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**SHRI DHARMASTHALA MANJUNATHESHWARA
LAW COLLEGE & CENTRE FOR
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Legal Opus

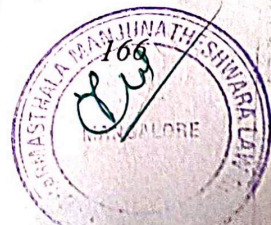
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MULTICULTURALISM - A BOON OR A BANE FOR THE MINORITIES?

Dr. Annapoorna Shet ¹

Abstract

Unity in Diversity is the motto of Indian culture. India is comprised of wide varieties of people who differ in various aspects, be it language, region, religion, etc. as the people are divided on the various basis there arises a majority and minority group in the society. It is the common feature that, the minorities are usually oppressed by the majorities. The concept of multi culturalism has paved the way for the differences between the majorities and minorities. Minorities in a multicultural society need to be protected by the State. It is a concern of the State to protect the rights of minorities as against the majorities. Several provisions are included in the Indian Constitution with regard to the protection of minorities. Apart from the Indian Constitution, there are several other enactments constituted from time to time with regard to protect the minorities. But there are certain incidents in a society where the minority because of the various privileges granted to them is exploiting the majority in certain circumstances. Hence there must be a proper balance between the rights and privileges granted to the minors against the majors. Both majority as well as minority together to play an important role to build a better India.

Introduction

Increased global contacts and interactions, and in particular extensive migrations, have placed diverse practices of different cultures next to one another. Societies in most countries are now becoming more and more culturally diverse with co-existence of many traditions and customs, languages, religions and diverse ethnic and racial groups. The celebration of difference, respect for pluralism, and avowal of identity politics have come to be regarded as the hallmarks of a progressive, multicultural outlook and as the foundation of modern liberal democracies. Multiculturalism is becoming more acceptable.²

India is the 7th largest and 2nd most populous nation of the world occupying 24% of the total world area. It contains about 15% of the world's population living in a variety of social, economic, geographical and ecological condition. Unity in diversity

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² <http://www.sabrang.com/cc/archive/2010/apr10/chapter2.pdf> visited on 19/10/2018

is a special feature of the Indian Constitution. The diversity runs through various races, religion, castes, tribes, languages, cultural beliefs, political philosophies, etc.³ Because of this peculiar multicultural society, it divides the people on their religious, linguistic line. So there arises a difference between majority and minority group. It is common that the ruling majority will always oppress the minority and as a result minorities are suffering in a society. So in order to prevent the rights of the minorities, constitution has provided certain provisions especially under Article 29 and Article 30 so that the minorities are protected to the maximum extent.

Multiculturalism And Minorities.

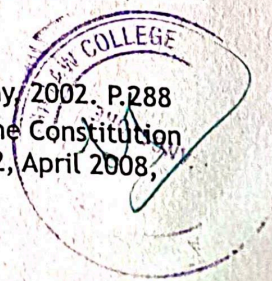
There is a close link between the two concept. Multiculturalism relates to communities containing multiple cultures. The term is used in two broad ways, either descriptively or normatively. As a descriptive term, it usually refers to the simple fact of cultural diversity: it is generally applied to the demographic make-up of a specific place, sometime at the organizational level, e.g. schools, businesses, neighbourhoods, cities, or nations. As a normative term, it refers to ideologies or policies that promote this diversity or its institutionalization; in this sense, multiculturalism is a society "at ease with the rich tapestry of human life and the desire amongst people to express their own identity in the manner they see fit".⁴

India is culturally, linguistically, religiously and to a certain extent, ethnically, the most diverse country in the world. The culture of India has been shaped by its long history, unique geography and diverse demography. India's languages, religions, dance, music, architecture and customs differ from place to place within the country, but nevertheless possess a commonality. The culture of India is an amalgamation of these diverse sub-cultures spread all over the Indian subcontinent and traditions that are several millennia old.⁵

The term multiculturalism is not much used in India. Within Indian culture, the term unity in diversity is more commonly used. Multicultural society is a reality of the post modern world. The term 'minority' has not been defined in the Indian Constitution. The Motilal Nehru Report showed a prominent desire to afford protection to minorities but did not define the expression. The Sapru Report 1945 also proposed inter alia, a minorities commission, but didn't define minority.⁶

In 1930, the Permanent Court of International Justice (PCIJ), in its advisory opinion defined minority community as: "a group of persons living in a given country or locality, having a race, religion, language and traditions of their own and united by this solidarity, with a view to preserving their traditions, maintaining their form of

³ Dr. R.N.Sharma, *Society In India*, 4thedn, Delhi, Surjeet Publication, 2002, p.155
⁴ *Supra* note 2
⁵ T.K.Ocmmen, *Sociology For Law Students*, 4thedn, Lucknow, Eastern Book Company, 2002. P.288
⁶ ShivaniRaswanPathania, "Critical Review Of the Impact Of Article 29 and 30 Of The Constitution Granting Special Autonomy To Educational Institutions", *Nyayadeep*, volIX, Issue 2, April 2008, New Delhi p.99



worship, ensuring the instructions and upbringing of their children in accordance with the spirit & traditions of their race & rendering mutual assistance to each other.” International Encyclopaedia of Social Sciences defines minorities as “A group of people – differentiated from others in the same society by race, nationality, religion, or language – who both think of themselves as a differentiated group and are thought of by others as a differentiated group with negative connotations.”⁷

Minorities In a Multicultural Society

India is a multicultural society. So that there are various religions, language, culture which are practiced throughout India.

Regarding the concept of religion; India is an abode for many religions. It represents diverse religions and multiple cultures. The Hinduism, Islam, Christianity, Sikhism, Buddhism, etc have flourished in India. Hindus constitute the majority of the India's population. So that other religions are regarded as minorities in India. Indian religious pluralism is one of the most complexes in the world.⁸

It is quite important to note that religion is the mixed bag of comforts and pains, like any facet of social life.⁹ On the one hand, people belonging to the same religion have tendency to unite because of several factors viz loyalty to common precepts, common deity, common religious leaders, festivals, common place of worship, pilgrimages, etc. but on the other hand, the same religion divides the society because of several factors like difference in religious feelings, rituals, etc. so religion even operates as a divisive factor in a society.¹⁰

As it is common factor that majority will rule over the minority religion, it is important to give protection to the religious minorities. Secularism is an instrument for protection of religious minorities and for establishing harmony in the society.

Regarding the concept of language; though the constitution of India has recognized 18 major languages, but as many as 1,652 languages and dialects are spoken in our country. Broadly these languages belong to three families of languages; Indo-Aryan, Dravidian and European. Hindi is an official language of India and English is an associate language. It is quite important to note that some States have been created after Independence on the linguistic basis.¹¹ Ex; Punjab.

In a multilingual country like India, where many languages compete for space, functions, speakers and power, equitable brokering of linguistic power becomes essential for social health. A number of factors such as social, psychological, geographical, historical, emotional, political, etc play a very important role causing linguistic conflicts in India.¹²

⁷ http://www.iiep.unesco.org/fileadmin/user_upload/pdf/jule03.pdf Visited on 12/11/2018

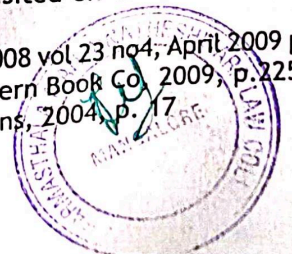
⁸ *Supra note 3*, p.158

⁹ “The Status of Minorities & Their Rights In India”, *Legal News & Views*, 2008 vol 23 no4, April 2009 p.25

¹⁰ P.Ishwara Bhat, *Law And Social Transformation*, 1stedn, Lucknow, Eastern Book Co, 2009, p.225

¹¹ Ram Ahuja, *Indian Social System*, 1stedn, New Delhi, Rawat Publications, 2004 p.17

¹² P.K.Kar, *Indian Society*, 2ndedn, Orissa, Kalyani Publishers, 2000, p. 14



In case of linguistic minorities, every language group in a country is a minority as there is no non-minority language group in the country. ¹³ Through linguism, certain complications and disturbing trends have developed which appears to have threatened the unity and stability of the country. For ex; Belgaum, where both Karnataka and Maharashtra are fighting for Belgaum stating more Marathi speaking people we can find in Belgaum. Similar problem is faced in almost all the border city of the State which has led to the demand of new district and the State as the case may be. So the State reorganization commission had provided for safeguard of linguistic minorities in the State.

Regarding the concept of region, India is even divided on the basis of region. And some regions are well developed with all the facilities while some regions are in a worst condition. People of India are divided even on the basis of region. People who are found in few number in a region are exploited by the majority.¹⁴ Recently we have witnessed Assam violence which is a best example for such conflicts.

Need For The Protection Of Minorities

Minorities are the integral part of the democratic set up in country. India has accommodated minorities since times immemorial. The minorities and the majority have lived here united. There was neither the communal problem nor communal riots. The problem of minorities saw its birth during the British rule in India. The 'Divide and Rule' policy followed by the British rulers was responsible to break the unity among minorities and majority community in India.¹⁵ The real problem of minorities in India was created in 1909 when the Minto Morley reforms introduced separate communal electorates for Hindus and Muslims. People divided themselves on communal and religious lines and formed communal bodies.¹⁶

Minorities and majorities increasingly clash over such issues as language rights, regional autonomy, political representation, education curriculum, land claims, immigration and naturalization policy, even national symbols, such as the choice of national anthem or public holidays. It is common knowledge that ruling elites in a democracy are elected by majority vote of citizens. However, rule of the majority often becomes tyranny of the majority. It is in this context that minority rights become significant. ¹⁷

In the past 60 years, politicians have nurtured a rift between the majority and the minority for their own vested interests. When we talk about minority rights, there is an immediate adverse reaction in the majority.

So the Constitution of India has conferred a host of special rights to minorities. The

¹³ *Supra* note 11, p. 16

¹⁴ *Supra* note 10, p.244

¹⁵ *Supra* note 9 p.29

¹⁶ Dr. George Joseph, "Protection Of Minority Rights- Its Constitutional Philosophy, Emerging Trends And New Challenges" *Kerala University Journal Of Legal Studies*, vol 2012, p.124

¹⁷ *Supra* note 7



constitutional provisions relating to rights and safeguards for minorities are not actually in force in full. They are often violated under various pretexts, including arbitrary public policy and presumed administrative expedience. Clear provisions of the Constitution calling for affirmative action in favour of the minorities have taken a back seat. So there is a lot of disillusionment among the minorities.¹⁸

To promote a sense of security among the minorities, to ameliorate the conditions of the depressed and backward classes, to make them useful members of society, to wield the diverse elements into one national and political stream, the Constitution contains liberal scheme of safeguards to minorities, backward classes and scheduled Castes. The most important among such safeguards is the cultural and educational rights, which may be said to be positive rights of the minorities. These rights are manifestly intended to benefit the religious, linguistic and cultural minorities, and it cannot be said to grant on cultural lines.¹⁹ Even cultural and traditional rights of the minority people are protected under the head of Intellectual Property Rights.

Constitutional Provisions For The Protection Of Minoroties

Article 14 grants to every person equality before law or equal protection of laws, within the territories of India. The right to equality envisaged in the Indian Constitution is not absolute right. The principle of likes to be treated alike and unlikes need not be treated equally is followed while implementing the right to equality under Article 14 of the Indian Constitution.

Article 15 prohibits discrimination on grounds of religion, race, caste, sex, or place of birth. The general mandate of Articles 14 and 15 completely protects the rights of minorities.

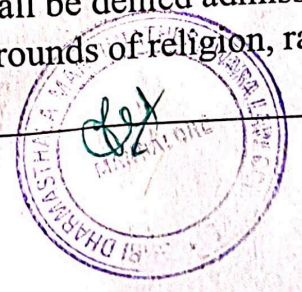
Article 16 envisages equality of opportunity for all. It also empowers the Parliament to make reservations for backward classes that are not adequately represented in the services of the states. The reason is as simple as to make them in par with the other majority classes of people.

Articles 25 to 28 provide certain freedoms pertaining to religion to all major and minor communities viz. freedom of managing religious affairs, freedom to propagate any religion, freedom from payment of taxes for promotion of any religion. India being a secular country, even though it does not possess any religion, it encourages and respects every religion and treat all the religion equally which has led to the unity in diversity.

Article 29 particularly protects the interests of minorities. It provides that any section of citizens residing in India, having a distinct language, script or culture of its own shall have the right to conserve the same. Also no citizen shall be denied admission into any educational institution maintained by the state on grounds of religion, race, caste, language or any of them.

¹⁸ Supra note 9 p.29

¹⁹ Supra note 16 p. 134



Article 30 provides for the right of minorities to establish and administer educational institutions. Also the state shall not discriminate in matters of granting aid, against any educational institution on the ground that it is maintained or managed by a minority.

Article 350A directs every state to provide adequate facilities for instruction in the mother tongue, at the primary stage of education to children belonging to linguistic minority groups. As a result several languages are included in the curriculum of the students in their education.

The framers of our Constitution have no doubt provided for sufficient safeguards for the protection of the rights of minorities. But there is lack of effective implementation of these provisions, as a result of which many religious and linguistic minorities still face an era of backwardness and exploitation and also frequent controversies pertaining to the provisions.²⁰

The fundamental rights guaranteed to the minorities have been described as "our sacred obligation to the minority communities who are of our own". These special safeguards were incorporated in the chapter on fundamental rights under Articles 29 and 30 with a view to instill in minorities a sense of security. The legitimate exercise of fundamental rights by a particular minority community will not tantamount to infraction of the fundamental rights to the equality of the majority community.²¹

Article 30 of the Constitution groups religious and linguistic minorities together and extends equal or identical rights to both classes of minorities. The purpose of article 30 is to instill confidence in these two classes of minorities, by way of assurance that they will have the same right as non-minorities, notwithstanding the fact that under the system of government, adopted by the Constitution the majority would, if it chooses, have the power to pass laws and take executive action which may suppress the aspiration of the minorities. This guarantee of equality has been extended in regard to establishing and administering of educational institutions of the choice of these minorities. Article 30 places a linguistic as well as a religious minority on the same footing and whatever interpretation is extended to one group will equally apply to the other group.²² As already pointed out, the right under Article 30 is given to a minority, based on religion or language, which means a group or collection and not to the individuals. To extend the right to an individual belonging to that religion or that language is to render the protection meaningless as every Indian would be entitled to set up an educational institution for propagating his language in any number of states, which do not have his language as the language of the minority.²³

²⁰ http://www.nrilegalservices.com/constitutional_protection_for_minorities.aspx Visited on 19/10/2018

²¹ *Supra* note 16 p. 129

²² *Supra* note 20

²³ *Supra* note 16, p. p. 130-131



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887**Emerging Trends and New Challenges for the Protection of Minorities**

The fundamental right of the administration of minority educational institution under Article 30 on its terms and language is absolute. However, in catena of decisions it has been held that no fundamental right in our Constitution is absolute and unregulated. The same would apply to Article 30. In *Kerala Education Bill*, the Hon'ble Supreme Court has held that right to administer does not comprise the right to mal administer. It has been observed by the Hon'ble Supreme Court that the question whether a regulation is in the general interest of the public has no relevance, if it does not advance the excellence of the institutions as a vehicle for general secular education. These observations need to be understood in the context of imposition of restriction in the interest of general public.

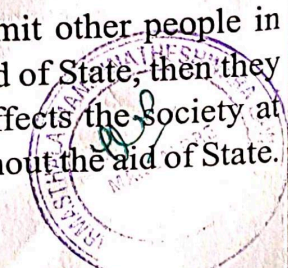
The threshold of considering reasonableness of Article 19(6) and Article 30 is qualitatively different. Regulations made in the true interests of efficiency of instruction, discipline, health, sanitation, morality, public order and the like may undoubtedly be imposed. The minority institutions cannot claim immunity against such general pattern and standard or against general laws such as laws relating to law and order, health, hygiene, labour relations, social welfare legislations, contracts, torts, etc which are applicable to all communities.

Article 30 is the protective measure for the benefit of religious or linguistic minorities and no "ill-fit or a camouflaged institution should get away with the Constitutional protection". It is stated that interpretation of the constitutional provisions should not be influenced by instances of the abuse of Article 30(1) by some educational institutions. Article 30 in terms apparently makes no distinction between primary education, secondary education or technical education.

There are differences of opinion regarding Article 30. One view is that imparting of education by the minority religious educational institution militates against the secular value or spirit of the Constitution. On the other hand, it is contended that it is open to minority to establish an educational institution to impart instruction best suited to its culture and traditions and mould the educational institution according to the ideas of the founders as to how the interests of the community in general and the institution in particular will be best served. The institutions want to produce students who are not merely proficient in technical efficiency, but are well moulded, morally and spiritually. The institution does not want merely to produce bright and good students of its own community alone, but such students from all communities. Thus, educational institutions help the minorities to retain their identity through all those distinctive things they value.

Article 30 provides that, the minority institutions can even admit other people in their institutions. But if they are totally controlled without the aid of State, then they need not require providing seat to other people. This in turn affects the society at large. But normally, no educational institutions are managed without the aid of State.

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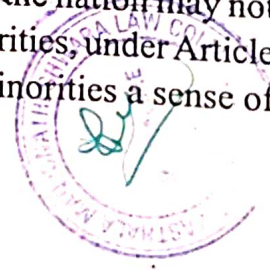
So this problem will not arise. Even though the Constitution has provided certain rights to the minorities to establish their own educational institution and administer the same, still in all the stages in one or the other way it has put restriction. So that even if a minority educational institutions don't provide admission, then the institutions must face the consequences. Hence Article 30 is in contravention with the other articles which speaks about equality.

Hence, by looking to all these provisions, we can say that the minorities have a great challenge on themselves to administer and start educational institutions as there are many hurdles which they have to face to run those institutions. Most of the provisions of Article 29 and Article 30 overlap with each other provisions and create confusion and most of the time, minorities rights are curtailed while dealing with other rights.

Hence, there is a need to make certain corrections to the said article so that the minorities are not affected and their rights are protected. But in the present scenario, the thing is quite different. The people who are termed as minority are really well established in every percept. They are well settled without any difficulties. But the real problem is with the majority people. They are the real sufferers at the present day. This is mainly due to the excess of reservations and benefits given to the minorities neglecting the majorities. Hence there is a need to look into this aspect. The other thing is that, it is a world of cheating. Everywhere fraud, corruption takes place. Many a time's people do fake certificates and try to get the benefits from the Government which they don't deserve. So some strict provisions are to be taken regarding this so that the fruit of benefit will be reached to the deserved person.

Conclusion

Multiculturalism plays an important role in the Indian society. It has both advantages and disadvantages. At one side it unites the society and on the other side it divides the people on communal, linguistic basis, etc. as a result, there will be conflicts between the two sects of the society. It creates a dividing line between majority and minority and the minorities are affected by the ruling majority. All over the world, majorities tend to turn tyrannical in the absence of clear and decent procedure for resolving conflict with minorities. Oneness of all religion and the need for religious tolerance would not be sufficient in India. The emphasis is thus on specific safeguards to the minorities. An important functional aspect of the Constitution is that it keeps a balance between the interests of the minority and majority, so that unity of the nation may not be jeopardized.²⁴ To strengthen the safeguards provided to the minorities, under Article 29(2) should be suitably amended to instill in the minds of the minorities a sense of confidence and security.



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²⁴ Ibid, p.p. 138-142

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