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## RIGHTS OF MINORITIES UNDER INDIAN CONSTITUTION: AN ANALYTICAL STUDY

### INTRODUCTION

The term ‘minority’ comes from a Latin word ‘minor’ which is joint with ‘ity’ and gives the expression ‘small in numbers’. The United Nations states that when there is any community or group of similar categories of people which is inferior in population as well as socially, politically and economically non- dominant then it is said to be a ‘minority’ community. There is no definition of term ‘minority’ provided under the Constitution of India.

On 13<sup>th</sup> December, 1946, the objective resolution was moved by Pandit Jawaharlal Nehru and was unanimously adopted by the Constituent Assembly on 22<sup>nd</sup> January, 1947. It depressed backward classes and tribal areas of the nation by adopting a safeguard mechanism for minority communities.

Initially, the drafting committee of the Constitution formulated various provisions in Part XIV under the head “Special Provisions Relating to Minorities”. It was later modified and finally the only special rights available to minorities are related to cultural and educational rights. It was originally planned to provide reservation of seats for religious minorities in Legislative bodies and public services but the same found to be missing in the Constitution of India.

The aim behind granting special rights to minorities is to ensure that there is peaceful environment between the minorities and the majorities in the society and support each other in building a better democratic nation. Moreover, these special rights are inherent part of Human Rights and promote tolerance and respect for diversity.

### PROVISIONS DEALING WITH MINORITY RIGHTS

Article 14 of the Indian Constitution directs the State to prohibit unequal treatment among people i.e. there must be no discrimination among the people and no special rights should be

granted to any person. Further, it adds that equal protection of law must be guaranteed to every person i.e. every person must be provided with equal treatment in equal circumstances within the territory of India.

In addition to this, Clause (1) of Article 15 prohibits the State from discriminating against any citizen on the grounds of religion, race, caste, sex, place of birth or any of them.

Article 29 of the Constitution protects the interests of minorities by stating in clause(1) that if there is any section of the citizens residing in Indian territory or any part of it , who have distinct language, script or culture of its own then they have right to conserve the same. Clause (2) of Article 29 prohibits the discrimination only on the grounds of religion, race, caste, language or any of them in admission procedure of any citizen into any educational institution maintained by State or aided by the same.

Here, the question arises that why the minorities are provided with special rights under Article 29 of the Constitution when there is an express prohibition on State for any discrimination under Article 15(1)?

#### Distinction between Article 29(2) and Article 15(1)

It appears prima facie that Clause (2) of Article 29 is in contravention to Article 15(1) but there are few differences among the both. They are as follows:-

1. Under Article 29(2), the protection extends against the State or anybody else who violates the rights guaranteed under it whereas the protection under Article 15 is provided to all citizens against the State.
2. Article 29 provides a special right to citizens of minority community regarding admission into educational institutions whereas Article 15 is quite general and broader in applications as it applies to all citizens whether they belong to majority or minority group.

The Supreme Court, in case of *State of Maharashtra vs. Champakam Dorairajan*<sup>1</sup>, held that the order of Madras Government to fix the proportion of students of each community for admission in State Medical and Engineering Colleges, is invalid as it is in violation to Article 29(2).

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<sup>1</sup> *State of Maharashtra vs. Champakam Dorairajan* AIR 1951 SC 226

Article 30 of the Constitution deals with rights of minority community to establish and administer educational institutions of their choice whether they are minority on the basis of religion or language. But, the religion and language cannot be the grounds of discrimination in granting aid to such educational institutions.

The Supreme Court, in *Re Kerala Education Bill*<sup>2</sup>, held that the fundamental right under Article 30(1) is not an absolute right so one cannot militate against the claim of State and there can be reasonable restrictions imposed on them by the State.

A Constitution Bench of 11 Judges of the Supreme Court headed by Chief Justice B.N. Kirpal, in case of *T.M.A. Pai Foundation vs. State of Karnataka*<sup>3</sup>, held by majority that the admission policy of unaided educational institutions run by linguistic and religious minorities and State Governments cannot be regulated by the State Governments and universities. The academic qualifications and rules and regulations to maintain academic standards however can be specified by the State Governments and universities.

The Supreme Court, in *P.A. Inamdar vs. State of Maharashtra*<sup>4</sup>, held that scheme for reservation of seats in unaided private professional institution whether minority or majority violates Articles 30 and 19(1) (g). They said that having centralised entrance test for one group of institutions imparting same or similar education does not violate Article 30 of the Constitution. Right to fix reasonable fee structure is included in the right to establish and administer an institution within the meaning of Article 30(1) of the Constitution but the charging of capitation fee is not permitted under the same.

In the case of *Christian Medical College, Vellore Association vs. Union of India and Ors.*<sup>5</sup>, the validity of National Eligibility Cum Entrance Test (NEET) for admissions to medical and dental courses was upheld by the Supreme Court. It was again reiterated that the right guaranteed under Article 30 is not an absolute right and is subject to regulations by the State.

## **OTHER PROVISIONS**

There are few Articles which impliedly talks about the minority rights and privileges. They are as follows:-

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<sup>2</sup> *Re Kerala Education Bill* AIR 1958 SC 956

<sup>3</sup> *T.M.A. Pai Foundation vs. State of Karnataka* AIR 2003 SC 355

<sup>4</sup> *P.A. Inamdar vs. State of Maharashtra* AIR 2005 SC 3236

<sup>5</sup> *Christian Medical College, Vellore Association vs. Union of India and Ors.* AIR 2020 SC 4721

The State has been given direction under Article 38 of the Constitution to secure and protect welfare of people through social order which include social, economic and political justice.

Article 39 of the Constitution directs for the States to provide free legal assistance and equal justice of several dimensions to secure livelihood for all the citizens, equitable distribution of material properties for common good.

Articles 331, 333, 334 336 and 337 of the Constitution deals with the special provisions in context of nomination of Anglo-Indians in the Parliament. But such nomination are now repealed by 104<sup>th</sup> Constitutional Amendment, 2019.

Further, Article 350(B) talks about appointment of a Special officer for linguistic minorities.

## **CONCLUSION**

Despite several efforts, the Supreme Court failed to define the term 'minority' and interpreted it as per the Constitution. Both the Articles 29 and 30 are broader in scope and need to give complete choice to the minority section in order to establish and administer any educational institution according to their understanding.

Though Article 14 prohibits any discrimination and promotes equality, Articles 29 and 30 are special rights guaranteed to them by the Constitution because reasonable classification is permitted under Article 14 but not class legislation.