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# Rights of Minorities in India

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## ABSTRACT

*India is a multi-lingual and multi-religious nation. From a religious point of view, Indian culture is pluralistic in nature. Persons belonging to different religious communities have worked together in this country for a very long time. Although most of the people living in this country are Hindus, people belonging to other religious communities, such as Muslims, prisoners, Sikhs, Buddhists, Christians, do enjoy similar freedoms and persecution.*

*Hindus make up the majority while the rest belong to "religious minorities". In the Constitution the word minority is not defined. Literally, it means a non-dominant group. The two main problem typically faced by the minorities are: Firstly, the problem of discrimination and secondly, the problem of preserving specific, social and cultural life.*

*Minorities often feel the need for security and protection. Especially during riots, cast disputes, communal violence etc.*

*Our constitution makers, while framing the laws, have keenly kept in mind the problems faced by the minorities and have made the laws regarding the same. They have not only made laws protecting the unique cultural and religious identities but also for empowering them.*

*Laws relating to the rights of minorities*

- 1. Article 14<sup>3</sup> – equality before law.*
- 2. Article 15<sup>4</sup>- prohibition of discrimination on grounds of religion, race, caste, sex or place of birth*
- 3. Article 16<sup>5</sup>- equality of opportunity in matters of public employment.*
- 4. Article 21<sup>6</sup>-protection of life and personal liberty.*
- 5. Article 25<sup>7</sup> – freedom of conscience and free profession, practice and propagation of religion.*

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<sup>3</sup> The constitution of India, Article 14-Equality before law

<sup>4</sup> The constitution of India, Article 15- prohibition of discrimination on grounds of religion, race, caste, sex or place of birth

<sup>5</sup> The constitution of India, Article 16- equality of opportunity in matters of public employment

<sup>6</sup> The constitution of India, Article 21- protection of life and personal liberty

<sup>7</sup> The constitution of India, Article 25 - freedom of conscience and free profession, practice and propagation of religion.

6. Article 26<sup>8</sup>- freedom to manage religious affairs.
7. Article 29<sup>9</sup>- protection of interests of minorities.
8. Article 30<sup>10</sup>- rights of minorities to establish and administer educational institution.

*In India, minorities are free to live their life the way they want without any fear or pressure due to the secular nature of our country.*

**Keywords:** *Minority Rights, Fundamental Rights, Right to Equality, Freedom of Religion, Right to life and liberty.*

## I. INTRODUCTION

It is very clearly stated in the Preamble itself that India is a “Secular State”. The word Secular is added by the 42<sup>nd</sup> Amendment act, 1976. The concept of Secularism is that there will be no State Religion, it does not mean that India is an irreligious or atheistic State, nor does it mean that it is an anti-religious State. It merely means that there is no National religion to be followed by all citizens of the country, so we can conclude that in the matter of religion, the country is neutral. Nor it promotes any religion, neither promotes any religion in particular, it also does not interfere with any religious practice. The State is not concerned with the relationship of men with their God.

In **S.R. Bommai v. Union of India**<sup>11</sup>, the supreme court has held that “**secularism is a basic feature of the Constitution.**” The state treats equally all religions and religious denominations. Religion is the matter of individual faith and cannot be mixed with secular activities. The Indian Constitution embodies the positive concept of Secularism and has not accepted American doctrine of Secularism, i.e. the concept of erecting a wall of separation between religion and state. The concept of positive secularism separates spiritualism with individual faith.

The constitution of our country ensures equal freedom to all the religions. At the same time, it is declared that the religion of the person has nothing to do in the matters relating to social and economic welfare of the people, which matters can be regulated or restricted by the state, by law.

“Secularism”, concept was explained by supreme court in **St. Xavier college v. State of**

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<sup>8</sup> The constitution of India, Article 26- freedom to manage religious affairs

<sup>9</sup> The constitution of India, Article 29- protection of interests of minorities.

<sup>10</sup> The constitution of India, Article 30- rights of minorities to establish and administer educational institution

<sup>11</sup> AIR 1994 SC 1918

**Gujarat**<sup>12</sup>, “is neither anti-god, nor pro-god; it treats alike the devout, the agonistic the atheist. It eliminates God from the matter of State and ensure that no one shall be discriminated against on the grounds of religion.” That, every person is free to mould and regulate his relation with God in any manner. He is free to go to God or to heaven in his own ways. And, that worshipping God is left to be dictated by his own conscience.

#### **(A) Who are Minorities?**

The term ‘minority’ is not defined in the constitution. Literally, it means a non-dominant group. It is a relative term and is referred to, to represent the smaller of two numbers, sections or groups. This observation was made by Supreme Court in the case **T.M.A. Pai Foundation v. State of Karnataka**<sup>13</sup>, a constitutional bench of 11 learned Judges of Supreme Court considered the fundamental issue. It has been held that since the reorganizations of State in India has been on linguistic lines, for the purpose of determining the minority the unit will be the state and not whole of India.

**Bal Patil v. Union of India**<sup>14</sup>, a three judge bench of Apex court explained that minority as understood from constitutional scheme signified and identifiable group of people or community, who were deserving protection from likely deprivation of their religious, cultural and educational rights by other communities who happened to be majority and likely to gain political power in a democratic form of government based on elections.

Minorities are basically classified into two categories:

1. Linguistic Minorities
2. Religious Minorities

Linguistic minorities for the purpose of Article 30(1) is one which must have a separate spoken language and that language need not have a separate script. They are to be determined with reference to the language spoken by community and not with reference to any other language which community wants its children to study. In the case, **Association of Teachers in Anglo-Indian Schools v. Association of aids of Anglo-Indian school**<sup>15</sup>, it was observed that a community whose language is one of the official languages of the State, can, as yet, be a minority community. Thus, only because English is one of the official languages of the State of West Bengal the same does not mean that the Anglo-Indian community whose language is

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<sup>12</sup> AIR 1974 SC 1389

<sup>13</sup> AIR 2003 SC 355

<sup>14</sup> AIR 2005 SC 3172

<sup>15</sup> AIR 1995 Cal. 194.

English, cannot be termed to be a minority community.

Minority based on Religion means that the only and principal basis of minority must be adherence to one of the many religions and not a set or part of religion. In *Bal Patil v. Union of India*<sup>16</sup>, it was observed that a minority based on religion should be restricted only to those religious minorities which have identity separate from majority, namely the Hindus. For example, Muslims, Christians, Jains, Buddhists, etc. the Supreme Court in **Bramchari Sidheswar Shai v. State of West Bengal**<sup>17</sup>, held that Ramakrishna religion could not claim to belong to a minority based on religion as the religion was not distinct and separate from Hindu religion and was not entitled to the fundamental right under Article 30(1).

### **(B) Problems Faced By the Minorities**

Some of the main problems faced by minorities in India are as follows:

1. *Problem of Identity.*
2. *Problem of Security.*
3. *Problem Relating to Equity.*

#### **1. Problem of Identity**

Arises due to the difference in the society, cultural practices, history and backgrounds. Minorities mainly have to face this problem everywhere giving rise to the problem of adjustment with the majority community.

#### **2. Problem of Security**

Due to difference in identity and relatively small number to the rest of the society a feeling of insecurity about life, assets and well-being may develop in the mind of minorities. The feeling of insecurity may also increase at the time of problems between majority and minority. They may feel the pressure from the majority community and also may not be able to fight effectively due to lack of population of same community.

#### **3. Problem Relating to Equity**

Minorities at times may feel that they are deprived of the benefits of opportunities of development due to discrimination. Because of the difference in identity, the minority community develops the perception of the sense of inequity.

### **(C) What is Religion?**

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<sup>16</sup> AIR 2005 SC 3172

<sup>17</sup> AIR 1995 SC 2089

The term religion is nowhere defined in the Constitution. It still does not have any rigid definition. However, in the case **Commissioner, H.R.E v. L.T. Swamiar**<sup>18</sup>, the Supreme Court explained:

Religion is a matter of faith with individuals or communities and it is not necessarily theistic. There are well-known religions in India like Buddhism and Jainism, which do not believe in God. A religion undoubtedly has its basis in a system of belief or doctrine which are regarded by those who profess that religion as conducive to their spiritual well-being. It includes worship, belief, faith, devotion, etc., and extends to rituals. This word religion has different shades and colours. An important shade is Dharma (duty), duty towards the society and soul.

It has also been said that the word religion in Article 25 and 26 has to be understood in the sense of its comprehending our concept of Dharma. Justice Hansaria explained in the **Narayana Case**<sup>19</sup>, that a "Sectarian religion is open to a limited group of people, whereas Dharma embraces all and excludes none." The learned Judge further said that the word religion has to be understood in a broad sense.

The Apex Court in **Ratilal v. State of Bombay**<sup>20</sup>, explained that religious practices or performance were as much a part of religion as faith or belief in particular doctrines. It was further impressed that no outside authority had any right to say that those were not essential parts of religion and it was not open to the secular authority of the state to restrict or prohibit them in any manner they liked under the guise of administering the trust estate.

Practices which are regarded by religious community as part of its religion are also matters of religion. For instance, right to bury dead bodies in a particular manner with particular rites in consecrated places is part and parcel of certain religions.

## **II. RIGHT TO FREEDOM OF RELIGION**

### **(A) Article 14: - Equality before Law**

"The State shall not deny to any person equality before law or the equal protection of the law within the territory of India.

Article 14 imposes an obligation on the State for the benefit of all persons within the territory of India and not only to citizens of India. Every person whether natural or artificial, whether he is a citizen or an alien, is entitled to equal protection and equality under this article. This article includes prohibition of discrimination on the basis of caste, religion, race, gender, etc. U

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<sup>18</sup> AIR 1954 SC 282

<sup>19</sup> AIR 1996 SC 1765

<sup>20</sup> AIR 1954 SC 388

Under Article 14 no person can be deprived of his right in any aspect of life.

It has been held in **National Legal Service Authority v. Union of India**<sup>21</sup>, that the word person in Article 14 is not only restricted to male and female i.e. gender, but includes even hijras and transgenders.

This article is important in a country like ours due to its variety in culture and heritage. Earlier, people were discriminated on the basis of their caste and were ill- treated by the upper caste people. The lower castes were not allowed to take water from the well which upper class people used, not allowed to sit on the benches as they were made only for people belonging to higher religious classes, sometimes, they were not even allowed to walk in front of pandits as looking at them was considered against their religion.

Mahatma Gandhi was very disturbed after looking at this condition and he decided to work for the welfare of such people. He named these people as Harijans meaning “Gods children” and also carried out several movements for the empowerment of Harijans.

“Equality before law”, thus, means absence of any special privileges for any particular person or class. It also strikes at arbitrary power on the part of Government. It is therefore, a negative concept.

### **(B) Article 15- Prohibition of Discrimination on the grounds of religion, race, caste, sex, or place of birth**

This article contains provision for a particular application of general principle of equality of treatment embodied in Article 14. Article 15 secures right against discrimination only to citizen and for that non- citizens cannot invoke the provisions of this article.

Clause (1) of Article 15 provides that the state shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

The word “discriminates” against means “to make an adverse distinction with regards to; to distinguish unfavourably from others.” It involves an unfavourable bias.

Discrimination against one person necessarily involves discrimination in favour of other. The term thus includes comparison. Where two citizens placed, more or less similarly in all material aspects, any state action placing one of them alone under a disadvantage, there would be the discrimination against him under the meaning of article 15.

In **State of Rajasthan v. Thakur Pratap Singh**<sup>22</sup>, a notification issued under Police Act, 1861

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<sup>21</sup> AIR 2014 SC 1863

<sup>22</sup> AIR 1960 SC 1208

provided that in a disturbed area the expenses incurred by the state for stationing additional police forces were to be borne by inhabitants of that area, but exempted the Harijans and Muslim inhabitants from the payment. The exemption was granted on the basis of caste and religion, the prohibited ground, was struck down as violative of Article 15 clause (1).

In **John Vallamatton v. Union of India**<sup>23</sup>, section 118 of Indian Succession Act, 1925 which restricted a person, having a nephew or a niece or nearer relative, from bequeathing his property for religious or charitable use, place restrictions only on Indian Christians. Holding the impugned section 118 as violative of Article 14, the majority of Supreme Court held Article 15 as no application in this case.

Article 15(2) provides “no citizen shall, on the grounds only of religion, race, caste, sex, place of birth or any of them, be subjected to any disability, liability, restriction or condition with regards to –

- (a) Access to shops, public restaurants, hotel and places of public entertainment: or
- (b) The use of well, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of state funds or dedicated to use of general public.”

Clause (2) of Article 15 is a particular application of general principle against discrimination embodied in clause (1). While first clause forbids discrimination against citizen in all matters, the second clause deals only with cases of discrimination as regards to use or access to public places mentioned therein.

The object behind clause (2) of Article 15 is to guard against menace of discrimination which can possibly be practised in a country like India, on a vast scale and in a relentless manner. The purpose is to eradicate the evil of Hindu caste system, under which a section of Hindus, depressed class, were considered untouchables and were prohibited entry to public places.

Article 15(4) contains an exception to clause (1) and (2). It provides: “nothing in this article or in clause (2) of article 29 shall prevent the state from making any special provision for advancement of any socially or educationally backward classes of citizen or for Schedule Castes and Schedule Tribes.”

This clause was added by the constitution (1<sup>st</sup> Amendment) Act, 1951, as is equal to the decision of 7 judge bench of Supreme Court in **State of Madras v Champakam Dorairajan**<sup>24</sup>, in this case the Madras Government issued a communal G.O., providing for reservation of seats in the state medical and engineering colleges for different communities in proportion of student of

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<sup>23</sup> AIR 2003 SC 2902

<sup>24</sup> AIR 1951 SC 226



each community. Thus, the seats were reserved on the grounds of religion, race, caste. This was challenged as violative of Article 15(1) since it discriminated on the grounds of religion, race and caste. The government contended that the order was issued in order to promote DPSP enshrined in Article 46. The Supreme Court, however, held the order void as violative of Article 15(1) the court explained that while fundamental rights were justiciable, the directive principles had been expressly declared non-justiciable and that it was there duty to enforce only the justiciable provision.

Clause (4) of Article 15 is also an enabling provision. It mainly confers discretion on the state to make special provisions. It does not impose any obligation on state to take any action under it.

Reiterating and relying on the law laid down by a 9 Judge bench of Supreme Court in **Indra Sawhney v. Union of India**<sup>25</sup>, the court explained that the state government was the competent authority to decide policy of reservation in P.G. medical courses in State. Merely because the government of India has made a provision for reservation of SC's and ST's candidates, it could not be said that the State was bound to follow the same. The decision of Government of India in this respect the court ruled, could not automatically be applied in selection where the state government has power to regulate. Every State, the court opined, could take its own decision with regards to reservation depending on various factors.

The expression "backward classes" is not defined in the Constitution. Article 340 of Constitution, however, empowers the President to appoint a commission to investigate the condition of socially and educationally backward classes within the territory of Indi. On receiving the reports of the commission, the President may specify the classes to be considered backward.

The expression Schedule Caste and Schedule Tribes have been defined under clause (24) and (25), respectively of Article 366.

### **(C) Article 16- Equality of Opportunity in matter of Public Employment**

Clause (1) of Article 16 guarantees to all citizen, equality of opportunity, in matters relating to employment of appointment to any office under the State. Clause (2) further strengthens the guarantees contained in clause (1) by declaring that " no citizen shall, on grounds only of religion, race, caste, sex, decent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under that State." Clause (3), (4)

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<sup>25</sup> AIR 1993 SC 477

and (5) or Article 16 contains exceptions to rule of equality of Opportunity, embodied in clause (1) and (2).

Clause (4) of Article 16 expressly permits the state to make provision for reservation of appointment or posts in favour of any backward class of citizen which, in the opinion of State, is not adequately represented in the service under the State.

The expression “backward classes” of citizen in Article 16(4) includes the Schedule Caste and the Schedule Tribe. The object of providing reservation to SC or ST and educationally and socially backward classes of the society is to remove inequality in public employment as the candidates are unable to compete with the candidates belonging to the general category, as a result of facing centuries of oppression and deprivation of opportunity.

This clause cannot be extended to the person acquiring SC/ST status by voluntarily. Further children of inter-caste marriage coupled, of which one is SC/ST, have been held not entitled to claim reservation benefit. However, such children can claim relaxation of marks.

Article 16 clause (4) is an enabling provision, enacted to secure equality. Reservation for backward classes not mandate. It confers a discretionary power on State to make reservation of appointment in favour of Backward Classes not adequately represented in the services of state either numerically or qualitatively.

The Supreme Court **E.V. Chinniah v. State of A.P.**<sup>26</sup>, while striking the Andhra Pradesh Schedule Caste (rationalisation of reservation) Act, 2000, ruled that while reasonable classification is permissible, micro- classification or mini- classification is not. The state, thus, has no power to sub- divide or sub- classify or sub- group the caste which are found in the presidential list of Schedule Caste, issued under Article 341. The court explained that the principle of sub – classification into backward and more backward was not applicable to Schedule Caste and Schedule Tribes.

In the case **Akhil Bhartiya Shoshit Karamchari Sangh (Railway) v. Union of India**<sup>27</sup>, Supreme Court upheld the validity of 10 circulars issued by the Railway Board, providing reservation in selection posts in railway for Schedule Castes and Schedule Tribes. The impugned circulars provided for reservation of 17.5% posts in railway services for these categories. These circulars further contained the rule to carry unfailed reserved post for three years. As a result of carry forward rule, the reservation quota for these categories, in the third year came to about 64.4%. The Supreme Court upheld this contempt of reservation as not

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<sup>26</sup> 2005 (1) SCC 394

<sup>27</sup> AIR 1981 SC 298

excessive for it was ruled that mathematical precision could not be applied while dealing with human affairs.

#### **(D) Article 21- Right to Life and Personal Liberty**

Article 21 provides no person shall be deprived of his life and personal liberty according to procedure established by law. This right has been held to be the heart of the Constitution, the most organic and progressive provision in our living constitution, the foundation head of our laws.

Highlighting the paramountcy of the life and personal liberty, a constitutional bench of Supreme Court in **Kehar Singh v. Union of India**<sup>28</sup> observed: to any civilized society, there can be no attributes more important than the life and personal liberty of its members... these twin attributes enjoy a fundamental ascendancy over all other attributes of political and social order...

Article 21 secures two rights – (a) rights to life and (b) right to personal liberty.

Article 21 prohibits deprivation of above rights except according to procedure established by law. Article 21 provides protection from discrimination on the basis of caste, creed, sex, etc., and from deprivation of rights and to live life with liberty only on this basis.

#### **(E) Article 25- Freedom of Conscience and free profession, practise and propagation of religion**

Clause (1) of Article 21 provides: subject to public order, morality and health and to other provision of this part, all persons are equally entitled to freedom of conscience and right freely to profess, practise and propagate religion.

**(a) Freedom of conscience:** - This expression means freedom of a person to mould his relationship with God in whatever manner he likes. It means the freedom to hold or to, entertain religious beliefs. Any belief which is genuinely and conscientiously held, or any religious belief as may be approved by his judgement or conscience, attracts the protection of Article 25(1), this was held in the case **Bijoe Emmanuel v. State of Kerela**<sup>29</sup>.

In the case **Stainslaus v. State of M.P.**<sup>30</sup>, it was held that this article also implies that right of a person not to be converted into another man's faith or to belong to any religion at all.

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<sup>28</sup> AIR 1989 SC 653

<sup>29</sup> AIR 1987 SC 748

<sup>30</sup> AIR 1975 MP 163

**(b) Right to Profess Religion:** - It means to make an open declaration of; to declare one's belief in; to accept into religious orders. Thus, to profess a particular religion means to declare freely and openly once faith and belief in.

**(c) Right to Practise Religion:** - In the case **Ozair Hussain v. Union of India**<sup>31</sup>, it was held to practise religion means to perform religious duties, rights or rituals. The protection is thus, not limited to matter of doctrine but extends to rituals and observances. It not only protects freedom of Religious opinions, but it also protects act done in pursuance of religion. It enables person to practise the belief and opinion which he holds in a meaningful manner.

**(d) Right to Propagation of Religion:** - To propagate religion, means to spread and publicise one's religious views. Holding public meetings by persons for propagating their religion is held to be guaranteed under 25(1), this by observed by Supreme Court in **Srilakshamana v. State of A.P.**<sup>32</sup>

Clause (2) of Article 25 enables State to regulate or restrict the economic, financial, political or other secular activities associated with religious practise. Therefore, a law which falls within Article 25(2)(a)(b) will be constitutionally valid even if it is found to be in consistent with right guaranteed under 25(1). However, such activities include those which are not of essence of religion. For example, a provision directing, the management of a temple, to send the copy of audit report to the government does not violate the rights conferred by Article 25 or 26.

The explanation (1) provides the wearing and carrying of Kirpans shall be deemed to be included in profession of Sikh religion. It thus recognises the fundamental rights to Sikhs to wear and carry Kirpan as a part of their religion.

Explanation (2) provides the expression Hindu for the purpose of this Article shall be construed as including persons professing Sikhs, Jain or Buddhist religion.

#### **(F) Article 26- Freedom to manage Religious Affairs**

This article provides "subject to public order, morality and health, every religious denomination or any section thereof shall have the rights –

- (a) To establish and maintain institutions for religious and charitable purposes.
- (b) To manage its own affairs in matter of religion.
- (c) To own and acquire movable and immovable property and,
- (d) To administer such property in accordance with law."

A religious denomination may be denomination which is based on some particular religion. It

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<sup>31</sup> AIR 2003 Del. 103

<sup>32</sup> AIR 1996 SC 1414

was held in **S.P Mittal v. Union of India**<sup>33</sup>, that the word religious denomination in Article 26 must take their colours from the word religion.

**1. Right to Establish and Maintain Institutions:** - Clause (a) of Article 26 guarantees to every religious denomination the right to establish and maintain institutions for religious and charitable purposes. In **T.M.A Pai Foundation v. State of Karnataka**<sup>34</sup>,

It was observed right under Article 26(a) is a group right and is available in every religious denomination, be it of majority or any section thereof. It thus gives right both to majority as well as minority communities to establish and maintain institutions for charitable purposes, which would, inter alia includes educational institutions.

**2. Right to Manage matters of Religion:** - The expression matter of Religion includes religious practises, rites and ceremonies essential for practising of religion. It thus, not merely includes matters of doctrine and belief concerning the religion, but extends to act done in pursuance of religion and therefore contains a guarantee for rituals and observances, ceremonies and modes of worship, which are essential and integral parts of religion as also the practise thereof, it however would not include religious practises unless those practises is found to contribute essential and integral part of religion as observed in **Venkataramana v. State of Mysore**<sup>35</sup>.

**3. Right to Own and Administer Property [Article 26(c) and 26(d)]:** - Clause (c) of Article 26 secures to a religious denomination or any section thereof the right to own and acquire movable and immovable property. Clause (d) further strengthens this right by guaranteeing to the denomination the right to administer such property in accordance with law. The right contained in clause (c) or Article 26 is distinguishable from the guarantee contained in clause (b) relating to management of religious affairs. While, 26(b) guarantees fundamental rights the right contained in Article 26(c) can be regulated by a law made by competent legislature.

### **(G) Article 29- Protection of Interest of Minorities**

Clause (1) of Article 29 provides any section of citizens residing in 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. Article 29(a) thus guarantees the right to conserve once own language, script or culture. It also preserves right to maintain or to work for once own language, script or

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<sup>33</sup> AIR 1983 SC 1

<sup>34</sup> AIR 2003 SC 355

<sup>35</sup> AIR 1958 SC 255

culture. In **D.A.V College Jullundur v. State of Punjab**<sup>36</sup>, the Supreme Court held that setting up of Gurunanak Dev university at Amritsar to promote, inter alia the studies and research in Punjabi language and literature and to undertake measure for development of Punjabi language and culture did not infringe Article 29(1). Promotion of majority language, the court held, did not mean stifling of minority language or script.

Article 29(2) provides no citizen shall be denied admission into any educational institution maintained by State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them. This article guarantees to every citizen the right to admission to institutions maintained by state or aided by state and no citizen can be denied admission to such institutions on the above-mentioned grounds.

In **State of Bombay v. Bombay Educational Society**<sup>37</sup>, the State government issued an order banning admission of all those whose language was not English into schools having English as a medium of instructions. The order of government was struck down as violative of Article 29(2).

#### **(H) Article 30- Rights of Minorities to Establish and Administer Educational Institutions**

Article 30(1) provides “all minorities whether based on religion or language, shall have right to establish and administer educational institution of their choice.”

Article 30(1) guarantees to all linguistic and religious minorities the “right to establish” and “right to administer” educational institutes of their “choice.” The right is available only to minorities whether based on religion or language.

A Linguistic Minority is the one which must have a separate spoken language and that language need not have a distinct script. Whereas, a Religious Minority means that only and principle basis of minority must be adherence to one of the many religions and not the set or part of religion.

Article 30 is held to be more in nature of protection for minorities and is not immuned from regulatory control. It is to ensure equality with majority and not intended to place them in a more advantageous position. The object of Article 30(1), the Supreme Court in **A.P. Christian Medical Educational Society v. Govt. of Andhra Pradesh**<sup>38</sup>, observed was:

“...to give minorities a sense of security and a feeling of confidence is not merely guaranteeing the right to profess, practise and propagate religion to religious minorities but also to conserve

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<sup>36</sup> AIR 1971 SC 1731

<sup>37</sup> AIR 1954 SC 561

<sup>38</sup> AIR 1986 SC 1490

their language, script and culture to linguistic minorities...”

The Supreme Court intended to give children of minorities best general and professional education, to make them complete men and women of the country and to enable them to go out into the world fully prepared and equipped. The minority is not required to seek prior permission for the establishment of the educational institution.

Clause (1A) was inserted in the 44<sup>th</sup> Amendment Act with a view to safeguard the right to property belonging to an educational institution established and administered by any minorities, it provides “in making any law providing compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1) the State shall ensure that the amount fixed by or determined under such law for acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause. In the society of **St. Joseph’s College v. Union of India**<sup>39</sup>, a Constitutional bench of 5 judges ruled that clause (1A) of article 30 stated that after the date of its introduction, there must be a law that specifically related to the compulsory acquisition of property of educational institution.

Clause (2) of Article 30 provides: “that State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.”

The object of Clause (2) is to make right secured by Clause (1) as a real right. But, the grant of aid has not been held a constitutional imperative.

In **T.M.A Pai Foundation v. State of Karnataka**<sup>40</sup>, the Supreme Court has ruled that the absence of aid does not make the right under Article 30(1) illusory. It only means that a minority institution shall not be discriminated as when to aid educational institution is granted.

### III. CONCLUSION

*India is a country full of various cultural and religious diversities. From Punjab to West Bengal, from Assam to Kerela, from Madhya Pradesh to Telangana India displays its variety in cultural and heritage. In such a diverse country, there are very high chances of many community being majority and many being minority. Which may even lead to discrimination by majority or pressure by majority on the minority’s communities.*

However, our constitutional makers have kept in mind all the aspects and were very keen to stick to those and frame a constitution which brings the minorities at par with majorities, make

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<sup>39</sup> AIR 2002 SC 195

<sup>40</sup> AIR 2003 SC 355

them feel safe and create a feeling of belongingness in them towards the nation.

They have added Fundamental Rights bringing equal rights to all citizens irrespective of their caste, creed and race. And have also added special rights for minorities guaranteeing them cultural and educational rights. This have removed the fear of majority communities from their mind.

However, they have also kept in mind that majority communities should not feel that are being discriminated against minorities and are not being given special rights, and hence fundamental rights are equal for all.

Because of all this, even today our country stands strong with various cultural and religious diversities. We are Hindus, Muslims, Christians, Sikhs, etc., but more than that we are INDIANS.

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