

**Religious minority in india and contemporary issues.**

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Introduction :

In the absence of specific definition of the term “Religious Minority” in the Constitution and the ratio of 50% as decided by the Supreme Court in *Re Kerala Educational Bill*¹ the question arose about basis for criteria of calculation of less than 50% Because if it is calculated on the basis of entire population of India or of a particular state, or any part of it because there are examples where particular religion is in majority in particular state but counted as minority in Country. So the question is open that whether they require any such Constitutional protection as a vulnerable group and where to draw the line and what is to be taken as consideration. Indian Constitution provides some special rights to minority under the chapter of Fundamental Rights under Article 29 and 30. Hence the question of religious minority and their rights required special emphasis.

Definition of the term Minority:

The expression as defined by Encyclopedia Britannica means group held together by ties of common decent, language, religious faith and feelings different in these respect from the majority of the inhabitants of the given political entity. There is no specific definition of the word Minority. In common parlance, the expression minority means a group comprising less than half of the population and differing from other especially the predominant religious section. As regard religious minority at the national level in India, all those who profess a religion other than Hindus are considered as minorities. Often the difficulties experienced elsewhere in arriving at a satisfactory definition of the concept of “Minority” same difficulty also faced while framing of Indian Constitution. But in the absence of specific definition or criteria to decide we consider what is stated by the National Commission of Minorities Act, 1992. It notified 5 religious communities as minority Muslim, Christians, Sikhs, Buddhist and Zoroastrians and added Jain as minority in 2014.

Need and objective behind insuring rights to religious minority

Every community has the right to freedom of conscious includes thought and religion, the right to profess or not to profess to a religion and finally the right of parents to have their children educated in the line with their particular benefits and convictions. Because forced assimilation still occurs in countries in which there is a dominant majority religion. As per the obligation set out in international treaties every state must protect the religious group’s right and not allowed the majority groups to dominate minority. Even if they are the recognized state religion. State may impose certain restriction on minority rights which is legal and necessary to maintain democratic society.

Minority rights under Indian Constitution:

The Constitution uses the word ‘minorities’ in some articles but does not define it anywhere, “The Constitution of India used the word ‘minorities’ or its plural form in articles 29 to 30 and 350 A to 350 B but does not define it anywhere. Article 29 has the word ‘minorities’ in its marginal heading but speaks of “any section of citizens having a distinct language script and culture. Whereas Article 30 speaks specifically of two categories of minorities – religious and linguistic.

The remaining two articles – 350 A and 350 B relate to linguistic minorities only, “As per clause (c) of section 2 of the National Commission for Minorities Act, 1992, five communities vide Ministry of

¹ AIR 1958 SC 956



Welfare notification dated 23rd October, 1993 are declared as minority communities viz Muslims, Christians, Sikhs, Buddhists and Zoroastrians (Parsis),”

Religious minority... A minority religion is a religion held by a minority of the population of a country, state, or region.

A linguistic minority is a community that uses a language different from the one spoken by the national majority. ... All of them are legally recognized, but the specific minority rights and their implementation differ significantly from one region to another.

Objective behind provision of Minority Rights under Article 29 & 30 of the Constitution of India :

1. Opportunity to develop, by securing for them social, economic and political justice;
2. Liberty of thought, expression, belief, faith and worship; and equality of status and opportunity..
3. In order to achieve unity and integrity of the country and to allay any fears of the minority communities,
4. Articles 29 and Article 30 were provided as protection against cultural hegemony of the dominant groups.

Article 29(1) of the Constitution provides that 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.”

Article 29(2) laid down that “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(1) enjoins that “all minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice”,

While Article 30(2) lays down 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.”

Furthermore, Article 350-A establishes that “it shall be the endeavor of every State and of every local authority within the State to provide adequate facilities for instruction in the mother-tongue at the primary stage of education, to children belonging to linguistic minority groups.”

Judicial approach and Religious minority.

The first question of defining minority was made in *Re: Kerala Education Bill*² where the Supreme Court, through S.R. Das C.J. suggesting the techniques of arithmetic tabulation, held that the minority means a “community, which is “numerically less than 50 percent” of the total population. However in the *Guru Nanak University case*³, the Supreme Court rejected the contention of the state of Punjab that a religious or linguistic minority should be minority in relation to the entire population of India. The court has ruled that a minority has to be determined in relation to state population.

In *TMA Pai foundation case*⁴ the eleven judge’s bench of the Supreme Court confirmed the position that minority status of a community is to be decided with reference to the state population.

² Ibid

³ 1966 PLR 735

⁴ 2002 SC 25 Para 39



In P.A.Inamdar case⁵and Islamic Academy of Education case⁶ Supreme Court reinforces the judgment of TMI Pai case to ensure equal treatment between the Majority and the Minority institutions. Recently Public Interest Litigation filed by Ashwini Kumar Upadhyay where he seeks status for Hindus in eight states on the basis of less population of Hindu's according to the 2011 census. He focused in his Public Interest Litigation that Hindu's are being deprived of their Minority rights illegally and arbitrarily to the majority population in the eight states mentioned in the Petition as they are not minors as per National Commission for Minority Act, 1992. His contention was that Hindu's are in Minority in that eight states but not avail the benefits of scholarship offered by Central Government. This plea was rejected by Supreme Court bench consisting of S.A.Bobde, B. R. Gavai and Surya Kant. Justice Bobde states that religion doesn't have state borders, so minority can be decided based of whole Indian population only.

The demand of petitioner to seeks to quash the notification issued by the Central Government in 1993 by which 5 communities were notified as minorities, Petitioner further seeks a direction to the Central Government to define the term "Minority" so that only those religious and linguistic groups that are socially, economically and politically non dominant and numerically inferior may enjoy rights and protections guaranteed under Article 29 and 30 of Constitution of India. National Commission of Minorities refused representation of AshwiniUpadhyaybefore it, stating that they do not have the jurisdiction to declare new minority communities and the power is vested with the Central Government.

AshwiniUpadhyayexpressed his view that various decisions of the Supreme Court discourage the National Commission for Minorities from encouraging such claims from different communities and express the need where NCM need to propose ways and means to help to create such social conditions where the concept of majority and minority can be done away altogether. The PIL finally dismissed by Supreme Court on February 20, 2020 where Supreme Court allowed the Petitioner to approach respective High Court to ensure that only those religious and linguistic minority groups which are socially, economically and politically non dominant and numerically very inferior, enjoy the rights and protection as guaranteed Under Article 29 and 30 of the Constitution of India.

Conclusion

Religious Communities have their own religious educational institution, such as Gurukuls by Hindus, Madarasas by Muslims, Seminaries by Christians, some of these institutions impart normal education, in addition to religious education. Theseinstitutions follow their own school and thoughts and there is no community in their syllabus and teaching methodology. So almost every religion in India enjoying the concept of secularism and religious freedom...so detail discussion is require on the additional need to provide certain religious communities additional special rights in the name of Minority.

However while going through this entire discussion following points needs for serious consideration on the part of National Commission for Minoritiesthese are :

1. It is required to redefine "minorities" and exact criteria to define it.
2. If it is considered on the basis of statethen whether it is practically possible as India is unitary State.
3. What are the practical difficulties that arose if Minority decided at state level.

⁵ {(2005)6 SCC 537}

⁶ {(2003)6 SCC697}