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# Infringement of Economic Rights of Minorities in India

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## ABSTRACT

*India is a progressive democratic economy and has adopted the changing trends with the changing times. It has tried and tested various economic policies and has adopted a system which is unique in itself has a blend of western capitalism and Nehruvian socialism. The policy believes in all-round development and protection of economic rights of the masses but down the line, it has faltered to achieve its goal. A large chunk of India's minority population has been sidelined and marginalised with the proceeds of ongoing economic development. It is said "to judge a democracy you have to see at the minority welfare in the state", to this Sachar Committee and Ranganath Mishra Commissions have stated that the condition of the Muslims is even worse than SC/ST in certain areas which are worsening day by day. The state is not taking affirmative action and even if it does, it does not ensure the policy implementation towards it. Secondly, Muslims have lost faith in the state machinery because of half-hearted implementation which leads to the absence of targeted results promised by the state. The term 'Muslim' has been attached to a religious identity and is treated as a religious group having no benefactors in the economy. They are the victims of a systematic political apprehension framework. Anti-national and criminal association of the community espoused by the law enforcement agencies further reduces their capacity of the political bargain within the constitutional frameworks. The Muslims are treated as a mere political vote bank and actual development has not seen the light of the day. Their human development index is low. They have been forced to stay at places which are inhumane and populous. They are thinly represented in government jobs, schools, higher education and administration. India saw an economic boom from 2000 and the fruit of job creation of post-liberalization era was also denied to them as they had little or insufficient training and specialized knowledge for these kinds of job, making them completely helpless for survival and development pace through which India is going. Many banks have designated Muslim populated area as the negative or red zone so that the Muslims cannot take a loan. Muslims only represent less than 5% in the govt jobs and therefore, the guarantee of government offices is not available to them further complicating the matter and thus, the gap remains open between the Muslims and the formal sector. The*

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*development has always been a much-needed phenomenon for any community and in the present scenario, Muslims being the largest minority in India, need it most for developing society as a whole and to realise the true meaning of 'unity in diversity' which is only achievable by 'development of the diversity'.*

## **I. INTRODUCTION**

The simplest definition associated while defining human rights is the rights of human beings by the virtue of being human.<sup>2</sup> These are inalienable rights and do not cease to exist even with the conduct unworthy of becoming a human is there. The human rights are complex social practice interplaying between individuals, society and the state implementing it which roots around a distinctive set of substantive values. Article 22 of the UDHR recognizes economic, social and cultural rights indispensable for dignity and development of human beings. The UDHR envisages economic, social, political, cultural and civil rights irrespective of geography, ethnicity etcetera. Inalienable entitlements of all people round the clock all around the world bypassing the verticals and horizontals of division.

## **II. BASIS OF ECONOMIC RIGHTS AS HUMAN RIGHTS**

The economic rights recognized under Article 22 of the UDHR is substantiated by Article 23 of UDHR recognizing the right to choice of employment with just, fair and favourable remuneration without any discrimination. Article 22 and Article 23 of UDHR collectively recognizes economic right under the ambit of human rights. To understand the rights status of human rights it is worthy to attention towards two sense of rights i.e. in a moral and political sense, one being the rectitude and other being entitlement.<sup>3</sup> The former means righteousness as a consequence of being honourable and having morally correct conduct and the later means right granted by law, having a right with a belief of belonging and claim to a specific set of privileges. The distinction between rectitude and entitlement is the sanction of law. The sanction of law sets it in motion by advancing claims which are beyond social policy, sense of righteousness, social utility or other grounds for action. The sanction of law bestows a power to claim rights which is distinctive in every sense from being a beneficiary of obligation or benevolence. The entitlement of right adds on a special value to having a right when one does not enjoy the object of the right.<sup>4</sup> This special value of having a right is inherent and is termed to be human rights. It denotes political subjects, for whom these rights

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<sup>2</sup> United Nations Declaration of Human Rights, 1948

<sup>3</sup> Donnelly, J, 1980, Natural law and right in Aquinas Political thought. *Western Political Quarterly*, 33, 520-35.

<sup>4</sup> *id.*, note 2

are recognised, as citizens recognised by law, free and equal. This shapes the form of government and puts in flags of limitations of the government constituting the state of a particular kind<sup>5</sup> thus upholding the human rights regime of equal treatment of everyone irrespective of race, religion and other diversity factors differentiating one human being from the other. The question of the hour is whether human rights draw its source from religious, philosophical and moral code or it is a construction of systematic political regime? John Rawls put forth the answer to this question as it is a political conception of justice meaning it can be found by the recognition of rules determining the structure of the society. The dependence and recognition of human rights are free from religious doctrines of any particular religion but a contrasting similarity can be found in the preaching of Hinduism, Islam and Christianity<sup>6</sup>. In theory, as described by Henry Shue and as described by Jack Donnelly, human rights bestow three kinds of duties; i) The right holder should not be deprived of the enjoyment of the rights; ii) The protection against any deprivation of enjoyment of rights; iii) Providing adequate measure and aid to those whose right has been violated, but the question of who are the duty bearers is in limbo with a steady change in this trend of identification of duty bearer. It has been observed that in practice state is held accountable within their sovereign boundaries for implementation and enforceability of such rights with, in the present era of international law, the pressure to confirm from international community draws its jurisdiction from the treaties signed by the state actors, assuring political legitimacy of the sovereign state confirming to the universality of the human rights. The coming together of the international community on the issue of human rights is organic and has transcended territorial boundaries for upholding the flag of human rights.

### **III. GENERATIONS OF HUMAN RIGHTS**

The theoretical understanding of human rights as discussed extends its branches in the development of human rights in the contemporary rights discourse. The contemporary regime of human rights is marshalled by the treaties and conventions signed and ratified by the states thus promising to uphold these principles within their territorial jurisdiction. The development of the right can be traced by its metamorphosis from first-generation rights to third generation rights. The first generation rights addressed the civil and political rights such as freedom of choice, freedom of speech and expression, freedom of religion. These rights are acknowledged by the Universal Declaration of Human Rights in the year 1948. The

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<sup>5</sup> *ibid.*,

<sup>6</sup> Shue, H. 1996, *Basic Rights: Subsistence, Affluence and US Foreign Policy*. Princeton NJ: Princeton University Press.

second generation of human rights addresses the socio-economic rights which include right to education, right to employment, and right to livelihood, right to a healthy and hygienic standard of living. The third generation of human rights moves from individualistic nature of rights to social or group rights including right to environment, commonwealth, right to communication to name a few among the others.

United Nations in the year 1948 adopted Universal Declaration of Human Rights (UDHR) which attained its efficacy when in the year 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR) along with International Covenant on Civil and Political Rights (ICCPR) were adopted and these came to be known as the charter of human rights along with complementary conventions, optional protocols, procedures and declaration such as International Covenant of Elimination of Racial Discrimination (ICERD, 1965), United Nations Convention Against Torture (UNCAT, 1985), Convention on Elimination of all forms of Discrimination Against Women (CEDAW, 1979), United Nations Convention on the Rights of the Child (UNCRC, 1990). These conventions uphold human rights universally and are binding on all parties.

#### IV. HUMAN RIGHTS IN INDIA

*“Human Rights are what every individual shall have by virtue of his birth as a human being”*.<sup>7</sup> These rights are inalienable and inherent in its nature.<sup>8</sup> Human rights are universal in nature and do not depend on boundaries or states, it is inherited to humans because of being human. It is the modern name of what has hitherto been known as *“Natural Rights”*.<sup>9</sup> Human rights help in the all-round development of humans. The concept is ancient and finds its root deep down in Indian society. Some rights are fundamental to human existence and cannot be taken away or forfeited.<sup>10</sup>

Indian laws which trace their genesis from British eras such as Indian Penal Code, 1860, the Criminal Procedure Code, 1861 and 1898, and the Indian Evidence Act, 1872 had some provisions to protect the interest of the accused but the real recognition to human rights principle in India was only after the enactment of the Indian Constitution and Code of Criminal Procedure, 1973 and Protection of Human Rights Act, 1993. There are two categories of legislative measures that accord recognition to human rights principles, namely,

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<sup>7</sup> K.N. Chandrasekharan Pillai, “Human Rights and the Criminal Justice System”, (ed. K.I. Vibhute, Criminal Justice, Eastern Book Company, First edition, 2004, pg. 97)

<sup>8</sup> *ibid.*,

<sup>9</sup> Prof. D. Banarjea. “Human Rights of the Victims of Crime in the Criminal Justice System of India”, pg. 5

<sup>10</sup> B.V. Trivedi, “Human Rights and Criminal Justice System in India: A Reflection on their Mutual Contextual Nexus”, (ed. K.I. Vibhute, Criminal Justice, Eastern Book Company, First edition, 2004, pg. 141)

measured enshrined in the Constitution and the measures enshrined in other general laws.<sup>11</sup> Indian constitution has guaranteed certain Fundamental rights in part III of the constitution.<sup>12</sup> Part III of the constitution protects substantive as well as procedural rights.<sup>13</sup> These fundamental rights are Human rights measure under the Indian constitution.<sup>14</sup> As per the Indian Constitution, the rights are as follows:

- a) Right to equality enshrined in Article 14.<sup>15</sup>
- b) Rights to freedom of expression and speech in Article 19.<sup>16</sup>
- c) Protection of accused against ex-post-facto law, double jeopardy and self-incrimination under Article 20.<sup>17</sup>
- d) Right to Life and Personal Liberty in Article 21.<sup>18</sup>
- e) Protection against Arrest and Detention under Article 22.<sup>19</sup>
- f) Freedom to choose and profess religion under Article 25.<sup>20</sup>
- g) Freedom to manage religious affairs under Article 26.<sup>21</sup>
- h) Protection of interest of minorities under Article 29.<sup>22</sup>
- i) Right of minorities to establish and administer educational institutions.<sup>23</sup>
- j) Rights to seek remedies before the Supreme if there is any violation of any of the fundamental rights. (article 32)<sup>24</sup>

India is a signatory to the human rights charter and pledges to uphold the human rights of every subject or citizen under its jurisdiction. India is still in the phase of implementation of human rights and currently concluding enabling the second generation of rights to its full. The efficacy of the implementation in the ground is still a debatable proposition. The socio-economic rights are at par with the rights to life and liberty and in a diverse state like India, an extra layer of cushioning is required for the effective implementation of schemes and policies related to enforcement of human rights. A democracy has to be judged over the implementation of schemes for the welfare of minorities and the initiatives it has undertaken to uplift the socio-economic status of minorities reinforcing the community with a sense of

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<sup>11</sup> *id.*, note 9

<sup>12</sup> M.P. Jain, *Indian Constitutional Law*, Sixth Edition, 2010, pg.901

<sup>13</sup> *Pratap Singh v. State of Jharkhand*, AIR 2005 SC 273

<sup>14</sup> *id.*, note 11.

<sup>15</sup> *ibid.*,

<sup>16</sup> *ibid.*,

<sup>17</sup> *id.*, note 10

<sup>18</sup> *id.*, note 11

<sup>19</sup> *id.*, note 10

<sup>20</sup> *id.*, note 11

<sup>21</sup> *ibid.*,

<sup>22</sup> *ibid.*,

<sup>23</sup> *ibid.*,

<sup>24</sup> *id.*, note 10

confidence and social security. As per the Census of the year 2011, the total population of India is 121.09 crores out of which 96.63 crores (79.8%) are Hindus and 17.22 (14.2%) crores are Muslims. 2.3% of the population are Christians and 1.7% are Sikhs. If it is compared with the Census data of 2001, it is observed that the overall population growth of India stood at 17.7% for the decade of 2001-2011, and for the same decade the growth rate of Hindu population was 16.8%, the Muslim population was 24.6%, the Christian population was 15.5% and Sikhs population was 8.4%.

The education and economic development is directly proportional and more often than not education acts as the take-off point for any person for a better economic status. It is a tool for social and economic development and helps in providing employment. It also develops the critical and rational thinking to understand and resolve issues occurring in society. It is the basic element for the development of a community and it acts as a key factor. The Muslims, the majority among minorities in India, lacks behind in this key factor and has the lowest literacy rate among all the communities. This is one of the major reasons hindering their economic development.

## **V. EDUCATION AND ECONOMIC STATUS OF MUSLIMS IN INDIA**

Literacy and level of education are the indicators of development in modern society wherein trade and commerce plays a pivotal role in the economic development and modernization of society. The national average literacy rate of India is 74.04%, as per the data provided by the 2011 Census report. The data released by the census analyzing the education level by religious community for age 7 and above with the presumption that everyone from age 0-6 is an illiterate revealed that 42.7% of the Muslim population is illiterate. The literacy rate of Hindus is 63.6% whereas the literacy rate of Muslim is 57.28%. It is appalling that the literacy rate of Muslims is way below than the other minorities. The Christians have 74.4%, Buddhists have 71.8%, Sikhs have 67.8 and Jains have 86.7% literacy rate among persons above the age of 7. Considering Graduation as a minimum qualification, 25.6% of Jains have a graduation degree in contrast to 2.7% of Muslims having graduation degree. 8.8% of Christians, 6.4% Sikhs, 6.18 Buddhists and 5.98% Hindus have a graduation degree.<sup>25</sup>

Among other levels of education, only 0.44% of Muslims have technical/non-technical diploma, 4.44% have studied till higher secondary and 6.33% till Matriculation. Similarly, the rate of employment is the primary and upper primary level in the year 2012-2013 is 14.2% and 12.1% respectively. The rate of enrolment in graduation/higher education is at

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<sup>25</sup> Census report, 2011

abysmal 13.8% and out of this the share of the population to that share of enrolment ratio is only at 4.5%.<sup>26</sup>

It can be seen that the rate of literacy and enrolment is lowest among Muslims community in India which affects their employability. Employment provides financial independence and purchasing power to consume goods of basic needs, comfort and leisure. The employment increases the purchasing power and allows future investment and savings. This also ensures the future from economic contingencies and also individual contributes to the economy by boosting investments in the economy. It elevates the economic and social status of Individuals. However, like literacy rate, the employment status of Muslims in India is dismal. The worker population ratio for Muslims is low in comparison with other socio-religious communities. This is low due to the lack of participation of Muslim women in economic activities. The majority of Muslim workforce is engaged in self-employment related activities. It is as high as 61% of the total population is engaged in this. However, when it is compared with Muslims in salaried or regular jobs, this percentage takes a nose dive to 13%. This data further worsen off in the case of government organization, departments/PSU. It drops down to 5% of the total workforce.

The Muslim workers are concentrated in self-employed activities and their participation in casual labour, salaried/regular jobs and public sector is low and less accessible. Then the immediate question arises that then in which sector the majority of Muslim workforce is engaged. The reliance on self-employment among the Muslim workforce is high, the distribution of workers by enterprise type shows that a large proportion of Muslim workforce is engaged in the informal sector and majorly in medium and small enterprises with very less significant participation formal sector of employment. Participation of Muslim women workers in women-owned proprietary enterprises is significantly high. However, this enterprise is home-based enterprises wherein women workforces of Muslims are pooled in like a sub-contractor. In this type of jobs, the level of earning is very low. The status of Muslim workforce is vulnerable concerning the above-mentioned work-related industries. In terms of the type of contract, 73% of the Muslim workforce has no written contract for their aid, 71% of Muslims have no social security benefit. The participation of Muslims in the professional and managerial cadre is low. Worker belonging to the Muslim community is more likely to lose their jobs and become economically vulnerable as the majority of them does not have written contract or social security benefits. Apart from this, their working condition is worse off than other socio-religious communities. This poor work condition is

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<sup>26</sup> All India Survey on Higher Education, Ministry of Tribal Affairs, Government of India



back by poor or low wages. It has been observed that a Muslim worker gets a lower salary for regular jobs in both the public and private sectors. One can surmise that in general Muslim men and women are in inferior jobs, such as clerical or Class IV employees, compared to the Hindu men and women even in the public sector jobs. In the private sector, the difference in earnings may only partly be due to the difference in the nature of the jobs undertaken by the two communities. A large part of the difference is likely to be due to the nature of the private sector enterprises themselves, with the Muslims being engaged in smaller informal and thereby low productivity enterprises. Such enterprises may be small workshops, where a large number of Muslim men are engaged, for example, as mechanics in garages. The women could be attached to small manufacturing enterprises.<sup>27</sup>

## **VI. THE REASONS FOR A LOWER RATE OF EDUCATION AND ECONOMIC DEVELOPMENT**

1. The interaction of Muslims at social, political, cultural, public and private spaces in India can be a challenging task due to the branding of Islam as an anti-national religion and at the same time appeasement politics by the political parties leaving the actual issues concerned in limbo. The constant vigilance, scrutiny, suspicion and stereotyping by the public has an adverse effect on the community.
2. The markers of Indian Muslims such as keeping a beard, wearing a topi, wearing burqa causes concerns to the community. The level of scrutiny and uneasiness among the general public increase with such religious markers. These identifiers make them easy targets for law enforcement agencies.
3. The Muslims in India faces a lot of hassle in finding a good school for education and a house in a non-Muslim locality. There are undercurrents in the society of renting out a house to a Muslim or admitting a Muslim child in the mainstream schools.
4. The lack of will of the government to uplift the status of the community often results in a perverse response from the community which is already facing an identity crisis due to apparent negligence by the government.<sup>28</sup>
5. Muslims live a state of fear due to the arrogant and ignorant approach of the law enforcement agencies towards the community.<sup>29</sup>

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<sup>27</sup> Social, Economic and Educational Status of the Muslim Community of India, A report published in the year 2006 by Prime Minister's High Level Committee Cabinet Secretariat Government of India, Pg.105

<sup>28</sup> Social, Economic and Educational Status of the Muslim Community of India, A report published in the year 2006 by Prime Minister's High Level Committee Cabinet Secretariat Government of India,

<sup>29</sup> Social, Economic and Educational Status of the Muslim Community of India, A report published in the year 2006 by Prime Minister's High Level Committee Cabinet Secretariat Government of India,

6. Muslims due to a sense of security and also some due to lack of government's desire have concentrated in small geographical localities. This can be observed in all major cities of India.
7. Lack of infrastructure, public apathy towards the community and concentration of the population in targeted areas make them an easy target in communal conflicts.
8. The law enforcement agencies target the community in cases of anti-national activities. The community is coloured as extremist and branded to be involved in activities against the nation.<sup>30</sup>
9. The content of school textbooks is communal and does not respect the diversity of our country. The school textbooks neglect an entire community creating a sense of hostility for Muslims.
10. A growing communal mindset leads to subjugation and discrimination of Muslims students and teachers equally as it is difficult for a Muslim teacher to get a job and has to resist to religion-based remarks.

## VII. CONCLUSION

Human rights are universal in nature despite that the perspective of each society concerning them may differ. During the colonial era, India had experienced the lack of recognition of negative obligations of State and reliance of the state on the privileged section of the society but the concept of human rights has been an integral part of our society. The institution of criminal justice has evolved to protect human rights and to restore the human dignity of those who have gone out of the social order. The Apex court has said time after time that after committing an offence a person does not become a non-person and he continues to be entitled to all human rights in the restrictive legal framework but at times it has been felt that the lower rungs of the criminal justice administration has remained unperturbed and unmoved by human rights ideologies and is more tuned to the crude and coercive mechanics that are supposed to produce best crime control result. The lack of human rights culture and education is responsible for the present sorry state of affairs. The policemen focus on the concrete reality of the lawless behaviour of the criminal possessing threats to the peace of the society and the same is with the lower strata criminal underlies the uncaring and callous attitude of the police and prison official towards them. In the case of the first category, one can argue on the Hobbesian philosophy of 'nasty, dwarf, and brutish' man. But in the second category, one hardly dispute the desirability of judicial individualism. In the abstract sense, the State power

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<sup>30</sup> *ibid.*,

must respect the individual's liberty and freedom but State's concern for safeguarding human rights cannot be more than conditional as the state is more motivated by interest than the protection of human rights of the individual. Also, Human rights as a tool for struggle indeed has limited potential. It can act as a nuclear weapon in case of arbitrary exercise of power in few cases but as a whole, it does not make much difference as basic developmental needs of the majority in the population is not attained till date. Thus, the principle has to be rationalised and can be summed up on the agreement that though India has not incorporated the human rights friendly provisions as per international standards in totality it can safely be asserted that the segments of that are present in our criminal justice administration and in particular, the judiciary is playing a magnificent role in interpreting the provisions from human rights angle and has responded to this new situation pretty well.

The development has always been a much-needed phenomenon for any community and in the present scenario, Muslims being the largest minority in India, need it most for developing society as a whole and to realise the true meaning of '*unity in diversity*' which is only achievable by 'development of the diversity'. This cannot be achieved through appeasement of minorities at the time of elections and branding the community as anti-national when the need of the votes has vaporised. An all-round development programme for the development of the community is recognised then only in a true sense India can achieve the second-generation human rights and be the torchbearer and champion of human rights.

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