

**INTERNATIONAL JOURNAL OF LEGAL ENFORCEMENT**

**ISSN: 2582 8894|UIA: AA1003/2020**



**Volume 1 Issue 2**

**|June 2021|**

**Website: [www.internationaljournaloflegalenforcement-ijle.com](http://www.internationaljournaloflegalenforcement-ijle.com)**

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**“Dharma is to protect the Needy”**

**Article on**

**THE RELIGIOUS MINORITIES OF INDIA: PROTECTED OR  
PERSECUTED?**

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## **INTRODUCTION**

The Supreme Court's recent direction in 2019 to the "National Commission for Minorities" (NCW) to define "Minorities" at the State level is paradoxical and hypocritical in itself. When the reports of the UN 2019 itself claims that 80.5% are Hindus<sup>1</sup> then trying to define Minorities state wise including Hindus to be minorities in States where minorities are higher is critical in understanding as to what are the yardsticks actually planned to define minorities. Franklin Roosevelt stated that a country's basic fundamental democracy will be afloat only when that country's minorities are recognized properly.<sup>2</sup> The idea of democracy will fail in itself when the minorities are not recognized.

No efforts were initiated to define minority in the Indian Constitution which makes us understand the term minority from *Encyclopaedia Britannica*, as it defines those who are culturally, ethnically or racially separate groups which reside side by side with the main dominant group.<sup>3</sup> Attempts were being made to define minorities in "*In Re: The Kerala Education bill*" as it states, the minority communities are those whose representation are less than 50% of the total population residing in India.<sup>4</sup> The definition was not wholesome and cannot be zeroed down to understand the term minority properly. It is a task in itself to identify who lies in the 50% cap.

The development of minority issues in the present times has turned topsy-turvy. The minority communities are facing their rights being threatened and brought under scanner by various Courts which again brings the question of democracy to the plate. This article will deal to understand the concept of minority drawing parallels with the Indian scenario.

## **DEDUCING "MINORITY" THROUGH THE CONSTITUTION AND JUDICIAL DECISIONS**

The Constitution of India has enshrined in Article 29 and 30 the heading of "*Cultural and Educational Rights*" which emphasizes on the rights of the minority communities. If

<sup>1</sup> Diva Rai, "Minorities in India: rights and legal status", I-pleaders (20 Sep 2020).

<sup>2</sup> Ibid.

<sup>3</sup> The Encyclopaedia Britannica, <http://www.britannica.com/EBchecked/topic/384500/minority>, accessed on 8 June 2021.

<sup>4</sup> *In Re: The Kerala Education bill*, 1959 1 SCR 995.

critically analysed, Article 29(1) states “*any section of people who have a distinct language, script or culture of themselves shall have the right to protect it*”.<sup>5</sup> Article 29(1) is general and does not focus on the religious minority. It tries to protect the linguistic minority. Article 30 on the other hand deals with minority rights of both linguistic and religious communities to have their own educational institutes of their choice and administer them.<sup>6</sup>

The recent Supreme Court verdict on the Madrasa schools has a different tale to present. The famous “*Keshavananda Bharati*” case held that the minority groups are a part of the basic structure of the Constitution.<sup>7</sup> Article 30, also stated that the minority groups have the right to “establish” and “administer” educational institutions of their own choice.<sup>8</sup> Article 30 has no such limitations or restrictions which can be seen to exist in the fundamental rights.

On the contrary a two-judge bench upheld two acts namely the “*West Bengal Board of Madrasah Education Act,1994*” and “*West Bengal Madrasah service Commission Act,2008*” as to which both the acts reduce the autonomy of *madrasas* to negligible. The appointment of the teachers in these madrasas will be done through a board appointed by the Government.

If judicially traced back the word “administer” in Article 30 of the Constitution has been interpreted in the cases like “*Ahmedabad St. Xaviers College*”<sup>9</sup> and “*TMA Pai Foundation*”<sup>10</sup>

It is learnt that the Court was steady in concentrating that the term “administer” meant allowing the minority institutions to select their own teachers, staff and providing the basic liberty needed to run the institution but the recent development has seen the arbitrary nature of the Government’s intervention on the *madrasas* and sabotaging the minority rights by bringing *madrasas* under their control. Section 12 of the Act even threatens the madrasas to be devoid of funds if the appointments done are not in congruence with the recommendations.<sup>11</sup> The whole idea of Article 30 has just crumbled itself by the smaller bench not even hesitating to overrule a larger bench’s decision.

<sup>5</sup> Article 29, “The Constitution of India,1950”.

<sup>6</sup> Article 30, “The Constitution of India, 1950”.

<sup>7</sup> *Keshavananda Bharati v. State of Kerala*, AIR 1973 SC 1461.

<sup>8</sup> Article 30, “The Constitution of India, 1950”.

<sup>9</sup> 1974 AIR 1389.

<sup>10</sup> AIR 2003 SC 355.

<sup>11</sup> Section 12, “*West Bengal Madrasah service Commission Act,2008*”.

It is not just Madrasas but in Gujarat's new law relating to the "Gujarat Secondary and Higher Secondary Education (Amendment) Act, 2021" which was brought in force in 1<sup>st</sup> June 2021, the law exercises to take away all the rights given to the minority institutions and take away all their rights of appointing teaching and non-teaching staff. The Government funded minority institution's principles to non-teaching staff will be appointed through a Central Recruitment Committee set up by the Government.

This is really saddening to see the dilution of minority rights and crumbling up of the provisions of the Indian Constitution through this present Government. The motive is clear to make the minorities knee bent and take their rights while on the other side show dominance and false victory by making a mockery of the Constitution.

It is not just one event where minority rights are deprived but there is a string of events where it is understood that minorities in India are always on the persecuted side. There is always a constant fear for the minorities that their rights can be infringed anytime.

In the case of "Ram Narayan Agarwal v. State of UP"<sup>12</sup> It was held that about 1.8 million minority community people in a year are tortured in the police stations. Also, the word "murder of minorities" has transitioned to another word "encounter killings".

The Indian Constitution under its preamble through its 42<sup>nd</sup> amendment has incorporated the term "secular" <sup>13</sup> which denies favoring any particular religion or identifying itself with one particular religion. But it can be witnessed neither in laws nor in its practice that any separation lies between the religion and the State. Under Article 15(1) of the Constitution it states that the State will not "discriminate" any citizen on the grounds of religion but the question which arises is whether discrimination includes "favoring"?

Article 290 (A)<sup>14</sup> The Constitution is an example wherein the Constitution is witnessed favoring a particular religion. It states that a sum of money will be paid out of the Consolidated fund of the Kerala State every year to maintain the Hindu temples.

Also, Article 25 of the Constitution <sup>15</sup> can be debated to understand the idea of "conversion" in religion. Whether the concept of "right to convert" is associated with "right to

<sup>12</sup> AIR 2015 SC 3135.

<sup>13</sup> Preamble, "The Constitution of India, 1950".

<sup>14</sup> Article 290(A), "The Constitution of India", 1950.

<sup>15</sup> Article 25, "The Constitution of India, 1950".

*freedom of religion”?*

With regards to other countries the concept of “conversion” is not clear with its provisions in the Constitution of India.<sup>16</sup> Art 25(1) of the Constitution under the heading of “Right to freedom of religion” states that “all persons have the right to equally enjoy the freedom of conscience and the right to profess, practice and propagate religion”.<sup>17</sup> It can be understood that the freedom of conscience which means the idea to judge right and wrong with regards to religious freedom can breed the idea of “right to convert” under it.

A Supreme Court judgment in a case “*Ratilal Panachand Gandhi v. State of Bombay*”<sup>18</sup> has stated that a person is entitled to his fundamental right under the Constitution to not just entertain the religious beliefs and the ideas which he has but also to display his beliefs through overt acts as are instructed or sanctioned by his religion. It also stated that further propagation of his religious views was allowed for the edification of others.<sup>19</sup>

Contradicting to the earlier judgment in another case of “*Digyaadarsan Rajendra Ramdas Ji v. State of Andhra Pradesh*” it stated that the right to propagate includes the idea of communication of one’s religious beliefs through various means where the tents of faith is exposed but the “right to convert” will not be included to convert any other person to the former’s faith.<sup>20</sup>

The idea of “freedom of conscience” guaranteed in 25 (1) of the Constitution is for all the citizens and is not concentrated on religious groups. In a similar case of “*Rev. Stainislaus v. State of Madhya Pradesh*” the same idea is reflected and stated that no fundamental right is present to convert another person to his own exercising religion. In other words, *forced conversion* is not allowed as it defeats the purpose of propagating the religion but if a person willfully converts himself to another religion that would not impinge on the “freedom of conscience” as he was not forced to convert.<sup>21</sup>

Article 48 of the Constitution focuses on prohibiting slaughter of cows which has totally been a tool for the majority Hindu community to dominate the minority communities and create

<sup>16</sup> Shiv B Rao, “The Framing of India’s Constitution”, Vol. II, pg:173–174.

<sup>17</sup> Article 25(1), “The Constitution of India,1950”.

<sup>18</sup> AIR 1956 SC 388.

<sup>19</sup> Ibid.

<sup>20</sup> 1970 AIR 181.

<sup>21</sup> 1977 SCR (2) 611.

a total mess for the rest of the minority people.

The cow vigilantes have raised cows to such a level that the right to life which is a fundamental right under Article 20 is superimposed by Article 48. The right wing hindu activists claim to be the protectors of the cows naming their gangs to be the “Gau Raksha Dal” all over India. They have started patrolling all over and whoever they catch with beef are stripped of naked, made videos of being lynched. Is this what the law has stood for? This is nothing but dominating the minorities and enjoying the part of being the majority in the State. Article 48 should be amended and the last line be omitted as the law has been violating human rights and the minority communities are being persecuted anywhere anytime.<sup>22</sup>

The quote which was made by Thomas Jefferson stands true as he says that a democracy can be pinpointed to be a mob rule where the majority 51% of the people can take away the rights of the minority 49%.

### **ROLE OF CENTRAL GOVERNMENT IN PROTECTING THE MINORITY GROUPS**

After the BJP in 2014 has come to power the discriminatory laws and violence has been a constant tale to be witnessed. In 2013 the infamous Muzaffarnagar incident took place before the general elections were due to be held in 2014. It led to the death of 60 people and displacement of nearly 50,000 people. The displaced people in majority were all Muslims.

The right-wing vigilantes apart from being *gau rakshaks* have also been involved in targeting minorities with forced re-conversions which they termed it as *ghar wapsi*. It is basically mass re-conversion of people to Hinduism. These laws have fostered in building hostility between the majority and minority groups.

The advent of 2016 and 2017 have seen the death of many minorities due to cow vigilantes. A report published in 2019 has stated that nearly 44 people were killed in India over the last three years wherein the majority people were Muslims. Also, the law enforcement and the Hindu political leaders protect the vigilantes from various International Ngos like Human Rights watch.<sup>23</sup>

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<sup>22</sup> Jayshree Bajoria, “India’s Cow Protection Groups Raise Tensions,” Human Rights Dispatch.

<sup>23</sup> Ian Marlow, “Cow vigilantes in India killed at least 44 people, report finds”, The Economic Times, Feb 20,2019.

Also, laws have been twisted by excluding the minority Christians and Muslim Dalits from “Prevention of Atrocity Act” which is also termed as Scheduled Caste and Scheduled Tribes Act which was enacted in 1989. The mischievous attempt to remove these categories of people disrobing what they should achieve is another setback for the minority people. The Government has taken both the benefits of caste as well protection under this law.

The whole idea of a shift to being Muslim does not change the fact of their economic or social status which was being noted by the “Rajinder Sachar Report”<sup>24</sup>

The 2015 statistics which are being published by the “*National Crimes Records Bureau*” states that 67% of the people in the Indian Jails are defendants which are under trial, more than 25% are in the prison for more than a year. The minority groups that include the Muslims, Dalits and the Adivasis amounts to 55% of India’s defendant population.<sup>25</sup> In the Kashmir area just because a person is Muslim should not be tagged a terrorist. Many undertrials are innocent but the real culprits still roam free.

Also, enacting the Foreign Contribution Regulation Act saw measures being taken by the Government to halt 20,000 NGOs from receiving foreign funds. This legislation was brought just so that the minority funding can be halted by the Government.<sup>26</sup>

## **CONCLUSION**

The analysis of the paper is critical relating to the minority rights but the state of minority is in a poor state. The understanding of everyone is a human after all irrespective of caste, creed, sex, religion is of quintessence. We have just one life and sharing hate in that life should not be a purpose of achievement but harmonizing the majority with the minority people will bring peace and progress. There are various state laws which are created that do not conform and comply with the International standards of freedom and religion or belief. For instance, Article 18 of “*United Declaration of Human Rights*” and also Article 18 of “*International Covenant on Civil and Political Rights*”.

The statistics of violence which are committed to the religious minorities were both from the Congress led government which got more stronger in the BJP led government. The

<sup>24</sup> Sachar Committee report.

<sup>25</sup> National Crime Records Bureau report, 2015.

<sup>26</sup> Advocacy Statement, “Actions of the Indian government with respect to minority communities – Universal Periodic Review 27th session (May 2017)”, 24 April 2017.

hate, discrimination and disrobing power is not the solution of creating religious biasness. This is a democracy and every religious community has the equal rights to live and let live.

