1)

The inter-relation of Article 29(1) and 30(1) was elaborately examined by the supreme court in the case St. Xavier's Colleges V State of Gujrat the court point out the following distinction between these two Article-

1. Article 25(1) confers right on any section of the citizen which will include the majority section, Article 30(1) Conferee the right only on minority based on religion or language.
2. While Art-25(1) is concerned only three subject language, script, or cultural art 30(1) deals with minorities based on language or religion.
3. Art 25(1) concerned with the right to conserved language, script or culture Art 30(1) deals with right of minorities to establish and administer educational institution of their choice.

Case- In Re Education Bill

Where the supreme Court observed by S R Das C.J. Suggestion that the minority means a "community". Which is numerically less than 50 percent' of the total population.

Article-340 the Constitution empowered the president to appoint a commission to investigate the conditions of socially and educationally backward classes " but did not make it mandatory.

Article-347 Special provision relating to language spoken by section of the population of a state.

Article-350 Language to be used in representation for redress of grievances.

Article-350 (A) Facilities for instruction in mother tongue at primary stage.

Article-350 (B) Special officer for linguistic minorities.

Tahir Mahmood views that the phrase "Socially and educationally backward classes" under

Article-15(4) permits identification of beneficiary based on multiple factors including religion just like identification of beneficiary based on caste is permissible³.

However that religion is not a definite cause for backwardness and is dependent on fact in each case. In Indra Sawhney Case⁴ the Supreme Court has considered that backward class of person within religious communities may also be considered for reservation in public employment under Article-16(4).

Welfare of all section of Society. Compulsory primary education-uniform civil code [Art-44] and Cow-protection envisaged under part-IV and fundamental duties [Art-51] of every citizen towards communal harmony have positive implication for religiously minorities.

Minorities Commission

Minorities continue to feel the pinching presence of inequality and discrimination Minorities Commission was therefore set up so that there was a dedicated body to enforce the equality guaranteed by the law the Minorities commission was constituted in 1978 to protect religious and linguistic minorities.

Later in 1992 parliament gave the body a national character and gave it a statutory status with a fair measure of autonomy its composition power and working are now governed by the National commission for Minorities Act of 1992 and the Rules and Regulations formed there under.

The Commission is there not Just to protect the minorities but also to promote their social and economic development in the Country equality and justice are two fundamental goals to be achieved in this area, and Minorities commission is there to ensure the attainment of these twin objects.

State Minorities Commission were first setup in Uttar Pradesh and Bihar.

Sacher Committee Report⁵

9 March 2005 the Prime Minister issued a Notification for the constitution of High Level committee to prepare a report on the Social, economic and educational status of the Muslim community of India:-

1. Need for Transparency, Monitoring and Data Availability - create a National data Bank where all relevant data for various socio-religious categories are maintained.
2. Enhancing the legal Basis for providing equal opportunities set up an equal opportunity commission to look into grievances of deprived group like minorities.
3. Education a process of evaluating the content of the school text book needs to be initiated to purge them of explicit and implicit content that may impart inappropriate social values, especially religious intolerance Need to ensure that all children in the age group 0-14 have access to face and high.
4. Quality education
5. High quality Government school should be set up in all areas of Muslim concentration exclusive school for girls should be set up particularly for the 9-12 standards.
6. Provides the primary education in Urdu in area where Urdu speaking population is concentrated.
7. Recognize degrees from madras for eligibility in Defense services, civil Services and Banking exam.
8. Increase employment share of Muslims particularly where there is great deal of public dealing.
9. Enhancing participation in Governance:- appropriate state level laws can be enacted to ensure minority.
10. Representation in local bodies.
11. Improve participation and share of minorities particularly Muslims in business of regular commercial banks.

Conclusion

The Constitution of India Safeguards the linguistic and Cultural liberty of minorities the aim of constitution is to provide the right and protect minority equality of opportunity and freedom to adhere to individual language caste, culture and education the government has came with various law to help protect the right of minorities. Where in constitution provide the right to minority where also make restriction for minority.

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