The Meaning, Access and Equity of the Religious Minorities in India

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Abstract: The term minority often lacks in a universal definition. While a broad effort defining these communities are made, the meaning or the proposed meanings have changed from country to country or over the years. The lack of a proper acceptable definition has hindered the evolution of a systematic framework for the protection of minorities. The paper attempts to look into the definition of the terms across the globe along with focussing on the various definitions of the term minorities in the context of India. In addition to this, this paper has attempted to review the administrative measures of the both central and state governments in terms of minority welfare in the country.

Keywords: Minorities, Muslims in India, Sachar Committee, National Commission for Minorities

Defining 'Minorities'

It is often difficult to define the term minority in one word. The United Nations defines minority as, "an ethnic, religious or linguistic minority is any group of persons which constitutes less than half of the population in the entire territory of a State whose members share common characteristics of culture, religion or language, or a combination of any of these".

The term usually refers to any group that is subjected to oppression and discrimination by those in more powerful social positions, whether or not the group is a numerical minority. The term 'minority' is a term that originated in the mid- 15th century in Europe. The term minority often referred to religion, language and ethnic communities. The term particularly belongs to the European origins as it doesn't appear in the Universal Declaration of Human Rights (the "UDHR")[1], the International Covenant on Civil and Political Rights (the "ICCPR")[2], the International Covenant on Economic, Social and Cultural Rights (the "ICESCR")[3],is the American Convention on Human Rights, or the African Charter on Human and Peoples' Rights. The term appears in the Council of Europe Framework Convention for the Protection of National Minorities[4], which notes that "any discrimination based on any ground such as ethnic or social origin [or]

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[1] See Universal Declaration of Human Rights, G.A. Res. 217A(lll), U.N. GAOR, 3d Sess., art. 2 (1948), available at http://www.un.org/Overview/nghts.html.

[2] See International Covenant on Civil and Political Rights, opened for signature Dec. 16, 1966, 999 U.N.T.S 171(entered into force Mar. 23, 1976), available at http://www.hrweb.orgilegal/cpr.html.

[3] See International Covenant on Economic, Social and Cultural Rights, opened for signature Dec. 19, 1966, 993 U.N.T.S. 3 (entered into force Jan. 3, 1976), available at http://www.unhchr.ch/html/menu3/b/a cescr.html.

[4] Draft Treaty establishing Constitution for Europe, art. 11-21(1), CONV 850/03, at http:/leuropean-convention.eu.intldocsfrrreaty/cvOO850.enO3.pdf.

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membership in a national minority shall be prohibited. Hence it is important to read the basic understanding of the history of minority rights, particularly in the context of European history, as it has been a term coined or defined by the Europeans.

In the International Encyclopaedia of the Social Science, Arnold defines minority as "a group of people differentiated from others in the same society by race, nationality, religion or language, who think of themselves as differentiated group and are thought of by others as a differentiated group with negative connotations. Further, they are relatively lacking in power and hence are subjected to certain exclusions, discrimination and other differential treatments." It is difficult to define minority in a single quote. According to Jaganath Pathy (1988), minorities are a group that are subordinate to the dominant, often reserved or has a different physique and cultural features. But this group often is being, "discriminated, prejudice and exclusion by the dominant group and self-segregation by the subordinate or minority constitute the basis for minority identification" (Pathy, 1988:28).

The Minoritisation of Muslims

The Constitution of India seeks to the protection of the minorities in the country. It is mandatory for the people of India to abide to the constitution of India, composed of several Articles considering the political as well as religious groups in the country. However, the partition of India in 1947 divided the British India into two independent dominions; India and Pakistan had a greater impact on the religious communities. The partition witnessed one of the greatest migrations in the history of mankind especially on the religious identity crossing border than ever before, to a Hindu majority- India and a Muslim majority- Pakistan. The newly formed state has put the makers of the constitution into further dilemma as no religious or ethnic or linguistic minority should be excluded from their rights.

The partition of the British India has certainly traumatised both the nations. It has shaken the roots of a cohesive bond between two major religious communities and has made the country to rethink on the concept of "secularism". The Partition – the division of British India into the two separate states of India and Pakistan on August 14- 15, 1947 – was the "last-minute" mechanism by which the British were able to secure agreement over how independence would take place (Ansari, 2017)." The division of the one nation based on religion could only ignite the hate which still prevails in the society.

The narrative of the Muslims in India remained suppressed and as once a majority community, post-partition became a minority in their own land fighting for their rights. If we could blame namely one of the British for this minoritisation, then certainly it is the Mountbatten's plan that led to the extreme marginalization of the community.

Who is a Minority?

The Constitution of India uses the term minority but does not define it. In the context of India there include two types of minorities, religious and the linguistic minorities. TheArticle 29 and Articles 30 guarantee

certain right to the minorities. Article 29 protects the interests of the minorities by making a provision that any citizen / section of citizens having a distinct language, script or culture have the right to conserve the same. Article 29 mandates that no discrimination would be done on the ground of religion, race, caste, language or any of them. On the other hand, the Article 30 of the Indian Constitution states the right of minorities to establish and administer educational institutions. To quote, "All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice." While Article 30 and Article 29 of the Constitution do not specify 'minorities' in India, it is classified into religious minorities and linguistic minorities. However, Under Section 2(c) of the National Commission for Minorities Act, 1992, the Centre had in 1993 notified five communities — Muslims, Sikhs, Buddhists, Parsis and Christians — as minorities. Jains were included in the list in 2014. Meanwhile Jains were recognised as the state minorities in various states of India from very early period.

As observed, though the Constitution doesn't specifically mention who is a minority, the Supreme and the High Court judgements provides a better clarification of the term. In the case *of A.M Patroni v. Kesavan*[5] the Kerala High Court held that "any linguistic or religious community is considered a "minority" if the community population of 50% of the total population." While the judgement does not clearly mention the total population of state or country that needs to be taken into consideration. However, this problem was over come later in the *TMA Pai Foundation v. State of Karnataka*[6] where a panel of eleven bench judge held that while determining minority compared to total population, the total population of state has to be considered to determine whether a community qualifies as a minority or not. Hence, through some of the judgements one is able to draw who the state doesn't actually refer to when they use the term minority.

According to the judgement, "It ruled that as the reorganisation of the States in India had been affected on linguistic lines, for the purpose of determining a minority, the unit would be the State and not the whole of India. Thus, religious and linguistic minorities, who have been placed on a par in Article 30, have to be considered in terms of the State concerned". To brief it, for a community to be considered as "minority" then it should be numerically less than 50 percent of the population of that State. As per the judgement, such that this application of this principle applied to the religious minority groups such as Sikhism in Punjab, Islam in Jammu and Kashmir and Christianity in Nagaland to be rendered as the majority religions.

The foremost stone concerning the minorities was raised by the Commission for Human formed in 1947 under the United Nations. On the very next year, 10 December 1948, the Universal Declaration of Human Rights[7], reaffirmed the faith in fundamental human rights, in the dignity and worth of the human person. Inspired by the provisions of Article 27 of the International Covenant on Civil and Political Rights concerning the rights of persons belonging to ethnic, religious and linguistic minorities, it emphasizedin

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[5] Aldo Maria PatroniAndAnr. vs E.C. KesavanAndOrs. on 1 October, 1964, https://indiankanoon.org/doc/1393122/.

[6]T.M.A.Pai Foundation &Ors vs State Of Karnataka &Ors on 31 October, 2002, , https://indiankanoon.org/doc/512761/

[7]https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-rights-persons-belonging-national-or-ethnicel

the constant promotion and realization of the rights of persons belonging to national or ethnic, religious and linguistic minorities, as an integral part of the development of society as a whole and within a democratic framework based on the rule of law, would contribute to the strengthening of friendship and cooperation among peoples and States.

To quote from Article 2, "Persons belonging to national or ethnic, religious and linguistic minorities (hereinafter referred to as persons belonging to minorities) have the right to enjoy their own culture, to profess and practise their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination."

The Sachar Committee Report

In India, both the Centre and the State have assigned various commissions to study on the minorities and their challenges. One of the notable High Level Committee report on the status of Indian Muslims is addressed in the Justice Rajinder Sachar Committee Report, 2006. On March 9, 2005 the Prime Minister issued a Notification for the constitution of a High Level Committee to prepare a report on the social, economic and educational status of the Muslim community of India. A seven-member High Level Committee, chaired by Justice Rajindar Sachar, submitted its final report to the Prime Minister on November 17, 2006. The Government tabled the Justice Rajindar Sachar Committee Report in Parliament on November 30th. The Sachar Committee has compiled data from a number of sources. The report frames these issues as related to identity, security and equity. Barring some generic observations about the causes for the 'development deficit' among Muslims, there is no explicit or detailed discussion of the causes of such conditions. According to the report, "the abysmally low representation of Muslim OBCs suggests that the benefits of entitlements meant for the backward classes are yet to reach them."

The Constitution of India upholds the socialjustice and promotes harmony throughout the nation, making it stand out as one of the well written constitutions in the world. Based on, The Citizenship Act, 1955, seeking protection on the minorities in India, the country has formed various High-Level Committees to address these voices. As per the Act, the Ministry of Home Affairs established the National Minorities Commission of India[8] in a resolution on January 12, 1978. It mentioned that: "despite the safeguards provided in the Constitution and the laws in force, there persists among the Minorities a feeling of inequality and discrimination. In order to preserve secular traditions and to promote National Integration, the Government of India attaches the highest importance to the enforcement of the safeguards provided for the Minorities in the Constitution". Later, the Minorities Commission was detached from the Ministry of Home Affairs in 1984, and placed under the Ministry of Welfare. Once the National Commission for

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[8]http://ncm.nic.in/homepage/homepage.php.

Minorities Act was enacted in 1992, the Minorities Commission became a statutory body and was renamed as National Commission for Minorities.

So many MinorityCommission were existing in different states of the country since from the earlies of 1960's. In Kerala, The Kerala State Minority Commission was formed in 2013, then this author was the Director, Department of Minority Welfare Govt. of Kerala. He was entrusted by the State of Kerala to prepare and submit the Model Act of the proposed commission due to the consistent compulsion the government of India. It was also recommended by the Paloli Committee Report, which was resultant edition of the Sachar Committee Report.

Based on the Justice Rajinder Sachar Committee report, 2006, the UPA government called for the urgent need of rehabilitation of the Muslim community calling it as an un-represented minority. The government demanded for ensuring reservations for the Muslims in every sector including in the Indian army. At that time, this was opposed by the opposition calling as an "election strategy" and also by the Indian Army and the then Chief General J.J. Singh's stated[9]: "Our system of entry into the armed forces is merit-based. We are apolitical, we are secular and we are professional." But the reservation for Muslims was welcomed by many secular social scientists, administrators and historians like Harsh Mander, Irfan Habib etc. Irfan Habeeb commented[10], "Why should the army be excluded from the scrutiny of citizens? It is an elementary exercise."

Nonetheless, the Sachar Committee report also targeted in uplifting the Muslims in India in terms of education. Despite having multiple plans and policies from the Centre and the State, they failed to address the challenges faced by the community. In higher education level, they were no specific schemes to promote Muslim children to enrol and participate in higher education and they were under-represented. Justice Rajinder Sachar Committee reported that the representation of the Muslims in IAS and IPS is below 3 percent. Their enrolment ratio in higher education is very dismal and par with the most backward communities like SC and ST.

Initiatives by the Government

Government of India has formulated the "Prime Minister's New 15-Point Programme for the Welfare of Minorities". An important objective of the Programme is to ensure that an appropriate percentage of the priority sector lending is targeted for the minority communities and that the benefits of various government sponsored schemes reach the under-privileged, which includes the disadvantaged sections of the minority communities. The Programme is being implemented by the Central Ministries/Departments concerned

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[9]https://www.indiatoday.in/magazine/nation/story/20060227-sachar-committee-congress-minority-agenda-comes-under-scrutiny-785928-2006-02-27.

[10]https://www.indiatoday.in/magazine/nation/story/20060227-sachar-committee-congress-minority-agenda-comes-under-scrutiny-785928-2006-02-27.

through State Governments/Union Territories and envisages location of certain proportion of development projects in minority concentration districts(MCD).

The government has been implementing various minority education schemes and programmes especially for Muslim community. Article 46 of the Constitution of India states that

> "*The state shall promote, with special care, the education and economic interests of the weaker sections of the people and, in particular, of the Scheduled Castes and Scheduled Tribes and shall protect them from social injustice and all forms of social exploitation."*

The Ministry of Human Resource Development has taken several significant initiatives, as detailed below, during XIth Five-Year Plan and the momentum of which are being continued/accelerated during the XIIth Five-Year Plan. The following schemes and initiatives aim to provide inclusive educational approach under a broader framework of national-level educational schemes. The important schemes are for the welfare and educational empowerment of Muslim minority implemented by the Ministry of Minority Affairs includes:

i. Scheme for Providing Quality Education in Madrasas (SPQEM)
ii. Scheme for Infrastructure Development of Private Aided/Unaided Minority Institutions (IDMI)
iii. Sarva Shiksha Abhiyan (SSA)
iv. Kasturba Gandhi Balika Vidyalayas (KGBVs)
v. Extension of Mid-Day Meals (MDM) Scheme to Madrasas/Maqtabs
vi. Saakshar Bharat
vii. Jan ShikshanSansathan (JSS)
viii. Rashtriya Madhyamik Shiksha Abhiyan (RMSA
ix. Strengthening of the National Council for Promotion of Urdu Language (NCPUL)
x. Establishment of the National Commission for Minority Educational Institutions (NCMEI)
xi. List of Minority Concentration Districts
xii. Sub-mission of Poly techniques under the coordinated Action for Skill development
xiii. Girls Hostel Scheme
xiv. Setting up model schools

Even though a lot of flagships programmes were formulated by the government of India under the ministry of minority affairs and ministry of human resources, those schemes and projects couldn't be triggered the targets of the respective communities as all religious minorities were equally treated and its benefits were shared among them in terms of proportion to the population instead of the current position of backwardness.

Conclusion

The term minority lack in a universally accepted definition. As we run through the term has multiple definitions which are yet relevant depending on the societies. But what constitutes a minority needs to be

specified. Though several attempts have been made since the establishment of the United Nations to secure a working definition of the term but on each of the occasions when such efforts were embarked on, member states have expressed divided opinions on the matter. However, the lack of unanimity over definition partly emanates from diverse historical experiences and prevalent minority situations.

Especially in the context of India we witness reluctance among the ruling government or the organisations to accord a distinctive group status to minorities is a result of the innate fear that this would encourage "them" to acquire a distinct juridical personality which, in turn, has the potential to stoke their aspiration for self-determination. Presently what we witness today as a definition of minority is more of a collective notion of minorities as a group and its legal, a normative recognition. In other words, the distinctiveness of a group as a principle to identify a minority at the state level is supplemented by another powerful norm, i.e., backwardness and marginalisation.

The Muslims in India have been always seen as a religious cultural minority, often envisaged as a national-level backward community. Though, the Sachar Commission Report has consolidated this administrative-policy imagination the guiding principle for the ministry of minority affairs, established in 2006, the Muslims in India, one of the largest minority groups in the country is yet to attain the benefits as for the state-central government schemes.

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