

# Minorities – In the Eye of Human Rights

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**Abstract –** The population of India is composed of various groups with different racial, ethnic, religious and socio-cultural background. Since time immemorial, these groups arrived in this land from different areas at different points of time. During the extensive period of their association, which spread over thousands of years, there has been a absolute admixture in the common habitation. Some of the groups underwent sub-divisions and disintegrations and some other groups retained their distinct identity, maintaining a certain measure of their traditional exclusiveness, mainly through cultural institutions religious ideologies. Indian Minorities belong to the latter category. The questions with reference to minority rights have been of international consequence and are at the center of many political, academic and legal debates. Identity claims of minority groups have been recognized and deemed worthy of protection. It will be significant to note that nonetheless, even today minority issues tend to occasion anxiety amongst people and States. It is, therefore, necessary to have a jurisprudential understanding of minority rights vis-à-vis human rights in Indian context. This article will enable us to gain clarity on questions regarding the nature of minority rights and the various challenges revolving around them. The article has viewed claims and rights of minorities from the standpoint of international law and human rights and in doing so has charted out the historic progression of minority rights. This article further talk about the present day issues of the inter-relationship between minority rights and human rights in India. It also examines the ever increasing demands for the inclusion of various categories like gender and children under the minority rights regime.

**Keywords:** Minority Rights, International Law, Human Rights

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## INTRODUCTION

The term 'minority' has not been defined in the Constitution or in any other enactment. However, the Human Rights Commission of the United Nations' Organisation in 1950 has defined minority to include "only those non-dominant groups in a population which possess and wish to preserve suitable ethnic, religious and linguistic traditions or characteristics markedly different from the rest of the population". The Sub-Reporter of the Sub-Commission on prevention of discrimination and protection of minorities defined minority as follows: "An ethnic, religious, or linguistic minority is a group numerically smaller than the rest of the population of the State to which it belongs and possessing cultural, physical and historical characteristics, religion or a language different from those of the rest of the population". According to Humayun Kabeer, minority is 'a group on some basis or the other, which has a sense of "aliqueness" and of communal unity, which further distinguishes it from the majority of the inhabitants of the area'.<sup>72</sup>

## HISTORICAL PERSPECTIVE

We can understand contemporary Indian Politics only in the light of our freedom movement, which was to set the course for contemporary Indian Politics. After all, the main pillars of the constitution – democracy, secularism, social justice and fundamental and minority rights – were forged in, and through sustained political mobilisation. And the decision of inclusive social movements, as opposed to exclusivist and narrow ones deserve respect. Historically speaking, the rights of minorities to their culture and religion and the right to be protected against majoritarianism were recognized as far back as 1928 in the Motilal Nehru draft constitution.<sup>73</sup>

Subsequently, Jawaharlal Nehru, writing a note on minorities in 'Young India', on May 15, 1930 was to state " the history of India, and of many of the countries of Europe have demonstrated that there can be no stable equilibrium in any country so long as an attempt is made to crush a minority, or force it to conform to the ways of the majority.<sup>74</sup> It matters little whether logic is on its side or whether

<sup>72</sup> Nirja Gopal Jayal (1993), 'Ethnic Diversity and the Nation-State', Journal of Applied Philosophy, vol.10, no.2, pp. 147-53, at p.147

<sup>73</sup> G. Aloysius, *Dalit-Subaltern Self-Identifications: Iyothee Thassar & Thamizhan* (Critical Quest, New Delhi, 2010)

<sup>74</sup> Ibid

its own particular brand of culture is worthwhile or not. The mere fact of losing it makes it clear. Therefore, we in India must make it clear to all that our policy is based on granting this freedom to the minorities and that under no circumstance will any coercion or repression of them be tolerated. We can also lay down as our deliberate policy that there shall be no unfair treatment of any minority.”<sup>75</sup>

The Karachi charter of 1931 on fundamental rights also reiterated this principle. The report of the Sapru committee, which was set up by the non-party conference in November 1944, recommended full religious tolerance, non-interference in religious beliefs, practices and institutions and protection of culture and languages of all communities.

The Sapru committee also recommended political representation. However it created some controversy and the report could not be adopted. A true democracy ensures not only individual rights but also rights of minorities as a community. Our constitution has laid down in Articles from 25 to 30, the rights religious, linguistic and cultural minorities will enjoy. These rights make India a truly democratic and secular nation. The minorities are free to profess, practice and propagate their religion but also to establish institutions of their choice. These rights are such as to make even the most modern nation in the world proud.<sup>76</sup>

## CONCISE THEORIES OF HUMAN RIGHTS, MINORITIES AND CONSTITUTION

Commonly, human rights concerns have become global in the 21<sup>st</sup> century. Condemnations of gross human rights infringements committed in the Sudan, Zimbabwe, Mexico, Pakistan, Nigeria and China, for instance, are vocally rebuked in London, Washington, Paris, Johannesburg and elsewhere by governments and human rights NGOs distressed about its infractions.<sup>77</sup> Moreover, the UN often denounces human rights violations that happen in all regions of the world.

The dilemma worldwide is that all citizens—particularly minorities without political clout, don't have the benefits of human rights proclamations equally in society. Nevertheless, constitutionally and doctrinally (in religious teachings) individuals are expected to enjoy human rights because they are guaranteed in their national constitutions,<sup>78</sup>

provisions in the Universal Declaration of Human Rights and other international human rights instruments. Additionally, human rights dogmas are sanctioned in most theological texts and their pedagogy.<sup>79</sup> Because of the unsatisfactory implementation of human rights precepts equally in society, the general call for the respect of human rights by activists continues. Also, the common desire, among human rights agents, to fight for the respect of minorities' human rights globally has gained currency.

In truth, their rallying cry on behalf of those who suffer from victimization in their political, economic, religious and social milieus reached its crescendo within the last twenty years or so. The criticism of campaigners against human rights infractions is intended to bring pressure to bear on polities to change legally and politically those actions/policies that often marginalized individuals and minority groups in a system. The hope is that an emphasis on the observance of human rights provisions may result in their proper implementation resulting in peaceful coexistence in society. Arguably, the creation of such a condition might further the legitimacy of the state in the eye of individuals and groups, attenuate political instability and encourage social harmony.<sup>80</sup>

The theoretical discourses and argumentations should serve as reminder of the impact of “labeling” a group as either “superior” or “inferior,” “in-group” or “out-group” and the resultant human rights violations of the supposedly “inferior” population by the “superior” in many societies. Furthermore, the minority and majority political dynamics in many communities tend to bring to the fore the problematic issues of human rights infractions particularly as they relate to the politics and marginalization of minority groups in the competition for who gets what, when and how.

According to Francisco Caporati's explication, “minority group is a [collectivity] numerically inferior to the rest of the population of a state, in a non-dominant position, whose members being citizens of a state possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language.”<sup>81</sup>

Human rights infringements in polities with minority groups who may not share vital characteristics with

<sup>75</sup> Jawahar Lal Nehru, Young India, May 15, 1930.

<sup>76</sup> A.S. Narang, “Nationalism and Minorities in Akhtar Majeed (eds.), *India in Nation and Minorities: India's Plural Society and Its Constituents* (Centre for Federal Studies, Hamdard University, New Delhi, 2002) pp.68

<sup>77</sup> Rakesh Prakash, “Human Rights and Minorities in India: A Theoretical and Conceptual Overview.” *Journal of Third World Studies* Vol. 18, No. 1 (2001), 89-94.

<sup>78</sup> Ramesh Chand, “National Constitution and Human Rights Issues in India,” *Indian and Asian Studies* Vol. 2, No. 2(2003), 101-123.

<sup>79</sup> Massey J., *Minorities and Religious Freedom in a Democracy*, Centre for Dalit Subaltern Studies (Manohar, 2003)pp. 24

<sup>80</sup> E.I. Udogu, “Human Rights Practices: The Case of Peripheral Populations,” A paper presented at the Twenty-fifth annual meeting of the Association of Third World Studies, 18-20, November 2007 in Lima, Peru and African Studies Association of the United Kingdom at the University of Central Lancashire, Preston, the United Kingdom, September (2007/8), 11-13.

<sup>81</sup> E.I. Udogu, “Human Rights and Minorities in Africa: A Theoretical and Conceptual Overview.” (2001), 94

those of the dominant group/s and who may have historically suffered from certain social and religious scars such as slavery and negative stereotypes—are rampant. These collectivities are frequently marginalized and their political plights in society are often exacerbated by their relegation to the bottom of society through the doctrine of “social closure.” Theoretically, Max Weber explained social closure as a tactic for group survival whereby social groups establish monopolies [in the control of power] in order to avoid competition with possible rival groups that could be detrimental to the “dominant” group who wishes to monopolize the major benefits in society.<sup>82</sup> This supposition is furthered by the theory of privilege which contends that those who enjoy a position of privilege would do whatever it takes to maintain their position of advantage. The methods that are usually applied for maintaining a privileged position include demonization of prospective rivals in the competition for the position of privilege; destruction and intimidation of real or putative rivals in the struggle to maintain a position of privilege; changing the rules of the game when the dominant group's position of privilege is being threatened, among others.<sup>83</sup> In practice minority groups, with a few exceptions, seldom have political clout in a democratic dispensation particularly in the developing nations. This dilemma for minorities is made more severe if political parties are organized along ethnic lines. Allegiance in the society tends to be centrifugal—i.e. loyalty to the ethnic group, rather than centripetal (i.e. citizens devotion to the nation-state and its policies). In the main, a country's stability is often threatened when minority groups suffer from political, social and economic ostracism that is brought about in part when their human rights, as citizens, are violated. Be that as it may, the preceding suppositional dialogue is intended to provide a template for the proceeding analysis on the development of human rights infractions of marginalized groups in India—who are often minorities (i.e. Dalits). This analysis will also seek to demonstrate how law makers through the instrumentality of the national constitution of this country have attempted to tackle the question.<sup>84</sup>

## **TORTURE, ILLEGAL DETENTION AND EXTRAJUDICIAL KILLINGS**

The most egregious human rights violations perpetrated by the police include illegal detention of suspects and torture of detainees, arrestees and convicts, as well as extrajudicial killings, called “encounter killings.” These “encounter killings” are

staged by the police who insist that those killed had taken the first shot. Not only have torture and the killings spiraled, the government has refused to act against their perpetrators.<sup>85</sup>

In November 2016 a detailed HRW investigation into nearly 600 custodial deaths from 2010 through 2015 reported that the “police used sexual abuse, forms of waterboarding and beatings with a ‘truth-seeking belt’”.<sup>16</sup> No police officer accused of those killings has been convicted.<sup>86</sup>

**Extrajudicial Killings:** One of the most prominent cases of extrajudicial killings with multiple fatalities occurred in Madhya Pradesh state on October 31, 2016 when police killed eight suspected members of an outlawed organization of Muslim students claiming that they had murdered a prison guard and escaped from a high-security prison. After the NHRC issued a formal complaint against the state government, police, and prison authorities, expressing concern about deaths, the Madhya Pradesh police appointed a special investigation team to investigate the killings. In July 2016, security forces shot dead five people, including an infant, in the Kandhamal district of Odisha, a state that has long seen both violent and nonviolent protests against the government's appropriation of farmlands for industry. Security forces claimed the deaths had occurred during crossfire in an encounter with the outlawed Maoist groups. Human rights defenders said there is reason to believe the victims had been shot in cold blood.

In another case, involving one of the largest number of fatalities in decades, police in the Andhra Pradesh killed 20 woodcutters in April 2015 claiming they had fired in self-defense, but the evidence suggested the victims had been unarmed and had been tortured before their deaths. A special probe, conducted by the police themselves, said the “complaint [of fake encounter] was false” and closed the investigation.

Just a day apart police in the adjoining Telangana state killed five terrorism suspects while bringing them to a court hearing. The police claimed the victims snatched weapons from the guards and opened fire at them, prompting the latter to fire in self-defense. But photographic evidence suggested the victims were handcuffed, tied to their seats and the weapons planted on their bodies.<sup>87</sup>

<sup>82</sup> J. Stone, “Race, Ethnicity, and the Weberian Legacy,” *American Behavioral Scientist*, Vol. 38, 3 (1995), 398.

<sup>83</sup> P.O. Agbese., and E. I. Udogu, “Taming of the Shrew: Civil-Military Politics in the Fourth Republic,” in E. I. Udogu (ed.) (2005). *Nigeria in the Twenty-first Century: Strategies for Political Stability and Peaceful Coexistence* (Trenton, New Jersey: Africa World Press, 2005), pp. 23-25.

<sup>84</sup> See [http://ec.europa.eu/europeaid/how/finance/dci/non\\_state\\_actors\\_en.htm](http://ec.europa.eu/europeaid/how/finance/dci/non_state_actors_en.htm) (accessed 4 October 2019).

<sup>85</sup> Lloyd I. and Susan H. Rudolph, *In Pursuits of Lakshmi* (Chicago, 1987) pp. 38-39

<sup>86</sup> Partha Chatterjee, *Nation and its Fragments: Colonial and Postcolonial Histories* (Princeton University Press, 1993) p. 156

<sup>87</sup> See, Menon, N., & Menon, N. (2010). Introduction. In Chatterjee P. (Author), *Empire and Nation: Selected Essays* (pp. 1-20). Columbia University Press. Retrieved from <http://www.jstor.org/stable/10.7312/chat15220.4>

## ABUSE OF DRACONIAN LAWS

The extensive abuse of draconian national security laws has continued apace causing massive human rights violations. These laws include the AFSPA, the National Security Act (NSA), the Public Safety Act (PSA), the Unlawful Activities Prevention Act (UAPA), the Maharashtra Control of Organized Crimes Act (MCOCA) and the Chhattisgarh Special Public Security Act (CSPSA).

UAPA: Written in 1967, the UAPA loosely defines terrorism as “any act with intent to threaten or likely to threaten the unity, integrity, security or sovereignty of India or with intent to strike terror or likely to strike terror in the people or any section of the people.” It gives the government discretion to designate, by simple notification, any organization as “unlawful” if the government sees it as a threat or potential threat to the country’s “sovereignty and integrity,” or as promoting “enmity between different groups” or as making “imputations prejudicial to national integration.”

The law allows a judicial tribunal to confirm or reject the designation, but it does not specify the standards for adjudication. UAPA also criminalizes membership of or “helping” an “unlawful” or terrorist organization. The law’s application has resulted in successive governments often proscribing organizations arbitrarily and virtually transferring the burden of proof on the accused. Unlike the regular criminal laws under which police must file charges in court within 60 days of the arrest of the accused, UAPA lets a detainee be in prison for 180 days without being charged.

## ARTICLES OF THE CONSTITUTION OF INDIA RELATING TO RELIGIOUS MINORITIES:

The following are the articles in the Constitution of India relating to religious minorities which prohibit discrimination on grounds of religion, race, caste, sex or place of birth, provide for equality of opportunity in matters of public employment, envisage freedom to practice and propagate religion, and provide for freedom to manage religious affairs, freedom as to payment of taxes for any particular religion and freedom as to attendance at religious instruction or religious worship in certain educational institutions. While these articles are important in their own right, the articles 29 and 30 are of greater importance to minorities which provide them right to conserve their language, script or culture and the right to establish and administer educational institutions. The following are the Articles.

**Article 15:** Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth

**Article 16:** Equality of opportunity in matters of public employment

**Article 25:** Freedom of conscience and free profession practice and propagation of religion

**Article 26:** Freedom to manage religious affairs: Subject to public order, morality and health, every religious denomination or any section.

**Article 27:** Freedom as to payment of taxes for promotion of any particular religion: No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination.

**Article 29:** Protection of interests of minorities:

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 citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

**Article 30:** Right to minorities to establish and administer educational institutions:

## SACHAR COMMITTEE REPORT AND ITS RECOMMENDATIONS 2006

The Sachar Committee Report shows clearly that the literacy and educational status of Muslims is particularly low. The literacy rate among Muslims is far below the national average and this gap is greater in urban areas and for women. Nevertheless, regional differences do also emerge. In 10 out of 21 selected states, the literacy rates among Muslims is found to be higher than the state average. These states include Maharashtra, Andhra Pradesh, Tamil Nadu, Gujarat and Karnataka.<sup>88</sup>

In Kerala, the difference between literacy rates of socio- religious communities is minimal. Overall, Muslims are doing better in this respect in the south and in the west of the country. There is a significant disparity between the educational status of Muslims and that of other socio-religious categories (except SCs and STs).<sup>89</sup>

The Sachar Committee concluded that in 12 states where the Muslim share in total population is 15.4 per cent; their representation in government jobs is only 5.7 per cent. In police, administrative and

<sup>88</sup> Summary of Sachar Committee Report <http://www.prsindia.org/administrator/uploads/general/1242304423~~Summary%20of%20Sachar%20Committee%20Report.pdf>  
<sup>89</sup> Ibid



diplomatic services their representation varies from 1.6 to 3.4 per cent.<sup>90</sup>

Muslims, have a poverty rate of 43% whereas the national average is 39% (National Sample Survey Organisation, 1999-2000). In rural areas Muslim landlessness is 51% as compared to 40% for Hindus. In urban areas, 60% of the Muslims have never gone to schools as against the national average of 20%. Only 5% of Muslim women have completed high school education and the income of the average Muslim is 11 % less than the national average. Apart from low level of education, lack of access to bank credits and government programmes is the real cause of economic backwardness of Muslims. For example, the entire Muslim concentration area of Jamia Nagar, Zakir Nagar and Okhla Village in Delhi have been excluded by banks for loaning purpose. The Committee has recommended access to Muslims in Priority Sector Advances, and any shortfall in targets should be critically examined by higher banking watchdogs.<sup>91</sup>

## **TEN YEARS AFTER SACHAR COMMITTEE REPORT<sup>92</sup>**

- a. Sachar Committee had highlighted the need to increase the share of Muslims in IAS and IPS. The committee had recorded the share of Muslims in the IAS and IPS to be 3% and 4% respectively. However, Ten years on, as per the data of the Home Ministry, the corresponding figures increased only marginally to 3.32% and 3.19% respectively as of January 2016. An analysis of the government data shows that fall in Muslim representation in the IPS was because of a reduction in the share of Muslim promote officers in the IPS.
- b. In 2005, the share of Indian Muslims in India's police forces is 7.63% and it fell to 6.27% in 2013. Following the deterioration, the government has stopped releasing data on police personnel broken down by religion.
- c. The work participation rate among Muslims has increased only marginally over the years. For men, the rate increased from 47.5% in 2001 to 49.5% in 2011. For Women, the rate increased from 14.1% in 2001 to 14.8% in 2011.
- d. Analysis of the data shows that both preceding and following Sachar report, Indian Muslims have the lowest average

monthly per capita expenditure (MPCE) among all communities.

- e. Muslims population in India increased from 13.43% in 2001 to 14.2% in 2011. The increase of 24.69% in the population of Muslims is the smallest ever recorded between the two censuses. Similarly, the population of Muslims in urban centres too remained higher than the national average as enumerated in both Censuses.
- f. Sex ratio among Indian Muslims remained better in both the 2001 and 2011 Censes

## **CONCLUSION**

The State and its lawmakers should strive to broaden scientific education that inculcates the values of equality among the youth through the public school system; government should educate the polity on Indian constitutional provisions on human rights and international human right instruments because they are critical to advancing peaceful coexistence among the socio-ethnic montage in the polity. Indian federal government could use its massive apparatus, known as Information and Broadcasting Department, to disseminate information that can be put to use in educating the masses on the values of the respect for human rights—particularly the human rights of marginalized citizens. Finally, the power of non-governmental organizations and India Human Rights Watch should be strengthened. They should be given adequate authority with which to monitor and enforce human rights legislation and provisions contained in the national constitution and international human rights texts. In this way, India might be able to lessen this itchy problem and continue with her inspiring development agenda. But these possible developments would depend on the political will of the governing elite with the active participation of Dalits in the democratic process. Such a collaborative and mutual enterprise might work in the direction of redressing the problems of the disadvantaged minority community and promotion of peaceful coexistence critical to catapulting this industrializing society to its zenith in the 21<sup>st</sup> century.

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