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MINORITIES AND HUMAN RIGHTS IN INDIA

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ABSTRACT

India is today one of the most powerful developing nations. This newly industrializing state enjoys a prominent status as the largest democratic nation-state in the world. Unlike some emerging polities, it has had several successful elections without military incursions into politics. It is a nuclear power and increasingly becoming a major economic actor in this era of the "New Globalization." In spite of her impressive developments, however, India continues to confront human rights problems with respect to minorities. After the formation of BJP Government in India there has been increasing sense of insecurity prevailing among religious minorities. In this context an attempt has been made in this paper to analyse the rights of religious minorities in India. The first part this paper tries to define minorities in India; the second deals with the position of minorities according to the Indian Constitution; and the third concerns with the role of state and the Civil Society in safeguarding the rights of religious minorities.

INTRODUCTION

India is very different from most other nations, especially the more homogenous, present-day European nations. This has to do with the fact that India as a state is not a product of indigenous growth, but results from British colonial effort. In fact, if we look back through Indian history, it is only for brief periods like the rule of the Mauryas in the 3rd and 2nd century B.C. and the much later Moguls around 1700 A.D., that we meet with empires of the same size and extent as modern India; and in those cases also, instead of talking about nations, it would be more correct to speak about empires.¹ So, modern India, or the modern Indian nation, is in many respects a product of British imperialism.

When speaking of minorities, we must note that in some countries there is no linguistic equivalent for the expression. In an official communication to the United Nations, Sub-Commission on the Prevention of Discrimination and the Protection of Minorities, the government of Thailand stated that the concept of "minorities" was unknown in that country. The communication said, "Although this word has a Thai translation from the English for the purpose of communication with the outside world, it has no social or cultural connotation

whatever”. But for us in India we have a written Constitution and there is no difficulty in knowing who are reckoned as “minorities”. Article 29 read with Article 30 provides that any section of citizens of India residing in India or any part of the territory of India having a distinct religion, language, script, or culture of their own are minorities with the right – a fundamental right – to conserve their religion, language, script, and culture. “One” culture was anathema to the founding fathers. Religious and linguistic minorities not only have a separate status under our Constitution, they have also been conferred an additional fundamental right – a right which no ordinary law can take away – to “establish and administer educational institutions of their choice”. The intention of the framers of the Constitution was to use the term “minorities” in the widest sense.

By its very existence, our Constitution recognises that every minority group, whether religious, linguistic, or cultural, in any part of India poses a challenge to the predominantly majority community – a challenge to what has been elsewhere described as “the dynamics of governance amidst pluralism”. This is a challenge for every government, even a majority government that has a two-thirds majority in Parliament. It is still pledged to safeguard and enhance minority rights, and the Constitution tries to ensure that the dynamics of governance amidst pluralism are tackled peacefully and with vision. In every nation, intolerance towards someone who looks, talks or worships differently (or who even lives or dresses differently) from the majority community has always been a basic human infirmity. History shows us several ways in which members of a society have tried to solve the problems posed by the presence of a minority group (“section of citizens”, as our Constitution describes them). These ways or methods fall into two groups.

(1) Coercive or Hostile Toleration:

This is like the treatment of a sect of Muslims known as Qadianis (or Ahmediyas) in modern-day Pakistan. The Ahmediyas, a minority, were officially and statutorily declared as non-Muslims in the Islamic State of Pakistan because the rest of the Muslims in their Parliament were in a majority. Today, they are hardly “tolerated” – even as non-Muslims.

(2) Voluntary or Involuntary Assimilation or Absorption:

Forced conversions in the Middle Ages effectively destroyed the identity of religious minority groups. The Ismaili Khojas and the Cutchi Memons of today were originally Hindus who were forcibly converted to Islam during the invasions of Mahmud of Ghazni (971 to 1030) and his successors.² They are now a recognised sect of Muslims in India.



THE MAKING OF THE INDIAN CONSTITUTION AND MINORITIES

The present Indian Constitution was adopted by the 299 person Constituent Assembly on the 26th of November 1949, after more than two and a half years of deliberations, and came into force on the 26th of January 1950. It consists of 395 articles and is one of the world's longest constitutions. With its 45 amendments it has been functioning as the legal author for Indian society since 1950. Already with Jawaharlal Nehru's proposal for the objectives of the Constitutive Assembly, it was clear that the persons chosen to frame the constitution for the new, independent Indian republic were faced with a daunting task, namely to find a compromise between modern, Western, liberal ideas of democracy and the enormous ethnic, linguistic, cultural, and religious diversity found in India. Thus, already article 4 of the Objectives Resolution of 13th of December 1946 declares as one of the objectives of the constitution that it should guarantee that India shall be ruled democratically, and article 5 states that the constitution shall guarantee to all the people of India such rights as "justice, social economic, and political; equality of status, of opportunity, and before the law; freedom of thought, expression, belief, faith, worship, vocation, association and action, subject to law and public morality."³

If, in these two articles, we note a clear inspiration from Western documents such as the American Declaration of Independence and the Constitution of the United States, already article 6 shows us that the people behind the Objectives Resolution clearly envisaged the problems which could be foreseen when trying to transplant these ideals to the Indian social, religious and political reality, with its diverse minorities. Thus, in this article, it is said that "adequate safeguards shall be provided for minorities, backward and tribal areas, and depressed and other backward classes". The same preoccupation is clear if we look at the list of the seventeen important committees of the Constitutive Assembly. Out of these, four were dealing especially with problems having to do with the situation of various minorities. Thus, there were the Advisory Committee on Fundamental Rights, Minorities and Tribal and Excluded Areas, the Minorities Sub-Committee, the North-East Frontier Tribal Areas and Assam Excluded & Partially Excluded Areas Sub-Committee, and the Excluded and Partially Excluded Areas (Other than those in Assam) Sub-Committee; all committees dealing with minorities or tribals. No doubt the original intention behind the Constitutive Assembly was to produce a document that would assure equality to all groups of Indian society and at the same time safeguard the interests of the many minority groups. As such the work was based on the Government of India Act of 1935 and especially the so-called Nehru Report of 1928. However, the partition of India in 1947 put its mark on the work of the Constitutive Assembly. Many of the various designs for protection of minorities found in these two documents, and particularly in the Nehru Report,



were especially aimed at the large Muslim minority. Now, that the Muslims themselves had decided to establish their own nation, many Hindu representatives did not feel the same need to comply with the demands of the Muslim minority.⁴ One result of this was that the scheme of reservations for the legislatures, proposed by the Nehru Report, was completely dropped during the drafting of the constitution. Similarly, the proposal for a proportional electoral system that would have been to the advantage of the minorities did not meet with the approval of the majority of the representatives.

MINORITY RIGHTS IN INDEPENDENT INDIA

The Constitution, of India mentions the word minority, in Articles like 29-30 and 350A to 350 B. Article 30 makes a specific reference on two categories of minorities; a) religious and b) linguistic. Article 350A and 350B mention only linguistic minorities. 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.” (Communalism Combat). Dawn of freedom and partition of the country was accompanied by bloodshed on an unprecedented scale and migrations of population in both directions from Pakistan to India and vice versa. In this atmosphere of mutual hatred and ill will, the country required total resilience to hold its aspirations of becoming a true democracy. Therefore the constituent Assembly members felt that they owed a duty to the Muslims, and other minorities in the country. “In all earnestness the constituent Assembly addressed itself to the problems of minorities. An Advisory committee on minorities was appointed incorporating representatives of all minorities Muslims, Christian, Parsis, Anglo- Indians.

Although Indian democracy is commended world- wide for being the largest democracy yet it has not responded so far to the problem of the “exclusion” of the Muslim minority community in general which constitute at least 15 percent of the total Indian population and being the second largest majority community in the country. India’s democratic experiences of about six decades with majoritarian political structures of power and influences completely failed to overcome the problem of “exclusion” of the Muslims in most of the sectors of human resource development. The Muslim community is statutorily enabled only in the states of Karnataka, Tamilnadu and Kerala to avail reservation policies of respective governments meant for backward classes of citizen. In 2004, the state of Andhra Pradesh followed similar course of action for social Justice on the basis of valid materials and survey reports of the minority commissionerate and Andhra Pradesh backward classes Commission. But the Indian Judiciary at the state level stopped this public policy. On the other hand, anti-Muslim elements in political parties, bureaucracy and various other governmental and public sector levels, openly questioned the survival of the



principle of the rule of law. This has already jeopardized civic; political culture in the country. As a result, the Muslim community has entered in to the vicious cycle of backwardness and exclusion which degenerate the whole purpose of democracy in the country maintaining constitutional obligation mostly on the paper. B. R. Ambedkar, one of the chief architects of the Indian constitution, had cautioned against being content with mere political democracy which could not last unless social democracy lay at its base. According to Dr. Ambedkar: Two things were missing in Indian Society equality and fraternity. On the occasion of the adoption of the constitution he said on 26 January 1950 we are going to enter in to a life of contradictions. In politics we will have equality and in social and economic life we will have inequality. In politics we will be recognizing the principle of one man, one vote one value. In our social and economic life, we shall by reason of our social and economic structure, continue to deny the principle of one man one value. How long shall we continue to deny equality in our social and economic life? If we continue to deny it for long we will do so only by putting our political democracy in peril.⁵

Democracy is made democratic by basing its rule on the consent of those governed. The means of articulating that consent and feeding in to the system of governance is the concept of popular sovereignty. There must also be a system of institutions for transmitting the will of the people to the rules, together with a willingness on the part of the rules to translate popular inspirations. We should also remember that while debating the provisions which ultimately went in to part IIIrd of the constitution Fundamental rights – the members of the Constituent Assembly were fully aware of giving certain additional facilities to the minorities. Right to freedom of Religion (Article 25) is available to all including the minorities. Under article 26 of the constitution every religions denomination has a right to establish religious and charitable institution and maintain the same. While these two Articles, namely Article 30, makes special provisions for minorities as follows. In his article, “liberal states and Muslim minorities”, R.A.Jagirdar argues, “All minorities whether based on religious or language shall have the right to establish and administer educational institutions of their choice.”⁶ The state shall not, in granting aid to educational institutions, discriminate against a minority institution. The importance of this provision which is having loaded in favour of minorities in India has not been properly appreciated by the minorities. And another noticeable thing in this context is to be considered more seriously that, the elite class among the Muslims tried to make use of the provisions specially given to the minorities to the maximum level. But the malady is that the elite class monopolized all kinds of benefits and advantages earned through constitutional provisions leaving nothing fruitful to the ordinary Muslim masses. Indian religions are allowed to maintain communications with co-religionists abroad financial contributions from abroad are not banned but are subject to scrutiny by the ministry



of home affairs of the central government. But the experiences tell us Christian brethren in abroad contributed much for the socio-economic and educational development of the community in the form of charity. But Muslim countries did not do much in this respect on the other hand, wahabism, with enormous Saudi petrodollars at its disposal, has wrought havoc worldwide.

But everything proved wrong in the post independent India, where minorities are constantly oppressed just because they have no constitutional safeguards to represent themselves or to articulate their rightful and just demands within the constitutional or legal frame work. The feeling of insecurity and fear among the minorities has been strategic weapon across the political parties to exploit and maneuver them as more vote banks without of empowering the large minority sections as a political force. The apprehensions and the concerns expressed by the national leaders in case of providing political safeguards to these minorities of become a fallacy. Minorities suffered and unprecedented trauma and humiliation even in the democratic set up without gaining political safeguards. Majoritarian back lash owing to the clandestine and systematic anti-campaign, against the minorities in the name of minority appeasement; was a great blow to the minorities in terms of spoiling the relationship between the majority and minority leaving no space for them to articulate their basic and just demands to fulfill their socio-economic and cultural empowerment. The whole democratic system was vitiated around building all kinds of perverted public discourses on minorities and excluded them from the national main stream. There is a wide spread recognition that unless nation states become more sensitive to the concerns of and the need for minority voices in decision making strategies of inclusion cannot have any chance of success. The critical issues in this regard is“ the ways and methods through which minorities can be included in public institutions. Until recently, however, policy makers in India did not view these inequalities with regard to the under- participation of minorities in governance as a problem. Taken in to consideration the whole issue of minority rights and deprivation of 64 years after independence, the Muslims remain economically backward, socially marginalized, politically under represented, educationally much below the national lever and practically unrepresented in any field of governance and administration. According to the report of the Sachar Committee, Muslim community is almost as backward as the scheduled castes and the scheduled tribes and more backward than the non- Muslim OBC“s. Since 1947, Muslims have been consistently under represented by 50% in proportion to their population.⁷



STATE AND MINORITY RIGHTS

An important factor contributing to the nature of the current debate on minority rights is the fact that the Indian state has fallen short of recognizing and actively addressing the issue of the socio-economic rights of Muslims. Zoya Hasan's analysis of the relationship between the state and minority communities is significant in this regard. Hasan argues that the constitutional provisions for religious liberty and cultural rights of minorities have proved inadequate in protecting them against discrimination and exclusion. Taking the argument further, she suggests that the state's failure to ensure the socio-economic development of India's minorities is tantamount to discrimination.⁸

Hasan's argument is substantiated by the fact that although widespread evidence of the dismally poor socio-economic status of Muslims led the Gopal Singh committee to declare them to be a 'backward community' in India as early as 1983, and government reports do acknowledge the backwardness and deprivation of Muslims, there are very few policies aimed at redressing it. Indeed, government policies in economic upliftment of the minorities are conspicuous by their absence⁹ Arguably, this inability of the state to address the socio-economic deprivation faced by religious minorities can in part be traced back to the Constitution, which explicitly articulates the need to preserve the cultural rights of religious minorities and not their economic, social or political rights. As Rochna Bajpai points out, the dominant nationalist opinion in the constituent assembly, represented by the Congress and its supporters among minority leaders, held that the backwardness of a group was a legitimate ground for group preference provisions.¹⁰ This meant that while the scheduled castes and scheduled tribes came within the purview of group preference provisions, any debate on similar provisions for religious minority groups was foreclosed.⁸ In the absence of constitutional guarantees, debates about the relative deprivation of Muslims have not found much space in the political sphere, which continues to be dominated by discussions on the cultural rights of the community. A similar case can be made for civil society, where organisations that view themselves as secular are reluctant to be seen as working exclusively for any particular religious community. As Imtiaz Ahmed argues, secularism has been the paradigm within which CSOs have defined themselves since independence, and within this definition identification with a specific religious community is equated with being communitarian and even communal.¹¹ In so doing, civil society organizations have fallen into the same trap as the state of not recognising that while caste, class and gender are significant in determining the structural constraints faced by individuals, belonging to a particular religious community or ethnic group too has a similar impact.



CONCLUSION

Constitution of India provides several articles intending to protect religious and linguistic minorities and their culture. We have also seen how, in spite of this, right wing Hindu forces within the last couple of decades have assaulted primarily the Muslim and Christian minorities. Thus, it is clear that the aims of the architects of the Constitution of India have not been fully realized. On the contrary, some would argue that communalism has been on the increase since the introduction of the Constitution. We should understand is in politics minorities do not function as unidimensional cultural entities because they enter larger political formations, align themselves with different forces in all civil society and assert Citizenship rights. Since minority rights remain constitutionally embodied and politically embedded in the Nation-State system. It is necessary to find new spaces for minority politics in which both secular interest and cultural identities of the minorities not only survive but also flourish.

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