



## MINORITY RIGHTS IN THE CONSTITUTION OF INDIA

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### ABSTRACT

The term "minority" is commonly used in a variety of contexts, including academia. The literal definition of minority, according to the Oxford English Dictionary, is "a smaller number or part, particularly a number or component that is less than half of the whole." Scholarly articles by academics provide a more thorough and alive explanation for the minority. A minority group is defined as "a group of people who are picked out from the rest of society for differential and unequal treatment due to their physical or cultural traits, and who view themselves as objects of collective discrimination," according to prominent sociologist Louis Wirth. India is a land of contrasts, with people of various cultures, languages, religions, castes, ethnicities, tribes, clothing, culinary habits, style of life, standard of living, and political affiliations. Hinduism is the majority religion in India, accounting for 79.80% of the population. Minorities in India include Islam, Christianity, Jainism, Buddhism, Parsi, and Sikhism. This numerical disparity in religious devotee strength offers an ideal setting for community violence and unrest. As a result, minorities endure persecution from the majority religion and its followers. Throughout India's volatile history, there have been various communal confrontations and outbreaks. The partition of India is a well-known example of how discriminatory religious feelings can be used to justify the degradation of India's heritage. With the recent bloodshed caused by communal riots and mutinies in mind, the Indian Constitution's founding fathers and authors took great care to include measures that would prevent communal violence and protect the rights of minorities. In this backdrop, the purpose of this research is to shed insight on key articles of the Indian constitution aimed at avoiding communal insurgencies, protecting minority rights, and promoting secularism and brotherly societal norms. This research will also look into how minorities are treated under the Indian Constitution.

## INTRODUCTION:

The diversity of India is well-known.

India has a staggering number of languages. "A land of diversity," William J. Dukier contends, "India was and continues to be a land of diversity, as indicated by its languages, cultures, and physical traits." India has a staggering number of languages. It has a well-deserved reputation as the cradle of religion, as does the Middle East."<sup>1</sup> India is the world's largest democracy, according to academic circles and international relations.

Democracy is a commonly accepted method of political activity in nation states, with roots dating back to ancient Greece, in which every individual has a role and participates in day-to-day administration and decision-making, either directly or indirectly. It is a government style founded on the ideas of justice, liberty, equality, and the rule of law, and it has become a generally accepted manner of operation for public administration and political systems. As a result, the majority of Western thinkers considered democracy to be the most admirable form of government. In their edited book, Larry Diamond and Giwook Shin, for example, contend that "democracy is the best form of government or the most desired political system."<sup>2</sup> This is not to claim that democracy is the finest or most comprehensive system. Many individuals argue that, despite its many excellent aspects, democracy has flaws, gaps, and fundamental inconsistencies. Winston Churchill allegedly declared, "Democracy is the worst form of governance that has ever been attempted."<sup>3</sup> J.S. Mill demonstrated how minority groups' interests are sacrificed in the sake of majority rule, exposing faults in democracy's fundamental structure and administration. This phenomenon is referred to as "majority tyranny"<sup>4</sup> by J. S. Mill.

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<sup>1</sup>William J. Duiker, *The Essential World History*, Volume 1.(USA : Cengage learning. 2010), p.30

<sup>2</sup>Larry Diamond, Gi-WookShin,*New Challenges for Maturing Democracies in Korea and Taiwan*(Stanford :Stanford University Press,2014)

<sup>3</sup>Andrew Heywood, *Politics* ( London :Macmillan, 1997), p.65

<sup>4</sup>Stefan Collini (ed.), *John Stuart Mill: On Liberty and Other Writings* (Cambridge :Cambridge University Press. 1989), p.8

A government that has selected a democratic political system follows the rule of majority. This raised a plethora of questions for rational and idealistic political thinkers, as well as the general public. What about the people and the masses who did not vote for the ruling party, do not share the government's religious beliefs, and have different viewpoints and ideals than the bulk of society? As a result, the minority is vulnerable to attacks and crimes perpetrated by the majority. As a result, minorities in a democratic country like India will naturally see the dread and panic of the majority as overpowering. As a result, it's natural for minorities to seek and petition for constitutional safeguards to defend their rights and privileges in a diverse society. Individual liberty and human rights, as is widely acknowledged, have ample space and acknowledgment in a democratic workplace. <sup>5</sup> It established a political structure and governance that prioritised citizens' rights and liberties.<sup>5</sup> The same democracy predicated on liberty, fairness, and equality must also balance individual and community rights and liberties. This illustrates the crucial need of providing opportunities for groups to maintain their different and distinct identities, as well as for individuals to fully develop and mature their personalities and potential.

## DEFINING MINORITIES

Minorities are smaller groups of people who distinguish themselves visibly from the majority. Because of their disadvantage, they are more aware of their rights and privileges, as well as requests for constitutional rights and protections to protect and enhance them. According to Louis Wirth, "a minority is a group of people who are picked out from others in their society for differential and unequal treatment based on their physical or cultural traits, and who see themselves as objects of collective discrimination as a result." Furthermore, being a member of a minority group entails being excluded from full involvement in society. <sup>6</sup>Capotorti defines a subordinate group as "a group statistically inferior to the rest of a state's population, in a subservient position, whose members are state nationals and display, if only tacitly, a sense of solidarity directed at preserving their culture, customs, religion, and language."

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<sup>5</sup>Trenton Fervor, *The Myth of American Democracy* (USA: iUniverse, 2013), p.30.

<sup>6</sup>Louis Wirth, "The Problem of Minority Groups" in Ralph Linton (ed.), *The Science of Man in the World Crisis* (New York: Columbia University Press, 1945), P. 347.

## MINORITY AND MULTICULTURALISM IN INDIA

In response to the persistent claims of minorities, even in the most advanced and developed first world countries, and an in-depth connection between minorities' difficulties and widespread human rights violations worldwide, academic circles began to think differently about minority and majority politics and culture. This paved the door for a scholarly and methodical investigation of a concept known as "multiculturalism" in democratic ideologies.<sup>7</sup> Political scientists began to consider scholarly insights and understandings about the existence of minorities in majority societies, as well as the critical nature of special rights, privileges, and concessions that allow minorities to maintain their distinct religious, caste, language, culture, and other identities.<sup>8</sup>

Because "democracy cannot survive without minorities" and "the issue of minorities as such cannot develop without democracy,"<sup>9</sup> democracy and minorities are mutually reinforcing. Minorities, as well as the complementary and supplemental nature of democracy, serve as litmus tests for democracy's success. A heterogeneous nation, such as India, can claim true democratic success only if minorities seeking sanctuary in India are treated with the utmost security, protection, and trust. This argument is emphasised by Franklin Roosevelt, who states that "no democracy can long survive if it does not recognise minority rights as fundamental to its own survival."

India's social, ethnic, and cultural diversity is a kaleidoscope. "India contains at least 3000 castes and 25000 subcastes, according to the traditional caste system." The country contains 22 officially recognised languages, which only reflect a fraction of the roughly 1500 mother tongues believed to exist in the country, 33 of which are spoken by over 100,000 people." While claiming diversity is a source of pride for a community, managing and maintaining harmony amid these differences is a difficult task.

Such a country's political system will have the difficult task of resolving conflicts and disagreements produced by conflicting and diametrically opposing interests and agendas. In India, social, cultural, linguistic, and cultural pluralism produced a vicious spiral that made it impossible for multiple identities to coexist. As a result, minorities became vulnerable to the whims and wishes of the majority. In India, minorities' aspirations for the protection of their rights and identities pose severe obstacles to the country's democracy. "In India, conflict between

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<sup>7</sup> Capotorti's definition about minorities in his article 'minorities in 1985.

<sup>8</sup> Michael Freeman, Human Rights, An Interdisciplinary Approach (Cambridge: Polity Press, 2003), p. 116.

<sup>9</sup> Humayun Kabir, Minorities in a Democracy (Calcutta: Firma K.L. Mukhopadhyaya, 1968), pp. 6-8.

minorities and majorities has a long history that spans several centuries." 16 Throughout India's war for independence from British imperialism and colonialism, numerous communal riots occurred, culminating in the country's division, which has far-reaching implications for minority rights.<sup>10</sup>

## CONSTITUENT ASSEMBLY ON MINORITY RIGHTS

The Indian constitution's framers used prudence in building a constitution for the country that meets the nation's desire for unity while also accommodating the aspirations and needs of individual communities. They promised to create a social and political environment that would allow the country's diverse nationalities and communities to coexist peacefully. With the exclusion of Anglo-Indians, the constituent assembly established a constitution after protracted debates and deliberations that barred religious minorities from acquiring specific political rights.<sup>11</sup> The country was declared secular<sup>12</sup> in order to ensure the state's neutrality and impartiality in religious matters<sup>13</sup>. All citizens in India are guaranteed equality of opportunity and equality before the law under the Indian constitution. With the exception of language, culture, and education, minorities do not have any special or unique rights under the Indian Constitution. 21 This is not to say that the Constituent Assembly and the Indian Constitution were unaware of the social and historical marginalisation and deprivation of society's underprivileged groups.<sup>14</sup> It has a set of laws and adjustments in place to help society's weakest members. Minority rights are primarily derived from four sources in the Constitution:

### The 'Indian Constitution' Preamble

"WE, THE PEOPLE OF INDIA, having solemnly resolved to organise India into an SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC..."<sup>15</sup> begins the preamble to the Indian Constitution. As stated explicitly in the preamble, India is a secular country. The word secular was dropped from the preamble of the Indian Constitution when it was approved in 1950. The term secular was added to the Indian Constitution's preamble with the 42nd amendment in 1976. This is not to say that the Constitution's authors did not want India to be secular prior to its

<sup>10</sup> Soli J. Sorabjee, "Minorities: National and International Protection", in Iqbal A. Ansari, (ed.), Readings on Minorities, Perspectives and Documents (New Delhi: Institute of Objective Study), Vol. I, p.166.

<sup>11</sup> Article 331 and 333 of the Indian Constitution gives special political representation for Anglo Indian communities

<sup>12</sup> Constitution (Forty-Second Amendment) Act, 1976.

<sup>130</sup> Article 14-18 of the Indian Constitution

<sup>14</sup> Articles 15 (4) (5) and 16 (4) provides special provisions like reservation for weaker sections.

<sup>15</sup> Preamble, Indian Constitution

incorporation. The 42nd amendment just established a more formal affirmation of secularism. Previously, the country's secular nature was acknowledged tacitly in Articles 25–28, which addressed the right to religious freedom. By saying that "all religions in our country (regardless of their strength) enjoy the same status and support from the state," the Indian constitution shows the benefits of secularism. <sup>16</sup>This also means that no religion will be designated as the national or state religion, nor will any faith be given special treatment. In the eyes of the Indian state, every faith shall be treated equally. "As a response to our circumstances and style of thinking, it is natural that secularism in the Indian state evolved into Sarva Dharma Sambhava or equality of all religions," NeeraChandhoke correctly remarked.

### The Indian Constitution, Part III

Section III of the Indian Constitution has the cardinal component. This part, beginning with article 12-35, enshrines fundamental rights. The United States Constitution compelled the framers to specify specific and justiciable fundamental rights in this situation. All citizens, without exception, are entitled to the benefits and privileges guaranteed by fundamental rights. Individual dignity, social equality, the protection of the public interest, and national unity are all safeguarded by fundamental rights principles. Fundamental rights are those that are recognised and protected by a country's constitution, which serves as its supreme law. Due to the universal nature of these rights, they also apply to minorities. The following are the fundamental rights that guarantee the country's security and safeguard the rights and interests of minorities.

"The State shall not deny any individual within the territory of India equality before the law or equal protection of the laws," the Indian Constitution's Article 14 declares.

This part assures equal access to and protection from the law for all citizens. No one will be considered superior to another in legal jurisprudence. "Nothing in this Article or paragraph (2) of Article 29 precludes the State from establishing specific measures for the social and educational advancement of any segment of the population, as well as for scheduled castes and scheduled tribes," Article 15 declares (4). This law empowered the government to take any extraordinary steps necessary to advance society's backward segments.

Both the Gopal Singh and Sachar Committee Reports emphasised Muslims' educational and economic underachievement. Many Indian states, like Kerala and Tamil Nadu, provide reservation privileges and coverage to Muslims, who are a minority community in Indian society.

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<sup>16</sup>RakeshDwivedi, G.S in 60 Days (New Delhi: Tata McGraw-Hill Education, 2010), p.3.8.

"All citizens shall have the right s• To freedom of speech and expression; s• To assemble peaceably and without arms; s• To form associations or unions; s• To move freely throughout the territory of India; s• To reside and settle in any part of the territory of India; and s• To practise any profession, or to carry on any occupation, strade or business," states Article 19 of the Indian Constitution.

These liberties are the distinguishing features of a functioning political democracy. They are the foundation for a person's complete development as well as a peaceful and productive living within a human community. These freedoms of expression, assembly, unionisation, movement, profession, and settlement, among others, are vital for minorities' growth. Minority rights may be suppressed by the majority if these liberties are not guaranteed under the Constitution.

"Subject to public order, morality, and health, and to the other provisions of this Part," says Article 25 of the Indian Constitution, "all persons are equally entitled to freedom of conscience and the right freely to profess, practise, and propagate religion."

This right entitles a person to follow, practise, and spread the religion of their choosing. Any religious convention or tradition cannot be imposed or prohibited by the state. This shields minorities from attacks from the country's major religions. According to Article 26 of the Indian Constitution, "subject to public order, morality, and health, every religious denomination or any section thereof shall have the right to establish and maintain institutions for religious and charitable purposes; to manage its own affairs in matters of religion; to own and acquire movable and immovable property; and to administer such property in accordance with law."

These rights safeguard and protect a religion's collective rights. As a result, the religious rights and privileges of minorities will be protected and maintained.

Article 27 of the Indian Constitution states, "No one shall be compelled to pay taxes whose proceeds are particularly appropriated for the promotion or preservation of any particular religion or denomination."

This ensures that public funds are not used to benefit and advance one religion at the expense of other religions, including minority religions. When a government is founded on a majority religion, minority religions, individuals, and religions are more likely to be isolated and marginalised. The responsibilities of Article 27, on the other hand, serve as a deterrent to such discriminating tendencies.<sup>17</sup>

Article 28 of the Indian Constitution states that "no religious instruction should be provided in any educational institution that is wholly sponsored by public funds."

This regulation ensures that no educational institution, whether totally or partially supported by the government, has the authority to compel anybody to accept religious instruction. Minorities

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<sup>17</sup>NeeraChandhoke, *Beyond Secularism. The Rights of Religious Minorities* (New Delhi: Oxford University Press, 1999), p.42.

must also be protected from attempts by the main religious educational institution to compel them into accepting their religious teachings.

"(1) Any segment of the population existing in the territory of India or any part thereof that has its own language, script, or culture will have the right to maintain it," states Article 29 of the Indian Constitution.

(2) No one shall be refused admission to or support from a state-run educational institution solely on the basis of religion, race, caste, or language, or any combination of these factors." This is one of those articles that focuses solely and explicitly on the country's minorities. These articles assist minorities in defending and safeguarding their native language, culture, and script.

"(1) All minorities, whether religious or linguistic, would enjoy the freedom to establish and run educational institutions of their choice," states Article 30 of the Indian Constitution. (2) When providing help to educational institutions, the State shall not discriminate against any educational institution based on religion or language because it is governed by a minority." This article safeguards minorities' rights to create and govern educational institutions and prohibits the state from discriminating against educational institutions while disbursing aid.

#### Directive Principles of State Policy'

The 'Directive Principles of State Policy' are a set of principles and reminders that an Indian state should keep in mind when drafting legislation, formulating policies, and putting them into action. The 'Directive Principles of State Policy' are discussed in Articles 36 through 51. The 'Directive Principles of State Policy,' along with the 'Fundamental Rights,' form the heart and soul of India's political system and public administration. "The Directive Principles and Fundamental Rights are the Constitution's conscience," according to Granville Austin.

Articles and measures in the Directive Principles of State Policy protect minorities' rights in India, either directly or indirectly. Several of them have begun to follow suit.

- According to Article 38, "the State shall endeavour to promote the welfare of the people by establishing and preserving as effectively as possible a social order in which social, economic, and political justice pervades all aspects of national life." Minority rights are also protected by

reminding the state of the significance of sustaining several dimensions of justice.

- Article 39 requires the state to provide equal access to justice in all areas. This will provide justification for defending minorities' rights.
- Article 46 directs the government to take the appropriate steps to assist society's most vulnerable members in their educational and economic development. With this in mind, the government has implemented a variety of measures aimed at boosting society's weakest segments, particularly minorities, such as reservation, scholarships, loans, and skill development training.
- Article 49 focuses on the importance of "the state maintaining monuments, locations, and artefacts of national significance."

This will help to protect and preserve the historical monuments of the country's minorities from being spoliated, distorted, demolished, deleted, discarded, or exported.

- Article 51 compels governments to follow international treaties and rules. By respecting individual liberty, numerous international treaties, notably those of the United Nations, strive to build a more inclusive, socially equitable, and equal society.

Articles of the Indian Constitution that are not found elsewhere

Aside from the assurances and precautions provided in the Preamble, Fundamental Rights, and Directive Principles of State Policy, the Indian Constitution has a number of other sections that expressly or implicitly address the rights and advantages of minorities in India. The following are a few examples:

- Article 347 contains a specific provision for the President to legally recognise a language spoken by a significant segment of the people. This may give some protection for minority languages.

Articles 331, 333, 334, 336, and 337 provide for "ensuring representation of Anglo-Indians in the Union and State legislatures through nominations if necessary, special provision for the community in certain services, and special provision for educational funding for their benefit."

- Article 350(B) of the Constitution authorises the President to designate a "Special Officer for



Linguistic Minorities" charged with "examin[ing] all situations impacting the safeguards established for linguistic minorities under this Constitution and reporting to the President."

## Conclusion

Minorities will find numerous articles and provisions in the Indian Constitution that protect their rights and benefits. The Indian Constitution shows how different demands made by people of various cultures and identities can be tolerated and adjusted. Minority rights are protected by numerous sections in the Indian Constitution. The concepts represented in the 'preamble,' 'Fundamental Rights,' 'Directive Principles of State Policy,' and several other articles and sections are among them. As a result, it is apparent that the Indian Constitution is crucial in safeguarding the rights and advantages of minorities in India.