

# Educational rights of Minorities in India: An Analysis

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## INTRODUCTION

Cultural and educational rights of the minorities are very important and essential which works as tool for the upliftment of the minorities. Culture plays a vital role for the congenial development of children who belong to the community of the minorities and that is why the preservation of the culture, language and script are important. Without education the progress of the community is not possible and the transformation of a society depends on education. All over India it has been found that there is a huge gap between the minority and majority communities.

The problem of minorities is of not recent origin. It was implanted by the British by the formula of “*Divide and Rule Policy*”. Everybody has experience of the partition of the country and the “*hide and seek game*” of the British.

The division of the country on the basis of religion and declaration of an Islamic State in Pakistan were the result of the long treacherous British rule. Loot, murder, plunder and wholesale destruction of opposite community at the time of partition of our nation were the scars on the body politic of India at the dawn of Independence<sup>1</sup>.

Even though the separate state was formed for Muslim, a considerable section of Muslim remained in India. There were Indian Christian, Anglo-Indian and some Europeans who opted India as their homeland. The framers of the Indian Constitution were keenly aware of the fact that these religious minorities should have to be assured<sup>2</sup> “*Liberty of thought, belief, faith and worship.*”

The founding father of the Constitution tried to satisfy the hope, aspiration and desire of the minority by safeguarding the educational rights of the minority. At the fifth session of the Constituent Assembly of India, The Chairman (The Honorable Dr Rajendra Prasad) assured the minorities that<sup>3</sup>: 3

*“To all the minorities in India we give the assurance that they will receive fair and just treatment and there will be no discrimination in any form against them. The religion, their culture and their language are safe and they will enjoy all the rights and privileges of citizenship, and will be expected in their turn to render loyalty to the country in which they live and its constitution. To all we give the assurance that it will be our endeavour to end poverty and squalor and companions, hunger and disease, to abolish distinction and exploitation and to ensure decent condition of living.”*

Indian democratic set up and constitutional safeguards respect the right of minorities and it has been placed under Article 29 and 30 in the Part III of the Indian Constitution. Through the perusal of the constitution of India it is found that expression “minorities” has been employed only at four places in the constitution of India. Head note of the article 29 uses the word minorities. Then again the expression minorities or minority has been employed in head note of Article 30. At this stage it may be noted that the expression ‘minorities’ has been used in Article 30 on two senses one based on religion and other based on language<sup>4</sup>. That expression “minority” needs to be discussed in details in order to pierce the miasma of confusion and misunderstanding.

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<sup>1</sup> D.S Prakash Rao “Protection of minorities rights: Need of the hour”, Legal Journal quest for justice, vol –II, No -1, Academic year 2006- 07, pp-63-64

<sup>2</sup> *Id.*

<sup>3</sup> Constituent Assembly Debates, Vol 5, P-2

<sup>4</sup> Molishree, Minority Educational Institution –A critical Analysis, [http://ccs.in/ccindic/interns2006/minority % 20 education %20Molishreepdf](http://ccs.in/ccindic/interns2006/minority%20education%20Molishreepdf) (visited on 05.02.2017).

The expression “minority” has been derived from the Latin word “minor” and suffix “ity” which means “small in numbers”<sup>8</sup>. According to Encyclopedia Britannica minorities means “group held together by ties of common descent, language or religious faith and feeling different in these respects from the inhabitant of a given political entity”

The U.N Sub –Commission on Prevention of Discrimination of Minorities has defined minority as under<sup>5</sup>:

- 1) The term “ minority ” includes only those non –documents group of the population which possess and wish to preserve stable ethnic, religious or linguistic traditions or characteristic markedly different from those of the rest of the population;
- 2) Such minorities should properly include the number of persons sufficient by themselves to preserve such traditions or characteristic ; and
- 3) Such minorities should be loyal to the state of which they are nationals.

### The Indian Constitutional provisions regarding Minorities Education

- **Article 29 -Protection of interest of minorities<sup>6</sup>.**

(1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.

(2) No citizens 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, caste, language or any of them.

- **Article 30 .Right of Minorities to establish and administer educational institution<sup>7</sup>:**

(1) All minorities ,whether based on religion or language shall have the right to establish and administer educational institution 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, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under the clause]

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(2) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of minority whether based on religion or language.

Beside these, Article 350A says ‘facilities for instruction in mother tongue at primary stage’<sup>8</sup>. Article 350 B says “special officer for linguistic minorities”<sup>9</sup>

### Judicial Interpretations in regard to Minorities Education

It is crystal clear that the term minority is not defined in the constitution .The supreme court of India settled this by judicial interpretation .In **Re Kerala Education Bill**<sup>10</sup> where the Supreme court ,through S.R Das C.J ,suggesting the techniques of arithmetic tabulation held that “minority means a ‘community’ which numerically less than 50 percent” of total State population” .In **A.M.Patroni vs Kesavan**<sup>11</sup> , a division bench of the Kerala High Court held that the word “Minority” is not defined in the constitution ,and in the absence of special definition ,any community religious or linguistic –which is numerically less than 50 percent of the population of the State concerned, is entitled to fundamental right guaranteed by Article 30 of the constitution .In the case of **D.A.V College ,Bhutinda vs State of Punjab and others**<sup>12</sup>, the Supreme Court held that “ what constitute a linguistic or religious minority must be judge in relation to the State inasmuch as the impugned Act was a State Act and not in relation to whole of India”.

<sup>5</sup><http://hrlibrary.umn.edu/demo/1994min.html>(visited on 05.02.2017).

<sup>6</sup> The Constitution of India, 1950, Article 29

<sup>7</sup> Id. Article 30

<sup>8</sup> Id. Article 350A

<sup>9</sup> Id. Article 350B

<sup>10</sup> A.I.R 1958 S.C 956

<sup>11</sup> A.I.R 1965 Ker 75 at p-76

<sup>12</sup> 1971 (Supp)S.C.R 677

In **Stephen's College vs University of Delhi**<sup>13</sup>, The Court held that the minority under Article 30 must necessarily means those who form a distinct or identifiable group of citizen of India. In **Bramchari Sidheswari vs State of West Bengal**<sup>14</sup>, the Supreme court has held that the Ram Krishna Mission established by Swami Vivekanda to propagate the Vedanta values as expounded by Ram Krishna is not a minority religion separate and distinct from Hindu religion, but a religious sect or denomination of Hindu religion and therefore not entitled to claim the fundamental right under article 30(1) of the constitution of establishing and administering educational institution of their choice. Chief Justice Kirpal in **T.M.A Pai Foundation vs State of Karnantaka**<sup>15</sup>, held that *"a linguistic and religious minority are covered by the expression 'minority' under Article 30 of the Constitution .Linguistic lines, therefore for the purpose of determining minority, the unit will be the State and not the whole of India. The religious and linguistic minorities who have been put at per Article 30 have to consider State wise"*.

In **Bal Patel vs Union of India**<sup>16</sup>, the court held that the Central Government has to exercise its power for identification of minority group not merely on the recommendation of the Commission but on consideration of the social, cultural and religious condition of the community in such State. Statistical data produced to show that a majority of the community belongs to the affluent class of industrialist, businessmen, professional and propertied class, it may not be necessary to notified them minority under the Act and may not extend any special treatment or protection to them as minority under the Act.

**Azeez Basha v/s Union of India**<sup>17</sup>, is a very important decision on the right conferred by Art 30(1) on linguistic and religious minorities to establish and administer educational institutions. The petitioner impugned the validity of the Aligarh Muslim University (Amendment) Act, 1965, which amended the Aligarh Muslim University Act 1920, ("the Act of 1920") on the ground that the amendment deprived the Muslim minority community of its right to manage the University established by the community. Before the impugned Act, an amending Act of 1951 had deleted the proviso to 5.23(1) of the Act of 1920 according to which members of the "Court" had to be Muslims. The amendment had not been challenged because in fact the set up of the University had continued unchanged. The effect of the two amendments was that the "Court" ceased to be the supreme governing body of the University and it was not necessity that it should consist exclusively of Muslim.

The Supreme Court held the very expression "establish and administer" used in Art 30(1) was to be read conjunctively that is to say two requirement has to be fulfilled under Art 30(1), namely that the institution was "established" by the community and that its administration was rested in the community. The Court went into the meaning of the word "establish" and after referring to various dictionary meaning it said that the word "founding" is not the only meaning of the word "establish", but it also means "to bring into existence." Therefore, the right given by Art 30(1) to the minority is 'to bring into the existence' an educational institution, and if they do so, to administer it. Keeping this concept in view, the court examined the history of the Aligarh Muslim University and notwithstanding the fact that it was clear that it was a Muslim minority that made an effort, collected the money and handed over the properties of the Mohammedan Anglo-Oriental College and those of the Muslim University Association, the University, in fact, owed its birth to the Aligarh Muslim University Act and that it was not 'brought into existence' by the Muslim minority community. The Court observed that it could not be said that the University was established by the Muslim Community because the provision of section 6 of the Act of 1920 that the degree conferred by the University would be recognized by the Govt. It showed that the Aligarh Muslim University when it came to be established in 1920 was not established by the Muslim minority, for the minority could not insist on the recognition by Govt. of the degrees conferred by any University established by it.

The guideline for reservation ,admission procedure, fees structure , capitation for unaided private institution both minority and non minority in **P.A. Inamdar vs State of Maharashtra**<sup>18</sup> can be summarized as follow:

**1 Reservation :** In unaided private professional institution (both minority and non minority ) ,the Court held that the scheme for reservation of seats as State quota is violative of Article 30 and 19(1)(g) .Its affect the autonomy of such institution .However a limited reservation of 15 % may be made for Non Resident of India (N.R.I) depending on the discretion of management subject to two condition: First ,such seats should be utilized for benefit of N.R.I wards and secondly money collected should be utilized for the benefit of economically backwards students.

<sup>13</sup> A.I.R 1992 SC 1630

<sup>14</sup> (1995) 4 SCC 464

<sup>15</sup> A.I.R 2003 SC 355 at p-418

<sup>16</sup> AIR 2005 SC 3172

<sup>17</sup> AIR 1968 SC 662

<sup>18</sup> AIR 2005 SC 3236

**2. Admission procedure:** The court held that there is nothing wrong in having centralized entrance test being held for one group of institution imparting same or similar education. Admission to be made from the list of successful candidate without altering inter se merit. It would benefit twin objects, first serving student free from exploitation and secondly, ensuring merit admission.

**3. Fee Structure:** It was held that every institution free to devise its own fee structure subject to the limitation that there can be no profiteering and no capitation fee directly or indirectly or in any form is charged. Fees structure can be regulated for preventing profiteering. The right to establish and administer an institution within the meaning of Article 30(1) of the constitution includes the right to fix reasonable fee structure.

### **Auxiliary initiative for the rise of Minorities in India**

The core Constitutional objective of social and economic democracy is to remove the disabilities and eliminate the inequalities in the society through rule of law. Social justice enjoins that the interest of the weaker sections is to be protected and simultaneously the poor and vulnerable people should be provided with positive opportunities and facilities so as to create a just social order. Although we could notice some development of these people on the socioeconomic front, still they are far away from the mainstream of the society very effective and strategic plans were chalked out with huge flow of money for the all round development of minority section of the society, but due to all these efforts the gap in their socio-economic status continues to remain almost the same even in this era of globalization. Upliftment of the minority section was considered by the Government through various Development Plans, Policies, Special Strategies and Programmes, some of them are discussed below.

### **1. Prime Minister's New 15 Point Programme for the Welfare of Minorities**

#### **(A) Minority Education**

**(1) Equitable availability of ICDS Services:** The Integrated Child Development Services (ICDS) Scheme is aimed at holistic development of children and pregnant/lactating mothers from disadvantaged sections, by providing services through Anganwadi Centers such as supplementary nutrition, immunization, health check-up, referral services, pre-school and non-formal education.

**(2) Improving access to School Education:** Under the Sarva Shiksha Abhiyan, the Kasturba Gandhi Balika Vidyalaya Scheme, and other similar Government schemes, it will be ensured that a certain percentage of all such schools are located in villages/localities having a substantial population of minority communities.

**(3) Greater resources for teaching Urdu:** Central assistance will be provided for recruitment and posting of Urdu language teachers in primary and upper primary schools that serve a population in which at least one-fourth belong to that language group.

**(4) Modernizing Madarsa Education:** The Central Plan Scheme of Area Intensive and Madrassa Modernization Programme provides basic educational infrastructure in areas of concentration of educationally backward minorities and resources for the modernization of Madrassa education.

**(5) Scholarships for Meritorious Students from Minority Communities:** Schemes for pre-matric and post-matric scholarships for students from minority communities will be formulated and implemented.

**(6) Improving educational infrastructure:** The Government shall provide all possible assistance to Maulana Azad Education Foundation (MAEF) to strengthen and enable it to expand its activities more effectively.

#### **(B) Economic Activities and Employment**

**(7) Self-Employment and Wage Employment for the poor:** (a) The Swarnjayanti Gram Swarojgar Yojana (SGSY), (b) The Swarn Jayanti Shahari Rojgar Yojana (SJSRY) consists of two major components namely, the Urban Self-Employment Programme (USEP) and the Urban Wage Employment Programme (UWEP). A certain percentage of the physical and financial targets under USEP and UWEP will be earmarked to benefit people below the poverty line from the minority communities.

**(c) The Sampurna Grameen Rozgar Yojana (SGRY):** it is aimed at providing additional wage employment in rural areas alongside the creation of durable community, social and economic infrastructure. Since the National Rural Employment Guarantee Programme (NREGP) has been launched in 200 districts, and SGRY has been merged with NREGP in these

districts, in the remaining districts, a certain percentage of the allocation under SGRY will be earmarked for beneficiaries belonging to the minority communities living below the poverty line till these districts are taken up under NREGP.

**(8) Up gradation of Skills Through Technical Training:** A very large proportion of the population of minority communities is engaged in low-level technical work or earns its living as handicraftsmen. Therefore, a certain proportion of all new ITIs will be located in areas predominantly inhabited by minority communities.

**(9) Enhanced Credit Support for Economic Activities:**(a) The National Minorities Development & Finance Corporation (NMDFC) was set up in 1994 with the objective of promoting economic development activities among the minority communities.

**(10) Recruitment to State and Central Services:**(a) In the recruitment of police personnel, State Governments will be advised to give special consideration to minorities.

### **(C) Improving the conditions of living of minorities**

**(11) Equitable Share in Rural Housing Scheme :** The Indira Awaas Yojana (IAY) provides financial assistance for shelter to poor beneficiaries from minority communities living in rural area.

### **(12)Improvement in Condition of Slums Inhabited by Minority Communities**

Under the schemes of Integrated Housing & Slum Development Programme (IHSDP) and Jawaharlal Nehru National Urban Renewal Mission (JNNURM), it would be ensured that the benefits of these programmes flow equitably to members of the minority communities and to cities/slums, predominantly inhabited by minority communities.

### **(D) Prevention & Control of Communal Riots**

**(13) Prevention of Communal Incidents :** In the areas, which have been identified as communally sensitive and riot prone, district and police officials of the highest known efficiency, impartiality and secular record must be posted.

**(14) Prosecution for Communal Offences:**Severe action should be taken against all those who incite communal tension or take part in violence. Special court or courts specifically earmarked to try communal offences should be set up so that offenders are brought to book speedily.

**(15) Rehabilitation of Victims of Communal Riots:**Victims of communal riots should be given immediate relief and provided prompt and adequate financial assistance for their rehabilitation.<sup>19</sup>

### **(3) National Policy on Education**

The National Policy on Education is a policy formulated by the Government of India to promote education amongst the poor people of India. The policy covers elementary education in colleges of both rural and urban India. The first NPE was promulgated in 1968 by the government of Prime Minister Indira Gandhi, and the second Prime Minister Rajiv Gandhi in 1986. It emphasizes three aspects in relation to elementary education.

- Universal access and enrolment,
- Universal retention of children up to 14 years of age, and
- A substantial improvement in the quality of education to enable all children to achieve the success in their life.

### **(4) Scholarship Schemes Relating to Education of Minorities:**

- Scholarship for students belonging to minority in India under Pre-Matric scholarship scheme
- Scholarship for students belonging to Minority in India under Post-Matric scholarship scheme.
- UGC Scheme of national fellowship for minority community students in India.
- State wise fellowship to students belonging to Sikh community under Maulana Azad National Fellowship in India.
- Vocational Training Scheme of national Minorities Development and Finance Corporation in India.
- Educational loan scheme by National Minority Communities in India.
- Merit-cum-means Based Scholarships for Students belonging to Minority Communities in India.<sup>20</sup>

<sup>19</sup>[http://www.minorityaffairs.gov.in/pm15point\(vistedon 10-03-2015\).](http://www.minorityaffairs.gov.in/pm15point(vistedon 10-03-2015).)

<sup>20</sup> [www.Indiastat.com/social and welfare schemes/27/minorities schemes \(visited on 10-3-2015\).](http://www.Indiastat.com/social and welfare schemes/27/minorities schemes (visited on 10-3-2015).)

#### (6) National Mid-Day-Meals Programme (NMMP)

With a view to enhancing enrolment, retention and attendance and simultaneously improving nutritional levels among children, the National Programme of Nutritional Support to Primary Education (NP-NSPE) was launched as a Centrally Sponsored Scheme on 15th August 1995.

In 2001 MDMS became a cooked Mid Day Meal Scheme under which every child in every Government and Government aided primary school was to be served a prepared Mid Day Meal with a minimum content of 300 calories of energy and 8-12 gram protein per day for a minimum of 200 days. In October 2007, the Scheme was extended to cover children of upper primary classes (i.e. class VI to VIII) studying in 3,479 Educationally Backwards Blocks (EBBs) and the name of the Scheme was changed from 'National Programme of Nutritional Support to Primary Education' to 'National Programme of Mid Day Meal in Schools'. The nutritional norm for upper primary stage was fixed at 700 Calories and 20 grams of protein. The Scheme was extended to all areas across the country from 1.4.2008.

The Scheme was further revised in April 2008 to extend the scheme to recognized as well as unrecognized Madarsas / Maqtabas supported under SSA.<sup>21</sup>

**(9) Right to Free Legal Services:** By articulating the right to free legal services, the Court strove to ensure equality as between rich and poor defendants and to eliminate the inherent inequality that exists between the rich and the poor defendants and to eliminate the inherent inequality that exists between the prosecution and the defendants. In *Khatri v. State of Bihar*<sup>22</sup>, the Court took the opportunity to make an important clarification pertaining to the new constitutional right that it had hitherto enunciated. Commenting on the excuse of financial and administrative inability that the state can put up to avoid its constitutional obligation, the Court rightly pointed out that "the law does not permit any government to deprive its citizens of constitutional rights on the plea of poverty." The court made it mandatory for every magistrate and sessions judge to inform the accused of his constitutional right to free legal services at the cost of the state to the poorer section of the society. Under *Hussainara Khatoon* and its progeny, every prisoner is entitled to a justifiable right to free legal services and to a speedy trial.<sup>23</sup>

### CONCLUSION

The core Constitutional objective of social and economic democracy is to remove the disabilities and eliminate the inequalities in the society through rule of law. Social justice enjoins that the interest of the weaker sections is to be protected and simultaneously the poor and vulnerable people should be provided with positive opportunities and facilities so as to create a just social order. Although we could notice some development of these people on the socioeconomic front, still they are far away from the mainstream of the society. From the foregoing discussion it is clear that very effective and strategic plans were chalked out with huge flow of money for the all round development of minority section of the society, but due to all these efforts the gap in their socio-economic status continues to remain almost the same even in this era of globalization. Upliftment of the minority section were considered by the Government through various Development Plans, Policies, Special Strategies and Programmes.

In general it can be said the scope of minority right are:

**1.To preserve the language, script or culture**

**2.To establish the educational institution**

**3.To administer educational institution**

**4.To administer according to their choice**

It can be said that a minority can preserve language, script, culture through the educational institution. But the right to minority education doesn't indicate religious teaching but general secular education. Generally establish means coming into existence of an educational institution by the minority and administer means day to day administration of the institution. The power of administration has many facets like appointment of teachers, admission of the students, choice to determination of language of educational institution etc.

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<sup>21</sup> [www.mhrd.gov.in/mid-day-meals](http://www.mhrd.gov.in/mid-day-meals)(visited on 11-3-2015).

<sup>22</sup> A.I.R. 1981 SC 928

<sup>23</sup> *Kedar Pahadiya v. State of Bihar*, A.I.R. 1982 S.C. 1167; *Sheela Barse v. State of Maharashtra*, A.I.R. 1983 S.C. 378; *Hussainara Khatoon v. State of Bihar* ( NO. 2 ), A.I.R. 1981 S.C. 736; *Sukhdas v. Union Territory* A.I.R. 1986 S.C. 991.