

## CONSTITUTIONAL AND LEGISLATIVE PROVISIONS REGARDING THE MINORITIES

### Who are the minorities?

1. The Constitution of India uses the word 'minority' or its plural form in some Articles – 29 to 30 and 350A to 350B – but does not define it anywhere. Article 29 has the word "minorities" in its marginal heading but speaks of "any sections of citizens... having a distinct language, script or culture". This may be a whole community generally seen as a minority or a group within a majority community. Article 30 speaks specifically of two categories of minorities – religious and linguistic. The remaining two Articles – 350A and 350B – relate to linguistic minorities only.

2. In common parlance, the expression "minority" means a group comprising less than half of the population and differing from others, especially the predominant section, in race, religion, traditions and culture, language, etc. The Oxford Dictionary defines 'Minority' as a smaller number or part; a number or part representing less than half of the whole; a relatively small group of people, differing from others in race, religion, language or political persuasion". A special Subcommittee on the Protection of Minority Rights appointed by the United Nations Human Rights Commission in 1946 defined the 'minority' as those "non-dominant groups in a population which possess a wish to preserve stable ethnic, religious and linguistic traditions or characteristics markedly different from those of the rest of the population."

3. As regards religious minorities at the national level in India, all those who profess a religion other than Hindu are considered minorities, since over 80 per cent [of the] population of the country professes the Hindu religion. At the national level, Muslims are the largest minority. Other minorities are much smaller in size. Next to the Muslims are the Christians (2.34 per cent) and Sikhs (1.9 per cent); while all the other religious groups are still smaller. As regards linguistic minorities, there is no majority at the national level and the minority status is to be essentially decided at the state/union territory level. At the state/union territory level – which is quite important in a federal structure like ours – the Muslims are the majority in the state of Jammu and Kashmir and the union territory of Lakshadweep. In the states of Meghalaya, Mizoram and Nagaland, Christians constitute the majority. Sikhs are the majority community in the state of Punjab. No other religious community among the minorities is a majority in any other state/UT.

4. The National Commission for Minorities Act 1992 says that "Minority, for the purpose of the act, means a commu-

nity notified as such by the central government" – Section 2(7). Acting under this provision, on October 23, 1993 the central government notified the Muslim, Christian, Sikh, Buddhist and Parsi (Zoroastrian) communities to be regarded as "minorities" for the purpose of this act.

5. The Supreme Court in *TMA Pai Foundation & Ors vs State of Karnataka & Ors* (2002) has held that for the purpose of Article 30 a minority, whether linguistic or religious, is determinable with reference to a state and not by taking into consideration the population of the country as a whole. Incidentally, 'scheduled castes' and 'scheduled tribes' are also to be identified at the state/UT level. In terms of Articles 341 to 342 of the Constitution, castes, races or tribes or parts of or groups within castes, races or tribes are to be notified as scheduled castes or scheduled tribes in relation to the state or union territory, as the case may be.

6. The state Minorities Commission Acts usually empower the local governments to notify the minorities e.g. Bihar Minorities Commission Act 1991, Section 2(c); Karnataka Minorities Commission Act 1994, Section 2(d); Uttar Pradesh Minorities Commission Act 1994, Section 2(d); West Bengal Minorities Commission Act 1996, Section 2(c); Andhra Pradesh Minorities Commission Act 1998, Section 2(d). Similar acts of Madhya Pradesh (1996) and Delhi (1999) however say that government's notification issued under the National Commission for Minorities Act 1992 will apply in this regard – Madhya Pradesh Act 1996, Section 2(c); Delhi Act 1999, Section 2(g); Section 2(d). In several states (e.g. Himachal Pradesh, Jharkhand, Madhya Pradesh, Maharashtra, Uttar Pradesh and Uttarakhand), Jains have been recognised as a minority. The Jain community approached the Supreme Court seeking a direction to the central government for a similar recognition at the national level and their demand was supported by the National Commission for Minorities. But the Supreme Court did not issue the desired direction, leaving it to the central government to decide the issue (*Bal Patil* case, 2005). In a later ruling however, another bench of the Supreme Court upheld the Uttar Pradesh law recognising Jains as a minority (*Bal Vidya* case, 2006).

### Rights of minorities

7. The Universal Declaration of Human Rights 1948 and its two International Covenants of 1966 declare that "all human beings are equal in dignity and rights" and prohibit all kinds of discrimination – racial, religious, etc. The UN

Declaration against All Forms of Religious Discrimination and Intolerance 1981 outlaws all kinds of religion-based discrimination. The UN Declaration on the Rights of Minorities 1992 enjoins the states to protect the existence and identity of minorities within their respective territories and encourage conditions for promotion of that identity; ensure that persons belonging to minorities fully and effectively exercise human rights and fundamental freedoms with full equality and without any discrimination; create favourable conditions to enable minorities to express their characteristics and develop their culture, language, religion, traditions and customs; plan and implement national policy and programmes with due regard to the legitimate interests of minorities; etc.

8. In India, Articles 15 and 16 of the Constitution prohibit the state from making any discrimination on the grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them either generally i.e. every kind of state action in relation to citizens (Article 15) or in matters relating to employment or appointment to any office under the state (Article 16). However, the provisions of these two articles do take adequate cognisance of the fact that there had been a wide disparity in the social and educational status of different sections of a largely caste-based, tradition-bound society with large-scale poverty and illiteracy. Obviously, an absolute equality among all sections of the people regardless of specific handicaps would have resulted in perpetuation of those handicaps. There can be equality only among equals. Equality means relative equality and not absolute equality. Therefore the Constitution permits positive discrimination in favour of the weak, the disadvantaged and the backward. It admits discrimination with reasons but prohibits discrimination without reason. Discrimination with reasons entails rational classification having nexus with constitutionally permissible objects. Article 15 permits the state to make "any special provisions" for women, children, "any socially and educationally backward class of citizens" and scheduled castes and scheduled tribes. Article 15 has recently been amended by the Constitution (93rd Amendment) Act 2005 to empower the state to make special provisions, by law, for admission of socially and educationally backward classes of citizens or scheduled castes/tribes to educational institutions, including private educational institutions, whether aided or unaided by the state, other than minority educational institutions. Article 16 too has an enabling provision that permits the state for making provisions for the reservation in appointments of posts in favour of "any backward class of citizens which, in the opinion of the state, is not adequately represented in the services under the state". Notably, while Article 15 speaks of "any socially and educationally backward class of citizens" and the scheduled castes and scheduled tribes without qualifying backwardness with social and educational attributes and without a special reference to scheduled castes/scheduled tribes, Article 16 speaks of "any backward class of citizens".

9. The words 'class' and 'caste' are not synonymous expressions and do not carry the same meaning. While Articles 15 and 16 empower the state to make special provisions for

backward "classes", they prohibit discrimination only on the ground of 'caste' or 'religion'. In other words, positive discrimination on the ground of caste or religion coupled with other grounds such as social and educational backwardness is constitutionally permissible and therefore, under a given circumstance, it may be possible to treat a caste or religious group as a "class". Therefore even though Article 15 does not mention minorities in specific terms, minorities who are socially and educationally backward are clearly within the ambit of the term "any socially and educationally backward classes" in Article 15 and "any backward class" in Article 16. Indeed the central government and state governments have included sections of religious minorities in the list of Backward Classes and have provided for reservation for them. The Supreme Court, in *Indira Sawhney & Ors vs Union of India*, has held that an entire community can be treated as a 'class' based on its social and educational backwardness. The court noted that the government of Karnataka, based on an extensive survey conducted by them, had identified the entire Muslim community inhabiting that state as a backward class and have provided for reservations for them. The expression 'backward classes' is religion-neutral and not linked with caste and may well include any caste or religious community which as a class suffered from social and educational backwardness.

10. Though economic backwardness is one of the most important – or perhaps the single most important – reasons responsible for social and educational backwardness alone of a class, the Constitution does not specifically refer to it in Articles 15 and 16. In the *Indira Sawhney* case, the Supreme Court had observed: "It is therefore clear that economic criterion by itself will not identify the backward classes under Article 16(4). The economic backwardness of the backward classes under Article 16(4) has to be on account of their social and educational backwardness. Hence no reservation of posts in services under the state, based exclusively on economic criterion, would be valid under clause (1) of Article 16 of the Constitution."

11. It is however notable that in the chapter of the Constitution relating to Directive Principles of State Policy, Article 46 mandates the state to "promote with special care the educational and economic interests of the weaker sections of the people... and... protect them from social injustice and all forms of exploitation." This article refers to scheduled castes/scheduled tribes "in particular" but does not restrict to them the scope of "weaker sections of the society".

12. Article 340 of 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.

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### Other constitutional safeguards

13. The other measures of protection and safeguard provided by the Constitution in Part III or elsewhere having a bearing on the status and rights of minorities are:

- (i) Freedom of conscience and free profession, practice and propagation of religion (Article 25);
- (ii) Freedom to manage religious affairs (Article 26);
- (iii) Freedom as to payment of taxes for promotion of any particular religion (Article 27);
- (iv) Freedom as to attendance at religious instruction or religious worship in certain educational institutions (Article 28);
- (v) Special provision relating to language spoken by a section of the population of a state (Article 347);
- (vi) Language to be used in representations for redress of grievances (Article 350);
- (vii) Facilities for instruction in mother tongue at primary stage (Article 350A);
- (viii) Special officer for linguistic minorities (Article 350B).

### **Articles 15 and 16 of the Constitution prohibit the state from making any discrimination on the grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them either generally**

ing aid out of state funds on grounds only of religion, race, caste, language or any of them.

15. Unlike Article 30, the text of Article 29 does not specifically refer to minorities though it is quite obvious that the article is intended to protect and preserve the cultural and linguistic identity of the minorities. However, its scope is not necessarily confined to minorities. The protection of Article 29 is available to "any section of the citizens residing in the territory of India" and this may as well include the majority. However, India is a colourful conglomeration of numerous races, religions, sects, languages, scripts, culture and traditions. The minorities, whether based on religion or language, are quite understandably keen on preserving and propagating their religious, cultural and linguistic identity and heritage. Article 29 guarantees exactly that. There may appear to be some overlapping in language and expressions employed in Articles 15(1) and 29(2). However, Article 15(1) contains a general prohibition on discrimination by the state against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them whereas Article 29(2) affords protection against a particular species of state action,

viz admission into educational institutions maintained by the state or receiving aid out of state funds.

### *Article 30*

16. Article 30 is a minority-specific provision that protects the right of minorities to establish and administer educational institutions. It provides that "all minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice". Clause (1A) of Article 30, which was inserted by the Constitution (44th Amendment) Act 1978, provides that "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 that clause". Article 30 further provides that "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 a minority, whether based on religion or language".

17. It would be worthwhile to note that minority educational institutions referred to in clause (1) of Article 30 have been kept out of the purview of Article 15(4) of the Constitution which empowers the state to make provisions by law for the advancement of any socially and educationally backward classes of citizens or scheduled castes/scheduled tribes in regard to their admission to educational institutions (including private educational institutions), whether aided or unaided.

18. Articles 29 and 30 have been grouped together under a common head, namely "Cultural and Educational Rights". Together they confer four distinct rights on minorities. These include the right of:

- (a) any section of citizens to conserve its own language, script or culture;
- (b) all religious and linguistic minorities to establish and administer educational institutions of their choice;
- (c) an educational institution against discrimination by state in the matter of state aid (on the ground that it is under the management of a religious or linguistic minority); and
- (d) the citizen against denial of admission to any state-maintained or state-aided educational institution.

19. Article 29, especially clause (1) thereof, is more generally worded whereas Article 30 is focused on the right of minorities to (i) establish and (ii) administer educational institutions. Notwithstanding the fact that the right of the minority to establish and administer educational institutions would be protected by Article 19(1)(g), the framers of the Constitution incorporated Article 30 in the Constitution with the obvious intention of instilling confidence among minorities against any legislative or executive encroachment on their right to establish and administer educational institutions. In the absence of such an explicit provision, it might have been possible for the state to control or regulate educational institutions, established by religious or linguistic minorities, by law enacted under clause (6) of Article 19.

**Legal framework for protection of religious minorities**

20. Legislation such as the Protection of Civil Rights Act 1955 [formerly known as the Untouchability (Offences) Act 1955] and the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act 1989 has been enacted by the central government to protect persons belonging to scheduled castes and scheduled tribes from untouchability, discrimination, humiliation, etc. No legislation of similar nature exists for minorities though it may be argued that unlike the latter act, viz the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act 1989, the former act, viz the Protection of Civil Rights Act 1955, is applicable across the board to all cases of untouchability-related offences regardless of religion. Therefore if a scheduled caste convert to Islam or Christianity (or any other person) is subjected to untouchability, the perpetrators of the offences may be proceeded against under the provisions of the act. However, no precise information is available in regard to the act being invoked to protect a person of a minority community.

The law enforcing agencies appear to be harbouring a misconception that the Protection of Civil Rights Act 1955 has been enacted to protect only scheduled castes against enforcement of untouchability-related offences. There is thus a case for sensitising the law enforcement authorities/agencies in this regard. Having said that, one cannot resist the impression that the Protection of Civil Rights Act 1955 has failed to make much of an impact due to its tardy implementation notwithstanding the fact that the offences under this act are cognisable and triable summarily. The annual report on the Protection of Civil Rights Act for the year 2003 (latest available), laid on the table of each House of Parliament under Section 15A(4) of the act, reveals that only 12 states and UTs had registered cases under the act during that year. Out of 651 cases so registered, 76.04 per cent (495) cases were registered in Andhra Pradesh alone. The number of cases registered in nine states/UTs varied from one to 17. Only in three states, the number of cases registered exceeded 20. The report also reveals that out of 2,348 cases (out of 8,137 cases, including brought/forward cases) disposed of by courts during the year, a measly 13 cases constituting 0.55 per cent ended in conviction. This appears to be a sad commentary on the state of affairs in regard to investigation and prosecution. To say that the practice of untouchability does not exist in 23 remaining states/UTs would be belying the truth that is known to the world. It only denotes pathetic inaction on the part of law enforcing agencies. The provisions of the Protection of Civil Rights Act need to be enforced vigorously with a view to ensuring that the law serves the purpose it has been enacted for.

21. With a view to evaluating progress and development of minorities, monitoring the working of safeguards provided to them under the Constitution and laws, etc, the central government had constituted a non-statutory Minorities Commission in 1978. In 1992 the National Commission for Minorities Act was enacted to provide for constitution of a statutory commission. The National Commission for Minorities was set up under the act in 1993. The functions of the commission include:

- (a) evaluating the progress of the development of minorities under the union and states;
- (b) monitoring the working of the safeguards provided in the Constitution and in laws enacted by Parliament and the state legislatures;
- (c) making recommendations for the effective implementation of safeguards for the protection of the interests of minorities by the central government or the state governments;
- (d) looking into specific complaints regarding deprivation of rights and safeguards of the minorities and take up such matters with the appropriate authorities;
- (e) causing studies to be undertaken into problems arising out of any discrimination against minorities and recommend measures for their removal;
- (f) conducting studies, research and analysis on the issues relating to socio-economic and educational development of minorities;
- (g) suggesting appropriate measures in respect of any minority to be undertaken by the central government or the state government; and
- (h) making periodical or special reports to the central government on any matter pertaining to minorities and, in particular, difficulties confronted by them.

22. A Constitution amendment bill, viz the Constitution (103rd Amendment) Bill 2004, has been introduced so as to add a new article, viz Article 340A, to constitute a National Commission for Minorities with a constitutional status. A bill to repeal the National Commission for Minorities Act 1992 has simultaneously been introduced.

23. In terms of Section 13 of the act, the central government shall cause the annual report together with a memorandum of action taken on the recommendations contained therein, in so far as they relate to central government, and the reasons for non-acceptance, if any, of any recommendation... as soon as may be after the reports are received to be laid before each House of Parliament.

24. In the absence of a definite time frame for laying the annual report of the commission, there has been considerable delay in tabling the annual reports of the commission in Parliament. The National Commission for Minorities has submitted 12 annual reports for the years 1992-93 to 2004-05. The annual reports for the years 1996-97, 1997-98, 1999-2000 and 2003-04 have been tabled in Parliament only recently, some as recently as in the winter session 2006 of Parliament. Therefore there appears to be a case for amendment of the act so as to provide for a reasonable time frame for the recommendations to be laid, along with memorandum of action taken, before the Parliament/state legisla-

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ture. It may be advisable to incorporate a suitable provision in the Constitution amendment bill, laying down a definite time frame for laying the annual reports of the commission on the tables of both Houses of Parliament along with action taken notes.

25. According to the provisions of clause (9) of Articles 338 and 338A, the union and every state government shall consult the National Commission for Scheduled Castes and the National Commission for Scheduled Tribes on all major policy matters affecting the scheduled castes and the scheduled tribes respectively. Such a consultation is mandatory and can be construed to be an important constitutional safeguard for scheduled castes and scheduled tribes. A corresponding provision does not exist in the National Commission for Minorities Act 1992. In the absence of such a provision, the government of the day may or may not consult the National Commission for Minorities

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ties on major policy matters impacting minorities, depending on exigencies. Therefore the National Commission for Minorities Act 1992 needs to be suitably amended with a view to incorporating in it a provision analogous to the provision in Articles 338(9) and 338A(9). This may instil a sense of confidence amongst minorities about protection of their interests.

26. While we are on safeguards, it should be noted that a very important mecha-

nism of ensuring the welfare of scheduled castes is constitution of a Parliamentary Committee on Scheduled Castes. The successive committees have been doing yeoman work towards safeguarding the interests of scheduled castes. Such a mechanism (of monitoring effective implementation of the constitutional and legal provisions safeguarding the interests of minorities, and also implementation of general or specific schemes for the benefit of minorities by government and its agencies/instrumentalities) is expected to be an effective step for ensuring the welfare of religious minorities.

27. The National Commission for Minority Educational Institutions Act 2004 was enacted to constitute a commission charged with the responsibilities of advising the central government or any state government on any matter relating to education of minorities that may be referred to it, looking into specific complaints regarding deprivation or violation of rights of minorities to establish and administer educational institutions of their choice, deciding on any dispute relating to affiliation to a scheduled university and reporting its findings to the central government for implementation. The act was extensively amended in 2006 (Act 18 of 2006) inter alia empowering the commission to inquire suo motu or on a petition presented to it by any minority educational institution (or any persons on its behalf) into complaints regarding deprivation or violation of rights of minorities to establish and administer an educational institution of its choice and any dispute relating to affiliation to a university and report its finding to the appropriate government for its implementation. The act also provides that if any dispute arises between a minority educational institution and a university, relating to its affiliation to such university, the decision of the commission thereon shall be final.

The commission discussed the provisions of the act as amended and felt the need to make clear-cut, concrete and positive recommendations for improving and streamlining the provisions of the act.

