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# Article 29 and Cultural Rights: Addressing Contemporary Issues of Identity and Representation

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## ABSTRACT

*Albert Camus rightly observed that Democracy is not the law of the majority but the protection of the minority. This article aims to comprehensively analyze Article 29 and its contemporary stance while addressing the current issues of identity and representation surrounding minorities in India. It strives to explore the nature and purpose of rights accorded by Article 29. What sort of claim does the provision vest in the citizens? Is the right conferred therein subject to alienation? What criteria are prescribed for determining a minority presently? While traversing the various dynamics of this legislative creation, we shall also investigate its contemporary relevance and implications. The article also accounts for the concerns that minorities in India are facing currently. From Hate and prejudice prevalent against minorities to controversies of illegal immigrants, specific challenges confront the minorities in India contemporarily, all of which the article duly takes into consideration. The article features a panoptic deconstruction of Article 29 of the Constitution of India while allowing for contemporary evaluation of the same coupled with an overview of pressing issues afflicting minorities in India today.*

**Keywords:** *Cultural Rights, Constitution of India, Judicial Interpretations, Identity and Culture.*

## I. INTRODUCTION

*“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”.<sup>2</sup>*

Article 29 to the Constitution of India declares protection of cultural and linguistic rights of minorities. The inclusion of such a provision is best appreciated in the backdrop of the colonial period in India when minority-majority awareness reached the zenith. While the British successfully realized their policy of divide and rule, the perceived identification of the Congress with Hindu upper castes propagated amongst the minorities, an apprehension of confinement in

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<sup>2</sup> India Const. art. 29, cl. 1.

post-independent India. Granting rights served as a panacea to the alarmed and panic-stricken minority community.<sup>3</sup>

Strikingly, while providing for a safeguard for the rights of the minorities, the Constitution does not formally define the expression. When understood in light of Articles 29 and 30 read together, it primarily indicates “*religious, linguistic and culturally distinctive*” minorities in the Country.<sup>4</sup>

Furthermore, a fairly accurate conception of the term can be derived if we delve into the *vision* of the drafters of the Constitution while including the Article in discussion. On discussion over Article 23, during the Constituent Assembly debate, *Dr. B.R. Ambedkar*, remarked –

*“It will be noted that the term minority was used therein not in the technical sense of the word ‘minority’ as we have been accustomed to use it for the purposes of certain political safeguards, ..., it is also used to cover minorities in the cultural and linguistic sense”*.<sup>5</sup>

Judicial trends have also attempted to provide a definite sense to the term minority in line with the intent of the makers of the Constitution. While Justice Quadri in the case of *T.M.A. Pai Foundation V. State of Karnataka*, opined that a minority can be construed as a “*non-dominant*” group<sup>6</sup>, the distinguished Bench in the case of *Bal Patil V. UOI* observed that although, the term “Minority” is not anywhere defined in the Constitution of India, keeping in view, the Constitutional scheme, it can be interpreted as –

*“An identifiable group of people or community who were seen as deserving protection from a likely deprivation of their religious, cultural and educational rights by other communities who happened to be in a majority and likely to gain power in a democratic form of government”*.<sup>7</sup>

## II. ARTICLE 29 AND CULTURAL RIGHTS: A CRITICAL ANALYSIS

Distinctly, *Article 29* canvasses the right of any section of the citizens to conserve its “*Own language, script or culture*”.<sup>8</sup> Article 29 on the face of it puts no limitation or qualification on the expression “Citizen”.<sup>9</sup> The Article further includes the right of a citizen “*Not to be denied admission*” into State-maintained or State-aided educational institutions on grounds only of

<sup>3</sup> Ranu Jain, *Minority Rights in Education: Reflections on “Article 30” of the Indian Constitution*, Vol 40, EPW, p. 2431, (2005).

<sup>4</sup> Abha Yadav & Ritima Singh, *Minorities Conceptualization and Contextualization of “Others”*, 13 RMLNLUJ (2021) 81.

<sup>5</sup> Constituent Assembly Debate on Article 23.

<sup>6</sup> *T.M.A. Pai Foundation V. State of Karnataka* (2002) 8 SCC 481(India).

<sup>7</sup> *Bal Patil V. Union of India* (2005) 6 SCC 690(India).

<sup>8</sup> India Const. art. 29, cl. 1.

<sup>9</sup> *State of Bombay V. Bombay Education Society* (1954) 2 SCC 152(India).

religion, race, caste or language.<sup>10</sup>

### (A) Nature of Rights under article 29–

When we deliberate upon the nature of the rights that *Article 29* offers, it is pertinent to turn to the Hon’ble Court in *Kanya Junior High School, Bal Vidya Mandir V. U.P. Basic Shiksha Parishad* wherein, it was held that the Article in discussion *does not* confer on the minorities any higher rights than the majority. It purely provides an **Additional protection**.<sup>11</sup> Any argument implying the Article’s discriminatory nature is futile.

In an earlier case of *P.A. Inamdar V. state of Maharashtra* as well the Hon’ble Court pointed out that though the Article is “Styled” as a right, it only confers Additional protection or Privilege on minorities instead of a right as such, mainly serving the purpose of instilling confidence in minorities against any encroachment upon their rights.<sup>12</sup>

The Hon’ble Apex Court in *Ahmedabad St. Xavier’s College Society V. State of Gujarat* while further clarifying the position, maintained that the suggestion behind conferring some “*Special rights*” on a section is not to prompt a privileged or pampered segment of the society, but to provide the minorities with a sense of security.<sup>13</sup> The differential treatment is deliberated to bring about an equilibrium, to guarantee equality in its true sense and not merely in theory.

Furthermore, the rights guaranteed under *Article 29* are **inalienable**. The monumental case of *Kesavananda Bharti V. State of Kerala*, contemplated whether the rights of minorities can be abrogated. According to *Sikri, C.J.*, the incorporation of special rights for minorities by the lawmakers is of great significance. While referring to the constitution of the Minorities’ Sub-Committee, Advisory Committee as well as the proceedings in the constituent assembly, the learned Chief Justice opined that the rights in question are Inalienable. The expression ‘*amendment of the Constitution*’ cannot be interpreted as vesting in the Parliament the power to annul the prerogative endowed on the minorities.<sup>14</sup> In *Virendra Nath Gupta V. Delhi Administration* the distinguished Bench adjudged that the rights of minorities cannot be taken away by any legislative enactment or rules made by executive authority.<sup>15</sup>

### (B) Purpose of Article 29(2) –

“No citizen shall be denied admission into any educational institution maintained by the State

<sup>10</sup> JUSTICE S.S. SUBRAMANI, DD BASU COMMENTARY ON THE CONSTITUTION OF INDIA, Articles 25-36, (9<sup>th</sup> ed, 2016).

<sup>11</sup> *Kanya Junior High School, Bal Vidya Mandir V. U.P. Basic Shiksha Parishad* (2006) 11 SCC 92(India).

<sup>12</sup> *P.A. Inamdar V. state of Maharashtra* (2005) 6 SCC 537 (India).

<sup>13</sup> *Ahmedabad St. Xavier’s College Society V. State of Gujarat* (1974) 1 SCC 717(India).

<sup>14</sup> *Kesavananda Bharti V. State of Kerala* (1973) 4 SCC 225(India).

<sup>15</sup> *Virendra Nath Gupta V. Delhi Administration* (1990) 2SCC 307(India).

or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them”.<sup>16</sup>

As highlighted above, *Article 29(1)* declares that ‘Any Sections of Citizens’, coupled with specific criteria, are empowered to protect their culture. As rightly highlighted in *Kerala Education Bill, 1957, Re*, *Article 29(1)* can be best utilized through educational institutions, “For it is by education that the culture of the minorities can be inculcated into the impressionable minds of the children of their community”.<sup>17</sup>

It was observed by the Hon’ble Supreme Court in *Usha Mehta V. State of Maharashtra* that Minority educational institutions are necessary Concomitant to their right to preserve their distinctive language, script or culture<sup>18</sup>, as has been guaranteed under *Article 30* of the Constitution of India.

However, when such a right is accorded, oversight has to be put in place. As already discussed, neither does *Article 29(1)* grant any special right to minorities than the rest, nor does it create any privileged section. The frame of *Article 29(2)* is wide and qualified enough to include both majority and minority groups within its purview.<sup>19</sup> *Article 29(2)* can be construed as a ‘non-obstante clause’, which has an overriding effect on its predecessor as well as *Article 30*.

The Hon’ble Apex Court in *St. Stephen’s College V. University of Delhi* highlighted that when seen in relation to *Article 30(1)*, it is observed that *Article 29(2)* is a special right deemed to be given preference over the general right conferred to the minority communities under *Article 30(1)*.<sup>20</sup> As also held in *State of Madras V. Champakam Dorairajan*, a citizen possesses the right to admission in an educational institution as an individual, not in the capacity of a member of any class or community.<sup>21</sup>

### III. ARTICLE 29 AND CULTURAL RIGHTS: A CONTEMPORARY ANALYSIS

Articles 29 and 30 have served as a cornerstone in safeguarding minority rights. However, time and again, the absence of an official or uniform definition of the term minority as well as the criteria for ascertaining one has been a matter of debate. In the present scheme, *judicial trends* have bridged the gap. Also, the landmark holdings have led us to a semblance of what the drafters of the Constitution had envisioned for the Nation, providing guidance in matters with

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<sup>16</sup> India Const. art. 29, cl. 2.

<sup>17</sup> Kerala Education Bill, 1957, Re (1958) INSC 20(India).

<sup>18</sup> Usha Mehta V. State of Maharashtra (2004) 6 SCC 264(India).

<sup>19</sup> Usha Mehta V. State of Maharashtra (2004) 6 SCC 264(India).

<sup>20</sup> St. Stephen’s College V. University of Delhi (1992) 1 SCC 558 (India).

<sup>21</sup> State of Madras V. Champakam Dorairajan (1951) SCC 351(India).

regards to minorities in the contemporary times.

**(A) Current definition and indicia for determining a minority –**

In *Kerala Education Bill, 1957, In re*, the Apex Court first addressed the question – **What is a Minority?** While attending to the issue, the Hon’ble Court stated that a minority is anything which is “Less than 50%”<sup>22</sup> while failing to provide a comparative parameter of the same (State or Nation). The definition being deficient, could not address the matter at hand adequately.

The issue was again taken up in *DAV College V. State of Punjab* in 1971, where the Hon’ble Court maintained that – “Religious or linguistic minorities are to be determined only in relation to the particular legislation that is sought to be impugned; if it is State legislature, these minorities have to be determined in relation to the population of the State”.<sup>23</sup>

This decision was later affirmed in *T.M.A. Pai Foundation V. State of Karnataka*. The distinguished Court while primarily dealing with Article 30 of the Constitution of India pronounced that – “State” is to be considered the “Unit” while determining a minority in India. The Ratio Decidendi rested on the reorganisation of states based on the language of the Majority of persons of the area. Taking into consideration that *Article 30* puts linguistic and religious minorities on par, it is but a natural conclusion that the “State” should be considered the yardstick for ascertaining minorities as opposed to the entire Nation.<sup>24</sup>

The Hon’ble Court in *Kanya Junior High School, Bal Vidya Mandir V. U.P. Basic Shiksha Parishad*, reiterated that a minority is decided in relation to the demography of a “State”, numerically.<sup>25</sup>

At present, the Central Government, empowered by Section 2(c)<sup>26</sup> of the *National Commission for Minorities Act, 1992* has identified “Muslims, Christians, Sikhs, Buddhists, Zoroastrians (Parsis) and Jains” as Minority communities.<sup>27</sup> The *Ministry of Minority Affairs* has implemented various schemes for the welfare of the notified Minority communities. Pre and Post-Matric Scholarship, Merit-cum-means Scholarship, Multi Sectoral Development Programme (MsDP), to name a few.

In the case of *Bal Patil V. UOI*, the Hon’ble Court directed our attention towards the **contemporary relevance** of a Minority status and its **implications** in current times. The

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<sup>22</sup> Kerala Education Bill, 1957, Re (1958) INSC 20 (India).

<sup>23</sup> DAV College V. State of Punjab (1971) 2 SCC 269 (India).

<sup>24</sup> T.M.A. Pai Foundation V. State of Karnataka (2002) 8 SCC 481 (India).

<sup>25</sup> Kanya Junior High School, Bal Vidya Mandir V. U.P. Basic Shiksha Parishad (2006) 11 SCC 92 (India).

<sup>26</sup> The National Commission for Minorities Act, 1992, § 2(c), No. 19, Acts of Parliament, 1992 (India).

<sup>27</sup> Jains notified as a minority community vide notification dated 27<sup>th</sup> January 2014.

distinguished Bench urged the Central Government to bear in mind the constitutional design while extending Minority Status to a community.

The drafters of the Constitution incorporated a safeguard on the cultural and educational rights of minorities in the form of *Articles 29 and 30* with the desire that it would create social conditions which would deny any necessity to shield the interests of the minorities.<sup>28</sup>

The Hon'ble Bench cautioned the Central Government against the incessant addition of minorities under the Act. In a "diverse, pluralistic and multicultural" Country such as India, the encouragement of claims to minority status is tantamount to the encouragement of "Fissiparous" and discordant tendencies, posing a grave threat to the fabric and core of Indian society. The Court directed the Central Government to act in furtherance of conserving the intrinsic values of the Country such as integrity and unity while working towards dissipating the difference of "Minority" and "Majority Classes".<sup>29</sup>

#### **IV. ARTICLE 29 AND CULTURAL RIGHTS: CHALLENGES OF IDENTITY AND REPRESENTATION FACING THE MINORITIES**

**(A) Subject to prejudice and hate** - Several minority communities are subject to *prejudice and hate* owing to their misrepresentation and misconception, stemming primarily from *differences* in practices, customs, traditions and culture, among other things.

- (i) For instance, *Pehlu Khan*, a 55-year-old dairy farmer from *Jaisinghpur, Mewat*, fell victim to the "*Alwar lynching*" when he was headed home after purchasing cattle for milking in Jaipur; however, he was suspected of buying them for slaughter just because he belonged to a particular community.<sup>30</sup>
- (ii) In another instance, *Mohammad Akhlaq*, a resident of *Dadri, Uttar Pradesh*, was lynched on *September 28, 2015* by a livid crowd who wrongfully assumed that he had butchered a cow.<sup>31</sup>

**(B) Illegal immigrants posing a threat to the culture of the minorities** - A flood of illegal immigrants into India has also become a potent issue for the minorities with regard to the preservation of their intrinsic assets and identity.

- (i) For instance, a massive influx of illegal immigrants from Bangladesh to Assam has been

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<sup>28</sup> Bal Patil V. UOI (2005) 6 SCC 690 (India).

<sup>29</sup> Bal Patil V. UOI (2005) 6 SCC 690(India).

<sup>30</sup> Roshni Shrivastava, *Mob Lynching in India: Desperate Need of Law against Unnecessary Vigilantism*, 8 NUJS J. REGUL. STUD. 2 (2023).

<sup>31</sup> *Id*

proven to have an *adverse* and *deleterious* effect on the cultural interests of the Assamese people. Highlighting the gravity of the issue, the Hon'ble Apex Court in *Assam Sanmilita Mahasangha V. Union of India*, maintained that these migrants have not only ambushed upon the life of the people of Assam but also on their "*Way of life*", depriving them of their privilege as accorded under Article 29 of the Constitution of India. To quote the Hon'ble Bench, "*The culture of an entire people is being eroded in such a way that they will be swamped by the persons who have no right to continue to live in this Country*".<sup>32</sup>

- (ii) In as early as 2005, in *Sarbananda Sonowal v. Union of India*, the Hon'ble Supreme Court had expressed apprehensiveness over the issue. The objections and concerns of the residents of the State over their distinct script, language and culture were considered and upheld against the illegal migrants.<sup>33</sup>

**(C) Issue of identity and representation of linguistic minorities** - If we deliberate upon the identity and representation of the linguistic minorities in India, the looming threat of being subsumed by the linguistic majorities first registers itself.

Over time, the State has instituted various policies for conserving minority languages. For instance, the "Three language formula" implemented as a policy stipulates the inclusion of, home or regional languages, English and Hindi, and any other modern Indian language into the curriculum for school education.<sup>34</sup>

However, inconsistent and flawed implementation of the policies, such as the three-language formula, has been observed. In some States, a "Two-language formula" is observed, whereas in others, languages like Sanskrit and Arabic are taught as modern Indian languages. Consequently, minority languages have become powerless.<sup>35</sup>

**(D) Minority Status often reduced to a means to meet political ends** - It would not be reprehensible to state that minorities have been used to forward political interests long since the pre-independence era, and more so in contemporary times. For instance, "*Jains*" were accorded the minority status by the Gujarat State Government exactly ahead of the general elections, even when the Supreme Court in *Bal Patil V. UOI* had

<sup>32</sup> Assam Sanmilita Mahasangha V. Union of India (2015) 3 SCC 1(India).

<sup>33</sup> Sarbananda Sonowal v. Union of India (2005) 5 SCC 665(India).

<sup>34</sup> Shailendra Mohan, *Minority and Majority Linguistic Groups in India: Issues and Problems*, BDCRI, Vol. 70/71, 2010, pp. 261–69.

<sup>35</sup> *Id*

adjudged that Jains cannot be granted a minority status as they do not need protection of the constitutional scheme considering their affluent background.<sup>36</sup>

As mentioned earlier, there is absence of a formal definition of the term Minority in the Constitution of India. Presently, minority status is ascertained in line with the judicial precedents while drawing an idea from what could have been the intent of the drafters of our Constitution.

Section 2(c) of the National Commission for Minorities Act, 1992 as well merely provides for notifying a minority community rather than defining it.<sup>37</sup> In such a case, it is not extraordinary that the “Minority status” as with its incentives becomes a potential tool for political parties to advance their interests.

This list is by no means exhaustive but only a reflection on some of the pressing issues faced by minorities in India.

## V. CONCLUSION

The beauty of *Article 29* is that it ideally balances the rights of both the minority and majority sections in India. While giving due acknowledgement to the rights of the minorities to protect their ‘distinct language, script or culture’, it ensures that the rights of an individual as a citizen are not encroached upon.

However, specific *lacunae* become apparent after having concluded a substantial assessment of *Article 29* and the cultural rights of citizens of India, on which the author intends to comment.

*Firstly*, at present, a Minority status is accorded with respect to a community’s numerical strength in its State as opposed to the whole Nation. However, a question emerges of whether it is in line with the intent of the makers of the Constitution. Whether the drafters of our Constitution envisioned such an interpretation?

*Articles 29 and 30* were incorporated to grant power to a minority section to conserve its individuality. Yet, in light of the current interpretation, we witness a different scenario. For instance, *Hindus* are a religious majority community in India. However, when seen in relation to certain States, such as Arunachal Pradesh, Sikkim or Nagaland, among others, they qualify for a minority status. The issue here is whether currently, and considering the greater scheme of things, it is exigent for the Hindu community, which forms the majority in the Country, to avail the privileges of *Articles 29 and 30*.

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<sup>36</sup> Yadav and Singh, *Supra* note 3.

<sup>37</sup> Bal Patil V. UOI (2005) 6 SCC 690 (India)

Once again, alluding to the findings of the Learned Bench in the case of *Bal Patil V. UOI*, the aim of incorporating *Articles 29 and 30* was to develop an environment that would disavow the need to protect the minority section and that incessant grant of minority status poses a grave threat to the unity of India, it is maintained that the existing legal stance on determination of a minority is insufficient.

*Secondly*, it is noteworthy that *Article 29* merely acknowledges the entitlement of any section of the society to protect their distinct culture, language or script. It is neither a direction to the State nor does it impute any *positive or negative obligation* on the State to act in furtherance of it. Hence, the State cannot be expected to actively strive for the protection of the interests of the minorities.

Nevertheless, *Article 29* remains a robust means, empowering the minority communities in India to conserve their identity and reflects the true essence of equity which the framers of our Constitution, in their brilliance, managed to capture.

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