ABSTRACT

It has long been recognized that promotion of full range of human rights is an essential condition for world peace. It was this realization that really led to the adoption of United Nations Charter proclaiming the principles of equal rights and self determination of peoples and of universal respect and observance of human rights and fundamental freedoms for all. In recent times the issue of human rights has found a global acceptance. Even the standard of a civilized society can be judged by progress a state achieves in the field of human rights. Minority rights are very much linked with the concept of human rights. It is understandably known that minorities in any state are the most likely victims of human rights abuses. Hence minorities are generally recognized as sections of people needing some special legal protection. They have therefore, been made entitled to some specific protection in addition to protection of general nature both under the national and international law systems so that their interest could be safeguarded. Thus problems of minorities form the core of contemporary human rights discourses. Any objective analysis of human rights situation cannot go without taking into consideration the extent of rights enjoyed by the minorities and problems faced by them in that country. In case of India, minorities are entitled to a number of safeguards guaranteed under the Constitution. In respect of them, India is under twin obligations as it is committed to both the national and international laws guaranteeing the protection of minorities.

The preamble of Indian Constitution contains the resolve of people of India to secure justice, liberty, equality and fraternity assuring the dignity of individual among all its citizens. These fundamental freedoms have been further spelt out in different
articles under part III of the Constitution. In addition to the guarantee of equality before the law and equal protection of laws in terms of Article 14 and Article 21 ensuring protection of life and liberty, part III of the Constitution contains a number of provisions that guarantee protection to minorities. Article 15 prohibits discrimination on grounds of religion, race, caste, sex and place of birth. Articles 25-28 talk about the right to freedom of religion. Articles 29 and 30 specifically guarantee cultural and educational rights so as to protect and preserve cultural identity of minorities. Moreover, Article 32 of the Indian Constitution provides a guaranteed remedy for the enforcement of all the above rights as it guarantees the right to move the Supreme Court for the enforcement of rights conferred by part III of the Constitution. Supreme Court is thus constituted as the protector and guarantor of fundamental rights of the Indian citizens including minorities. Through these provisions the Indian Constitution tries to ensure that minorities are not deprived of their sense of belonging, feeling of security, consciousness of equality and awareness that the conservation of their religion, culture and language etc. as also the protection of their educational institutions are their fundamental rights enshrined in the Constitution. In other words, it thus lays down a legal framework, which obliges the state to take care of minorities' interests and their fundamental human rights.

As noted earlier, one of the objectives of the United Nations was to work for the promotion and observance of 'human rights and fundamental freedoms for all' without distinction as to race, sex, language or religion. But the simple expression 'human rights and fundamental freedoms for all' was not just enough for the United Nations to achieve its goal. The U.N. therefore, adopted a declaration defining the fundamental principles of human rights called Universal Declaration of Human Rights (UDHR). When the UDHR was adopted by U.N General Assembly
on 10 December 1948, it created a revolution in the field of human rights by elucidating the principles of equality, human dignity, non discrimination, non violence, justice, democracy and morality etc. It has had a substantial impact on the drafting of many national constitutions including that of India. Its principles are reflected in a number of municipal laws and decrees in different countries. The Universal Declaration represents the yardstick to measure the degree of respect for and the compliance with the principles of human rights. By adopting the Declaration member states have committed to their citizens so that all people, despite their differences can live in security.

The Universal Declaration was followed by the adoption of two International Covenants, namely the International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1966. These Covenants that together with UDHR constituted what came to be known as the International Bill of Rights. The two Covenants, which are based on the principles enshrined in UDHR are legally binding on all ratifying states. India is one of such states, which has ratified these international instruments in 1979 during the Premiership of Morarji Desai. Article 27 of the ICCPR specifically talks about the rights of minorities. It lays down that:

In those States in which ethnic, religious or linguistic minorities exists, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion or to use their own language.

Besides ICCPR, close to the idea of protecting minorities there is a U.N Convention on the prevention and punishment of the crime of genocide, 1948.
On the inspiration of Article 27 of ICCPR the 1992 Declaration on Minority Rights was adopted. It not only calls for protecting minorities’ existence and promoting its identity but also urges states to take steps for the fullest enjoyment by the members of minorities of ‘all their human rights and fundamental freedoms without any discrimination and full equality before law’

It is in this context of national and international legal norms that the role of Indian state needs to be evaluated to see the extent of practical realization of minorities’ various rightful claims. It is for this reason that the present study attempts to probe measures taken by the Indian government as part of its obligations under both national and international laws to promote and protect various interests of religious minorities with special focus on Muslim and Christian communities. India is home for various other religious minorities but these two communities are specifically targeted and stigmatized on account of their religion being of foreign origin and their historical connection with past rulers who once subjugated the country. Besides Muslims and Christians, the officially recognized other minorities in India are Sikhs, Buddhists and Parsees who on account of relatively better socio-economic conditions and politically insignificant position have not been taken for detailed study here.

As contemporary Indian societies are besieged with Hindutva project of majoritarianism, the present study assumes particular relevance. There seems to have appeared political mobilization with the aim of eliminating inter-group differences by targeting mostly religious minorities and making them vulnerable to direct attacks and subjugation. The ideology of Hindutva in effect seeks to undermine minority identities and erase constitutionally sanctioned rights in order to institute one nation, one people notion. Above all what it puts at stake is Indian democracy, secularism, rule of law and composite nationalism
and culture. Take the example of massive anti-Muslim riots in Gujarat in 2002 under the BJP's Narendra Modi government, which caused unspeakable loss of lives and properties to the minority community of the state. The Gujarat killings of 2002 were a test case of the failure of the state machinery on law and order and also the failure of the secular tenets of the Indian constitution and state.

If the majority goes on showing impatience with the existence of other religious persuasions, minority religious groups expectedly become vulnerable to majoritarianism. Therefore, India that is deeply polarized on the matter of religion will need to institute protection for minorities against this majoritarian onslaught.

The issues involving minority rights are best viewed and judged from the perspective of equality. Substantive equality dictates that vulnerable groups in the polity should be protected through special measures. Any attempt aimed at taking special measure for the welfare of minorities unfortunately, in the majoritarian ideological context, is condemned as appeasement and is sought to be projected as negation of equality and secularism.

In India the current majoritarian propensity of holding the religious and cultural minorities responsible for most socio-economic ills and pushing them to the margins of contemporary societies has to be taken into consideration while looking into minorities’ over all human rights conditions in the states, national and international contexts. So a study of India’s performance in terms of its acceptance of constitutional legal precepts and government’s actual practices becomes imperative.
The present study has been divided into six chapters. The first chapter brings out discussion on the proposal of minority rights in the Constituent Assembly during the framing of the Constitution in evolutionary framework. It underlines the fact that the leading lights of the main national party, Congress, were inspired by a vision of homogenized unitary nationalism and the circumstances in which the partition was affected cast its shadow on the whole process of constitutional protection of minorities. By doing away with statutory reservation of seats in legislature for minorities and the promise of fairness in securing them their due share in public services, the question of minorities protection was thus dwindled.

Then it is pertinent to see how government has acted upon on the principle of equality, non-discrimination, security of life and cultural identity enunciated in the legal norms. In order to have an insightful understanding of the subject, chapter II analyses the working of Indian Constitution with regard to minorities. Further it discusses minorities' constitutional protection based on the principle of equality, freedom of religion and cultural and educational rights enshrined in the constitution. The contents of these constitutional provisions have also been examined. Attempts have been made to find out as to how effective they have been on the ground in real life situation. For this purpose scores of judicial decisions and interpretations were brought under scrutiny. Besides its national constitutional commitments, India's support to various International Covenants and Conventions brings it under international obligation as well. This twin obligation has been analyzed in terms of their domestic application and implementation in chapter III. It leaves one to believe that constitutional guarantee provide the best safeguards in principle but regrettably practices leaves much to be desired.
Tracing the genesis of the Commission for Minorities, back to the assurances of the Congress during 1930s in the Constituent Assembly's draft Article 299 and its ignominious scrapping and the revival of the idea through manifestoes of political parties in the late 60s and 70s, its first formation under the Janata Government as a department of the Home and Welfare Ministries and its subsequent establishment under an Act of Parliament in 1992 with wide powers and its functioning and role since then have been brought in for discussion under chapter IV. The next chapter V deals with the dimensions of injustices, deprivation and gross violations of human rights of minorities particularly the largest one – the Muslims have been subjected to. The unfulfillment of their lawful rights over such issues as religious freedom, language rights, political representation, educational curriculum and economic empowerment forms the core of discussion in this chapter. While dissecting these issues it also touches upon government's actions and inactions and failure of justice administration system. The last chapter provides broad conclusions emerging from the study.

III

India needs to take many legislative, administrative measures and political decision to improve its compliance of international human rights standard and minority rights obligations.

India was expected to act upon removing the inadequacies and inconsistencies in our constitution and laws after it signed and ratified the two international covenants in 1979, which made it accountable to the world community for their implementation, Since then the UN treaty monitoring bodies, especially the UN Human rights committee, have been pointing out the need to amend its laws, constitutional as well as statutory, for effective implementation of the universally accepted human rights norms.
The government of India hardly cared for the 1992 UN Declaration on Minorities as it maintains that rights of religious and linguistic minorities are amply safeguarded under the constitution.

But the economic, social, cultural and political realities prevailing in the country for 60 years since independence have been such that amounts to betrayal of the promise of equality, liberty and justice to the people enshrined in the constitutional preamble. This cannot be attributed to the behavioural failure of the political class alone. Fault lies also with makers of the constitution and flaws left in it that makes subversion of justice possible by the political leadership. For example, the persistently inadequate representation of minorities such as Muslims in the Parliament and Assemblies and their exclusion from the benefits of affirmative action programmes including reservation and the plight of the Urdu language and script have been caused by non-protection of minority political and economic rights and inadequate protection of their educational, cultural and linguistic rights in the constitution. Their rights have been made more precarious by un-helpful judicial interpretations and an indifferent bureaucracy.

The world community is conscious of the fact that simply making provision of legal-constitutional protection of weaker and vulnerable minorities hardly serves the purpose. What is required in fact is to make its objective happen on the ground in reality. But for achieving this objective what is first required is the knowledge of the actual condition of minorities in terms of security of life, property and honour, and of the degree and nature of their participation in the political process and their share in power, and national wealth and resources and their access to opportunities for educational and socio-economic development.
Minorities are subjected to discrimination everywhere in varying degrees and kinds. It is the Muslims who bear the brunt of discrimination most in almost all fields of life. Muslims are under-represented not just in higher echelons of administration, they are so even in the police, para-military forces and in class III and IV services of the union and the states governments. Their meager presence and deprivation can be seen even in the area of discretionary appointments and distribution of permits, licensees, loans and allotment of lands, shops and houses. The state in India enjoys vast powers at its discretion to extend patronage and confer benefits by way of appointing members and chairpersons of permanent, quasi-permanent and ad-hoc commissions and committees, boards and panels, judges, vice-chancellors, members and leaders of delegations etc. In all these spheres of discretionary appointments, the share of minorities has been throughout very poor. The study of discrimination and prejudice as is prevalent against minorities is rarely encouraged in official circles. The job is left to ill-equipped minority groups themselves, which is nothing but a testimony to the weakness of human rights activism working for promotion of minority rights.

By committing itself to international agreements and national constitution the Government of India is under obligation to make the condition of its minorities known so as to ascertain the degree of practical realization of the underlying principles of non-discrimination, justice and fair treatment. But under the garb of secularism until 2001, it kept suppressing community wise data on socio-economic and educational status that it had collected during census operations since 1951. During all these periods the same secular considerations, however, did not deter the Government to publish with fanfare the differential rate of growth of religious communities, especially Muslims. But data on literacy, poverty and other determiners of backwardness and cultural deprivation of the same community was kept secret for almost a
half century after cross tabulation which would have otherwise enabled people to correlate higher rate of Muslim growth in population with its educational backwardness and poverty.

It is encouraging to note that the Government of India has now not only made public such data as available with the Registrar General but has also appointed several committees to ascertain the degree and causes of under representation of minorities in all sectors of national life. The study of prejudice and discrimination against minorities needs the attention of the Government and commissions and the academic community. The fair practices in employment have unfortunately not been given chance to take roots in India. Just by providing for citizens right to non-discrimination, it is assumed that meritocracy already prevails in the country. Whereas the fact remains that traditional Indian social ethos has been more non-egalitarian, discriminatory and segregationist than in most other societies. Moreover sub group loyalties in India are stronger than any other loyalty or commitment. There is therefore, a need for a fair practices commission to ensure application of fairness in all employments, appointments and distribution of benefits.

The National Commission for Minorities as an agency to look after the interests of Indian minorities was basically instituted and empowered to investigate and report the condition of minorities and the working of the constitutional safeguards. But its actual performance in terms of effectively carrying out any of assigned functions has been rather disappointing. It has neither undertaken any study of minorities' under representation and its causes including prejudice and discrimination against them, nor has it been able to impress upon the government of India to publish such studies and data.

A closer look at the history of its formation and subsequent transformation that it underwent and its functioning since its final establishment under an act of Parliament in 1992 speak volumes
for the Commission. It is intriguing to note that the Commission was first formed under the Janta Party Government in 1977 simply as a department of Home and Welfare Ministries. Nowhere in the democratic world can one think of such an important Commission to function as a department of Ministry like Home or Welfare. When under domestic political compulsion and under pressure of international public opinion it was given a new shape in 1992 by an act of Parliament, it was made to consist of only government appointed chairman and members. This mode of appointment was however, not prescribe for National Human Rights Commission (NHRC) which was established only a year later.

The mode of appointment of the team indeed becomes crucial for independent functioning of these Commissions. While human rights organizations and activists launched concerted campaign demanding such independence for NHRC, none of them cared for the National Commission for Minorities when a bill to this effect was in the making. What to expect from the hapless minorities? All minorities especially Muslims took mere fact of establishment of a Commission under an Act of Parliament as an accomplishment for themselves. Though the Act has such a major drawback, it does provide a wide range of powers and functions for the adequate working of the Commission. But its non-working and the indifference of Parliament and the people to its ineffectual functioning can be gauged from the fact that the Commission has not made public any Annual Report since 1996. That the reports have not been laid in either of the two houses of Parliament for so long as it ought to be has not stirred members of the Parliament. No honourable member even of the minority communities seems to be bothered to question about the non-submission of Commission’s Reports. Human rights organizations and even minority forum seem to be least concerned about the Commission. The Commission is unable to receive much needed
attention perhaps also because it is dismissed by the right wingers of the majority community as a measure of minority appeasement. All this goes to show that minority concerns have been missing its due place in the national scheme of governance and hardly find patronage in India.

The Muslim community's fears of persecution have been strengthened by their view that judicial forums have been unable to punish the perpetrators of violence and hate preachers. The fact that prosecutors became defenders of the accused on communal grounds and that the judicial officers allowed miscarriage of justice, came in for severe strictures in the Best Bakery case related to Gujarat 2002 carnage by the Supreme Court of India. The creed of Hindutva followed by the RSS, V.H.P and Bajrang Dal has heightened these fears. The criminal justice system in India has not been completely effective either rights of innocent or punishing the guilty and compensating the victims. The most reprehensible part played in the crimes against Muslims and other minorities remains the partisan role of the states law enforcement machinery i.e the administration, the police and justice system.

Given this state of things the situation calls for adopting a wide range of affirmative action programmes. The objection is unfortunately raised on any proposal for reservation for Muslims on the ground that it is anti secular and it well require amendment of the constituent as Article 16 (4) enables the state to make reservation for 'classes' of people and not 'communities'.

It needs to be borne in mind that any special measure for minorities, like the provision of article 30, is not violative of the secular principle of the state. Secularism is required to ensure equality of treatment of all citizens, irrespective of religious affiliation. The international human rights standards starting from 1935 Albania school opinion by the Permanent Court of
International Justice to official explanation of the UN Declaration on the Rights of Persons Belonging to Minorities by Prof. Asbjorn Eide, and the Durban Declaration and Programme of Action (POA) 2001, emphasise the necessity of special measures to make the minorities effectively enjoy equality, which mere formal legal equality cannot ensure.

IV

The study has been carried out by sifting materials of both primary and secondary sources. The study has in fact been completed with the help of readings based on primary sources such as relevant parts of Constituent Assembly Debates concerning minorities, Reports of various commissions like National Commissions for Minorities, National Human Rights Commission and Reports of several other enquiry commissions. It also includes readings of Indian constitution and laws besides scrutinizing international laws affecting minorities. As secondary sources, a number of books authored on related topics have been consulted and numerous articles derived from various journals and newspapers have also been perused for the purpose of this study.

The work is essentially based on subjective approach of study and attempts have been made to present the issues confronting minority rights in India in an analytical framework.