CHAPTER - VI

RIGHTS OF RELIGION BASED MINORITIES

HISTORICAL BACKGROUND:

The history of India and its struggle for independence show how the concept of minority developed prior to and at the time of framing of the Constitution and later in the course of its working. History tells us that there were certain religious communities in India who were required to be given full assurance of protection of their religious and cultural rights. India is a country of people with the largest number of religions and languages living together and forming a nation. Such diversity of religions, culture and way of life is not to be found in any part of the world. John Stuart Mill described India as “a world placed at closed quarters”. India is a world in miniature. The group of Articles 25 to 30 of the Constitution, as the historical background of partition of India shows, was only to give a guarantee of security to the identified minorities and thus to maintain the integrity of the country. It was not in the contemplation of the framers of the Constitution to add to the list of religious minorities. The Constitution through all its organs is committed to protect religious, cultural and educational rights of all, Articles 25 to 30 guarantee cultural and religious freedoms to both majority and minority groups.; Ideal of a democratic society, which has adopted right to equality as its fundamental creed, should be elimination of majority and minority and so-called forward and backward classes. The Constitution has accepted one common citizenship for every Indian regardless of his religion, language, culture or faith. The only qualification for citizenship is a person’s birth in India. We have to develop such enlightened citizenship where each citizen of whatever religion or language is more concerned about his duties and responsibilities to protect rights of the other group than asserting his own rights. The constitutional goal is to develop citizenship in which every enjoys full fundamental freedoms of religion, faith and worship and no one is apprehensive of encroachment of his rights by others in minority or majority.
CONCEPT OF MINORITY

Even though articles 29 and 30 of the constitution uses the expression minority, but it has nowhere been defined. The preamble to the constitution seeks to guaranty to every citizen" liberty of thought, expression, belief, faith and worship. Articles 25 to 30 guarantees protection of religious, cultural and educational rights to both majority and minority communities. It appears that keeping in view the constitutional guarantees for protection of cultural, educational and religious rights of all citizen it was not felt necessary to define minority. Minority as understood from the constitutional scheme signifies an identifiable group of people or community who were seen as deserving protection from likely deprivation there religious, cultural and educational by other communities who happen to be in majority and likely to gain political power in democratic form of government based on election.

Section 2(C) of the National Commission for Minorities Act, 1992 defines minority to mean a community notified as such by the central government. The statement of objects and reasons for the enactment reads thus:

1. The Minority Commission was set up in January 1978 for providing an institutional arrangement for evaluating the safeguards provided in the constitution for protection of the minorities and to make recommendations for the ensuring implementation of the safeguards and the laws.

2. The Minorities Commission with statutory status would infuse confidence among the minorities about the working and effectiveness of the commission. It would also carry more weight with the State Government/Union Territory Administration and the Ministries/Departments and the other organisations of the central government.

3. It has, therefore, been decided to give statutory status to the Minority Commission by the proposed legislation.

4. The National Commission for the minorities will consist of a person of a chairperson and six members.

210
5. The main task of the commission shall be to evaluate the progress of the development of minorities, monitor the working of the safeguards provided in the constitution for the interests of minorities and in laws enacted by the central government or state governments, beside looking into the specific complaints regarding deprivation of rights and safeguards of the minorities. It shall also cause studies, research and analysis to the undertaken on the issues relating to socio-economic and education development of the minorities and make recommendation for the effective implementation of the safeguards for the protection of the interests of minorities by the central government or state Governments. It may also suggest appropriate measures in respect of any minority to be undertaken by the central government or state governments.

The eleven-judge bench in *T.M.A. Pai Foundation*¹ case held that Claims of minorities on both linguistic and religious basis would be each state as a unit. The country has already been reorganized in the year 1956 under the states Reorganization Act on the basis of language. Differential treatments to linguistic minorities based on language within the state is understandable but if the same concept for minorities on the basis of religion is encouraged, the whole country which is already under class and social conflicts due to various divisive forces, will further face division on the basis of religious diversities. Such claims to minority Status based on religion would increase in the fond hope of various sections of people getting special protections, privileges and treatment as part of constitutional Guarantee. Encouragement to such fissiparous tendencies would be a serious jolt to the secular structure of constitutional democracy. We should guard against making our country akin to a theocratic state based on multinationalism.² A meaningful conception of minorities would include sections of people who, on account of their non-dominant position in the country as a whole, are targets of discrimination and

¹ (2002) 8 SCC 481
² Bal Patil v. Union of India, (2005) 6 SCC 690 at p. 704
therefore deserving of special consideration. 

In the 2002 judgment in T.M.A. Pai Foundation & others vs. the State of Karnataka and Ors, the Supreme Court deliberated on the various contentions that the Centre, State, or a particular region within a State may be considered as the basic unit for protection of the right of minorities to set up minority educational institutions, and whether a minority in a State would lose its minority status if within a particular region of the State it happened to be in a majority. The Court has set out the principle that minority status should be determined in relation to the population of the State and not to India as a whole. It ruled that as the reorganization of the States in India had been effected on linguistic lines, for the purpose of determining a minority, the unit would be the State and not the whole of India. Thus, religious and linguistic minorities, who have been placed on a par in Article 30, have to be considered in terms of the State concerned. Not surprisingly, this issue surfaced again in Bal Patil (2004) and Srivastava (2007); these two judgments have further complicated the question of definition of minorities, as both these judgments relate, for the most part, to definitional issues. Bal Patil questioned the identity of Sikhs as a religious minority while Srivastava ruled that Muslims, by virtue of their numbers, cannot be considered a minority in Uttar Pradesh.

The numerical proportion of a population of a particular community in a State, distinguishable on religious grounds cannot entitle it automatically to minority rights.

The Constitution (103rd Amendment) Bill, 2004 to grant constitutional status to the National Commission for Minorities envisages a change in the way minorities are specified. The Cabinet has reportedly approved a proposal (May 2007) to define minorities State-wise in line with several Supreme Court judgments, most notably that in T.M.A. Pai. For the purpose of this legislation, minority will be specified as such in relation to a particular State/Union Territory by a presidential notification issued after consultation with the State Government; this will be in addition to the five minorities (Muslims, Christians, Sikhs, Buddhists, and Parsis) referred to in the NCM Act, 1992. The new approach is not

---

1 Hindu, Delhi, 14 July, 2007
consistent with the understanding developed in the Constituent Assembly on the protection of minorities and the constitutional compact between the State and minority groups.

**MINORITY RIGHTS:**

In *Davis vs. Beason*, the supreme court of united states referred to the case *Reynolds v. United States*, wherein Waite, C.J. who delivered the opinion of the court referred to the reply of Jefferson to an address to him by a committee of the Danbury Baptist Association. Jefferson said in his reply that man has no natural rights in opposition to duties. The court also laid down ‘congress was deprived of all legislative power over mere opinion but was left to reach action which were in violation of social duties or subversive of good order’. Applying this principle the U.S supreme court in DAVIS case held that the guarantee of the freedom of religion did not constitute a justification of polygamy which had been made criminal by an act of congress applicable to the territories.

K.Subba Roa, a former Chief Justice of India, has expressed his strong views on secularism. He writes “secularism has come to mean atheism instead of spiritual renaissance. Instead of religion deluging the land with spiritual ideas and unifying the nation and strengthening the moral fibers, it has helped to divide the country. The political attempt to implant the quixotic tree of perverted doctrine of secularism of foreign extraction in the religious soil of India, has not only failed but in the process, by weeding religion, deflated Indian character.

**REGULATION OF MINORITY INSTITUTIONS**

The right conferred by Article 30(1) is not an absolute right. The state may step in to maintain the standard of education. It can give security and protection to teachers and their staff. Regulations may be made in the interest of discipline, health, sanitation, morality, public order etc. The regulatory measures should not abridge the right of administration. The regulations imposed must be reasonable and must regulate the educative character of the institution.

The power of the government to take over management of an institution

---

which has failed to carry out the directions of the government was declared void on
the ground that it robbed the minority of its right. The minority has the right to
choose the members of the governing council, and the teachers. But minority has
no fundamental right of affiliation to a university. Qualification and conditions for
affiliation are all aimed at achieving excellence in education and also uniformity.

A State refused permission to an existing Christian boys school to admit
girls on the ground that nearby a Muslim girls school was situated where girls may
seek admission. The Supreme Court held that the minority has the right to admit
girl students and declared the refusal of permission violated minority rights.¹

An institution established for commercial purpose can lay no claim for
being protected under Article 30(1). The State has the undoubted right to lay down
terms and conditions of service of the teachers and other employees. It can regulate
the scale of pay and direct that their salary and allowances shall not be less than
those payable to the employees of government schools.² Minorities cannot be
allowed to oppress or exploit their employees. Their employees, like all others,
must be given security and a decent living standard.

The Industrial Disputes Act which is a social security measures designed for
the welfare of the labour applies to all and minority institutions are no exception.
The Industrial Disputes Act and other labour and welfare laws would apply to
minority institutions also. Article 30(1) is not a charter for maladministration.³

In St. Stephens College⁴ the Supreme Court held that the college, being a
minority institution, was not bound to follow the directions of the university. It
may select students for admission by an interview and may not abide by the
university rule to select students on the basis of marks obtained in the written
examination. It also laid down that up to 50% seats may be reserved for students
belonging to the Christian community. Other students may be admitted purely on
merits. This has now been overruled by the Supreme Court in Pai Foundation case.

Frank Anthony\(^1\) and Christian Medical College\(^2\) decisions are notable and praiseworthy because they have stopped exploitation of the teachers and other staff. Institutions imparting secular education must be subject to greater regulation than those which are imparting purely religious or cultural education. The students do not belong only to the minority. They belong to and constitute the nation.

After a long wait an 11 judge bench of the Supreme Court heard and decided the matter in 2002. It was held:\(^3\)

1. The right to establish and administer educational institutions is guaranteed to all citizens 119(1)(g) and 26 and to minorities specifically under Article 30. These rights are not limited to minorities and are available to all persons.

2. The State is to be regarded as the unit for determining both ‘linguistic minority’ as well as ‘religious minority’.

3. The question whether a sector denomination of a religion can claim minority status even though followers of that religion are in majority was left unanswered.

4. The question as to what is the criteria for treating an educational institution as minority institution was left open.

5. The rights of minorities under s. 30 cover professional institutions.

6. Admission of students to unaided minority institutions cannot be regulated by the State or a University but it can provide the qualifications and minimum conditions of eligibility in the interest of academic interests.

7. An aided minority educational institution has the right to admit students belonging to the minority but it may be required by the State government to admit a reasonable

---

\(^1\) Frank Anthony v. Union of India (1986) 4 S.C.C. 707.
number of non-minority students. Reasonable number would depend on the type of institution, courses being run and educational needs of the minorities.

8. Among the minority group admissions must be on merit.

9. In case of aided professional institutions the State may prescribe that only those persons may be admitted who have passed a common entrance test.

10. A minority institution may have its own procedure and method of admission but the procedure must be fair and transparent. Selection in professional and higher education colleges should be based on merit.

11. The State can provide that in aided institutions consideration is shown to weaker sections.

12. In case of unaided institutions the control should be minimal. Conditions of recognition and affiliation by or to a Board or University have to be complied. But the appointment of teaching and non-teaching staff and control over them will vest in the management. The State may frame regulations prescribing the minimum qualification of a teacher or principal and also in regard to service conditions.

13. Unaided institution can charge any frees but no institution can charge capitation fee.

14. The basic ratio of *St. Stephen’s College*¹ is correct but rigid percentage cannot be stipulated.

15. The (Partly overruled) scheme framed in *Unnikrishnan*² is unconstitutional. But the principle that there should be no capitation fee or profiteering is correct (Partly overruled).

It would be useful to recall what Dr. Ambedkar said in the Constituent Assembly.¹

It is wrong for the majority to deny the existence of minorities. It is equally wrong for the minorities to perpetuate themselves. A solution must be found which will serve a double purpose. It must recognise the existence of the minorities to start with. It will also be such that it will enable majorities and minorities to merge some day into one.

Pandit Nehru spoke in the same vein:

I do not think it will be a right thing to go the way this country has gone in the past by creating barriers and by calling for protection. As a matter of fact nothing can protect such a minority or a group less than a barrier which separates it from the majority. It makes it a permanently isolated group and it prevents it from any kind of tendency to bring it closer to the other groups in the country.

The term minority has no where been defined in the constitution. The concepts of minority and majority relate to numerical strength of a group of people. May it be family, club, corporation, government international community or any group of persons. Democracy is called the rule of majority. In the present time despite all evils democracy is the best available system of the government and majority rule is the best system of government or any other institution².

In context of our country politically we did not have concept of majority or minority but of religious majority or minority after invasion of India by Muslims. Muslims though in beginning were numerically very insignificant but with the axe of power by applying the conversion policy turned many Hindus to Islamic religion. Even during full swings of Muslim rule Muslims remain in minority numerically but politically they ruled over Hindu majority. With the advent of Christianity Missionaries also made efforts for conversion of Indian population into Christianity despite all temptations of Christian Missionaries a very small portion

¹ The Constitution and the Constituent Assembly, Lok Sabha (1990) p. 117.
At present efforts are made by Muslim Missionaries with the help of money from Muslim countries for conversion into Islam but the success is met very little. On the other hand, Christian Missionaries are getting comparatively more success for conversion of poor and illiterate tribal persons. As a reaction to Muslim and Christian conversion very rare, negligible efforts are made for re-conversion to Hindu fold.

Muslim conversion and Christian conversion get international support in money moral publicity and men, etc. from their respective community in world. But Hindu re-conversion does not get such support by international community but even within country. Politically Muslim and Christian conversions are supported in name of minority whereas rarest efforts of re-conversion into Hindu fold is taken as interference in religious matter. Muslims and Christians Press play very important role in this regard.¹

All these conversion and re-conversions into religious faiths are not based on ideologies and tenets. They are not based on deep understanding of principles of these religions. In most of the cases they are based on either terror or temptation for material gains.

Deep understanding of principles of any religion would reveal that all religions are equally good and no religious fold is free from evil persons. Every religion preaches for righteous life so every religious conversion under coercion and temptation is against the basic law of all religions. Every religion is good so there is no necessity of leaving and joining another religion despite all rhetoric eloquence. Therefore, in Shrimad Bhagwat Geeta Krishna declares:

स्वर्ग निवासं श्रेयः पर वर्गों भवायः ²

Other religion is full of fear even death is better in one's own religion.

B.R. Ambedkar, the legend of our own time born as Sanatani Hindu, rightfully had expressed his views against upper Hindu caste for their hatred,

¹ Supra, Note 1 Page 114
² Ibid, Page 114
untouchability and in human treatment meted out to depressed class persons. Ambedkar knowing despite all these facts did not convert to Islam or Christianity but only travelled from Sanatan to Buddhism within Hindu fold.

MINORITY RIGHTS AND FREEDOM OF RELIGION

The core of contest in India is related to religious minority. The first question that comes for consideration up is that what is religion? Religion in right sense is self-realization, understanding of spiritual values and spreading humanism, love and respect for all maintaining morality and developing human virtues and dignity longing for equality, fraternity, freedom and justice for all. No religion can preach against peaceful and orderly life. From every angle, we find universality and consistency in all religions. As far ideals are concerned all religions are in full agreements. They differ only in performance of certain rituals as part of religion and not full religion in itself. Division of world and spreading of hatred against other religions is not religion at all but distortion in name of religion, which corrupts the minds of sentimental persons. Protection safeguards and special rights are needed for those who are not safe but are harassed.

After Revolt of 1857, Syed Ahmed wrote a pamphlet entitled ‘Ashab-e-Bagawat-e-Hind’ (The causes of Indian Revolt) wherein he pleaded for loyalty of Muslims. In another pamphlet the loyal Muslims of India, he traced fraternity between a cross and crescent and assured loyalty of Muslims to British rulers and expressed equal detest for Hindus. This was the first attempt of treating Muslims as political minority loyal to other religious minority of Christians against slumbering Hindu majority.

Muslims as political minority got definite shape in year 1906 when Muslim League was formed. British Christians also found Indian Muslims near to their faith. William Hunter pleaded for favour to Muslim against Hindus as political power by applying the policy of Devise et Imperia. In year 1916 Congress recognized Muslim League as spokesman for Muslims. Curzon divided Bengal in two parts as Hindu Bengal and Muslim Bengal, namely, West Bengal and East Bengal. Agha Khan demanded separate electorates for Muslim as minority from Viceroy Minto. Moti Lal Nehru Report Tej Bhadur Sapru Committee also showed their eagerness for protection of Muslims as minority. Ultimately, Muslims were
granted separate electorate as political minority. Politician as vote bank strengthened Muslims as political minority. Now the question arises whether Muslims are in minority whether they need any special protection? The answer is in negative, Muslim community is not political minority and it does not need any special protection, the numerical strength of Muslims is next to Hindus and they are not in any way treated discriminately. Religious minorities are not adversely placed reservation for Muslims. For vote bank there is a demand for reservation for Muslims and Christians in public employment.

Jain, the richest community in India is claiming for minority status in order to get benefits from the government such trend for minority status against national integration. Our constitution does not permit division of country in name of religious majority or minority *Frank Furter in West Virginia State Board of Education v. Barnette*, rightly pointed out that religious minorities as well as religious majorities are equal in the eyes of political state. The minorities may disrupt the society. The general authority of the state can not be subordinated to secularian scruples. *Baramchari Sidheshwar Shai v. State of Bengal C. Ramkrishana Mission Case*, *DAV College, Jalandar v. State of Punjab*. Ramkrishna Mission and Arya Samaj claimed the status of religious minority to which Supreme Court did not agree Sikhs who fought for protection of Hinduism claim separate identity from Hinduism.

Dahl says, "Minorities are protected from oppression by non-constitutional social forces rather than constitutional one".

P.S. Deshmukh in Constituent Assembly declared in clear term, “There is no monstrous word in the history of Indian Politics, than the word "Minority". Ever since India emerged out of her political infancy, the demon of the interest of minorities and their protection stood before us and appeared bar to the progress of the country." K.B. Krishna points out that Morley and Sydneybram favoured Muslims and liked depressed classes. Personal likes of British’s coincided with

1 Supra Note 1, Page 116
imperial policy of setting one class against another.¹ The minority concept leads to religious a bigotry - a blame on mankind. Robinson dealt in detail separatist activities of Indian Muslims as religious minority² with special reference to Hindu Muslim riots (specially in areas of concentration of Muslim population and foreign aid by Muslim world). Hindu-Muslim riots are permanent features of Indian Politics. Fortunately, we do not have Christian-Parsees riots in our country. Religious minority is a feature of theologian state. In theologican state religious majority enjoys special status and special rights, etc., which are denied to religious minority. India is not a theologican state. It has no state religion. It does not deny status and rights etc. on basis of religion. There is no disability and inequality for religious minority in India. No person is adversely placed on the basis of religion. Protection terminates disabilities. It does not create new privileges. It attempts at equality not for immunities. In India religious minority is misnomer. There is no disability and inequality for religious minority.

The Muslims of the whole word are brothers irrespective of country. The persons who are not Muslims are Kafirs even he may be country man and real brother. Islam is above country and blood relations. Seven Crore Muslims in India, 11% of total population of the country is a majority and not a minority. Prof. Balraj Madhok so pointed out in his treatise.

The Constitution 44th Amendment Act, 1978 abolished Fundamental Rights of Property so question of compensation of acquired property can not at all be challenged because of repeal of Article 31. But in order to appease religious minorities as vote banks the aforesaid constitutional amendment inserted Cl. (1A) in Article 30 for protection of compensation amount for acquisition of an educational institution established and administered by minority.

Being assured of the minorities essential religious and cultural rights through the Constitution itself and its guardian the Supreme Court, they were ready to give up the demand for political safeguards in the form of communal electorates and reservations. Thus that fateful experiment which in spite of the security it had

given to the minorities has tended to isolate them from the mass of their fellow citizens and had increased mistrust and suspicion and helped to break up the unity of the country, came at last to an end. India can now look forward to an era of progressive co-operation and understanding between the communities and the gradual achievement of perfect political homogeneity.¹

Dalit Christians, Sikhs, and Muslims find that caste discrimination continues to exist after they have acquired different religious identities. Yet caste discrimination against Dalits, in all its forms, is a stain on the idea of a modern India, and needs to be eliminated effectively.²

**END NOTE:**

In a plural society all cultures and languages must be allowed to flourish. The opening of a medical or engineering college has no relation with preservation of culture. Non-religious and non-cultural education cannot be segmented into minority and majority. It is not conducive to the growth of a secular and integrated society. Behind the façade of minority educational institutions lies a whole world of elements engaged in amassing wealth by way of capitation fee and other under-the-table payments. Education which is an industry being run with a profit motive has no claim to minority protection. It is high time that the veil is lifted and the divisive antinational activities are brought to a stop. The duality (minority and majority) be permitted only in the area of religion, culture and language. In other areas the law must be equal. Article 30 must be read in harmony with the Preamble, Articles 14,15,51A etc. and interpreted in the light of the fact that education is a fundamental right and a basic feature. Article 30 was enacted as a protection against legislative encroachment on the rights of minorities. It was to allay the fear that the majority may suppress or deny the minorities the right to preserve their culture and language. Majority and minorities must be treated equally. All the so called minority institutions are imparting education through English. No section of Muslims or Christians in India has English as its mother-tongue. On the other hand such institutions have a deleterious effect on all Indian languages. India is awaiting assistance from the Supreme Court in curbing such

---

² The caste System – India’s Apartheid?, The Hindu, Saturday, August 18,2007
unwarranted discrimination against the Hindus and in building a united India. Even non-citizens residing in India are entitled to the benefit of Article 30 which was never the intention of the Constitution makers.