



INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL
ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

WWW.WHITEBLACKLEGAL.CO.IN

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Editor-in-chief of White Black Legal – The Law Journal. The Editorial Team of White Black Legal holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of White Black Legal. Though all efforts are made to ensure the accuracy and correctness of the information published, White Black Legal shall not be responsible for any errors caused due to oversight or otherwise.

WHITE BLACK
LEGAL

EDITORIAL **TEAM**

Raju Narayana Swamy (IAS) Indian Administrative Service **officer**



a professional
Procurement from the World Bank.

Dr. Raju Narayana Swamy popularly known as Kerala's Anti-Corruption Crusader is the All India Topper of the 1991 batch of the IAS and is currently posted as Principal Secretary to the Government of Kerala. He has earned many accolades as he hit against the political-bureaucrat corruption nexus in India. Dr Swamy holds a B.Tech in Computer Science and Engineering from the IIT Madras and a Ph. D. in Cyber Law from Gujarat National Law University. He also has an LLM (Pro) (with specialization in IPR) as well as three PG Diplomas from the National Law University, Delhi- one in Urban Environmental Management and Law, another in Environmental Law and Policy and a third one in Tourism and Environmental Law. He also holds a post-graduate diploma in IPR from the National Law School, Bengaluru and diploma in Public

Dr. R. K. Upadhyay

Dr. R. K. Upadhyay is Registrar, University of Kota (Raj.), Dr Upadhyay obtained LLB , LLM degrees from Banaras Hindu University & Phd from university of Kota.He has succesfully completed UGC sponsored M.R.P for the work in the ares of the various prisoners reforms in the state of the Rajasthan.



Senior Editor

Dr. Neha Mishra



Dr. Neha Mishra is Associate Professor & Associate Dean (Scholarships) in Jindal Global Law School, OP Jindal Global University. She was awarded both her PhD degree and Associate Professor & Associate Dean M.A.; LL.B. (University of Delhi); LL.M.; Ph.D. (NLSIU, Bangalore) LLM from National Law School of India University, Bengaluru; she did her LL.B. from Faculty of Law, Delhi University as well as M.A. and B.A. from Hindu College and DCAC from DU respectively. Neha has been a Visiting Fellow, School of Social Work, Michigan State University, 2016 and invited speaker Panelist at Global Conference, Whitney R. Harris World Law Institute, Washington University in St.Louis, 2015.

Ms. Sumiti Ahuja

Ms. Sumiti Ahuja, Assistant Professor, Faculty of Law, University of Delhi,

Ms. Sumiti Ahuja completed her LL.M. from the Indian Law Institute with specialization in Criminal Law and Corporate Law, and has over nine years of teaching experience. She has done her LL.B. from the Faculty of Law, University of Delhi. She is currently pursuing Ph.D. in the area of Forensics and Law. Prior to joining the teaching profession, she has worked as Research Assistant for projects funded by different agencies of Govt. of India. She has developed various audio-video teaching modules under UGC e-PG Pathshala programme in the area of Criminology, under the aegis of an MHRD Project. Her areas of interest are Criminal Law, Law of Evidence, Interpretation of Statutes, and Clinical Legal Education.



Dr. Navtika Singh Nautiyal

Dr. Navtika Singh Nautiyal presently working as an Assistant Professor in School of law, Forensic Justice and Policy studies at National Forensic Sciences University, Gandhinagar, Gujarat. She has 9 years of Teaching and Research Experience. She has completed her Philosophy of Doctorate in 'Intercountry adoption laws from Uttranchal University, Dehradun' and LLM from Indian Law Institute, New Delhi.



Dr. Rinu Saraswat

Associate Professor at School of Law, Apex University, Jaipur, M.A, LL.M, Ph.D,

Dr. Rinu have 5 yrs of teaching experience in renowned institutions like Jagannath University and Apex University. Participated in more than 20 national and international seminars and conferences and 5 workshops and training programmes.

Dr. Nitesh Saraswat

E.MBA, LL.M, Ph.D, PGDSAPM

Currently working as Assistant Professor at Law Centre II, Faculty of Law, University of Delhi. Dr. Nitesh have 14 years of Teaching, Administrative and research experience in Renowned Institutions like Amity University, Tata Institute of Social Sciences, Jai Narain Vyas University Jodhpur, Jagannath University and Nirma University.

More than 25 Publications in renowned National and International Journals and has authored a Text book on Cr.P.C and Juvenile Delinquency law.



Subhrajit Chanda



BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

UPHOLDING PLURALISM: THE CONSTITUTIONAL FRAMEWORK FOR MINORITY RIGHTS IN INDIA

AUTHORED BY - KRATIKA SHARMA

Roll No.: A3211120214

BACHELOR OF ARTS & BACHELOR OF LAW (HONS.)
AMITY LAW SCHOOL, AMITY UNIVERSITY, NOIDA

DECLARATION

I, Ms. Kratika Sharma, Enrolment No. A3211120214 declare that the dissertation titled “UPHOLDING CONSTITUTION: THE FRAMEWORK FOR MINORITY RIGHTS IN INDIA” is solely completed by me and is completely my effort. Regarding the content of this dissertation, I must state that, to the best of my knowledge and belief, it has never been presented anywhere before for the award of any degree or diploma.

I am enclosing the plagiarism report of my dissertation to demonstrate its originality.

Signature of the Student: Name:

Date:

WHITE BLACK
LEGAL

Certificate of Supervisor

AMITY LAW SCHOOL AMITY UNIVERSITY

This is to certify that the Dissertation entitled "UPHOLDING CONSTITUTION: THE FRAMEWORK FOR MINORITY RIGHTS IN INDIA" submitted by Mr./Ms. Kratika Sharma, Roll No. A3211120214 is hereby certified as completed under my guidance.

I confirm that the work presented in the Dissertation (LLB 502) entitled "UPHOLDING CONSTITUTION: THE FRAMEWORK FOR MINORITY RIGHTS IN INDIA" submitted by Mr./Ms. Kratika Sharma, Roll No. A3211120214 for the BA LLB Semester X at the AMITY LAW SCHOOL, AMITY UNIVERSITY represents bona fide research conducted under my direct supervision and guidance.

I attest that the Dissertation meets the required standards and fulfils the regulations pertaining to the degree.

Signature of the Supervisor:

Date:

Name of the Supervisor:

Designation:

Countersigned By

Director:

SCHOOL OF LAW,
AMITY UNIVERSITY

ACKNOWLEDGEMENT

During this time, I would like to take this opportunity to convey my highest appreciation to everyone who has helped and guided me in all the steps of writing the dissertation, "UPHOLDING CONSTITUTION: THE FRAMEWORK FOR MINORITY RIGHTS IN INDIA."

First of all, I would like to give my most profound gratitude to Mr. Sudhanshu Jatav, my faculty guide, whose unparalleled vision, constructive feedback, and their persistent unwavering shoulder have nurtured my research in many ways. His mentorship, besides the fact that it widened my view of the topic, also encouraged me to analyze it more richly and from more perspectives.

I am situated in a particularly fortunate position because of the help that I have received in my institutional training that facilitated this research. I wish to express my genuine gratitude to my teachers, guides, and companions for their constant support, constructive arguments, and new suggestions which considerably improved the quality of this paper.

My family, friends are the last group of people I want to thank from the bottom of my heart for their unlimited support, endurance, and faith in me. Their strength has been my major source of strength in the completion of this dissertation chapter. Through this small step towards the world's greater awareness and campaigning for sexual minorities' rights, the research has contributed to the ongoing discourse about inclusion and equality.

KRATIKA SHARMA

TABLE OF CONTENTS

S.No.	Title	Page. No.
1.	Acknowledgment	4
2.	Table Of Contents	5
3.	List Of Abbreviations	6-7
4.	List Of Cases	8-9
5.	Preface	10
6.	Chapter 1: Introduction	11-27
7.	Chapter 2: Understanding Pluralism	28-38
8.	Chapter 3: Judicial Interpretation and The Role of Indian Judiciary in Upholding Minority Rights	39-51
9.	Chapter 4: State Policies and Administrative Practices Affecting Minority Rights	52-62
10.	Chapter 5: Judicial Approaches Towards Minority Rights	63-70
11.	Chapter 6: The Role of State Institutions in Promoting Minority Welfare	71-81
12.	Chapter 7: Challenges To Minority Rights in Contemporary India	82-92
13.	Chapter 8: Conclusion And Recommendations	93-96
14.	Bibliography	97-99
15.	Webliography	100-101

LIST OF ABBREVIATIONS

S.NO.	ABBREVIATION	FULL FORM
1.	SC	SUPREME COURT
2.	HC	HIGH COURT
3.	NALSA	NATIONAL LEGAL SERVICE AUTHORITY
4.	LGBTQAI+	LESBIAN, GAY, BISEXUAL, TRANSGENDER, QUEER/INTERSEX, ASEXUAL AND OTHERS
5.	IPC	INDIAN PENAL CODE
6.	CRPC	CODE OF CRIMINAL PROCEDURE
7.	UDHR	UNITED NATION DECLARATION OF HUMAN RIGHTS
8.	ICCPR	INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS
9.	ICESCR	INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS
10.	UN	UNITED NATIONS
11.	NHRC	NATIONAL HUMAN RIGHTS COMMISSION
12.	UGC	UNIVERSITY GRANTS COMMISSION
13.	MSGE	MINISTRY OF SOCIAL JUSTICE AND EMPOWERMENT
14.	RTI	RIGHT TO INFORMATION
15.	NGO.	NON-GOVERNMENTAL ORGANISATION
16.	PRS	PRS LEGISLATIVE RESEARCH
17.	OBC	OTHER BACKWARD CLASS

18.	SC/ST	SCHEDULE CAST/SCHEDULE TRIBE
19.	WHO	WORLD HEALTH ORGANISATION
20.	HIV/AIDS	HUMAN IMMUNODEFICIENCY VIRUS/AQUIRED IMMUNODEFICIENCY SYNDROME
21.	UNDP	UNITED NATIONS DEVELOPMENT PROGRAM



LIST OF CASES

S.No.	Cases
1.	National Legal Services Authority v. Union of India, (2014) 5 SCC 438.
2.	Navtej Singh Johar v. Union of India, (2018) 10 SCC 1.
3.	Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1.
4.	Shafin Jahan v. Asokan K.M., (2018) 16 SCC 368.
5.	Shayara Bano v. Union of India, (2017) 9 SCC 1.
6.	Indian Young Lawyers Association v. State of Kerala, (2019) 11 SCC 1.
7.	People's Union for Civil Liberties (PUCL) v. Union of India, (2003) 4 SCC 399.
8.	Anuj Garg v. Hotel Association of India, (2008) 3 SCC 1.
G.	State of Madras v. Champakam Dorairajan, AIR 1951 SC 226.
10.	Lata Singh v. State of U.P., (2006) 5 SCC 475.
11.	Vishaka v. State of Rajasthan, (1997) 6 SCC 241.
12.	Francis Coralie Mullin v. Administrator, Union Territory of Delhi, (1981) 1 SCC 608.
13.	M. Nagaraj v. Union of India, (2006) 8 SCC 212.
14.	Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217.
15.	Joseph Shine v. Union of India, (2019) 3 SCC 39.
16.	Delhi Transport Corporation v. DTC Mazdoor Congress, AIR 1991 SC 101.
17.	Olga Tellis v. Bombay Municipal Corporation, (1985) 3 SCC 545.
18.	National Legal Services Authority v. Union of India, (2014) 5 SCC 438.

1G.	Navtej Singh Johar v. Union of India, (2018) 10 SCC 1.
20.	Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1.



PREFACE

The Indian Constitution serves as an essential road map for democracy, equality, and social inclusion, as it guarantees equal rights to all citizens, whether they are of different orientations, backgrounds, or genders, and even if they don't have the same protections. The reportage of many minority groups in India is that they are still off the benefits and the promise of the Constitution because they have to deal with exceptional difficulties. The dissertation entitled "Upholding the Constitution: The Framework for Minority Rights in India" seeks to explore the situations where the legal regulations designed to safeguard the minority use of the public interest sometimes contribute to the challenges these groups have to go through.

This present study probes into the ideologies regarding the rights of minorities in a multicultural country such as India. It discusses the legal provisions and the safeguarding regulations introduced for minorities and also highlights some of the landmark judiciary pronouncements that have contributed to the interpretation of these laws. The study also traces the history of minority rights, from the struggles before India gained independence to today's discussions about secularism, identity, and representation.

Additionally, this research critically addresses the various social and political challenges that minorities face, such as discrimination and violence, while evaluating how effective government policies are in responding to these issues. By comparing India's approach with global standards and successful practices from other countries, the study aims to enhance our understanding of diversity and what India can learn from these examples.

Importantly, this dissertation is not just an academic project; it is part of a broader effort to strengthen the core values of the Constitution of India. It contributes to ongoing conversations about fairness, justice, and protecting the identities of minority groups in an ever-changing social and political landscape.

Overall, we hope this study will significantly enhance our understanding of minority rights and inspire more discussions on how we can work together, both individually and collectively, to build a more inclusive society for everyone.

CHAPTER 1: INTRODUCTION

1.1. *BACKGROUND AND SIGNIFICANCE OF PLURALISM IN INDIA*

Diversity has characterized India, the land where different cultures, languages, religions, and traditions have lived together and prospered over the years. The Indian subcontinent, which has been home to different communities from the old Indus Valley Civilization till now, is like a contrasting picture of diversity; each community adds to the overall picture with its specific identity. The multiculturalism is not only a property of Indian life but also one of the main riches.

What distinguishes India is its ability to harmonize this diversity with a common national identity. However, maintaining such harmony requires a dedicated effort to safeguard the rights of all communities, particularly those that are marginalized. Ensuring equal dignity, opportunity, and respect for every group, regardless of size, is crucial for preserving this pluralistic framework.

India's strong belief in pluralism is thoroughly marked by the ethos and spirituality of the country. The Rigveda, a wonderful ancient scripture, affirms this with the quote "Ekam Sat Vipra Bahudha Vadanti" that translates as "Truth is one, but the wise express it in various ways". This utterance expresses a deep respect for different opinions. Buddhist, Jainist, Sikh, and Sufi philosophies have all communicated the same ideas, pointing out the key roles of non-discrimination, love, and peaceful living together. Collectively, these teachings have influenced India's enduring commitment to unity amidst diversity. During the medieval period, rulers like Akbar sought to institutionalize religious harmony through policies like Sulh-i-Kul (universal peace), fostering an inclusive governance model.¹

Nonetheless, the scenario changed drastically with the onset of the British colonial rule. The colonial administration did not merely govern, it also entailed redesigning India's social fabric deliberately to assert dominance. The policy of

¹ M. Athar Ali, "The Mughal Polity and Religious Tolerance," (1985) 19 Social Scientist 12

divide and rule was one of the most disastrous remnants of the time gone by. By widening the gap between religions and communities, the British managed to apply their power but at a huge expense to the pluralistic tradition of the Indian subcontinent. Rather than bringing people together, these tactics nurtured mistrust and division that still persist in the society. "The creation of separate electorates for Hindus and Muslims under the Morley-Minto Reforms of 1909 institutionalized communal identities, deepening societal fractures."² The Partition of 1947, a watershed event in the history of India, was the time when India was greatly deprived of peace and order of the state. Following the separation of the subcontinent into Indian and Pakistani territory, communal strife resulted in the explosion of violent outbursts, the displacement of millions of people, and a deep trust deficit among religious communities that still exist in the society to some extent. Nevertheless, amid so much suffering which became a part of the trauma, India made an emphatic and principled choice. The country, in line with its new adopted Constitution, became the sponsor of a secular and pluralistic vision which was the promoter of equal rights, dignity, and safety for all, irrespective of religion or language. The act was inspirational and even more, it was a definitive and purposeful act of healing, bringing people together laying the very foundation for democracy in the way that it is positively moving towards being.

1.2. PLURALISM IN POST INDEPENDENT INDIA

Having become self-governing, India initiated the processes that would be the building block for a fully democratic system precisely running on the principles of consideration for the will of the majority and the rights of the minorities. The Constitution, which was formulated with immense thought and vision under the guidance of Dr. B.R. Ambedkar, was a documentary effort to preserve the pluralism that has been the nation's identity. The architects understood that the actuality of democracy is not solely linked to the decision of the majority it is also about safeguarding every group, particularly the weak ones, to feel safe, to be heard, and to be part of the process. Hence, they inbuilt minority rights in the

² Percival Spear, "The Partition of India and the Prospects of Pluralism," (1951) 10(3) Journal of Asian Studies 245

constitutional hardware. The Preamble of the Indian Constitution upholds the values of justice, liberty, equality, and fraternity, reinforcing India's commitment to an inclusive democracy.³

Even with these constitutional protections, India's pluralism has experienced various trials. The nation has experienced several occurrences of communal violence, including anti-Sikh riots of 1984, the Babri Masjid demolition, and the subsequent riots of 1992, as well as the Gujarat riots of 2002.⁴ The occurrence of such incidents has brought doubt on the capability of India's pluralistic model and the skills of state mechanisms in protecting minority rights of the victims. Nevertheless, the Indian Supreme Court has been the one that has preserved the rights of minority people and has interpreted the Articles of the Constitution in a way that they have reinforced pluralism effectively. The two cases, namely *T.M.A. Pai Foundation v. State of Karnataka* (2002) and *St. Stephen's College v. University of Delhi* (1992), confirm the rights of minority institutions.⁵

1.3. PLURALISM AND DEMOCRACY

Pluralism is not merely a cultural or religious phenomenon; it is deeply intertwined with the democratic fabric of India. A truly democratic society accommodates diverse perspectives and ensures that minority voices are heard in governance and policymaking. Political representation of minorities, affirmative action policies, and special provisions for disadvantaged groups are essential elements of India's democratic pluralism. "The Sachar Committee Report (2006) highlighted the socio-economic backwardness of Indian Muslims, underscoring the need for targeted policies to uplift marginalized communities."⁶

³ Granville Austin, "The Indian Constitution: Cornerstone of a Nation," (Oxford University Press 1966) 78

⁴ Paul Brass, "The Production of Hindu-Muslim Violence in Contemporary India," (University of Washington Press 2003) 102

⁵ *T.M.A. Pai Foundation v. State of Karnataka*, (2002) 8 SCC 481; *St. Stephen's College v. University of Delhi*, (1992) 1 SCC 558

⁶ Sachar Committee Report, "Social, Economic and Educational Status of the Muslim Community in India," (Government of India, 2006)

In addition, the rights of linguistic minorities in India are ensured through the Constitution with provisions such as Article 29 and Article 30, which provide the rights minorities to protect their language and establish the educational institutions of their choice. The Three-Language Formula adopted by the Indian government ensures that regional languages, along with Hindi and English, are promoted, reinforcing linguistic diversity.⁷

1.4. CHALLENGES TO PLURALISM IN CONTEMPORARY INDIA

Although India's diverse tradition persists, present challenges are the threats to its basic things. The growth of majority political, religious separatism, and hate speech have been the signs of the downturn of the minority protections. Recently, the arguments regarding the citizenship laws, the anti-conversion legislation, and cow vigilantism have been the cause of fear of minority communities. The Citizenship (Amendment) Act, 2019 was passed⁸, which is the fast track citizenship non-Muslim refugees from the neighbouring countries, was challenged by public outpouring of protests, with opponents exposing that it voids India of its secular character.

Similarly, the role of digital media and misinformation has amplified communal tensions. Social media platforms have been used to spread false narratives, leading to mob violence and targeted attacks against minority communities. These developments necessitate stronger legal frameworks and proactive state intervention to ensure that India's pluralism is not compromised.

1.5. DEFINITION AND CONCEPT OF MINORITY RIGHTS

The idea of minority rights is very important when we talk about living together in a diverse society, respecting everyone's rights, and following the rules of good governance. In a country like India, where many different ethnic, language, religious, and cultural groups coexist, minority

⁷ Pritish Nandy, "Language and Identity: Linguistic Pluralism in India," (2010) 5 Indian Journal of Political Science 89

⁸ Anupama Roy, "Citizenship in India: A Century of Debate," (Oxford University Press 2020) 152

rights play a key role in promoting social peace, preventing unfair treatment, and supporting everyone's growth.

These are basically the minority rights insecure and are granted by the government to the smaller or less powerful groups in a country. Such rights serve as promotional measures for these groups to grow in alliance with the predominant community and not be neglected instead. This process helps in building up the unity of all citizens. The statement "minority" can be treated differently in some countries according to the differences of their situations. The meanings that minority rights are given are results of the influence of the international laws, domestic laws, and court decisions. In India, these rights have been given priority in the Constitution, particularly in Articles 25 to 30, which are the rights of people to the practice of their religion, culture, and education without any kind of prohibition. However, the failure to state the definition of "minority" in the Constitution has resulted in state authorities doing whatever they want with the interpretation of the law but usually in favor of the majority which has developed the legal discourse on minority rights in India.⁹

1.5.1. The International Perspective on Minority Rights

At the international level, minority rights have been recognized as an essential part of human rights jurisprudence. The United Nations (UN) has played a crucial role in establishing the legal framework for minority protection through various treaties, declarations, and conventions. The Universal Declaration of Human Rights (UDHR) of 1948,¹⁰ while not explicitly mentioning minorities, emphasizes equality before the law and non-discrimination, laying the foundation for minority rights in subsequent international instruments. The International Covenant on Civil and Political Rights (ICCPR) of 1966, under Article 27, explicitly states that:

⁹ P.K. Tripathi, "Minority Rights and Constitutional Provisions," (1974) 26 Journal of Indian Constitutional Law 89

¹⁰ Universal Declaration of Human Rights, (1948) United Nations General Assembly Resolution 217 A (III)

"In those states in which ethnic, religious, or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their religion, or to use their language."¹¹

Additionally, the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious, and Linguistic Minorities (1992)¹² reaffirms the responsibility of states to protect minority identities and ensure their full participation in national development. Regional human rights instruments, such as the European Convention on Human Rights (ECHR) and the, have also incorporated minority rights within their frameworks, recognizing that pluralistic societies require legal safeguards to maintain stability.

1.5.2. Defining "Minority" in India

Even though the Indian Constitution promises minority rights, the term "minority" is not explicitly mentioned in the Indian Constitution. This has resulted in the court's definitions and the statutory ones used to decide the minority status. The National Commission for Minorities Act, 1992, focuses on religion as the primary criterion for the definition of minorities, with Muslims, Christians, Sikhs, Buddhists, Jains, and Parsis identified as the national minorities.¹³ However, the determination of minority status is not uniform across all states, as some religious or linguistic groups that are minorities at the national level may be in the majority within specific states.

The Supreme Court of India has played a key role in interpreting minority rights. In *T.M.A. Pai Foundation v. State of Karnataka* (2002), the Court defined minorities as "those who are numerically less than 50% of the total population of the state or country."¹⁴ The essential point of this ruling was that minority status should be decided at the state level instead of the

¹¹ International Covenant on Civil and Political Rights (ICCPR), (1966) Article 27

¹² United Nations Declaration on the Rights of Minorities, (1992) UNGA Resolution 47/135

¹³ National Commission for Minorities Act, (1992) Section 2(c)

¹⁴ *T.M.A. Pai Foundation v. State of Karnataka*, (2002) 8 SCC 481

national level, which is a statement to the diverse nature of India's federal system.

Interestingly, the national constitution also safeguards the rights of the linguistic minorities. The Articles 29 and 30 of the Constitution assure linguistic minorities the freedom of use the language of their choice and establish educational institutions with the same. Nevertheless, the absence of a legal definition of linguistic minorities resulted in complexities in practice, thus making it often necessary for judicial branches to intervene and determine their range.

1.5.3. Constitutional Protection of Minority Rights in India

India's constitutional framework is designed to uphold secularism, equality, and minority rights, ensuring that the nation remains inclusive and just. The Preamble of the Indian Constitution guarantees justice, liberty, equality, and fraternity, principles that directly impact minority protection.¹⁵ The following constitutional provisions explicitly safeguard minority rights:

- **Article 14:** Ensures equality before the law and equal protection of laws, forming the foundation for non-discrimination.
- **Article 15(1) & (2):** Prohibit discrimination on grounds of religion, race, caste, sex, or place of birth.
- **Article 16(1) & (2):** Ensure equal opportunity in public employment, preventing discrimination against minorities.
- **Article 25:** Guarantees freedom of conscience and the right to freely profess, practice, and propagate religion.
- **Article 26:** Grants religious denominations the right to manage their religious affairs.
- **Article 29:** Protects the rights of minorities to conserve their culture, language, and script.

¹⁵ Granville Austin, "Working a Democratic Constitution: A History of the Indian Experience," (Oxford University Press 2003) 136

- Article 30: Grants minorities the right to establish and administer educational institutions of their choice.¹⁶

The Indian judiciary has played a critical role in interpreting these rights. In *St. Stephen's College v. University of Delhi* (1992),¹⁷ the Supreme Court ruled that “minority educational institutions have the right to autonomy while maintaining academic standards”. Similarly, in *Bal Patil v. Union of India* (2005), the Court emphasized that “the purpose of minority protections is to prevent discrimination and ensure inclusive development rather than promote separatism”.¹⁸

1.5.4. The Significance of Minority Rights in a Pluralistic Society

The preservation of the rich cultural and linguistic diversity of India is thanks in a large part to the rights of the minorities. The protection of these rights is vital to change the trend in the extinction of the indigenous languages and traditions, thus the very roots of the country. Also, the safeguarding of minority rights comes deep into the area of politics by having a direct impact on the stability of the country; the minority groups after they are being included and recognised, they do not want to create conflicts, have communal tensions or even do separatist movements, etc. Rather, by providing equal chances to get educated and trained in minority segments of the population not only benefits the social aspect of the country but also because it is a prerequisite to economic growth. To be on the side of providing minority rights is not only a duty of conscience, but also it stands in line with the signature of India on several international human rights treaties which the country is bound to. Hence, this is the country's set duty of not only to the people of India but also to the world, to protect the minorities in accordance with global standards. Thus, these rights are essential to maintaining a democratic and pluralistic society; in their absence, it is easy to see how political instability and social unrest can develop.

¹⁶ Constitution of India, Articles 25-30

¹⁷ *St. Stephen's College v. University of Delhi*, (1992) 1 SCC 558

¹⁸ *Bal Patil v. Union of India*, (2005) 6 SCC 690

1.6. EVOLUTION OF MINORITY RIGHTS IN INDIA

Over a long period, the development of minority rights in India has been passed by the cross-influencing historical events such as colonial policies, discussions about the constitution and court decisions. Rights of Minorities are not visible or just like this; they are the steps of the historical movement of the ones who have been contact with different unique social and political aspects in the earlier period-Peaceful living of different societies in a multicultural society. The three specific periods help us explore the change of minority rights in India deeply: pre-colonial period, British Raj period, and the period of the free independent India. All these times significantly contributed to the generation of the today's existing system of minority rights in India. The above-mentioned periods are the exact times in which the principles of equality, non-discrimination, and the need for different cultures to be protected under the law were articulated very clearly.

1.6.1. Minority Rights in Pre-Colonial India

Traditionally, India's demography has been filled with divinely, culturally, and linguistically very diverse. Through texts, surviving administrative policies of the feudal period, and societal structures one can learn about the status of communities in the minority that existed before the British colonized. The idea of formalized legal rights for minorities was absent, however, Indian society had a thoroughly pluralist origin. In prehistoric times, India was a place where various religions and other groups flourished together. Hinduism, Buddhism, Jainism, and other folk traditions have enjoyed full autonomy on their own with a significant amount of mutuality among them both in the matters of philosophy and political governance. The ancient Hindu texts like the Dharmashastras and Arthashastra show the acceptance of different laws for different communities. Buddhist rulers

like Emperor Ashoka (3rd century BCE) promoted religious tolerance and encouraged peaceful coexistence among various sects.¹⁹

The Middle Ages were the time when Islam spread to the Indian subcontinent thus leading to the emerging of new cultural and religious interactions. The Delhi Sultanate (1206-1526) and the Mughal Empire (1526-1857). Both of these different empires had different ways of dealing with religious minorities. “While some rulers enforced discriminatory practices against non-Muslims, others, like Akbar (1556–1605), promoted religious tolerance and pluralism through policies such as Sulh-i-Kul (universal peace), which allowed people of different faiths to practice their religion freely”.²⁰ The Jizya tax, imposed on non-Muslims under certain rulers, reflected an early form of differentiation between majority and minority communities. However, the Bhakti and Sufi movements of this period contributed significantly to inter-religious harmony, promoting shared spiritual values that transcended religious divides.²¹

Even though there were multiple traditions, a formal legal framework for minority rights was absent in pre-colonial India. The provision of protections to minorities, in the instances given, was mainly governed by the will of the ruling elite rather than by elaborations in laws or the constitution.

1.6.2. The British Colonial Era and Institutionalization of Minority Rights

The coming of the British to India marked the commencement of the colonial rule and the era where the minority communities began to experience a completely different system of administration from what they had enjoyed earlier. The Britishers as a colonial administration gave a formal character to the religious and social identities that were separate from each other, and which in the long run came to be considered the basic

¹⁹ R.C. Majumdar, "The History and Culture of the Indian People," (Bharatiya Vidya Bhavan, 1951)

²⁰ M. Athar Ali, "The Mughal Nobility Under Aurangzeb," (Oxford University Press, 1997)

²¹ Richard Eaton, "The Rise of Islam and the Bengal Frontier, 1204-1760," (University of California Press, 1993)

principal of minority rights in India. The time when communal divisions were put into the constitution, separatism became a minority understanding, and the law was used to protect the interests of individual groups. One of the major aspects of British rule was the divide and rule policy, which attempted to categorise communities according to religion, caste, and ethnicity, thus further strengthening the group identities. “The British Census of 1871 categorized the Indian population along religious and social lines, intensifying communal consciousness.”²² The following key developments occurred in this period:

1. **Introduction of Personal Laws:** The British codified Hindu and Muslim personal laws, recognizing distinct legal frameworks for different religious communities in matters of marriage, inheritance, and family law. The Hindu Widows’ Remarriage Act (1856) and Muslim Personal Law (Shariat) Application Act (1937) exemplified this approach.²³
2. **Separate Electorates:** The Indian Councils Act of 1909 (Morley-Minto Reforms) introduced separate electorates for Muslims, allowing them to elect their representatives. This system was extended to Sikhs, Christians, and other minorities through the Government of India Act, 1919 and 1935.²⁴
3. **Communal Award of 1932:** Introduced by the British Prime Minister Ramsay MacDonald, the Communal Award provided separate electorates for Dalits, Muslims, Sikhs, and other minorities. This move was opposed by Mahatma Gandhi, leading to the Poona Pact (1932), which ensured reserved seats for Dalits within the general electorate rather than separate electorates.²⁵

These policies, while ostensibly aimed at protecting minorities, exacerbated communal divisions, ultimately contributing to the demand for Pakistan and

²² Census of India, (1871)

²³ Hindu Widows’ Remarriage Act, (1856); Muslim Personal Law (Shariat) Application Act, (1937)

²⁴ Government of India Act, (1935)

²⁵ Poona Pact, (1932)

the partition of India in 1947. However, they also laid the foundation for constitutional safeguards for minorities in independent India.

1.6.3. Post-Independence Developments and Constitutional Protection

After independence, India's leaders were faced with the challenge of ensuring national unity while protecting the rights of minorities. The framing of the Indian Constitution (1950) was heavily influenced by the historical experiences of communal tensions and the partition. The Constituent Assembly Debates reflect a deep commitment to pluralism, equality, and the protection of minority rights.

The Role of the Constituent Assembly

The Constituent Assembly (1946–1950) discussed thoroughly and widely on minority rights, amid balancing the principles of democracy, secularism, and social justice. The eminent leaders Dr. B.R. Ambedkar, Jawaharlal Nehru, Sardar Patel, and Maulana Azad, were the game changers in shaping the constitutional provisions related to the minorities. The most significant discussions included:

- **Religious Freedom:** It was decided that India would be a secular state, thus ensuring freedom of religion for all communities (Article 25-28).
- **Educational and Cultural Rights:** The protection of linguistic and cultural rights of minorities (Articles 29-30) was highlighted to stop the process of cultural assimilation.
- **Reservations and Affirmative Action:** Although separate electorates were abolished, the Constitution provided reservations in education and employment for Scheduled Castes and Scheduled Tribes, recognizing their historical marginalization.²⁶

²⁶ Constituent Assembly Debates, Vol. IX

Judicial Interpretations and Legislative Developments

Post-independence, the Supreme Court of India has played a significant role in interpreting and expanding minority rights. Cases such as:

- Kerala Education Bill Case (1958) affirmed the right of minorities to establish and administer educational institutions.
- T.M.A. Pai Foundation v. State of Karnataka (2002) clarified that minority status should be determined at the state level.²⁷

The government has also enacted policies and commissions to safeguard minority rights, including:

- The National Commission for Minorities Act, of 1992, recognized six religious minorities.
- The Sachar Committee Report (2006), which led to the socio-economic status of Muslims in India, led to policy recommendations for their upliftment.²⁸

1.7. LEGAL AND CONSTITUTIONAL FRAMEWORK FOR MINORITY RIGHTS IN INDIA

The legal and constitutional measures for minority rights in India are not just rules and regulations but a special well-thought-out plan that has been meticulously constructed to shield the pluralistic and democratic culture of the nation from any kind of harm. Protecting the rights of the minority is, in fact, a moral duty to the extent that if it is not done, it would destroy social unity and national integration which is the prevailing condition in India, a land with numerous ethnic, religious, cultural, and linguistic groups. The Indian Constitution, the primary statute in this nation and the one that sores at the head of the rest, precisely lists the liberties of individuals and lays down the necessary protective conditions of the minority in society. In a more certain matter, these rights are backed by stipulations, court rules, and the state's commitment to

²⁷ T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481

²⁸ Sachar Committee Report, (2006)

international agreements that assure the neutrality, equality, and minority protection in the country. In this part, there is an extensive and detailed description of the Indian Constitution, the laws, and judges' decisions, and, above all, the international treaties that all together are the governing of minority rights in India. Moreover, it also shows the inventiveness of Indian law, which seeks to protect the collective needs of society and, in doing so, supports the minor groups to have a say in the democratic process of the state, thus not only be protected but also be granted the opportunity to participate in the political process of the country.

1.7.1. Constitutional Provisions Protecting Minority Rights

The Constitution of India, 1950, drafted after extensive deliberations in the Constituent Assembly, embodies the principles of secularism, equality, and justice. It not only guarantees fundamental rights to all citizens but also provides specific protections to minorities to preserve their cultural, religious, and educational identity. These provisions can be categorized into the following:

Fundamental Rights Ensuring Equality and Non-Discrimination

The Constitution grants fundamental rights to all individuals, which implicitly safeguards the interests of minority communities by ensuring non-discrimination and equal treatment. These include:

- Article 14: “Guarantees equality before the law and equal protection of the laws, ensuring that minorities are not subjected to discriminatory treatment.”²⁹
- Article 15: “Prohibits discrimination on the grounds of religion, race, caste, sex, or place of birth. This article presents any exclusionary policies that might undermine the rights of minority groups.”³⁰
- Article 16: “Ensures equal opportunity in public employment and prohibits religious discrimination in government jobs. The provision for

²⁹ Constitution of India, Art. 14

³⁰ Constitution of India, Art. 15

reservations in employment for Scheduled Castes (SCs), Scheduled Tribes (STs), and Other Backward Classes (OBCs) indirectly benefits minority communities that fall within these categories.”³¹

Religious and Cultural Rights of Minorities

Recognizing India's pluralistic fabric, the Constitution includes specific protections to ensure that minority communities can practice and propagate their culture and religion without fear of suppression.

- Article 25: Guarantees the freedom of religion, allowing individuals to profess, practice, and propagate their faith. This ensures that minorities can engage in religious activities without undue state interference, except when restricted in the interest of public order, morality, and health.³²
- Article 26: Grants religious groups the right to manage their religious affairs, including establishing institutions and maintaining places of worship.³³
- Article 29: Protects the cultural and educational rights of minorities, ensuring that their distinct language, script, and culture are preserved against homogenization efforts.³⁴
- Article 30: Confers upon minorities the right to establish and administer their educational institutions, ensuring that they can impart education by their cultural and religious values.³⁵

These provisions reflect India's commitment to secularism, not in the Western sense of strict separation of religion and state but as equal respect for all faiths.

³¹ Constitution of India, Art. 16

³² Constitution of India, Art. 25

³³ Constitution of India, Art. 26

³⁴ Constitution of India, Art. 29

³⁵ Constitution of India, Art. 30

Special Provisions for Minority Educational Institutions

One of the most significant protections for minorities under Indian law pertains to educational institutions. Article 30(1) ensures “that linguistic and religious minorities have the right to establish and administer their institutions without undue government interference.”³⁶

Several Supreme Court judgments have reaffirmed this right:

- In *T.M.A. Pai Foundation v. State of Karnataka* (2002), the Supreme Court held that minority status should be determined at the state level, granting greater autonomy to minority-run educational institutions.³⁷
- In *P.A. Inamdar v. State of Maharashtra* (2005), the Court ruled that minority institutions do not have an absolute right to government aid but must follow state regulations regarding admissions and fees.³⁸

These judgments have played a crucial role in balancing the autonomy of minority institutions with the state’s interest in regulating education.

1.7.2. Legislative Framework Supporting Minority Rights

Apart from constitutional guarantees, India has enacted **several laws** to ensure the effective implementation of minority rights. Some of the most significant legislative measures include:

1. The National Commission for Minorities Act, 1992 - This Act established the National Commission for Minorities (NCM) to monitor and safeguard minority rights.³⁹
2. The Right to Education Act, 2009 - Ensures free and compulsory education while exempting minority institutions from certain regulations to maintain their autonomy.⁴⁰

³⁶ *T.M.A. Pai Foundation v. State of Karnataka*, (2002) 8 SCC 481

³⁷ *P.A. Inamdar v. State of Maharashtra*, (2005) 6 SCC 537

³⁸ National Commission for Minorities Act, No. 19 of 1992, Acts of Parliament, 1992 (India)

³⁹ Right of Children to Free and Compulsory Education Act, No. 35 of 2009, Acts of Parliament, 2009 (India)

⁴⁰ Places of Worship (Special Provisions) Act, No. 42 of 1991, Acts of Parliament, 1991 (India)

3. The Places of Worship (Special Provisions) Act, 1991 - Protects religious places from being converted into places of worship of another religion, safeguarding historical and religious heritage.⁴¹

These laws demonstrate India's progressive approach to empowering minorities through legal protections.

1.7.3. Judicial Interpretations and Safeguards

The Supreme Court of India has been instrumental in the interpretation of minority rights so that these rights are not merely protected but also actively promoted. Some landmark cases include:

- *Azeez Basha v. Union of India* (1968): The Supreme Court held that minority institutions cannot claim complete immunity from government regulations.⁴²
- *St. Stephen's College v. University of Delhi* (1992): Affirmed that minority educational institutions can follow their admission policies while maintaining some reservations for non-minority students.⁴³

These judgments highlight the Court's delicate balancing act between minority autonomy and state regulations.

1.7.4. India's International Commitments

India is a signatory to several international treaties that reinforce its commitment to minority rights, including:

1. The Universal Declaration of Human Rights (UDHR), 1948
2. The International Covenant on Civil and Political Rights (ICCPR), 1966
3. The UN Declaration on the Rights of Minorities, 1992

⁴¹ *Azeez Basha v. Union of India*, AIR 1968 SC 662

⁴² *St. Stephen's College v. University of Delhi*, (1992) 1 SCC 558

⁴³ Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810 (1948)

These international agreements place moral and legal obligations on India to ensure the protection and promotion of minority rights in line with global human rights standards.⁴⁴

CHAPTER 2: UNDERSTANDING PLURALISM

2.1. UNDERSTANDING PLURALISM IN A DEMOCRATIC CONTEXT

Pluralism is both a normative ideal and a political necessity in any democratic society that seeks to accommodate diverse identities within a unified national framework. It refers not merely to the existence of diversity, but to the active engagement with and affirmation of that diversity in political, legal, and social structures. In this connection, pluralism stretches beyond the simple acceptance of disagreement; it aims to be the architect of the establishments that encompass and esteem the distinctions among the citizens and especially the varieties in religion, language, culture, ethnicity, and ideology.

The roots of pluralism as a political theory can be traced to the work of 20th-century scholars like Isaiah Berlin, who emphasized that human values and ways of life are inherently plural and, at times, incommensurable. Berlin argued that no single way of life could claim universal supremacy, and thus a free and just society must allow space for multiple, often conflicting, value systems to coexist within the legal

⁴⁴ International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171

order.⁴⁵ This recognition forms the ethical foundation of modern pluralism and lays the groundwork for democratic constitutionalism in diverse societies.

India is a country that exists in a pluralistic way and belief is not an external idea that has been taken from the West, but a very productive and presenting social practice that has evolved for a long time and gives life to the people in India. The primary model of this case as depicted in the historical narrative of India is the peaceful living together of a large group of people. This culture, together with its spiritual aspects, is the result of contributions made by Hindus, Muslims, Christians, Sikhs, Buddhists, Jains, Jews, Zoroastrians, and many other such followers. Hindus think that the coexistence of different communities should be experienced as historical witnesses to the idea in the case of this place. There is a beautiful line up of various traditions that are still in the run for recognition today. The model of HIV/AIDS living in India as a pluralistic society is still teaching the locals that plurality is in the way of life that shows different details.

The framers of the Indian Constitution were acutely aware of this plural character and deliberately infused its text with provisions meant to safeguard it. The Preamble itself promises "liberty of thought, expression, belief, faith and worship,"⁴⁶ reflecting an inclusive vision of citizenship that welcomes difference rather than suppressing it. The Fundamental Rights that are found in Part III of the Constitution along with Articles 14, 15, and 25 to 30 stipulate equality before law, non-discrimination, and the freedom of religion and culture. With the aid of these provisions the constitution gives ground to a pluralistic society, which primarily acknowledges that individuals and communities are entitled to maintain their unique cultural identities and at the same time take part in public events.

Pluralism is not just a term, it is also a part of the idea of being democratic. A society like India which undoubtedly has a deep mix of different religions, languages, and cultures can not treat democracy only as a system identified by a majority of voices. Along with that, it must serve as a path for safeguarding the smaller group interests, turning back the domination from society, and advancing political equality through

⁴⁵ Isaiah Berlin, *Four Essays on Liberty* 213–15 (Oxford Univ. Press 1969)

⁴⁶ *India Const. pmb*

social bar. John Rawls famously described this as the pursuit of an “overlapping consensus,”⁴⁷ wherein citizens with differing worldviews agree on basic principles of justice that guide public institutions.

Pluralism is the main aspect of this model of democracy and its application requires much more than formal legal guarantees alone. It needs a culture of respect, which also includes Institutional safeguards for minorities and besides, it requires the state to make active efforts to block the lopsided constitutional order through its implementation of majoritarianism. The Supreme Court of India has consistently underscored this aspect, observing in cases like *Indra Sawhney v. Union of India*⁴⁸ that inclusivity is essential for substantive equality and national integration.

Nevertheless, pluralism mustn't be considered a hindrance to national unity. Instead, it has to be viewed as a condition that is essential to the true unity of societies like India where homogeneity is not at all possible and is also not preferred. The difficulty arises in finding the right combination of the communities' rights with individual freedoms, that is, making sure that the group identities are not the reason for exclusion or intolerance. Legal scholar Rajeev Bhargava has argued that Indian secularism distinct from its Western counterpart has evolved precisely to navigate this delicate balance, protecting both religious freedom and equality without enforcing a strict separation of church and state.⁴⁹

Thus, pluralism is both a moral and a constitutional imperative in the Indian setting. It acts as a safeguard against totalitarianism, a defensive barrier against intergroup violence, and a stepping stone on the way to democratic consolidation in India. Yet, like any other democratic values, it is also not able to survive alone. It must be restored through civic education, self-serving governments, and a legal system that should be the torch bearer in the protection of the rights of the minorities against the violations of the majority. In this regard, pluralism is not only a value to be

⁴⁷ John Rawls, *Political Liberalism* 133–40 (Columbia Univ. Press 1993)

⁴⁸ *Indra Sawhney v. Union of India*, AIR 1993 SC 477

⁴⁹ Rajeev Bhargava, *Political Secularism: Why It Is Needed and What Can Be Learnt from India*, in *Secular States and Religious Diversity* 157–76 (Bruce Berman, Rajeev Bhargava & André Laliberté eds., UBC Press 2013)

praised but also a necessity of democracy that has to be constantly rescued and renewed.

2.2. DEFINING MINORITIES: RELIGIOUS, LINGUISTIC, CULTURAL, AND ETHNIC DIMENSIONS

The term "minority" is a fundamental term in both the legal and sociopolitical dimensions of pluralism. Nevertheless, pinpointing who exactly a minority member is can be a rather difficult task. The term doesn't have a definite explanation in the Indian Constitution, nor is there a generally approved legal explanation in international law. But, the national and international provisions both cite minorities as the groups that are fewer in number as compared to the majority group in a certain country and do not have a dominant position, frequently possessing distinct religions, languages, ethnicities, or cultures that they are trying to save.

In the Indian legal framework, minorities are broadly understood in two primary categories: religious and linguistic. These identities are recognized by the Constitution through a number of provisions, with Articles 29 and 30 as the most significant ones. According to Article 29, "The people living in the territory of India or in any part of it having a language, script, or culture of their own shall have the right to conserve it." On the other hand, Article 30 clearly states that the minority religious and linguistic groups are entitled to set up and run educational institutions of their own choice.⁵⁰ These constitutional protections do not define who the minorities are, but they imply the recognition of group-based identities as deserving of legal and institutional safeguards.

The Supreme Court, in the landmark judgment of *T.M.A. Pai Foundation v. State of Karnataka*, held that the term "minority" should be understood in the context of a particular state rather than the entire nation.⁵¹ In light of the federal structure of India, where a community might be a minority in one state while it is the majority in another, interpretation was essential in this case. For example, even though Muslims are considered as the religious minority in the country as a whole, they

⁵⁰ India Const. art. 29, cl. 1 & art. 30, cl. 1

⁵¹ *T.M.A. Pai Found. v. State of Karnataka*, (2002) 8 SCC 481

may not be in a minority in specific states such as Jammu & Kashmir (prior to the reorganization in 2019) or Lakshadweep.

Religious minorities in India include Muslims, Christians, Sikhs, Buddhists, Jains, and Parsis. These communities are officially recognized by the Government of India under the National Commission for Minorities Act, of 1992.⁵² Each of these communities has unique historical trajectories, cultural traditions, and institutional frameworks, and their inclusion under the minority umbrella is meant to ensure that their religious practices, educational institutions, and cultural expressions are not hindered by the dominance of the majority.

In addition to religion, linguistic identity plays a significant role in defining minorities in India. The country is home to over 22 constitutionally recognized languages (as per the Eighth Schedule) and hundreds of dialects, many of which are associated with specific regional or ethnic communities. The Constitution, through Articles 350A and 350B, mandates the provision of facilities for instruction in the mother tongue at the primary stage of education and the appointment of Special Officers for linguistic minorities.⁵³ These measures underscore the importance of language as both a cultural resource and a political right.

The two major divisions are minority identities due to ethnic and cultural references in the context of India. While the Constitution is not clear about the use of the terms "ethnic minorities," the mention of the indigenous people and the recognition and protection of the Scheduled Tribes under Article 342, as well as the Fifth and Sixth Schedules, point to the acknowledgement of their special needs, the majority of whom are considered to be ethnic minorities in terms of both people and power.⁵⁴ These communities often face structural marginalization and are protected under affirmative action policies including reservations in education, employment, and political representation.

Internationally, the definition of minorities has been more expansive. The United Nations Human Rights Committee, interpreting Article 27 of the ICCPR, has

⁵² The National Commission for Minorities Act, No. 19 of 1992, § 2(c), Acts of Parliament, 1992 (India)

⁵³ India Const. Art. 350A–B

⁵⁴ India Const. Art. 342; Fifth and Sixth Schedules

emphasized that the term includes “persons belonging to ethnic, religious or linguistic minorities” and that they shall not be denied the right, in community with others, to enjoy their own culture, profess and practise their religion, or use their language.⁵⁵ This right is understood to be both individual and collective, thus acknowledging the complex interrelation between personal liberty and community identity.

To conclude, the Indian context's conceptualization of minorities necessitates an understanding that is multifaceted and goes beyond just counting numbers. It mandates the consideration of the position of the group in the power system its capacity of being in public life and the extent to which its identity is acknowledged and accommodated. Minorities both based on religion speech ethnicity or culture are entitled not just to the right of law but also to the institutional support so that they can continue to live in coexistence and excel in a democratic and pluralistic society.

2.3. INTERNATIONAL PERSPECTIVES ON MINORITY RIGHTS

The historical shift in the discussion of minority rights in international law has been related to the general course of development of human rights standards in the era after World War II. The world society, seeing the barbarities of genocide, forced assimilation, and racial supremacy, concluded that the preservation of the rights of minority communities was both a moral duty and a necessary step for the establishment of peace and democracy. Even though the idea of minority protection was an earlier instrument of intergovernmental cooperation in Europe especially after WWI, the modern scheme was mainly constructed after 1945 anti the will of the United Nations The global community, confronted by the horrors of genocide, forced assimilation, and racial supremacy, recognised that protecting the rights of minority communities was not only a moral imperative but essential to maintaining peace and democratic stability. After the second world war, the idea of minority protection came to be more prominent, mostly due to the influence of the United Nations.

⁵⁵ Human Rights Committee, *General Comment No. 23: The Rights of Minorities (Art. 27)*, U.N. Doc. CCPR/C/21/Rev.1/Add.5 (1994)

A document that is recognized as one of the first and has made a significant influence on the issue is the Universal Declaration of Human Rights (UDHR), which was adopted by the United Nations General Assembly in 1948. The UDHR is not mentioned in the context of minorities but the spirit of the document is of the protection of dignity and equality for everyone. The first two articles underline the principles of freedom and equality for every person regardless of their racial or religious background and national origin.⁵⁶ This laid the groundwork for a more detailed and focused engagement with minority rights in subsequent instruments.

The milestone of the acceptance of the International Covenant on Civil and Political Rights (ICCPR) is now almost half a century. The 27th article of ICCPR is as follows: "In those States where, ethnic, religious or linguistic minorities exist, the persons who stand as part of such groups shall not be denied the right, with the other members of their group, to enjoy their own culture, to profess and practice their religion, or to use their language."⁵⁷ This provision marked a crucial shift by explicitly recognizing the cultural and collective rights of minorities not merely as individual rights-holders, but as communities entitled to legal and institutional recognition.

What makes Article 27 of the ICCPR particularly significant is its focus on the non-denial of rights, which implies that the state must refrain from interfering with the free expression of minority identity. While it stops short of requiring affirmative action, it obligates states to ensure that their legal and policy frameworks do not suppress minority languages, traditions, or religious practices.⁵⁸ The Human Rights Committee, in its General Comment No. 23, clarified that these rights are not limited to citizens and that minority protection includes indigenous peoples and migrants, thus broadening the scope of the term "minority."⁵⁹

⁵⁶ *Universal Declaration of Human Rights*, G.A. Res. 217A (III), U.N. Doc. A/810, arts. 1–2 (1948)

⁵⁷ *International Covenant on Civil and Political Rights*, Dec. 16, 1966, art. 27, 999 U.N.T.S. 171

⁵⁸ Dominic McGoldrick, *The Human Rights Committee: Its Role in the Development of the International Covenant on Civil and Political Rights* 244–46 (Oxford Univ. Press 1991)

⁵⁹ Human Rights Comm., *General Comment No. 23: The Rights of Minorities (Art. 27)*, ¶ 5.2, U.N. Doc. CCPR/C/21/Rev.1/Add.5 (1994)

In the year 1992, the General Assembly adopted the Indigenous Peoples of the World Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, thus marking the United Nations as a new key player in the international law setting. However, while not legally coercive, it shows worldwide agreement on reduction standards for minority groups. Besides, it clearly states that these groups have the right to their own culture, traditions, religions, languages and other factors such as public discourse and family environment being free from encroachment or discrimination. Besides, it stipulates that states have to adopt affirmative and proactive measures to be part of the solution to this problem and that they must implement the appropriate laws and regulations, as administrative policies and strategies to guarantee this.⁶⁰

The European human rights system, namely through the Framework Convention for the Protection of National Minorities (adopted by the Council of Europe in 1995), is the only minority protection regulation exclusively dedicated to this aspect in Europe. Even though India is not a party to it, the document is often quoted in studies of comparative law and strengthens the belief that the securing of minority identities is a precondition for democracy and is thus, beneficial for the society as a whole.⁶¹ It stresses that minority protection must be balanced with the principle of state sovereignty, thereby encouraging cooperative dialogue between majorities and minorities within national jurisdictions.

India, as a signatory to the ICCPR and as a state committed to the UN Charter, has broadly accepted the principles embedded in these international instruments. While the Indian Constitution was framed independently of these global treaties, it nevertheless resonates with their core ideas. For instance, India's constitutional protections for religious and linguistic minorities under Articles 25–30 align with the ICCPR's vision of non-denial and the UN Declaration's emphasis on cultural autonomy.

⁶⁰ *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*, G.A. Res. 47/135, U.N. Doc. A/RES/47/135 (Dec. 18, 1992)

⁶¹ *Framework Convention for the Protection of National Minorities*, Feb. 1, 1995, Europ. T.S. No. 157

Nonetheless, international law is still in the state of incapacity to directly enforce minority rights, especially in the countries having powerful domestic law systems and pluralist customs, such as India. The implementation of the norms is reliant on the state's co-operation and the national incorporation of the international standards. Yet, these international frameworks are invaluable in offering interpretative guidance to courts, influencing public policy, and reinforcing civil society efforts for greater inclusion.

2.4. CONSTITUTIONAL PROVISIONS SAFEGUARDING MINORITY RIGHTS IN INDIA

The Indian Constitution is a necessary document for the functioning of the country and the governance of it through the Constitution is as much moral and legal quest of the society. It was the makers' choice to perceive that India is a fantastic mosaic of diversities including numerous religions, languages, cultures, and ethnic beings. In protection and recognition of such differences, they made certain provisions that no one ethnic group can be the only one to control or exuberate over others.

Guaranteeing the rights of minority groups was not merely an afterthought; it indeed was a determinant in the Constitution. The Preamble or introduction of the Constitution is the preliminary sentence that commits India to the ideals of justice, freedom, equality, and brotherhood. This base shows a commitment to the acceptance and honoring of the abundance of Indian life. The ideological base is especially declared as the freedom of "thought, expression, belief, faith, and worship" which specified religious liberty as a principal constitutional value.⁶² This philosophical orientation informs several articles in Part III of the Constitution, which enumerates the Fundamental Rights available to all individuals and, in some instances, to specific communities such as minorities.

The protection of minorities, one of which is specific rights to culture and education and the right to believe in their own religion. The aforementioned article 25 allows for the "freedom of conscience and the right freely to profess, practise and propagate religion," that is to say, to the extent that it does not violate public order, social

⁶² *India Const. pmb1*

morality, and health.⁶³ This clause is applicable to every person, irrespective of the religion they practice, and it is the primary expression of India's affirmation to religious pluralism.

The very same Article 26 is very near the subject. Herein, the religious groups are given the power to control the religious affairs, possess property, and form institutions both for the religious and the charitable purposes.⁶⁴ These rights are particularly crucial for minority communities, as they protect the institutional autonomy of religious groups from state interference, thereby enabling them to sustain their distinct religious practices.

Article 27 further reinforces this autonomy by prohibiting the use of tax proceeds to support any particular religion, thereby establishing a model of secularism that discourages the state from favouring any religious group.⁶⁵ However, it is important to note that Indian secularism, as interpreted by the courts, is not a strict separation of church and state but a model that encourages principled equidistance and state support for all religions on a non-discriminatory basis.

Article 28 provides that no religious instruction shall be imparted in educational institutions wholly funded by the state, although religious instruction is permitted in institutions administered by religious bodies, thus preserving a degree of religious freedom in the educational sphere.⁶⁶ This Carefully balanced provision ensures that minority-run institutions can retain their religious ethos without breaching constitutional secularism.

Moving beyond religious freedom, the Constitution also secures the cultural and educational rights of minorities through Articles 29 and 30. Article 29(1) grants any section of the citizens having a distinct language, script, or culture the right to conserve the same.⁶⁷ Though not explicitly limited to minorities, the provision is typically invoked by minority communities seeking to protect their cultural heritage. Article 29(2) prohibits discrimination in admissions to educational

⁶³ *India Const. art. 25, cl. 1*

⁶⁴ *India Const. Art. 26*

⁶⁵ *India Const. Art. 27*

⁶⁶ *India Const. Art. 28*

⁶⁷ *India Const. art. 29, cl. 1-2*

institutions maintained by the state or receiving aid from it, solely based on religion, race, caste, or language.

Article 30 provides the most direct and specific protection to minorities. Under Article 30(1), religious and linguistic minorities are granted the right to establish and administer educational institutions of their choice.⁶⁸ The importance of this article has been repeatedly affirmed by the Supreme Court of India, especially in *T.M.A. Pai Foundation v. State of Karnataka*, where the Court clarified that minority institutions have the right to autonomy in administration, subject to reasonable regulations to maintain academic standards.⁶⁹ In a subsequent case, *P.A. Inamdar v. State of Maharashtra*, the Court reiterated that the state cannot impose its reservation policy on unaided minority institutions, further reinforcing their special constitutional status.⁷⁰

Apart from these explicit provisions, the Constitution also incorporates affirmative action measures under Articles 15(4) and 16(4), which empower the state to make special provisions for the advancement of socially and educationally backward classes, including minorities. While these clauses were initially interpreted in the context of caste-based reservations, the courts have gradually accepted their application to religious minorities where social disadvantage is demonstrable.⁷¹

In addition, the Directive Principles of State Policy under Part IV of the Constitution also reflect a commitment to minority welfare. Though non-justiciable, these principles guide the state in creating policies aimed at promoting social justice, equal opportunity, and cultural preservation. For instance, Article 46 urges the state to promote the educational and economic interests of weaker sections, including minorities.⁷²

These constitutional provisions come together to create a sturdy legal structure for the protection of minority rights in India. They are not only an expression of worry for equality in principle but also an effort that really brings it forward,

⁶⁸ *India Const. art. 30, cl. 1*

⁶⁹ *T.M.A. Pai Found. v. State of Karnataka*, (2002) 8 SCC 481

⁷⁰ *P.A. Inamdar v. State of Maharashtra*, (2005) 6 SCC 537

⁷¹ *Indra Sawhney v. Union of India*, AIR 1993 SC 477

⁷² *India Const. Art. 46*

acknowledging the particular weaknesses of certain communities in a democracy that is based on the majority. The structure is, however, not completely without drawbacks or difficulties; it is often the case that execution does not come up to the mark and the disagreement between self-governance and regulation is persistent but the constitutional picture is still, in its essence, pluralistic. Its goal is not to turn minorities into a single identity, which is what the state would want, but to fit them along with their uniqueness in the shared entity of the democratic constitution.

CHAPTER 3: JUDICIAL INTERPRETATION AND THE ROLE OF INDIAN JUDICIARY IN UPHOLDING MINORITY RIGHTS

3.1. INTRODUCTION TO JUDICIAL ROLE IN MINORITY RIGHTS PROTECTION

Indian judiciary is essentially identified as one of the most crucial elements in the entire framework of Indian democracy. Courts, mainly the Supreme Court, have not just interpreted laws but have also been instrumental in changing the constitutional norms and the rights of marginalized communities including minorities. In a complex and rich diversity society such as India, where the minority most of the time is the victim of systemic inequalities and political underrepresentation, the judiciary is the primary counter-majoritarian force, maintaining the individual liberties and collective rights without the interference of executive or legislative powers. The judiciary has continuously stress pluralism is not only a cultural reality in India but also a legal commitment.

The judiciary's interpretations of Articles 25 to 30 have helped to clarify the boundaries of minority rights. These constitutional provisions were straightforward in their wording, but they needed in-depth judicial involvement to address the conflicts that often arise between autonomy and regulation, minority rights and general social objectives, and individual freedoms and community rights. In addition to it, one of the common judgements by the judiciary has been to remind that the rights assigned to the minorities are not some philanthropic grants or

donations from the state but are the sources enshrined in the Constitution that can be claimed.

This understanding becomes vital in a democracy, that is majoritarian can sometimes ignore the point of minority interests in political logic. The courts have contributively ensured, via incorporating into the Constitution principles of equality, secularism, and inclusivity, that the rights of minorities are dealt with as much seriousness as they deserve and thus have not been politically manipulated.

A particularly important contribution of the judiciary lies in its clarification of the meaning of “minority” itself. The Constitution does not define who constitutes a minority, leaving it to judicial interpretation and legislative policy. In *T.M.A. Pai Foundation v. State of Karnataka*, the Supreme Court held that the term “minority” must be considered in the context of both language and religion and should be determined at the state level rather than the national level, given India’s federal structure.⁷³ This interpretation was significant because it allowed for a more context-sensitive understanding of minority status, responsive to demographic realities within individual states.

The courts have also stepped in to safeguard the independence of minority educational institutions, which is a right sanctioned by Article 30. In *St. Stephen's College v. University of Delhi*, the Supreme Court recognized the right of the institution to keep a portion of the seats for Christian students and, thus, confirmed the principle that minority institutions are allowed to practice admission policies that benefit their community if they meet the required standards of excellence.⁷⁴ The Court acknowledged that minority rights include the ability to preserve identity through educational and cultural institutions.

Moreover, the judiciary has not hesitated to strike down state actions that threaten the rights of minorities. In *Bijoe Emmanuel v. State of Kerala*, the Court protected the rights of Jehovah’s Witnesses, students who refused to sing the national anthem on religious grounds, asserting that true secularism lies in respecting all religious

⁷³ *T.M.A. Pai Found. v. State of Karnataka*, (2002) 8 SCC 481

⁷⁴ *St. Stephen’s Coll. v. Univ. of Delhi*, (1992) 1 SCC 558

beliefs, even if they are unconventional or unpopular.⁷⁵ This case marked a strong affirmation of religious freedom and highlighted the judiciary's willingness to protect minority expression even in the face of nationalist sentiments.

The courts have also played a role in interpreting Article 29, which guarantees the right to conserve distinct languages, scripts, and cultures. In *State of Madras v. Champakam Dorairajan*, although the primary issue was reservation, the decision helped reinforce that state actions cannot infringe upon the educational rights of citizens based on language or religion, unless explicitly permitted by the Constitution.⁷⁶ This judgment later led to the First Constitutional Amendment, underscoring the judiciary's influence in shaping public policy concerning minority rights.

However, the dataset by the judiciary also has some aspects of ambiguity. For instance, there were instances where courts allowed the state to intervene more in the administration of the minority institutions under the pretext of regulations, particularly when questions regarding transparency or accountability were raised. It has been a tough task to maintain the delicate balance between the autonomy of the minority and the public interest. The inconsistency between Article 30(1) and the regulatory tabulation like the Right to Education Act is what has resulted in the opposite consequences, especially regarding the extent to which the minority institutions can be forced to comply with the general educational guidelines. Article 30(1) and regulatory statutes such as the Right to Education Act have led to the conflicting interpretations of the extent to which the minority institutions get compelled to comply with the universal education norms.

As a final point, the judiciary has undeniably acted as the interpreter and the guardian of the rights of minorities in India. The courts have given these rights a concrete meaning through their decisions and have also given the citizens a portion of the right to autonomy from the state's interference. The nation's will to enact legislative changes has dealt with the central question of the legality of such laws. However, the often-quoted public opinion and the political context have had their

⁷⁵ *Bijoe Emmanuel v. State of Kerala*, (1986) 3 SCC 615

⁷⁶ *State of Madras v. Champakam Dorairajan*, AIR 1951 SC 226

part in judicial determinations, but the growth and development of right have always been one persistent path. The Indian judiciary's remarkable input into governance in Australia is impossible to overlook. Even when India is discovering its overall identity through a maze of cultures, it cannot work in a legal way without the courts that compel the state to fulfill their promises and ensure that minorities have not only the right to words but also the right to be.

3.2. CASE STUDIES REFLECTING JUDICIAL APPROACH TOWARDS MINORITY RIGHTS

The Indian judiciary has had a transformative effect on the scenario of minority rights, in fact, it has gone beyond the role of mere interpreter to actively creating entitlements to constitutional rights. To show this, a detailed discussion of a few major cases will suffice as the general trend among the courts is to support pluralism strongly. These examples present the juxtaposition of state policies and minority rights, through which we see the courts dealing with the real-life issues. Through these cases, the courts highlight the progressive development in their understanding of minority issues, the varying benchmarks they have adopted in different cases, and their struggles with the issues of governance, freedom, and equality.

T.M.A. Pai Foundation v. State of Karnataka is a prominent case, and in the ruling, the Supreme Court was faced with as many as twelve questions all about minorities' rights concerning the starting and administration of educational institutions. The Court opined that “the definition of minorities, both religious and linguistic, is a matter for the states to determine and that Article 30(1) not only provides the right to set up institutions but also the right to run them without the interference of the state that is not connected with their effective functioning.”⁷⁷ This marked a turning point, as the Court elaborated a framework to balance minority rights with regulatory oversight, making it clear that state supervision could not be so extensive as to rob institutions of their minority character. The judgment also emphasized the link between minority identity and educational autonomy, portraying institutions as critical sites for preserving language, culture, and faith.

⁷⁷ *T.M.A. Pai Found. v. State of Karnataka*, (2002) 8 SCC 481

Following this, *P.A. Inamdar v. State of Maharashtra*⁷⁸ extended the logic of *T.M.A. Pai*, particularly concerning unaided institutions. The Court held that while minority institutions are free to devise their admission procedures, they must ensure transparency and merit in the process. The Court's major decision was that the state could not force these organizations to execute reserved policies because this would be a violation of their constitutional rights. This ruling demonstrated the fine line between permissible regulation and unconstitutional interference, and the chipped attempt of the judiciary to create a balanced doctrine of social justice and cultural liberty.

Another notable case is *St. Stephen's College v. University of Delhi*⁷⁹, in which a Christian minority institution challenged Delhi University's uniform admission policy. The Court ruled that although minority institutions may not completely ignore non-minority applicants, they have the privilege to allocate a fixed percentage of seats for the students of their unity. The ruling appreciated the institution's twofold identity as being an academic body and a community shield. This ruling particularly emphasized that safeguarding minority identity is a legitimate goal, as long as the basic academic integrity is observed.

In contrast, the decision in *Ahmedabad St. Xavier's College v. State of Gujarat* showed a more cautious approach.⁸⁰ The court concluded that the Gujarat University Act, which interfered with the independence of minority institutions regarding the appointment of teachers and administration, was not valid. As per the court, the government can set the academic qualifications and standards, but the government cannot impose its control over the internal matters of these institutions only. Though the ruling was a jurisdictional strong point for the court to back the independence of institutions, it was also about the level of training and student welfare.

Judicial sensitivity to religious expression is also evident in *Bijoe Emmanuel v. State of Kerala*, where students belonging to the Jehovah's Witnesses refused to

⁷⁸ *P.A. Inamdar v. State of Maharashtra*, (2005) 6 SCC 537

⁷⁹ *St. Stephen's Coll. v. Univ. of Delhi*, (1992) 1 SCC 558

⁸⁰ *Ahmedabad St. Xavier's Coll. v. State of Gujarat*, (1974) 1 SCC 717

sing the national anthem due to their religious beliefs.⁸¹ The Court overturned their expulsion, stating that standing up respectfully during the anthem, without singing, fulfilled constitutional requirements. It found no evidence of disrespect or disloyalty and ruled that forcing them to act against their faith would violate Article 25. This judgment became a landmark affirmation of religious freedom and an important precedent for respecting diverse belief systems in public spaces.

At the same time, the judiciary has also shown restraint, as illustrated in *Bal Patil v. Union of India*, a case involving the demand to recognize Jains as a national minority.⁸² The Supreme Court held that the decision lay within the discretion of the central government, thus adopting a deferential stance toward the executive. While this position was grounded in the principle of separation of powers, it attracted criticism for its limited engagement with substantive questions about community identity and marginalization.

The cases discussed indicate the presence of both constancy and development in the logical thinking of the judges. Even though the courts have predominantly favored minority freedom, especially in the educative and the religious expression contexts, they have also made efforts to relate the minority rights to the broader democratic values of merit, transparency, and accountability. The ability to mediate between contradictions in this way is one of the fundamental characteristics of Indian constitutionalism, and due to the court's ability to remain impartial in this, their contribution is very important and essential.

Yet, challenges remain. Judicial interpretations are not always consistent, and minority communities sometimes find themselves unsure of where the line lies between permissible cultural preservation and obligations under general law. For instance, while the judiciary has granted wide latitude to religious and linguistic minorities in education, its stance on personal laws especially in the context of gender equality has been far more interventionist. This signals the judiciary's evolving role from a neutral arbiter to a more engaged moral agent in constitutional governance.

⁸¹ *Bijoe Emmanuel v. State of Kerala*, (1986) 3 SCC 615

⁸² *Bal Patil v. Union of India*, (2005) 6 SCC 690

To sum up, the judgments in India constitute a detailed and intricate corpus of jurisprudence that makes the judges not only referees but also constructors of the rules and regulations of minority rights. The courts, with a mixture of respect for the authority and self-initiated operations, have been able to keep the, as a rule, pluralism-promoting and wider interest-protecting balance. The line of these cases implies that the Indian judiciary is still a significant agency for the upholding and exercising of minority rights though it has its share of shortcomings.

3.3. EVOLVING TRENDS AND JUDICIAL INCONSISTENCIES IN MINORITY RIGHTS JURISPRUDENCE

The Indian law courts have not been rigid about the issue of minority rights. During the course of years, the Supreme Court and a number of High Courts have made a dynamic and at times, not very predictable interpretation of the constitutional guarantees. The transitions are mostly caused by the prevailing political situations, shifts in public emotion and the change in the bench's composition. Although many of the rulings endorsed to a great extent the minority rights protection, there have also been inconsistent doctrines whether practical or doctrinal that have bothered the path of this development.

One of the earliest trends visible in the post-independence period was a strong protective approach. In the 1950s and 60s, the courts were clear in limiting the state's encroachment on minority educational institutions. This phase was defined by judgments like *State of Kerala v. Very Rev. Mother Provincial*, where the Court struck a firm tone in asserting the autonomy of minority institutions under Article 30(1), viewing any form of state interference with suspicion.⁸³ The judiciary, during this period, adopted a textual and literal approach to constitutional rights, interpreting them broadly in favour of minorities.

However, beginning in the 1970s and continuing into the 1990s, a balancing phase began to emerge. Courts started drawing finer lines between 'reasonable regulation' and 'infringement.' In *St. Xavier's College*, the Supreme Court recognized "the right of minorities to manage their institutions but accepted that the state could set

⁸³ *State of Kerala v. Very Rev. Mother Provincial*, (1970) 2 SCC 417

standards of excellence and ensure fairness in administration.”⁸⁴ This marked the start of a more pragmatic approach: one that acknowledged the state’s legitimate interest in maintaining educational standards while protecting minority identity.

This balance became more pronounced in the 2000s with the judgments of *T.M.A. Pai* and *P.A. Inamdar*, which offered clarity but also opened up space for subjective interpretation. In *Inamdar*, for instance, the Court emphasized transparency and meritocracy even in minority institutions, potentially weakening their right to admit students according to community preferences.⁸⁵ Though aimed at ensuring fairness and preventing exploitation, these standards also introduced regulatory ambiguity, since what qualifies as “reasonable” or “transparent” remains open to interpretation and varies by case.

Another evolving trend is the increased judicial scrutiny of personal laws in the context of gender justice, particularly within religious minority communities. A key example is *Shayara Bano v. Union of India*, where the Supreme Court declared the practice of instant triple talaq (talaq-e-biddat) unconstitutional.⁸⁶ During the time, while a large number of people applauded the decision as a forward move to the gender equality, on the other hand, some critics stated that it is a possible change of the judiciary's former too much respect for the rights of minority religious groups. The Court did not choose to send the matter to Parliament nor did it rely on the community's reform, however, it used constitutional morality as a basis for intervention. This has made people think of selective judicial activism, especially when the same examination has not been always directed on other majority or minority traditions.

Moreover, inconsistencies are evident in the application of minority status and rights at the state level. Despite the clear pronouncement in *T.M.A. Pai* that minority status is to be determined at the state level, implementation remains irregular.⁸⁷ For example, a linguistic group that qualifies as a minority in one state may not receive the same recognition in another, leading to a fragmented rights regime. Courts have

⁸⁴ *Ahmedabad St. Xavier's Coll. v. State of Gujarat*, (1974) 1 SCC 717

⁸⁵ *P.A. Inamdar v. State of Maharashtra*, (2005) 6 SCC 537

⁸⁶ *Shayara Bano v. Union of India*, (2017) 9 SCC 1

⁸⁷ *T.M.A. Pai Found. v. State of Karnataka*, (2002) 8 SCC 481

sometimes reinforced this disjointed framework instead of pushing for a uniform minority recognition mechanism.

Judicial treatment of cultural and linguistic rights under Article 29 has also seen uneven enforcement. While the courts have acknowledged the importance of protecting distinct languages and scripts, they have rarely enforced these rights with the same rigour seen in educational or religious cases. This suggests a kind of hierarchy within minority rights, where some aspects (like institutional autonomy) are more vigorously protected than others (like cultural preservation), depending on the perceived immediacy or political sensitivity of the issue.

Not only have public sentiment and political climate been the primary factors of influencing the behavior of judges but the subtle manner has also been impacted by them. Of late, the judiciary is found to be more reserved partly due to the nationalistic discourse being the prevalent one. For example, when the *Indian Young Lawyers Association v. State of Kerala (the Sabarimala case)*⁸⁸ is considered, even though it was not primarily about the rights of a minority group, the Court's involvement in religious customs was the cause of fervent controversy that it evoked about the boundaries of judicial power and the possible response it could arouse. This is a clear illustration of the very fine position courts are in, balancing respect for the constitution and acceptance by society.

Inconsistencies, however, are not the only reason to question labeling the judiciary as hostile to the minority rights. Generally, the attitudes of the courts are still supportive, although somewhat mixed. Nowadays, they are more inclined to go beyond just the textual interpretation and participate in a meaningful constitutional reasoning, weighing the competing rights and interests. The shift indicates the development of a more profound judicial philosophy, although it is still undergoing a process of change.

Ultimately, the legal dialogue regarding the rights of minorities in India represents both dedication and prudence. The commitment to minority rights can be observed in the pioneering decisions that stand for the protection of the rights to education

⁸⁸ *Indian Young Lawyers Ass'n v. State of Kerala*, (2019) 11 SCC 1

and practice one's religion; the confidentiality enters the stage, however, when issues such as societal upheaval or political consideration of more importance is at work. Therefore, the Supreme Court's role in the interpretative choices concerning India, which has been stuck in the center of identity, diversity, and the threat of majority is critical. For a rights-based framework to work propely, on the other hand, it will be is required to be essential the increased consistency and transparency in the judges' reasoning.

3.4. THE JUDICIARY'S ROLE IN BALANCING MINORITY RIGHTS WITH PUBLIC INTEREST

The Indian judiciary has long walked a tightrope between preserving minority rights and safeguarding the broader public interest. This balancing act is perhaps one of the most challenging aspects of constitutional adjudication in a pluralistic society like India. The courts are often called upon not only to interpret the law but to weigh competing values individual freedoms versus collective order, autonomy versus regulation, and cultural identity versus national integration. However, it is impossible to find an easy way out of these disagreements, and the court's function is to preserve this equilibrium which is equally important and sensitive.

The Tension within the Constitution is generally not unaddressed as well. In addition to that, while Article 29 and 30 of the Minority Rights have specific cultural and educational rights, the one Constitution also considers equality, secularism, and unity in diversity. The hitch normally lies in the rights being entangled with overriding objectives like social welfare, national integration, or gender equality. Thus, the court needs to view the minority rights through the lenses of the entire constitution and not merely as independent occurrences.

A significant illustration of this judicial balancing can be seen in *T.M.A. Pai Foundation v. State of Karnataka*, where the Supreme Court acknowledged the right of minorities to establish and administer educational institutions but also underscored that this right is not absolute.⁸⁹ The Court ruled that although the minorities have their independence in administration, the state can enforce suitable

⁸⁹ *T.M.A. Pai Found. v. State of Karnataka*, (2002) 8 SCC 481

regulations to ensure the education quality and the students' well-being. This method was a reflection of a nuanced understanding, one that highlighted the respect of the community's autonomy but at the same time, did not choose to ignore the state's accountability in keeping standards.

The subsequent ruling in *P.A. Inamdar v. State of Maharashtra* further strengthened this balance. The Court categorically held that the state could not enforce reservation policies in private unaided minority institutions.⁹⁰ Yet, at the same time, it endorsed the necessity of transparent admission procedures and reasonable fee structures. Here, public interest took the form of merit and fairness, not necessarily equity through reservations. The Court's approach demonstrated that minority rights could coexist with broader public values, provided that the interference was justified and proportionate.

At times, however, the balancing act has required the Court to intervene more assertively in the name of public interest, even if it meant limiting minority autonomy. The decision in *Shayara Bano v. Union of India*—declaring instant triple talaq unconstitutional was justified as a step towards gender justice, a value enshrined in Article 14.⁹¹ Though the practice was rooted in religious personal law, the Court chose to prioritise the dignity and equality of women over rigid adherence to religious doctrine. The judgment was a clear message: constitutional morality must guide the exercise of religious freedom, especially when such freedom conflicts with fundamental rights.

Similarly, in the *Aruna Roy v. Union of India* case, the Court addressed the question of religious instruction in schools and emphasised the need to maintain secularism in educational spaces.⁹² The court served as a resolute endorsement of the National Curriculum Framework's note on value education, ignoring the suggestion that giving such instruction can be construed as religious indoctrination. On the whole, the ruling pointed to the judicial branch's efforts to guarantee the proper

⁹⁰ *P.A. Inamdar v. State of Maharashtra*, (2005) 6 SCC 537

⁹¹ *Shayara Bano v. Union of India*, (2017) 9 SCC 1

⁹² *Aruna Roy v. Union of India*, (2002) 7 SCC 368

administration of secular education and protect it from being undermined by the misuse of constitutional rights.

However, the balancing act has not been without its complications. For instance, the tendency of courts to be hesitant in enforcing particular cultural rights under Article 29, like the protection of language and script, denotes a prevailing approach of prioritizing more "urgent" public objectives such as national unity or homogeneity in education. Hierarchical protection can ensue from this, where minority rights are given little importance unless they are related to major constitutional values like education or non-discrimination.

Courts' treatment of religious processions and the like are other instances of that. The judiciary has been the institution which has typically leaned towards caution in the cases when the minority communities requested permission for the public practice of their religion particularly during the sensitive period on most occasions. The safety and order have sometimes been regarded by the high courts more important than the legal right to the practice of religion. Such decisions, although logical in a time of tension, may have the effect of establishing a paradigm in which the rights of minorities become subject to the willingness of the majority or the convenience of the administration.

The balancing exercise is also the site of contention in the context of minority-run medical and technical institutions, where issues such as merit, reservation, and commercialisation often are in mutual relationship. Not infrequently, courts have had to intervene to define tight rules for the institutions with respect to admissions, payment plans, and even course structure. Though this aids in achieving public interest objectives, meddling too much can defeat the very purpose of personal freedom which Article 30 is meant to safeguard.

Even with these strains, the judiciary has made the efforts to underlie its interventions on the principles of reasonable and proportionality that now constitute the Indian constitutional kit. These principles play a key role in the process of courts to determine whether a certain limitation on minority rights is only imposed for a legitimate public aim and whether it is the least restrictive means used. Though not

invariably applied, this paradigm signifies a robust evolution of legal theory which seeks to mediate the contrasting assertions of power in the democratic state.

To sum up, the judiciary's involvement in balancing minority rights with public interest is not strictly legal; it is, in fact, profoundly moral and political. It entails reading the Constitution not as a set of rules but as a document that evolves and seeks to bring together diversity and unity. Although the courts haven't always maintained the precise equilibrium, their endeavor to handle these conflicts with caution, human understanding, and fidelity to the Constitution is commendable. The task ahead will be to safeguard this fragile balance in a society that is increasingly divided.



CHAPTER 4: STATE POLICIES AND ADMINISTRATIVE PRACTICES AFFECTING MINORITY RIGHTS

4.1 INTRODUCTION

Minority rights in India are not simply constitutional text or judicial pronouncements, but their real substance is lived through the daily functioning of administrative systems and the state-sponsored policy frameworks which are on-off. The constitutional Articles 29 and 30 are the primary legal basis for minority protections, but the practical application of these rights largely relies on the way governments shape their policies and how the civil servants implement them in practice. Hence, the penetration of minority rights in real life is often decided by discretion of a bureaucracy and political will and not just by legal provisions.

The Indian state, recognising its responsibility to protect vulnerable communities, has initiated various welfare schemes targeted at religious and linguistic minorities. These efforts, particularly since the early 2000s, have been guided by the recommendations of expert bodies such as the Sachar Committee and the Ranganath Misra Commission. The Sachar Committee Report of 2006, for instance, marked a turning point by empirically documenting the educational, economic, and social backwardness of the Muslim community in India, laying bare the deep-rooted exclusion faced by minorities in public services and state institutions.⁹³ The government report has to propose more relevant policies concerning the admission of minorities such as the Multi-Sectoral Development Programme (MSDP) and the

⁹³ *Report of the Prime Minister's High-Level Committee on the Social, Economic and Educational Status of the Muslim Community of India* (Sachar Committee Report), Cabinet Secretariat,

Government of India, 2006



scholarship schemes for minorities, as the conclusions reached in this report prevailed upon the agency.

Nevertheless, minority welfare policies had been inadequately applied and oftentimes, marked by a lack of transparency, accountability, and sometimes even overt communal bias for the implementation. Studies and field reports frequently point out that beneficiaries either remain unaware of such schemes or face bureaucratic hurdles in accessing them.⁹⁴ Moreover, political considerations have sometimes led to a tokenistic approach to minority welfare, where schemes are launched with much publicity but suffer from chronic underfunding or inadequate execution.

Likewise, administrative practices are another element that has a considerable albeit indirect influence on people's experiences of minority rights. Unavoidable local officials' relational distance, majority-minority governance, and the ethno-linguistic security (or the lack of ethnic security) in the district administration will alter the experiences of the local groups more than the guarantees in the constitutions. For example, how minority-run educational institutions are inspected by state departments often reflects a disproportionate level of scrutiny compared to non-minority institutions, revealing a subtle bias that undermines Article 30 protections.⁹⁵ This problem is exacerbated when laws and regulations are left vague, leaving room for discretionary and, at times, discriminatory interpretations by local authorities.

The role of the National Commission for Minorities (NCM) and State Minorities Commissions is also critical in this ecosystem. Established under the National Commission for Minorities Act, of 1992, the NCM was intended to function as a watchdog for minority rights and to advise the government on policy matters.⁹⁶ However, the commission's limited powers particularly its inability to enforce recommendations and its dependence on the central government for appointments

⁹⁴ Hasan, Zoya, *Politics of Inclusion: Castes, Minorities, and Affirmative Action*, Oxford University Press, 2009, at 186

⁹⁵ Alam, Anwar, "Minority Educational Institutions: Between Autonomy and Regulation," *Economic and Political Weekly*, Vol. 48, No. 30 (2013), at 17

⁹⁶ The National Commission for Minorities Act, No. 19 of 1992, Acts of Parliament, 1992 (India)

and funding have raised questions about its institutional autonomy and efficacy.⁹⁷ As a result, while the NCM produces reports and intervenes in specific cases, its impact has often been marginal, especially when weighed against the scale of challenges faced by minorities in India.

In addition to structural issues, the political narrative around minorities significantly influences policy design and delivery. In recent years, the framing of minority welfare as “appeasement” by certain political actors has led to a noticeable cooling-off in proactive policy initiatives for minority communities.⁹⁸ Not only does this politicisation prevent administrative actions from being carried out but it also leads to the stigmatization of beneficiaries. 'fear of financial labelling or being the only one targeted to afford beneficiaries seek aid and grants.' In other words, this chapter is aimed at the critical evaluation of the intersection between state policy and administrative action in human rights issues. It is supposed to study principal welfare programs, the ways in which the administration has addressed them, the role of the minority commissions, and to provide examples of both best practices and structural shortcomings. This is not merely the disapproval of things but a way to judge the state's capabilities and its will to put into effect the constitutional promise of pluralism. India, as it is growing as a democratic society, becomes the key target for administrative systems to become inclusive.

4.2. THE FRAMEWORK OF MINORITY WELFARE SCHEMES AND THEIR CONSTITUTIONAL BASIS

The minority welfare programs in India are built upon the constitutional direction of the ensuring of equality, the cultural and educational rights, and the secular fabric of the nation. The Constitution acknowledges the existence of various religious and linguistic groups and also imposes an obligation to the state to promote their welfare and to make sure that they are not excluded from the process of democracy. The aforementioned can be found as legal principles and are particularly evident in

⁹⁷ Khan, Shahrukh Alam, “The National Commission for Minorities and Its Challenges,” *Indian Constitutional Law Review*, Vol. 4, (2017), at 75

⁹⁸ Jaffrelot, Christophe, *India's Silent Revolution: The Rise of the Lower Castes in North India*, Columbia University Press, 2003, at 259

several Articles of the Fundamental Rights, such as Article 14, 15, 21, 25, 29, and 30, as well as in the Directive Principles of State Policy.

While the Constitution does not provide for a specific regime of “welfare schemes” for minorities, it encourages affirmative state action to ensure that disadvantaged groups are brought to par with the mainstream population. Article 15(4), added by the First Constitutional Amendment in 1951, enables the state to make special provisions for the advancement of socially and educationally backward classes. Though not specific to minorities, this clause has often been invoked to support policies benefiting Muslim and other minority communities who are found to be educationally backward in several official reports.⁹⁹

The *Sachar Committee Report* (2006), as mentioned earlier, was pivotal in shaping the framework of welfare schemes targeted at minorities. The Committee, after extensive empirical research, found that Muslims the largest religious minority in India lagged not only in comparison to the majority Hindu population but also other historically marginalised communities like Scheduled Castes and Scheduled Tribes in key development indicators such as education, employment, and access to government schemes.¹⁰⁰ This led to a policy shift, culminating in the formulation of specific, community-targeted welfare programmes under the Prime Minister’s 15-Point Programme for the Welfare of Minorities.

One of the flagship initiatives under this policy framework was the Multi-Sectoral Development Programme (MSDP), introduced in 2008, which was aimed at addressing development deficits in minority-concentrated districts. The focus was on improving access to education, health, housing, and basic infrastructure such as roads and sanitation.¹⁰¹ While the intent was to ensure inclusive growth, the programme’s success varied widely across states due to inconsistent fund utilisation, limited monitoring, and political apathy. In 2013, MSDP was

⁹⁹ The Constitution (First Amendment) Act, 1951

¹⁰⁰ *Sachar Committee Report*, Cabinet Secretariat, Government of India (2006), at 10–12

¹⁰¹ Ministry of Minority Affairs, *Multi-Sectoral Development Programme: Guidelines*, Government of India (2008), at 3–6

restructured and later subsumed under the *Pradhan Mantri Jan Vikas Karyakram* (PMJVK), with nice efficiency and transparency.¹⁰²

Education-based schemes have also been a major component of the minority welfare framework. These include Pre-Matric and Post-Matric Scholarships, the Merit-cum-Means Scholarship Scheme for professional courses, and coaching assistance for competitive exams. These programmes are constitutionally justifiable under Articles 29 and 30, which protect the rights of minorities to conserve their culture and establish educational institutions. They are also a manifestation of the state's obligation to provide equal opportunity under Article 21A and promote social justice as envisioned in Article 38. However, these schemes have often suffered from delayed disbursement, cumbersome application processes, and a lack of awareness among eligible beneficiaries.¹⁰³

The Maulana Azad Education Foundation (MAEF), set up in 1989, has played a supplementary role in funding non-governmental organisations (NGOs) working on minority education and vocational training. Though it has contributed to grassroots empowerment, the lack of institutional continuity and fluctuating budget allocations have limited its impact.¹⁰⁴ Similarly, the Nai Manzil Scheme, launched in 2015, aims to provide integrated education and skill training to school dropouts from minority communities, but implementation challenges and poor integration with employment networks have prevented it from realising its full potential.¹⁰⁵

On the economic front, the National Minorities Development and Finance Corporation (NMDFC) was created to extend concessional loans for income-generating activities. This measure is linked to the Directive Principle under Article 46, which directs the state to promote the economic interests of weaker sections. However, critics argue that NMDFC's outreach remains urban-centric, with limited penetration in rural and semi-urban minority clusters.¹⁰⁶

¹⁰² Ministry of Minority Affairs, *PMJVK Scheme Guidelines*, Government of India (2019), at 2–3

¹⁰³ Shaban, A. (ed.), *Lives of Muslims in India: Politics, Exclusion and Violence*, Routledge, 2012, at 89

¹⁰⁴ Maulana Azad Education Foundation, Annual Report 2015–16, Ministry of Minority Affairs

¹⁰⁵ Ministry of Minority Affairs, *Nai Manzil Scheme: Concept Note*, Government of India (2015)

¹⁰⁶ National Minorities Development and Finance Corporation, *Performance Evaluation Report*, 2018

Another key concern is the constitutional balance between universalism and targeted intervention. India's welfare regime has generally leaned towards a universalist approach—where policies are designed for all marginalised citizens irrespective of religion. This has led to debates about whether minority-specific schemes violate the secular principle by appearing to favour certain religious groups. However, the courts have clarified that such schemes are constitutionally valid as long as they are aimed at addressing objectively verifiable disadvantages.¹⁰⁷ In *Ashoka Kumar Thakur v. Union of India*, the Supreme Court emphasised that affirmative action based on empirical evidence of backwardness is legitimate and consistent with the equality code of the Constitution.¹⁰⁸

The administrative apparatus that governs the implementation of these schemes is another critical element of the policy framework. The Ministry of Minority Affairs (MoMA), created in 2006, has been the nodal agency for all minority-focused schemes. However, inter-departmental coordination remains weak, with overlapping jurisdictions often delaying implementation. Moreover, states vary significantly in terms of their enthusiasm and capacity to execute central schemes. This federal asymmetry results in uneven development outcomes and minority communities in politically less responsive states are left behind.

In essence, while the constitutional framework empowers the state to adopt special measures for minorities, the efficacy of these interventions is determined by political resolve, administrative capacity, and a commitment to data-driven policymaking. The existence of welfare schemes, no matter how well-intentioned, cannot substitute for institutional equity. A rights-based approach to minority welfare must be grounded in accountability, transparency, and the participatory inclusion of minority voices in policymaking processes.

¹⁰⁷ Bhargava, Rajeev, *Politics and Ethics of the Indian Constitution*, Oxford University Press, 2008, at 220–222

¹⁰⁸ *Ashoka Kumar Thakur v. Union of India*, (2008) 6 SCC 1

4.3. GAPS BETWEEN POLICY AND PRACTICE IN MINORITY WELFARE

Despite the proliferation of welfare schemes and constitutional safeguards, a significant disconnect remains between policy formulation and its effective implementation when it comes to minority welfare in India. This gap stems from a combination of bureaucratic inefficiencies, socio-political inertia, inadequate data systems, and sometimes, a lack of genuine political will. As a result, many of the intended benefits of minority welfare initiatives either fail to reach the ground or are diluted by the time they do.

One of the foremost challenges is the low awareness and outreach of schemes among minority communities. Numerous studies have found that a large percentage of eligible individuals remain unaware of the schemes available to them, including educational scholarships, vocational training programmes, or financial aid through state-run corporations like the NMDFC.¹⁰⁹ This communication breakdown can be traced to inadequate publicity by implementing agencies, language barriers, and a lack of culturally sensitive outreach. Many schemes are also not sufficiently decentralised to reach rural and remote minority populations, who often remain invisible to mainstream administrative systems.¹¹⁰

The issue of fund allocation and utilisation is another recurring problem. The Ministry of Minority Affairs often reports significant underutilisation of allocated funds, especially in schemes like the Pre-Matric and Post-Matric scholarships or the PMJVK. For example, in several states, the utilisation of funds under MSDP hovered around 60–70%, with some districts reporting figures as low as 30%.¹¹¹ This is even though these districts were identified as minority-concentrated and thus, in need of focused interventions. A key factor contributing to this underperformance is the lack of inter-departmental coordination. Projects often

¹⁰⁹ Hasan, Zoya, *Politics of Inclusion: Castes, Minorities and Affirmative Action*, Oxford University Press, 2009, at 199–200

¹¹⁰ Ahmad, Iftikhar, “Inclusive Development: Participation of Minorities in India’s Development Process,” *Journal of Social Inclusion Studies*, Vol. 3, No. 1 (2017), at 25

¹¹¹ Ministry of Minority Affairs, *Annual Report 2021–22*, Government of India, at 47–49

require approvals and cooperation from multiple government departments, resulting in bureaucratic delays that impede timely execution.

Moreover, the politicisation of minority welfare has had a chilling effect on implementation. Welfare policies targeted at religious minorities, particularly Muslims, are sometimes portrayed as “appeasement” by certain political actors, which in turn reduces administrative enthusiasm or leads to a quiet rollback of schemes at the state level.¹¹² Even though these schemes are grounded in empirical studies and constitutional logic, such as those conducted by the Sachar Committee and the Misra Commission, they are frequently delegitimised in political discourse, which ultimately undermines their effectiveness on the ground.

The quality of services provided under these schemes is also a concern. Even when infrastructure projects under the PMJVK or earlier MSDP are completed, they often suffer from poor quality, lack of maintenance, or incomplete integration into broader public systems. For instance, schools built in minority areas may lack adequate teachers or teaching materials, and vocational centres may be under-equipped or poorly staffed.¹¹³ As a result, physical infrastructure does not always translate into real empowerment or opportunity.

A further problem lies in the absence of robust monitoring and evaluation mechanisms. While there are periodic reviews at the central level, states often do not maintain updated or disaggregated data on scheme beneficiaries. This makes it difficult to track progress, assess impact, or course-correct when needed.¹¹⁴ The lack of a credible grievance redressal mechanism also means that complaints regarding the denial of scholarships or poor quality of service delivery often go unaddressed, thereby breeding cynicism and disengagement among the very communities these schemes aim to empower.

¹¹² Jaffrelot, Christophe & Verniers, Gilles, “The Politics of Appeasement: How Indian Political Parties Engage with Muslims,” *Carnegie Endowment for International Peace*, Working Paper, 2019, at 11–13

¹¹³ National Institute of Labour Economics Research and Development (NILERD), *Evaluation Study of MSDP*, 2018

¹¹⁴ Centre for Budget and Governance Accountability (CBGA), *Tracking the Utilisation of Welfare Schemes for Minorities*, Policy Brief, 2020, at 7

The issue of representation and agency in the policymaking process also deserves attention. Minority voices are often absent from the design and oversight of welfare schemes. Though minority commissions exist at the national and some state levels, their role in shaping, auditing, or reviewing welfare policies is marginal. They have limited institutional autonomy and their recommendations are often advisory rather than binding.¹¹⁵ This results in a top-down approach where schemes are implemented without adequate local consultation or adaptation to community-specific needs, reducing their cultural relevance and effectiveness.

What emerges from this analysis is a pattern of systemic exclusion not due to a lack of policy intent, but due to failures in the implementation architecture. Unless these structural flaws are addressed through improved local governance, decentralisation of scheme management, enhanced representation, and a shift towards evidence-based policymaking minority welfare schemes will continue to fall short of their transformative potential.

4.4. ROLE OF BUREAUCRACY AND LOCAL GOVERNANCE IN MINORITY RIGHTS IMPLEMENTATION

The implementation of minority rights and welfare measures in India heavily depends on the functioning of the bureaucratic machinery and the responsiveness of local governance structures. While the policy framework laid out at the central level is often progressive and inclusive in its orientation, the translation of these policies into meaningful change on the ground is contingent on how bureaucrats and local administrators perceive, prioritise, and execute them. This relationship between the bureaucracy, local institutions, and minority communities is both intricate and uneven, often revealing deep institutional biases and gaps in accountability.

The bureaucracy, by being the primary implementing agency, is tasked with ensuring the delivery of services such as scholarships, skill training programmes, healthcare, and infrastructure development in minority-concentrated areas. However, the bureaucratic approach to minority issues has often been criticised for

¹¹⁵ Khan, Shahrugh Alam, "The National Commission for Minorities and Its Challenges," *Indian Constitutional Law Review*, Vol. 4, 2017, at 78

being technocratic and detached from ground realities.¹¹⁶ Several scholars have argued that there exists a "majoritarian bias" within segments of the civil service that manifests in administrative inertia or indifference when it comes to minority-focused schemes.¹¹⁷ This is compounded by a lack of sensitivity training, inadequate community engagement, and minimal inclusion of minority personnel within the bureaucracy itself.

A recurring issue is the failure of line departments to prioritise schemes targeted at minorities. Even when sufficient funds are allocated, field officers often delay implementation due to procedural rigidity or misaligned priorities. The lack of dedicated nodal officers at the district and block levels for minority welfare results in fragmented delivery mechanisms. Consequently, minority-specific concerns get subsumed under general development programmes, reducing their visibility and impact.¹¹⁸

Moreover, bureaucrats frequently rely on outdated or aggregated data that fails to reflect the nuanced socio-economic realities of diverse minority groups. The absence of community-disaggregated data at the block or village level makes it difficult to tailor policies or allocate resources efficiently.¹¹⁹ This data deficit also impairs monitoring, as it becomes difficult to evaluate how well schemes are functioning in truly reaching the intended beneficiaries.

In addition to bureaucratic shortcomings, the role of local governance institutions such as Panchayati Raj bodies and urban municipal corporations is equally significant. Ideally, decentralised governance should provide opportunities for context-specific solutions and greater community involvement. However, many of these institutions suffer from capacity deficits, lack of awareness about minority issues, and limited political representation of minority groups.¹²⁰ For instance, in regions with significant Muslim populations, their underrepresentation in elected

¹¹⁶ Hasan, Zoya, *Democracy and the Crisis of Inequality*, Oxford University Press, 2014, at 153

¹¹⁷ Jaffrelot, Christophe, *India's Silent Revolution*, Permanent Black, 2003, at 417–420

¹¹⁸ Ministry of Minority Affairs, *Evaluation Report on MSDP*, 2019, Government of India, at 18

¹¹⁹ Centre for Equity Studies, *Minority Development Mapping Report*, 2021, at 26

¹²⁰ Baviskar, B.S., "Panchayats and Empowerment of Disadvantaged Groups," in T.R. Raghunandan (ed.), *Decentralization and Local Governance*, Orient BlackSwan, 2012, at 145

local bodies results in limited advocacy for inclusive budgeting and prioritisation of minority-dominated areas in development planning.

Furthermore, the politicisation of local governance can lead to discriminatory allocation of public goods and services, with minority-dominated areas receiving less attention or investment.¹²¹ Case studies from Uttar Pradesh, Bihar, and West Bengal indicate that local panchayats often ignore or underfund infrastructure projects in Muslim neighbourhoods, despite their eligibility under centrally sponsored schemes like PMJVK.¹²² This form of institutional exclusion at the grassroots level creates a vicious cycle of marginalisation and mistrust.

The National Commission for Minorities (NCM), despite its mandate, has limited power to intervene in such issues at the bureaucratic or local level. It functions mostly in an advisory capacity, with no binding authority over state governments or district administrators.¹²³ Even the Ministry of Minority Affairs often lacks the leverage to ensure compliance or to penalise non-performing districts or states. This leads to a situation where bureaucratic indifference and weak local governance operate unchecked, and the broader goals of social justice and minority empowerment remain unfulfilled.

However, there have also been positive examples of local innovation. In Kerala and parts of Tamil Nadu, responsive bureaucrats and engaged local bodies have successfully integrated minority welfare schemes into broader development plans. These regions show that when administrators work in tandem with community leaders and civil society, minority-focused initiatives can yield real and sustainable outcomes.¹²⁴ Capacity-building workshops for district magistrates, gender-sensitive budgeting, and dedicated minority welfare officers at the block level have all been cited as best practices worth replicating across the country.¹²⁵

¹²¹ Thachil, Tariq, "Do Rural Elites Capture Local State Institutions? Evidence from India," *American Political Science Review*, Vol. 108, No. 1 (2014), at 187

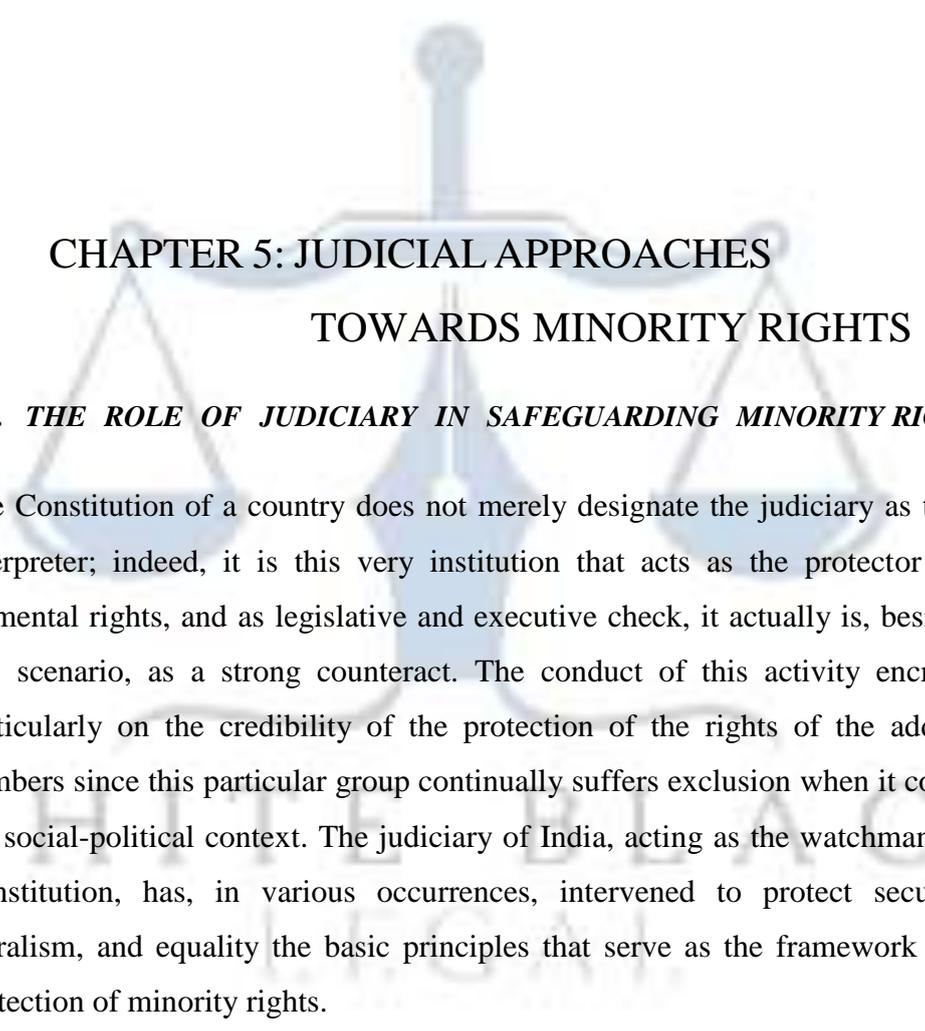
¹²² Mishra, Rajesh K., "Politics of Marginalisation: The Muslims in North India," *EPW*, Vol. 48, No. 3 (2013), at 56–58

¹²³ Alam, Shahrukh, "The Constitutional Limits of the National Commission for Minorities," *Indian Constitutional Law Review*, Vol. 3, 2016, at 92

¹²⁴ Government of Kerala, *Minority Welfare Department Annual Review*, 2020

¹²⁵ ActionAid India, *Best Practices in Minority Welfare*, 2018, at 22–23

In conclusion, the role of bureaucracy and local governance in implementing minority rights is pivotal but fraught with challenges. Without strengthening institutional accountability, ensuring representative participation, and inculcating inclusive values among civil servants and elected officials, policy intent will continue to fall short of policy outcomes. The future of pluralism in India thus depends as much on administrative reform and local empowerment as on constitutional guarantees.



CHAPTER 5: JUDICIAL APPROACHES TOWARDS MINORITY RIGHTS

5.1. THE ROLE OF JUDICIARY IN SAFEGUARDING MINORITY RIGHTS

The Constitution of a country does not merely designate the judiciary as the law interpreter; indeed, it is this very institution that acts as the protector of the elemental rights, and as legislative and executive check, it actually is, besides, in this scenario, as a strong counteract. The conduct of this activity encroaches particularly on the credibility of the protection of the rights of the additional numbers since this particular group continually suffers exclusion when it comes to the social-political context. The judiciary of India, acting as the watchman of the Constitution, has, in various occurrences, intervened to protect secularism, pluralism, and equality the basic principles that serve as the framework for the protection of minority rights.

The Supreme Court and High Courts have consistently reaffirmed the inviolability of Articles 29 and 30, which form the core of constitutional safeguards for minorities. These provisions guarantee minorities the right to conserve their language, script, and culture, and to establish and administer educational institutions of their choice. In *State of Kerala v. Mother Provincial* (1970), the Supreme Court

held that Article 30 was not just a passive assurance but an active guarantee that required protection from undue state interference.¹²⁶ Similarly, in *St. Xavier's College v. State of Gujarat* (1974), the Court ruled that minority institutions must enjoy autonomy in their administration to ensure that their cultural and educational values are not diluted under state control.¹²⁷

The judiciary has also been instrumental in clarifying the scope and limits of state regulation over minority institutions. While the state is empowered to ensure standards in education and prevent maladministration, it cannot impose such regulations that amount to indirect control over the character of minority institutions. In *T.M.A. Pai Foundation v. State of Karnataka* (2002), a landmark eleven-judge bench laid down a detailed framework for understanding the rights of minorities in the context of education.¹²⁸ The Court considered the rights of the minorities and the regulatory authority of the state and explained that, although minority institutions could be regulated reasonably, they were not allowed to force them to give up their specific identity.

Judiciary has also faced the issues of freedom of religion, personal laws, and non-discrimination, which are beyond the scope of the education sector, frequently walking on a tightrope on such political and delicate matters. For instance, in *Bijoe Emmanuel v. State of Kerala* (1986), the Court protected the right of Jehovah's Witness children who refused to sing the national anthem due to their religious beliefs, affirming that the right to conscience and belief could not be trampled under the guise of patriotism.¹²⁹ This judgement stands out for its robust defence of the constitutional right to dissent and religious expression, particularly for a small and unpopular religious minority.

However, the judiciary's role has not always been uniform or uncontroversial. Critics have pointed out that in recent years, there has been a perceptible shift towards majoritarian reasoning in certain rulings, especially those involving religious practices or communal conflict. In *Sardar Syedna Taher Saifuddin Saheb*

¹²⁶ *State of Kerala v. Mother Provincial*, (1970) 2 SCC 417

¹²⁷ *St. Xavier's College v. State of Gujarat*, (1974) 1 SCC 717

¹²⁸ *T.M.A. Pai Foundation v. State of Karnataka*, (2002) 8 SCC 481

¹²⁹ *Bijoe Emmanuel v. State of Kerala*, (1986) 3 SCC 615

v. State of Bombay (1962), the Court had once emphasised the state's limited role in reforming religious practices, but later decisions have sometimes blurred this boundary.¹³⁰ For example, the *Shayara Bano v. Union of India* (2017) judgement striking down triple talaq was hailed by many as a progressive step for gender justice, yet it also raised concerns among some scholars about judicial activism overriding community autonomy without adequate engagement with internal reform.¹³¹

Even with disagreements on this issue, the courts continue to be a primary arena for the struggle for and the recognition of the rights of minorities in the country. The decisions made by the courts result in the formulation of new legal principles which, besides giving a definition to the constitutional clauses, also establish the ethical standard for the treatment of minorities by the state of India. The judiciary was frequently a differential factor, companying the promise of justice against the oppressive power of the majority, even though it did not always do that consistently.

Therefore, the Indian judiciary's interventions in minority rights point out its position, where it protects the rights of the minorities as well as tries to bring about a reform. Even if sometimes it takes over the limit or it makes a mistake, which are caused by pressures from society and politics, its decisions are still the reasons for the foundation of India's pluralistic democracy.

5.2. IMPORTANT JUDGMENTS STRENGTHENING MINORITY RIGHTS

The minority rights development in India has been considerably influenced by specific critical judicial rulings. The same cases, which stemmed from the socio-political problems, interpreted the constitutional articles, determined the extent of the state legal authority, and consolidated the principles of equality, secularism, and autonomy. They have been forming the strong law pillar that gives the means of the protection and the promotion of minority rights in education, religion, and the culture exuberantly for quite a number of years now.

¹³⁰ *Sardar Syedna Taher Saifuddin Saheb v. State of Bombay*, AIR 1962 SC 853

¹³¹ *Shayara Bano v. Union of India*, (2017) 9 SCC 1

One of the earliest and most influential decisions in this context was *The State of Madras v. Champakam Dorairajan* (1951), where the Supreme Court struck down caste-based reservations in educational institutions on the ground that it violated Article 29(2).¹³² The minority rights development in India has been considerably influenced by specific critical judicial rulings. The same cases, which stemmed from the socio-political problems, interpreted the constitutional articles, determined the extent of the state legal authority, and consolidated the principles of equality, secularism, and autonomy. They have been forming the strong law pillar that gives the means of the protection and the promotion of minority rights in education, religion, and the culture exuberantly for quite a number of years now.

Another critical case was *St. Xavier's College v. State of Gujarat* (1974), where the Supreme Court protected the autonomy of minority educational institutions.¹³³ The Court held that any regulation which restricted the right of minorities to administer their institutions would be unconstitutional unless it was aimed at maintaining educational standards or preventing maladministration. The judgment made it clear that state control should not result in the erosion of the minority character of such institutions.

The evolution of minority rights jurisprudence took a giant leap in *T.M.A. Pai Foundation v. State of Karnataka* (2002).¹³⁴ In this case, the Supreme Court delivered a comprehensive interpretation of Article 30 and delineated the contours of minority educational rights. It was held that minorities—religious or linguistic—have the fundamental right to establish and administer educational institutions, whether aided or unaided. The judgment also introduced the concept of a "national mainstream," indicating that minority institutions must adhere to general standards without losing their identity. This judgment continues to serve as a constitutional compass on the subject.

A related decision in *P.A. Inamdar v. State of Maharashtra* (2005) reaffirmed the autonomy of private unaided minority institutions and held that they could not be

¹³² *The State of Madras v. Champakam Dorairajan*, AIR 1951 SC 226

¹³³ *St. Xavier's College v. State of Gujarat*, (1974) 1 SCC 717

¹³⁴ *T.M.A. Pai Foundation v. State of Karnataka*, (2002) 8 SCC 481

forced to implement state reservation policies.¹³⁵ The court ruled that while the state had the authority to regulate admissions for the sake of transparency and merit, it could not introduce quotas that would undermine the rights guaranteed by Article 30. This case played a key role in establishing a clear difference between regulation and interference, thus safeguarding the autonomy of the minority-managed institutions in the private sector.

In *Bijoe Emmanuel v. State of Kerala* (1986), the Court gave a strong verdict in favour of individual conscience and religious freedom.¹³⁶ The case involved schoolchildren who refused to sing the national anthem due to their religious beliefs as Jehovah's Witnesses. The Supreme Court held that their expulsion from school violated their right to freedom of religion under Article 25. The case became a landmark in asserting that minority rights are not limited to institutional claims but also extend to individuals' rights to live by their faith without coercion.

More recently, in *The Indian Young Lawyers Association v. State of Kerala* (2018), commonly referred to as the Sabarimala case, the Supreme Court struck down the age-based restriction on women's entry into the Sabarimala temple.¹³⁷ Although not a minority case in the conventional sense, it carried implications for understanding religious autonomy. The dissent and majority opinions reflected a larger constitutional debate over the limits of religious freedom, especially when it clashes with other rights such as gender equality. For minority communities, this judgment raised critical concerns about the potential for judicial reinterpretation of religious practices.

At the intersection of gender justice and community reform stood the much-debated case of *Shayara Bano v. Union of India* (2017), where the practice of triple talaq was declared unconstitutional.¹³⁸ The verdict, although it was viewed as a progressive decision to protect Muslim women's rights, also spurred debates about whether the judiciary had been overstepping its jurisdiction of personal laws. The discernment reemphasized that personal norms cannot outdo the Constitution and

¹³⁵ *P.A. Inamdar v. State of Maharashtra*, (2005) 6 SCC 537

¹³⁶ *Bijoe Emmanuel v. State of Kerala*, (1986) 3 SCC 615

¹³⁷ *Indian Young Lawyers Association v. State of Kerala*, (2018) 10 SCC 1

¹³⁸ *Shayara Bano v. Union of India*, (2017) 9 SCC 1

that changes within minority groups are required where basic rights are transgressed pre-eminently.

These decisions, spanning decades, collectively illustrate how the Indian judiciary has evolved as a key player in upholding minority rights. The courts have not shied away from asserting their constitutional role, even when the issues at stake were sensitive and controversial. While jurisprudence is not without contradictions or criticisms, it has undeniably contributed to the construction of a legal regime where minority rights are not only protected but also constantly reinterpreted in light of changing social realities.

5.3. JUDICIAL INTERPRETATION OF ARTICLE 30 AND MINORITY EDUCATIONAL INSTITUTIONS

Article 30 of the Indian Constitution confers upon religious and linguistic minorities the right to establish and administer educational institutions of their choice. This provision is among the most vital safeguards for preserving the cultural, religious, and linguistic identities of minority groups. Over time, the judiciary has played a central role in interpreting the scope and application of this article, particularly in balancing the autonomy of minority institutions with the regulatory interests of the state.

At the heart of Article 30 lies the assurance that minorities will have the freedom to develop and propagate their educational systems to suit their unique socio-cultural contexts. In the seminal case of *St. Xavier's College v. State of Gujarat* (1974), the Supreme Court emphasised that the autonomy of minority institutions is not merely a privilege but a constitutional guarantee.¹³⁹ The Court made it clear that "regulations" imposed by the state must not interfere with the core right of minorities to administer their institutions in a manner that aligns with their values and identity.

The interpretation of what constitutes a "minority" for Article 30 has also been a matter of extensive judicial deliberation. In *T.M.A. Pai Foundation v. State of Karnataka* (2002), the Court clarified that minorities must be determined at the state

¹³⁹ *St. Xavier's College v. State of Gujarat*, (1974) 1 SCC 717

level rather than the national level.¹⁴⁰ This was an essential distinction in a federal structure like that of India. Here, a community can be a minority in one state but be a majority in another. The judgment further observed that the right under Article 30 is not limited to just establishing an entity but it also includes the right to choose the staff and admit students and the right to manage the internal matters of the institution, while at the same time, it is subject to only reasonable regulation by the state.

A further elaboration of this principle came in *P.A. Inamdar v. State of Maharashtra* (2005), where the Court reiterated that unaided minority institutions could admit students without government interference, although transparency and merit-based admissions were still expected.¹⁴¹ The judgment drew a crucial line between “regulatory measures” (which are permissible) and “governmental control” (which is not). Thus, while the state can intervene to prevent maladministration, it cannot dictate policies that alter the essential character of minority institutions.

The case of *State of Kerala v. Very Rev. Mother Provincial* (1970) also reinforced this perspective by stating that while the state can impose regulations to maintain academic standards, these must not infringe upon the constitutional freedom granted by Article 30.¹⁴² This ruling underscored the judiciary's commitment to upholding minority rights while allowing space for essential state oversight.

However, the interpretation of Article 30 has not always been free of tension. One of the key issues that the judiciary has had to grapple with is whether state aid brings with it an obligation to follow government regulations, especially regarding admissions and appointments. In *Rev. Sidhajibhai Sabhai v. State of Bombay* (1963), the Court held that even in aided institutions, the essential right to manage the institution's character must be preserved.¹⁴³ But in subsequent rulings, especially post-*T.M.A. Pai*, courts have shown a greater inclination to allow state intervention

¹⁴⁰ *T.M.A. Pai Foundation v. State of Karnataka*, (2002) 8 SCC 481

¹⁴¹ *P.A. Inamdar v. State of Maharashtra*, (2005) 6 SCC 537

¹⁴² *State of Kerala v. Very Rev. Mother Provincial*, (1970) 2 SCC 417

¹⁴³ *Rev. Sidhajibhai Sabhai v. State of Bombay*, AIR 1963 SC 540

in aided institutions, reasoning that public funding justifies certain expectations of public accountability.

The evolving jurisprudence around Article 30 also intersects with debates on equality and social justice. For example, while minority institutions are exempt from certain state policies like reservations, this exemption has been challenged by some as discriminatory. Yet, the judiciary has consistently maintained that the protection of minority rights under Article 30 must be read harmoniously with Articles 14 and 15, ensuring that constitutional equality does not come at the cost of cultural autonomy.

Moreover, in *Society for Unaided Private Schools v. Union of India* (2012), the Court upheld the constitutional validity of the Right to Education Act's application to non-minority unaided schools but exempted minority schools from its purview.¹⁴⁴ This exemption was grounded in the principle that enforcing such mandates would infringe upon their Article 30 rights.

In summary, the judicial interpretation of Article 30 has reinforced the constitutional vision of a pluralistic society, one where minority communities are given adequate space to sustain their identity through educational means. Courts have consistently protected the integrity of minority institutions, even as they have tried to balance it with legitimate concerns of accountability and standardisation. This jurisprudence not only secures minority rights but also enriches the broader democratic fabric of India.

¹⁴⁴ *Society for Unaided Private Schools v. Union of India*, (2012) 6 SCC 1

CHAPTER 6: THE ROLE OF STATE

INSTITUTIONS IN PROMOTING

MINORITY WELFARE

6.1. CONSTITUTIONAL BODIES AND MINORITY WELFARE

The Indian Constitution is not just a governance framework; it is a document with a vision that is supposed to safeguard justice which is for all including social, economic, and political justice. In doing this, the foremost position is given to the safeguarding and welfare of minority groups particularly when it comes to a country like India which is rich in religion and language. Through the provision of the fundamental rights, these rights are safeguarded but the body of various constitutional and quasi-constitutional agencies carry the living out of this. These institutions such as those established for monitoring, reporting, and advising, and sometimes for intervention, play an efficient role in balancing majority governance with minority rights.

One of the key institutional mechanisms for addressing minority concerns is the National Commission for Minorities (NCM). Established under the National Commission for Minorities Act, of 1992, the NCM was a response to the longstanding demand for a centralised body that could voice the specific grievances of minority groups and act as a watchdog over the implementation of constitutional safeguards.¹⁴⁵ The Commission's mandate includes evaluating the development of

¹⁴⁵The National Commission for Minorities Act, No. 19 of 1992, § 3(1), India Code (1992)



minorities, monitoring the working of the constitutional and legal safeguards for them, and making recommendations for their effective implementation.¹⁴⁶ It also has the authority to look into complaints regarding deprivation of rights and safeguards, a function which has gained critical importance in the current socio-political climate where incidents of discrimination and communal violence continue to surface.

At the state level, State Minorities Commissions have been set up in many parts of India, with objectives similar to those of the NCM but tailored to local contexts. These commissions are expected to monitor state-specific issues such as educational access, religious freedom, and representation in employment or housing.¹⁴⁷ However, their effectiveness varies significantly depending on the political will, administrative support, and legal framework prevailing in the respective states. In states with a strong commitment to pluralism, such as Kerala, these bodies have been proactive in promoting welfare schemes, organising community consultations, and pushing for inclusive policymaking.¹⁴⁸ In contrast, in states marked by political polarisation or communal tensions, Minority Commissions have often remained underutilised, underfunded, or functioned in a purely symbolic capacity.¹⁴⁹

Furthermore, there are also other affirmative constitutional bodies like the National Human Rights Commission (NHRC) and the National Commission for Women (NCW) which at times also find their way into the minority sectors that are usually the focus of these bodies. This happens especially when cases of gender discrimination among minority groups, religious or caste-related violence and police inaction in community cases are lodged. Though not specifically examination minority issues, these institutions may serve as an extra platform for people to address their complaints and seek reparation.¹⁵⁰ Their interventions have

¹⁴⁶ Ibid at § 9

¹⁴⁷ Khan, M. (2018). "Role of State Minority Commissions in Safeguarding Rights," *Journal of Social Justice Studies*, Vol. 12(3), pp. 110–122

¹⁴⁸ Koya, M. (2014). "Minority Welfare in Kerala: A Policy Analysis," *Indian Journal of Public Administration*, Vol. 60(1), pp. 36–49

¹⁴⁹ Sharma, V. (2020). "Tokenism or Substance? Evaluating the Performance of State Minority Commissions," *Seminar*, No. 727, pp. 25–29

¹⁵⁰ National Human Rights Commission, *Annual Report 2019–20*, Government of India

occasionally led to critical directives, including recommendations for compensation, inquiries into police misconduct, or broader policy reform.

Yet, a significant lacuna in India's institutional architecture is the non-inclusion of Dalit Muslims and Dalit Christians within the Scheduled Castes (SC) category, which bars them from availing of affirmative action benefits. This exclusion stems from the Presidential Order of 1950, which initially restricted SC status to Hindus and was later extended to Sikhs and Buddhists but not to Muslims or Christians, despite clear socio-economic evidence of comparable marginalisation.¹⁵¹ This issue has been flagged by both the Sachar Committee and the Ranganath Misra Commission, which recommended the removal of religious criteria for SC status.¹⁵² However, no constitutional amendment or executive action has been taken in this regard, reflecting the persistent gaps in the state's approach to comprehensive minority welfare.

Thus, while constitutional and statutory bodies do exist to protect minority rights and promote their welfare, their efficacy is hampered by structural constraints, limited enforcement capacity, and at times, a lack of political independence. Unless these bodies are empowered with real investigative authority, made accountable through regular performance audits, and insulated from political interference, their ability to meaningfully impact the lives of minority communities will remain circumscribed.

6.2. THE ROLE OF THE MINISTRY OF MINORITY AFFAIRS

The establishment of the Ministry of Minority Affairs (MoMA) in 2006 marked a watershed moment in India's administrative response to the development needs of minority communities. Before its formation, various welfare schemes targeting religious and linguistic minorities were scattered across different ministries and lacked cohesive implementation. The creation of MoMA sought to streamline these efforts under one umbrella, ensuring focused policy development, implementation,

¹⁵¹ Constitution (Scheduled Castes) Order, 1950, as amended

¹⁵² Ranganath Misra Commission Report (2007), Ministry of Minority Affairs; Sachar Committee Report (2006), Government of India

and monitoring for the benefit of India's officially recognised minority groups: Muslims, Christians, Sikhs, Buddhists, Parsis, and Jains.¹⁵³

The Ministry's mandate encompasses a wide range of responsibilities including educational empowerment, skill development, livelihood generation, and preservation of cultural heritage. Among its flagship programs are the Pre-Matric and Post-Matric Scholarship Schemes, designed to assist students from minority communities at various stages of their education. These initiatives have provided critical financial support to lakhs of students across the country, allowing many to access formal education who might otherwise have been forced to discontinue due to poverty.¹⁵⁴ Another impactful scheme is the Merit-cum-Means Scholarship for Professional and Technical Courses, which targets students entering higher education in disciplines such as engineering, medicine, and law.¹⁵⁵

A significant step taken by the Ministry in empowering minority women is the launch of the Nai Roshni Scheme, which focuses on leadership development for women belonging to minority communities. Through training modules on health, education, legal rights, and financial literacy, the scheme aims to create self-aware and socially active women who can act as agents of change in their communities.¹⁵⁶ Another initiative, Nai Manzil, is a unique program that combines education with skill development for school dropouts from minority backgrounds, allowing them to earn recognized qualifications while simultaneously gaining vocational skills.¹⁵⁷

Furthermore, MoMA supports the Maulana Azad Education Foundation (MAEF), an autonomous body aimed at promoting education among educationally backward minorities, particularly Muslim girls. The Foundation provides grants to non-governmental organizations (NGOs) and educational institutions working in backward areas and also runs schemes for hostels and vocational centres.¹⁵⁸ These

¹⁵³ Ministry of Minority Affairs, "About the Ministry," Government of India (2021), available at <https://minorityaffairs.gov.in/>

¹⁵⁴ Ministry of Minority Affairs, "Annual Report 2020–21," Government of India, pp. 22–25

¹⁵⁵ Ibid at 28

¹⁵⁶ Ministry of Minority Affairs, "Nai Roshni Scheme Guidelines," (2019), Government of India

¹⁵⁷ Ministry of Minority Affairs, "Nai Manzil Scheme," Press Information Bureau, Government of India (2017)

¹⁵⁸ Maulana Azad Education Foundation, "Schemes and Initiatives," available at <https://maef.nic.in/>

efforts are critical in bridging the gender and regional gaps that persist in minority education outcomes.

Despite its wide-ranging activities, the Ministry has faced substantial criticism regarding its effectiveness and outreach. Various evaluation reports, including those from independent bodies like the Centre for Budget and Governance Accountability (CBGA) and the Post-Sachar Evaluation Committee, have highlighted the chronic underutilisation of allocated funds.¹⁵⁹ For instance, the 2021–22 financial year saw only 60% of the budgetary allocation for scholarships being used, primarily due to bureaucratic delays, complex documentation requirements, and lack of awareness among beneficiaries.¹⁶⁰

The Sachar Committee Report (2006), which played a key role in MoMA's formation, emphasised the need for transparency, community outreach, and institutional accountability to ensure that development schemes genuinely benefit minorities.¹⁶¹ However, recent studies suggest that awareness about many of the Ministry's flagship schemes remains low among the target population, particularly in rural areas and among women.¹⁶² The absence of a robust grievance redressal mechanism and insufficient field-level monitoring further exacerbate the problem.

Moreover, political trends in recent years have led to growing concerns about the shrinking space for minority welfare within governmental priorities. Budget allocations to the Ministry have seen inconsistent growth, and in some years, have even stagnated despite inflation and rising demand.¹⁶³ This has led several civil society organisations and scholars to question whether the government's commitment to minority welfare is being diluted under broader developmental narratives that tend to overlook identity-specific disadvantages.¹⁶⁴

¹⁵⁹ Centre for Budget and Governance Accountability (CBGA), "Tracking Budget Allocations for the Ministry of Minority Affairs," Policy Brief (2020)

¹⁶⁰ Ibid

¹⁶¹ Sachar Committee Report, Prime Minister's High-Level Committee, 2006, p. 206

¹⁶² Hussain, M. (2019). "Barriers to Scholarship Access in Minority Communities," *Economic and Political Weekly*, Vol. 54(12), pp. 15–18

¹⁶³ PRS Legislative Research, "Union Budget Analysis 2022–23: Ministry of Minority Affairs.

¹⁶⁴ Hasan, Z. (2021). "Eroding Institutional Support for Minorities in India," *India Forum*, 9 April 2021

Despite these challenges, the Ministry of Minority Affairs remains one of the most important institutional pillars of minority welfare in India. Its presence ensures that minorities have a dedicated channel within the government apparatus through which their developmental needs and grievances can be articulated. Strengthening the Ministry through better planning, decentralised implementation, data transparency, and proactive engagement with civil society would go a long way in ensuring that India's constitutional promise of equality and inclusion becomes a reality for all its citizens, particularly those historically left behind.

6.3. THE JUDICIARY AND MINORITY WELFARE

The Indian judiciary has always been an essential actor in outlining and extending the minority rights enshrined in the Constitution. In a democracy that is characterised by deep-rooted differences in religion, language, and culture, courts have emerged as the primary platforms for minorities to pursue justice against discrimination, arbitrary state actions, and infringement of their fundamental rights. Not only have the judicial pronouncements determined the extent and breadth of the constitutional protections but their rulings also on occasions have stood in place of the absent legislative and executive measures cutting across in the area of minor welfare.

One of the earliest and most foundational rulings came in *The State of Kerala v. Mother Provincial of St. Augustine's Convent*, where the Supreme Court held that Article 30(1) of the Constitution guarantees linguistic and religious minorities the right to establish and administer educational institutions of their choice.¹⁶⁵ This interpretation firmly entrenched the principle that minorities must enjoy autonomy in managing their institutions, free from excessive state interference. The Court recognised that educational freedom was central to preserving cultural identity and ensuring socio-economic mobility, particularly for historically marginalised communities.

In the landmark *T.M.A. Pai Foundation v. State of Karnataka*, the Court revisited this issue in detail. A constitutional bench clarified that while the state could impose

¹⁶⁵ *State of Kerala v. Mother Provincial of St. Augustine's Convent*, (1970) 2 SCC 417

reasonable regulations to ensure the excellence of education and prevent maladministration, it could not alter the essential character of a minority institution or infringe upon its autonomy.¹⁶⁶ This ruling balanced minority rights with the public interest, setting a precedent that has shaped educational jurisprudence since. The Pai decision also emphasised that the definition of 'minority' should be determined on a state-by-state basis, acknowledging India's federal character and regional variations in demographic patterns.¹⁶⁷

The judiciary has also played a proactive role in protecting minorities against state excesses or neglect. In *Indian Young Lawyers Association v. State of Kerala* (Sabarimala case), although not strictly a minority rights case, the Supreme Court broadened the interpretation of the right to equality and non-discrimination in religious spaces, setting a precedent that could be relevant for gender and caste-based exclusions within minority communities as well.¹⁶⁸ While the verdict triggered complex debates about faith, custom, and constitutional morality, it also underscored the judiciary's role in protecting individual rights within group identities.

In more specific terms, the Court has often had to step in when executive action appeared to infringe upon minority rights. In *Azeez Basha v. Union of India*, the Court held that Aligarh Muslim University, although a prominent institution associated with the Muslim community, was not technically a minority institution under Article 30 as it had been established by an Act of Parliament.¹⁶⁹ This judgment was controversial and continues to be a subject of debate, particularly in light of efforts to reclaim minority status for AMU. The ruling reflected the Court's strict interpretative stance on what constitutes a minority-established institution and demonstrated the delicate line the judiciary often walks between legal text and historical sentiment.

The judiciary has also provided relief in cases involving violence and communal tension. In *National Human Rights Commission v. State of Gujarat*, the Supreme

¹⁶⁶ *T.M.A. Pai Foundation v. State of Karnataka*, (2002) 8 SCC 481

¹⁶⁷ *Ibid*

¹⁶⁸ *Indian Young Lawyers Association v. State of Kerala*, (2019) 11 SCC 1

¹⁶⁹ *Azeez Basha v. Union of India*, AIR 1968 SC 662

Court sharply criticised the role of the state machinery in the aftermath of the 2002 Gujarat riots and transferred the trial of key cases outside the state to ensure impartiality.¹⁷⁰ Such interventions helped reaffirm the principle that minority communities must be protected not just in law but also in practice, especially when state authorities fail in their duty. It also showcased the judiciary's willingness to uphold justice even in politically sensitive contexts.

Moreover, in *Bijoe Emmanuel v. State of Kerala*, the Court reinforced the notion of conscientious objection and religious freedom by holding that students belonging to the Jehovah's Witnesses community could not be compelled to sing the national anthem if it went against their religious beliefs.¹⁷¹ This judgment was instrumental in establishing that freedom of religion is not merely the freedom to practice and propagate, but also to refrain from actions contrary to personal faith—an important nuance in minority jurisprudence.

However, the judiciary has not always been consistent in its approach to minority issues. There have been criticisms regarding selective urgency, especially when cases related to majority sentiment or electoral interests have been fast-tracked while those concerning minority grievances have remained pending for years.¹⁷² Additionally, the Court's deference to the executive in matters like the Citizenship Amendment Act (CAA), which many argue affects Muslim minorities disproportionately, has raised questions about judicial activism versus judicial restraint.¹⁷³

Despite the worries regarding the situation, the Indian judiciary is still considered to be a crucial institutional element in the protection of minority rights. The broad definition of the territorial rights, the development of new legal practices, and the will to stand for the subsidiary? against the misuse of power by the executive branch have led to the cumulative strengthening of the minority protection framework in India. Nevertheless, the judiciary's credibility in this regard depends on its

¹⁷⁰ *National Human Rights Commission v. State of Gujarat*, (2009) 6 SCC 767

¹⁷¹ *Bijoe Emmanuel v. State of Kerala*, (1986) 3 SCC 615

¹⁷² Bhushan, P. (2020). "Selective Priorities and Delays in the Indian Judiciary," *The Wire*, 11 June 2020

¹⁷³ Rahman, F. (2021). "CAA and the Question of Judicial Neutrality," *Indian Constitutional Law Review*, Vol. 8, pp. 55–66

unwavering compliance with both the letter and the spirit of the Constitution, particularly in a time when social and political forces frequently make attempts to water down minority rights.

6.4. THE ROLE OF CIVIL SOCIETY ORGANISATIONS IN SAFEGUARDING MINORITY RIGHTS

In India's pluralistic democracy, where the state machinery sometimes goes wrong in its duty to protect underprivileged sections, civil society organizations (CSOs) are the main agents to counter this and to be the torchbearers of minority rights. These organisations, ranging from grassroots collectives to international advocacy groups, function as watchdogs, service providers, policy influencers, and mobilisers of public opinion. Their work supplements state efforts and often fills critical gaps in the framework of minority welfare.

CSOs have been particularly instrumental in providing legal aid, education, and healthcare services in underserved minority-dominated regions. Organisations such as Anhad, PUCL (People's Union for Civil Liberties), and HRLN (Human Rights Law Network) have consistently raised issues of communal violence, police brutality, and wrongful incarceration, especially affecting religious minorities like Muslims and Christians.¹⁷⁴ Through public interest litigations (PILs), fact-finding missions, and media engagement, these organisations bring systemic injustices to light, often pressuring governments into accountability.

A significant aspect of civil society intervention has been in documenting and responding to communal violence and hate crimes. After the Gujarat riots in 2002, CSOs played a crucial role in offering immediate humanitarian aid, rehabilitating victims, and providing legal representation.¹⁷⁵ Groups like Citizens for Justice and Peace, led by activists such as Teesta Setalvad, tirelessly pursued justice for riot survivors in courts despite facing intimidation and legal hurdles.¹⁷⁶ The involvement of such organisations ensured that certain key cases, like the Best

¹⁷⁴ PUCL, "Criminalising Dissent and Minorities," (2021), available at <https://pucl.org>

¹⁷⁵ Human Rights Watch, "Compounding Injustice: The Government's Failure to Redress Massacres in Gujarat," (2003)

¹⁷⁶ Citizens for Justice and Peace, "About Us," available at <https://cjp.org.in/>

Bakery case and the Bilkis Bano case, received national and international attention, ultimately leading to convictions.¹⁷⁷

In the field of education and awareness-building, CSOs have facilitated capacity-building among minority communities by conducting workshops on constitutional rights, civic engagement, and leadership development. Organisations like the All India Muslim Majlis-e-Mushawarat, the National Council of Churches in India, and the Sikh Human Rights Group have developed community-specific curricula to promote inclusive citizenship and religious literacy.¹⁷⁸ These programs empower minorities to assert their rights and engage constructively with public institutions.

Moreover, civil society has played a critical role in policy advocacy and research. Reports published by NGOs such as Oxfam India, the Centre for Equity Studies, and Amnesty International have highlighted institutional biases, economic exclusions, and educational disparities affecting minorities.¹⁷⁹ Their publications serve not only as advocacy tools but also inform academic discourse and legislative debate. For instance, CSO research contributed to the discourse around the Sachar Committee Report, which eventually influenced government policy on Muslim welfare.¹⁸⁰

Importantly, CSOs also act as bridges between the state and marginalised communities, especially in contexts where fear or alienation may prevent minorities from accessing government schemes. During the implementation of initiatives like the Prime Minister's New 15 Point Programme, NGOs helped disseminate information, mobilise applications, and monitor the ground-level delivery of services.¹⁸¹ Their local credibility often makes them more effective intermediaries than formal bureaucracies.

However, the functioning of civil society organisations is not without challenges. In recent years, several NGOs working on minority issues have faced increased

¹⁷⁷ Bano v. State of Gujarat, (2004) 5 SCC 197

¹⁷⁸ Sikh Human Rights Group, "Minority Education Projects," Annual Report (2020)

¹⁷⁹ Oxfam India, "India Inequality Report 2021," available at <https://www.oxfamindia.org>

¹⁸⁰ Sachar Committee Report, Prime Minister's High-Level Committee, Government of India (2006), pp. 35–40

¹⁸¹ Ministry of Minority Affairs, "Evaluation Study of the Prime Minister's New 15 Point Programme," (2018), NITI Aayog

surveillance, funding restrictions, and administrative harassment. The cancellation of licenses under the Foreign Contribution (Regulation) Act (FCRA) has severely impacted organisations that relied on international support for rights-based work.¹⁸² Groups like Amnesty International India and Greenpeace India have either suspended operations or scaled back drastically, citing government hostility as a key reason.¹⁸³ These developments point to a shrinking space for dissent and advocacy, raising concerns about the future role of CSOs in a healthy democracy.

Furthermore, civil society efforts are often fragmented and lack coordinated strategy. In many cases, organisations work in silos, duplicating efforts or failing to amplify each other's voices. There is also the risk of tokenism and elite capture, where advocacy may be disconnected from grassroots realities, especially in rural or semi-urban minority regions.¹⁸⁴ For civil society to have a sustained impact, there is a need for greater coalition-building, transparency, and long-term community engagement.

In conclusion, civil society organisations are indispensable actors in safeguarding minority rights in India. They act as conscience-keepers of the nation, reminding both the public and the state of constitutional promises that risk being eroded. Strengthening their autonomy, enabling funding, and creating a supportive legal and political environment will be crucial to ensuring that India remains committed to its pluralistic ethos and the democratic ideals it enshrines.

¹⁸² Amnesty International, "India: Halt the Crackdown on Civil Society," (2020), available at <https://www.amnesty.org>

¹⁸³ Scroll Staff, "Amnesty International Halts Operations in India After Govt Freezes Bank Accounts," *Scroll. In*, 29 Sept. 2020

¹⁸⁴ D'Monte, D. (2019). "The Fragmentation of Civil Society in India," *India Development Review*, Vol. 4



CHAPTER 7: CHALLENGES TO MINORITY RIGHTS IN CONTEMPORARY INDIA

7.1. RISE OF MAJORITARIANISM AND COMMUNAL POLARISATION

The rise of majoritarianism in India in recent years presents a grave challenge to the secular and pluralistic vision enshrined in the Indian Constitution. Majoritarianism refers to a political philosophy or practice where the majority community dominates state institutions, political discourse, and policymaking, often at the expense of minority rights and interests. This phenomenon, while not new, has become more pronounced in the 21st century, with a growing tendency to conflate religious identity with national identity particularly equating Hindu identity with Indian identity.¹⁸⁵ This ideological shift has serious implications for minorities, especially Muslims and Christians, who increasingly find themselves alienated from the political mainstream and subjected to suspicion and vilification.

¹⁸⁵ Varshney, A., *Ethnic Conflict and Civic Life: Hindus and Muslims in India*, Yale University Press (2002)

The institutionalisation of majoritarian politics has occurred alongside the mainstreaming of a cultural nationalism that views India's history and destiny through the lens of a singular religious identity. As political scientist Christophe Jaffrelot has observed, the rise of Hindu nationalism is not merely a cultural assertion but a systemic effort to reshape democratic institutions, public policy, and legal frameworks by majoritarian preferences.¹⁸⁶ This ideological project often portrays minorities not as equal citizens but as "outsiders" or historical interlopers whose loyalty to the nation must be constantly proven.

Communal polarisation both as a social reality and a political strategy has intensified in recent years. It is frequently nurtured through divisive rhetoric, hate speech, and the manipulation of historical grievances. Election campaigns have seen open appeals to religious sentiment, including references to "love jihad," cow slaughter, and accusations of forced conversions—narratives that create moral panic and deepen communal divides.¹⁸⁷ Politicians have used communal incidents as a means to consolidate majority votes by mobilising fear and resentment. This was evident in the 2013 Muzaffarnagar riots, which many scholars believe were politically orchestrated ahead of the general elections to polarise voters along communal lines.¹⁸⁸

What exacerbates this polarisation is the silence or complicity of state institutions. Law enforcement agencies, which are constitutionally mandated to maintain neutrality, have been accused of either turning a blind eye to acts of communal violence or, in some cases, actively participating in them. During the Delhi riots of February 2020, for instance, video footage and eyewitness testimonies suggested that the police not only failed to control the violence but may have actively enabled attacks against minority neighbourhoods.¹⁸⁹ Several inquiries and independent fact-

¹⁸⁶ Jaffrelot, C., *Modi's India: Hindu Nationalism and the Rise of Ethnic Democracy*, Princeton University Press (2021)

¹⁸⁷ Raghavan, P., "The Rise of Hate Politics in India," *The Hindu*, 12 Jan. 2020

¹⁸⁸ Engineer, A. A., *Communal Riots After Independence: A Comprehensive Account*, Institute of Islamic Studies (1991)

¹⁸⁹ Citizens Committee, "Report on the North-East Delhi Riots," (2020), available at <https://delhiriotsreport.org/>

finding reports raised concerns about the biased handling of investigations, where Muslim victims were often arrested instead of perpetrators.¹⁹⁰

Moreover, legislative practices have also reflected a majoritarian approach. Several state governments have enacted laws ostensibly targeting religious conversions, often termed “anti-conversion” or “freedom of religion” laws. While framed as efforts to prevent coercion, these laws are frequently weaponised against interfaith marriages and disproportionately target religious minorities, creating a chilling effect on constitutional freedoms such as the right to privacy, belief, and personal liberty.¹⁹¹ The campaign against so-called “love jihad” has been used to stoke fears about Muslim men “luring” Hindu women into marriage as a means of demographic warfare, even though there is no empirical basis for such claims.¹⁹²

The media landscape has played a critical role in fuelling communal polarization. Prime-time debates, sensational headlines, and biased reporting have frequently demonised minorities, portraying them as either criminal, disloyal, or culturally regressive. Social media has further amplified this dynamic, serving as an echo chamber for communal narratives, hate speech, and misinformation.¹⁹³ WhatsApp forwards, Twitter trends, and YouTube channels have often been used to incite violence, spread conspiracy theories, and reinforce stereotypes.

The cumulative impact of these developments is a growing sense of fear and marginalisation among minority communities, especially Muslims. The normalisation of communal hatred and the erosion of interfaith solidarity have led to what some scholars call the “ghettoisation of the Muslim identity,” both physically in urban landscapes and symbolically in the national imagination.¹⁹⁴ Inter-community relationships have deteriorated, and many Muslims now report

¹⁹⁰ Human Rights Watch, “Shoot the Traitors: Discrimination Against Muslims Under India’s New Citizenship Policy,” HRW Report (2020)

¹⁹¹ Robinson, R., “The Anti-Conversion Laws in India: Implications for Religious Freedom,” *South Asia: Journal of South Asian Studies*, Vol. 33, No. 2 (2010)

¹⁹² Choudhury, A., “Love Jihad: The Dangerous Politics of Interfaith Romance,” *Scroll. In*, 5 Dec. 2020

¹⁹³ Tripathi, S., “Newsrooms of Hate: The Role of Indian Television in Fostering Communalism,” *The Wire*, 17 Aug. 2022

¹⁹⁴ Mander, H., *Fear and Forgiveness: The Aftermath of Massacre*, Penguin Books India (2009)

facing increased scrutiny in public spaces, reduced access to housing and employment, and an overall decline in their sense of belonging.

Thus, the rise of majoritarianism and communal polarisation poses not only a threat to minority rights but also a fundamental challenge to Indian democracy itself. A state that claims to be secular and pluralistic cannot sustain democratic legitimacy if large sections of its population feel excluded or unsafe. It is crucial to reaffirm the constitutional commitment to equality, secularism, and fraternity values that are under serious strain in contemporary India.

7.2. LEGAL AND INSTITUTIONAL REGRESSION

India's legal framework has long been praised for its robust constitutional protections for minorities. However, in recent years, there has been a noticeable regression in legal and institutional safeguards that once upheld the secular and pluralistic ethos of the republic. Rather than strengthening mechanisms for minority protection, some legislative and administrative actions have contributed to their marginalisation, triggering widespread concern from civil society, legal scholars, and international human rights observers.

One of the most controversial legal developments in recent times has been the Citizenship (Amendment) Act, 2019 (CAA). This Act marked a significant departure from the secular foundation of Indian citizenship law by introducing religion as a criterion for fast-tracked naturalisation. Under the CAA, migrants belonging to Hindu, Sikh, Buddhist, Jain, Parsi, and Christian communities from Afghanistan, Bangladesh, and Pakistan are eligible for Indian citizenship, provided they arrive before December 31, 2014.¹⁹⁵ Notably, the Act excludes Muslims, raising serious concerns about religious discrimination and violation of the constitutional guarantee of equality under Article 14.¹⁹⁶ Critics argue that the law creates a two-tiered citizenship framework and signals a shift towards an ethno-religious conception of nationhood.¹⁹⁷

¹⁹⁵ Citizenship (Amendment) Act, No. 47 of 2019, INDIA CODE (2019)

¹⁹⁶ Khosla, M., "The Citizenship Debate: Constitutional Concerns with NRC and CAA," *Indian Constitutional Law Review*, Vol. 7 (2020)

¹⁹⁷ Bajpai, A., *Whose Citizenship? CAA-NRC and the Fabric of Indian Democracy*, Context Publishing (2020)

The implications of the CAA become even more contentious when considered alongside the proposed National Register of Citizens (NRC). Initially implemented in Assam to identify illegal immigrants, the NRC process led to the exclusion of nearly 1.9 million people, many of whom were Muslims and lacked documentary proof of ancestry.¹⁹⁸ The potential rollout of the NRC at a national level, when combined with the CAA, is feared to render Muslims stateless, since non-Muslims excluded from the NRC could still access citizenship under the CAA, while Muslims would not have the same safeguard.¹⁹⁹ This convergence of policies has been criticised as discriminatory and antithetical to the inclusive vision of the Indian Constitution.

In addition to citizenship laws, the use of legislations like the Unlawful Activities (Prevention) Act (UAPA) and the National Security Act (NSA) has also raised alarm. These laws, while ostensibly enacted to protect national security, have increasingly been used to suppress dissent and target minority voices. The UAPA, for instance, allows the government to designate individuals as terrorists without a trial and provides for extended detention without the filing of a charge sheet.²⁰⁰ Several reports have shown that Muslims are disproportionately represented among UAPA detainees, with cases often collapsing in courts due to lack of evidence.²⁰¹

The institutional independence of investigative agencies and the judiciary has also come under scrutiny. There is a growing perception that institutions like the National Human Rights Commission (NHRC), the Minorities Commission, and even the courts are often reluctant to intervene decisively in matters where state action is questioned.²⁰² In cases involving communal violence or targeted discrimination, institutional responses have frequently been delayed, muted, or

¹⁹⁸ Guha, R., "India's Dangerous Slide Toward Ethnic Democracy," *Foreign Policy*, Jan. 3, 2020

¹⁹⁹ Amnesty International India, "CAA and NRC: A Recipe for Discrimination," (2020), available at <https://amnesty.org.in/>

²⁰⁰ The Unlawful Activities (Prevention) Act, No. 37 of 1967, INDIA CODE (as amended in 2019)

²⁰¹ Indian Express, "Many Arrested Under UAPA Acquitted for Lack of Evidence," *The Indian Express*, 4 July 2021

²⁰² Bhushan, P., "Institutions of Accountability in Decline," *Economic and Political Weekly*, Vol. 55(11) (2020)

absent. The reluctance to uphold constitutional morality over populist sentiment weakens the democratic fabric and undermines the rule of law.

State governments have further contributed to the regression of rights by enacting laws that restrict personal liberty under the guise of protecting religious or cultural values. Several states, including Uttar Pradesh, Madhya Pradesh, Gujarat, and Karnataka, have passed anti-conversion laws, also known as “love jihad” laws, which prohibit religious conversion through marriage or alleged coercion.²⁰³ Though framed as measures to prevent exploitation, these laws have been selectively enforced against interfaith couples, especially where the man is Muslim, thereby criminalising consensual relationships and infringing on the right to privacy.²⁰⁴

This regression is not merely legislative but also cultural and administrative. The celebration of religious festivals, renaming of public institutions, and revision of school curricula often reflect a majoritarian narrative that excludes or downplays the contributions of minorities.²⁰⁵ Such symbolic acts, while not always illegal, reinforce a political climate in which minorities feel increasingly unwelcome or alienated.

Furthermore, judicial responses to minority rights have been inconsistent. While the Supreme Court has delivered progressive verdicts upholding individual liberty in some cases, such as the decriminalisation of homosexuality in *Navtej Singh Johar v. Union of India*, its approach to issues affecting religious minorities has at times been conservative or deferential to majoritarian interests.²⁰⁶ The Court’s handling of the Ayodhya land dispute, where it acknowledged the illegal demolition of the Babri Masjid but still awarded the disputed land for the construction of a Ram temple, is often cited as a glaring example of this judicial ambiguity.²⁰⁷

²⁰³ The Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance, 2020, No. 21 of 2020

²⁰⁴ Bhatia, G., “Love Jihad Laws and the Assault on Liberty,” *The Hindu*, 16 Dec. 2020

²⁰⁵ Chatterjee, P., “Majoritarian Symbols and the Reshaping of Indian Identity,” *Seminar Magazine*, Issue 731 (2021)

²⁰⁶ *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1

²⁰⁷ *M. Siddiq (D) Thr Lrs v. Mahant Suresh Das*, (2020) 1 SCC 1

Legal regression, therefore, must be understood not only in terms of black-letter law but also through the broader political and institutional context in which laws are interpreted and applied. The weakening of constitutional checks and balances, the silencing of dissent, and the promotion of laws that implicitly or explicitly target minorities constitute a serious threat to India's secular democratic order.

7.3 SOCIO-ECONOMIC MARGINALISATION

The socio-economic condition of minority communities in India, particularly Muslims, continues to reflect deep-seated inequities despite the constitutional promise of equality and affirmative protection. While the Indian Constitution enshrines the principles of justice social, economic, and political these ideals remain largely aspirational for vast sections of minority populations. The intersection of religion and socio-economic status in India often places minorities at a systemic disadvantage, which is exacerbated by discriminatory attitudes, underrepresentation, and policy neglect.

The most authoritative study on the socio-economic status of Muslims remains the Sachar Committee Report (2006), which painted a grim picture of the Muslim community's condition in India.²⁰⁸ According to the report, Muslims lagged behind even Scheduled Castes and Scheduled Tribes on many indicators such as literacy, access to higher education, public sector employment, and income.²⁰⁹ For instance, it found that only about 3% of Muslim children complete education up to graduation, and a disproportionately high percentage are engaged in low-paying, informal sector jobs.²¹⁰ The report concluded that Muslims suffer from a double disadvantage of being both poor and socially marginalised.

Although the Sachar Committee recommendations called for targeted interventions such as establishing an Equal Opportunities Commission and enhancing access to education and credit many of these proposals were either only partially

²⁰⁸ Government of India, *Social, Economic and Educational Status of the Muslim Community of India: A Report* (Sachar Committee Report), Prime Minister's High-Level Committee, 2006

²⁰⁹ *Ibid.*, at 11–13

²¹⁰ *Ibid.*, at 21

implemented or altogether ignored.²¹¹ A follow-up assessment conducted a decade later revealed minimal improvements, suggesting a lack of sustained political will.²¹² The failure to institutionalise mechanisms for minority welfare has left Muslim communities particularly vulnerable to economic shocks, such as those experienced during the COVID-19 pandemic, which disproportionately affected informal sector workers and small-scale traders segments where Muslims are heavily represented.²¹³

This socio-economic marginalisation is further compounded by residential segregation. Studies have shown that Muslims are increasingly being confined to urban ghettos due to discriminatory practices in housing markets.²¹⁴ Landlords often refuse to rent to Muslim tenants, citing “security concerns” or “cultural incompatibility,” resulting in the formation of concentrated minority neighbourhoods.²¹⁵ These areas frequently suffer from poor infrastructure, inadequate sanitation, and limited access to quality education and healthcare, perpetuating a cycle of poverty and exclusion.²¹⁶

Access to credit and financial services remains another major hurdle. The Sachar Committee found that Muslims had limited access to institutional finance and were disproportionately dependent on informal lenders who charged high interest rates.²¹⁷ Despite government schemes aimed at financial inclusion, such as the Pradhan Mantri Jan Dhan Yojana, Muslim-majority areas often experience banking deserts, with few branches and low credit-to-deposit ratios.²¹⁸ This lack of financial infrastructure stymies entrepreneurial growth, exacerbating economic disparities.

²¹¹ Shariff, A., “Post-Sachar Evaluation: Still a Long Way to Go,” *Economic and Political Weekly*, Vol. 45, No. 4 (2011), pp. 45–52

²¹² Zoya Hasan & Mushirul Hasan, *India: Muslims and the Politics of Inequality*, Oxford University Press (2018)

²¹³ Indian Express, “Muslims Hardest Hit by COVID-19 Lockdown: Study,” *The Indian Express*, 5 May 2021

²¹⁴ Bhan, G., “Muslims in Urban India: A Case of Exclusion,” *Environment and Urbanization Asia*, Vol. 3, No. 1 (2012), pp. 129–140

²¹⁵ Thorat, S. & Attewell, P., “The Legacy of Social Exclusion: A Correspondence Study of Job Discrimination in India,” *Economic and Political Weekly*, Vol. 42, No. 41 (2007)

²¹⁶ Basant, R., “Social, Economic and Educational Conditions of Indian Muslims,” *Indian Journal of Industrial Relations*, Vol. 47, No. 4 (2012), pp. 613–620

²¹⁷ Sachar Committee Report, *supra* note 1, at 73–74

²¹⁸ Raza, M., “Muslim Financial Exclusion in India: A Developmental Barrier,” *Social Change*, Vol. 46, No. 2 (2016), pp. 237–245

Educational outcomes among minorities, particularly Muslims, also reflect structural inequality. Enrolment rates in schools are low, and dropout rates especially among Muslim girls are significantly high due to factors like poverty, early marriage, lack of access, and cultural barriers.²¹⁹ Though schemes like the Maulana Azad Education Foundation and scholarships for minority students have been introduced, their reach remains inadequate.²²⁰ Moreover, the communication of educational content in some state syllabi fosters alienation among minority students and discourages cultural inclusion.²²¹

Employment in the public sector and representation in law enforcement, judiciary, and politics are also disproportionately low for minorities. A 2016 analysis by the Ministry of Minority Affairs revealed that Muslims constituted only about 4.8% of employees in central government services, far below their population proportion.²²² The underrepresentation of Muslims in institutions of power not only reflects systemic exclusion but also affects their ability to influence policy and seek justice.

The stigmatization of Muslims as a suspect community further hinders their social and economic mobility. Following communal violence or terrorist incidents, Muslim communities are often subjected to surveillance, arbitrary detentions, and prolonged trials.²²³ This environment of suspicion discourages investment in these neighbourhoods, reduces job opportunities, and limits avenues for upward mobility.²²⁴ The cumulative result is a structural trap of marginalisation, where economic deprivation and social exclusion reinforce each other.

Thus, the socio-economic marginalisation of minorities in India is not merely a consequence of individual failures but a systemic phenomenon rooted in state inaction, discriminatory practices, and societal bias. Addressing this marginalisation requires a multidimensional approach involving inclusive

²¹⁹ Ministry of Minority Affairs, *Report on Educational Empowerment of Minorities*, Government of India (2019)

²²⁰ *Ibid.*, at 22

²²¹ Engineer, A.A., "Communal Bias in School Textbooks," *Economic and Political Weekly*, Vol. 36, No. 4 (2001)

²²² Ministry of Minority Affairs, *Annual Report 2016–17*, Government of India

²²³ Human Rights Watch, "Being Muslim in India: Targeted Discrimination and Violence," HRW Report (2021)

²²⁴ Mander, H., *Partitions of the Heart: Unmaking the Idea of India*, Penguin India (2018)

policymaking, equitable resource distribution, affirmative action, and community empowerment. Without significant structural reform, the constitutional promise of equality for all remains elusive.

7.4. CULTURAL AND IDENTITY THREATS

In a society as diverse and multi-religious as India, the right to preserve and express one's cultural identity is central to the idea of pluralism. The Constitution recognises this by granting minorities the right to conserve their distinct language, script, and culture under Article 29, and the right to establish and administer educational institutions under Article 30.²²⁵ However, in recent years, there has been an intensifying threat to the cultural identities of minority communities particularly Muslims and Christians emanating from both institutional neglect and deliberate majoritarian cultural imposition.

One of the most visible threats to cultural identity arises from symbolic and discursive politics. There has been a concerted effort to redefine Indian identity through the lens of a dominant religious majority, often conflating nationalism with a specific religious tradition.²²⁶ This manifests in the promotion of cultural symbols, public rituals, and historical narratives that prioritise Hindu civilisational heritage while marginalising or omitting minority contributions. The renaming of cities, streets, and institutions to reflect ancient or mythological Hindu names is one example of this symbolic reengineering, which many view as an attempt to erase Muslim historical presence from public consciousness.²²⁷

Religious festivals and dietary practices have also come under scrutiny. There have been instances where religious attire, such as the hijab or skullcap, has been politicised, leading to restrictions in educational institutions or public spaces.²²⁸ In Karnataka, for instance, the ban on wearing the hijab in classrooms in certain government colleges triggered widespread protests and legal battles, highlighting

²²⁵ INDIA CONST. Arts. 29 & 30

²²⁶ Jaffrelot, C., *Modi's India: Hindu Nationalism and the Rise of Ethnic Democracy*, Princeton University Press (2021)

²²⁷ Pandey, G., "The Politics of Renaming: Identity, Memory and Resistance," *Economic and Political Weekly*, Vol. 53, No. 5 (2018)

²²⁸ Ali, A., "Clothing and Identity: The Politics of Hijab in India," *Journal of South Asian Studies*, Vol. 42, No. 2 (2022), pp. 179–195

the fragile space minorities occupy when expressing their identity.²²⁹ Courts have been inconsistent in their responses sometimes upholding institutional autonomy over individual rights, thereby setting precedents that may curb cultural freedom.

Mob violence and vigilantism, often linked to the protection of religious symbols, have also played a role in threatening cultural practices. The phenomenon of “cow protection” vigilantes harassing and assaulting individuals particularly Muslims and Dalits on suspicion of transporting or consuming beef has been widely reported.²³⁰ These acts, though illegal, often enjoy tacit approval from segments of political leadership, and perpetrators are seldom brought to justice. Such targeted violence sends a chilling message to minority communities, discouraging the practice of dietary customs that are integral to their cultural identity.

Another significant area of concern is the restriction on religious conversions, which has a direct bearing on cultural self-expression and spiritual autonomy. Anti-conversion laws in several states are vaguely worded, placing the burden of proof on individuals who convert or those who facilitate conversions.²³¹ While these laws claim to prevent coercion, in practice they often result in the criminalisation of interfaith relationships, missionary activity, and religious propagation especially among Christian communities.²³² These developments shrink the space for religious freedom and cultural diversity, contradicting both domestic constitutional guarantees and international human rights standards.

In sum, cultural and identity threats to minorities in India are not merely episodic but stem from a systematic narrowing of the public and symbolic space they occupy. Whether through policy, education, media, or vigilante violence, the cumulative effect is the erosion of minority cultures, which undermines the pluralistic ethos of the Indian republic. Without deliberate efforts to foster cultural inclusion and

²²⁹ The Indian Express, “Karnataka Hijab Row: A Timeline of Events,” *The Indian Express*, 15 March 2022

²³⁰ Human Rights Watch, “Violent Cow Protection in India: Vigilante Groups Attacking Minorities,” HRW Report, Aug. 2017

²³¹ The Madhya Pradesh Freedom of Religion Act, 2021; The Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act, 2021

²³² Choudhury, N., “Anti-Conversion Laws and the Challenge to Secularism,” *Economic and Political Weekly*, Vol. 56, No. 2 (2021)

protect the diversity of traditions, India risks becoming a polity that celebrates uniformity over unity, and majoritarianism over multiculturalism.



CHAPTER 8: CONCLUSION AND RECOMMENDATIONS

The Indian state's engagement with minority rights has always stood at the complex intersection of democracy, secularism, and pluralism. While the framers of the Constitution embedded strong normative commitments to protect minorities through cultural autonomy, religious freedom, and equality subsequent political developments, socio-economic disparities, and identity-based conflicts have strained the realisation of these ideals. This dissertation has sought to trace the evolution, legal framework, challenges, and emerging threats to minority rights in India. It is clear from this analysis that while the Indian legal and institutional architecture offers a comprehensive framework for the protection of minorities, the implementation often remains deficient, and in some cases, regressive.

Minorities in India whether religious, linguistic, or cultural—face a multitude of challenges ranging from socio-economic marginalisation and political underrepresentation to cultural erasure and institutional discrimination. As Chapters 5 through 7 have demonstrated, these challenges are not simply episodic but reflect deep-rooted structural inequities that have been perpetuated over decades. Whether it is the underrepresentation of Muslims in the bureaucracy and police, the stigmatisation of interfaith marriages, or the marginalisation of minority languages like Urdu, the current socio-political climate demands a recalibration of the state's approach to pluralism.

The constitutional promise of pluralism is being increasingly tested by the rise of majoritarian politics, where the identity and aspirations of minority groups are often portrayed as conflicting with national unity.²³³ Such narratives not only endanger the secular ethos of the Indian republic but also alienate communities who have historically contributed to India's composite culture. In this light, rethinking the framework of minority rights requires both a recommitment to constitutional morality and the political courage to uphold the principles of inclusion and equality, even when they are unpopular or contested.

8.1. KEY OBSERVATIONS

First, legal protections under Articles 25 to 30 of the Indian Constitution remain the cornerstone of minority rights. However, these rights are increasingly being interpreted through a narrow lens, especially by state institutions and courts.²³⁴ The instrumental use of terms such as “public order” and “morality” to restrict minority practices, as seen in recent cases concerning the hijab and religious conversion, reveals the shrinking space for religious and cultural autonomy.²³⁵

Second, the absence of effective implementation mechanisms remains a core barrier. Committees such as the Sachar Committee and Ranganath Misra

²³³ Jaffrelot, C., *Modi's India: Hindu Nationalism and the Rise of Ethnic Democracy*, Princeton University Press (2021)

²³⁴ Faizan Mustafa, “Religious Freedom and Constitutional Morality,” *The Hindu*, 10 May 2022

²³⁵ Karnataka Education Institutions (Prohibition of Religious Dress) Rules, 2022

Commission made crucial recommendations, yet most remain unfulfilled.²³⁶ Policy discontinuity and weak political commitment have further impeded progress.

Third, socio-economic disparities are at the heart of minority exclusion. As noted earlier, Muslims in particular face structural disadvantages in education, employment, housing, and credit access.²³⁷ Without addressing these material conditions, rights on paper cannot translate into real empowerment.

Fourth, the rise in hate speech, communal violence, and vigilantism continues to create an atmosphere of fear and exclusion. Laws to address hate crimes remain inadequate, and institutional responses are often biased or delayed.²³⁸ This not only undermines the rule of law but also fractures the secular social fabric.

Finally, the discourse surrounding minorities is increasingly shaped by political and media rhetoric, which tends to stereotype and vilify certain communities. The instrumentalisation of religious identity for political gain is a dangerous trend that corrodes democratic values.²³⁹

8.2. RECOMMENDATIONS

In light of the above, this dissertation recommends a multi-pronged strategy to uphold and revitalise India's pluralistic ethos:

1. **Strengthen Legal Safeguards:** The scope of constitutional rights for minorities must be interpreted liberally, in alignment with international human rights standards. Legislative reforms should clarify and reinforce protections against hate crimes, religious discrimination, and forced assimilation.
2. **Institutionalise Oversight Mechanisms:** An independent **Equal Opportunity Commission**, as proposed by the Sachar Committee, should be established to

²³⁶ Ranganath Misra Commission Report, National Commission for Religious and Linguistic Minorities, 2007

²³⁷ Sachar Committee Report, Government of India (2006), at 21–32

²³⁸ Human Rights Watch, "Violent Cow Protection in India: Vigilante Groups Attacking Minorities," HRW Report, 2017

²³⁹ Nussbaum, M.C., *The Clash Within: Democracy, Religious Violence, and India's Future*, Harvard University Press (2007)

monitor state compliance with constitutional mandates and ensure the fair implementation of minority welfare schemes.²⁴⁰

3. **Educational and Cultural Inclusion:** School curricula should be re-evaluated to ensure they reflect India's diverse history and cultures. Government support for minority-language education, especially Urdu, must be revitalised through funding and affirmative policies.
4. **Economic Empowerment:** Expand financial inclusion programmes targeting minority communities with tailored initiatives for credit access, skill development, and entrepreneurship. Public sector recruitment should reflect equitable representation of minority communities through proactive outreach and reservation, where feasible.
5. **Community Policing and Judicial Reform:** Law enforcement and judicial systems must be sensitised to avoid communal bias and ensure swift justice in cases of discrimination or violence against minorities. Special training modules and oversight by National and State Minority Commissions can be valuable in this regard.
6. **Civic Engagement and Dialogue:** Promote interfaith dialogue, community partnerships, and civic education to counter communal polarization. Civil society and educational institutions have a key role in fostering mutual respect and understanding among communities.
7. **Political Representation:** Encourage greater minority participation in democratic processes through political outreach, capacity-building, and legal reforms such as ensuring fair constituency delimitation to avoid the ghettoisation of minority votes.

8.3. CONCLUSION

The Indian idea of pluralism is not just a constitutional value but a lived reality rooted in centuries of coexistence. However, the current trends of cultural homogenisation, economic exclusion, and communal polarisation pose serious challenges to this vision. Upholding pluralism in India requires more than symbolic

²⁴⁰ Shariff, A., "Equal Opportunity Commission: Rationale and Design," *Economic and Political Weekly*, Vol. 46, No. 14 (2011), pp. 56–62

gestures it requires structural reforms, inclusive policies, and a shared societal commitment to justice, equality, and fraternity.

Minority rights are not concessions granted to a few they are essential to the moral legitimacy and democratic integrity of the Indian state. As India marches into the future as a global power and the world's largest democracy, it must choose whether it will embrace its pluralistic legacy or succumb to the temptations of uniformity and exclusion. The answer to that choice will shape not only the fate of its minorities but the destiny of the nation itself.



BIBLIOGRAPHY

Books

- Austin, Granville, *The Indian Constitution: Cornerstone of a Nation*, Oxford University Press (1999).
- Bajpai, Rochana, *Debating Difference: Group Rights and Liberal Democracy in India*, Oxford University Press (2011).
- Basu, Durga Das, *Introduction to the Constitution of India*, LexisNexis (2021).
- Bhargava, Rajeev, *Politics and Ethics of the Indian Constitution*, Oxford University Press (2008).
- Jaffrelot, Christophe, *India's Silent Revolution: The Rise of the Lower Castes in North India*, C. Hurst & Co. (2003).

- Jaffrelot, Christophe, *Modi's India: Hindu Nationalism and the Rise of Ethnic Democracy*, Princeton University Press (2021).
- Nussbaum, Martha C., *The Clash Within: Democracy, Religious Violence, and India's Future*, Harvard University Press (2007).
- Noorani, A.G., *Constitutional Questions and Citizens' Rights*, Oxford University Press (2006).
- Rajagopal, Arvind, *Politics After Television: Hindu Nationalism and the Reshaping of the Indian Public*, Cambridge University Press (2001).

Government Reports and Official Documents

- Government of India, *Report of the High-Level Committee on the Social, Economic and Educational Status of the Muslim Community of India* (Sachar Committee Report), Cabinet Secretariat (2006).
- Government of India, *Report of the National Commission for Religious and Linguistic Minorities* (Ranganath Misra Commission Report), Ministry of Minority Affairs (2007).
- Ministry of Education, *All India Survey on Higher Education Report*, Government of India (2021).
- Ministry of Law and Justice, *The Constitution of India* (as amended).

Journal Articles and Periodicals

- Choudhury, Nazia, "Anti-Conversion Laws and the Challenge to Secularism," *Economic and Political Weekly*, Vol. 56, No. 2 (2021).
- Dua, Hans Raj, "Urdu and Its Marginalisation: Linguistic Politics in India," *Indian Linguistics*, Vol. 70, No. 1–4 (2010).
- Mukherjee, Aditya, "History in the Making: The Politics of Curriculum," *Seminar*, Issue 720 (2019).
- Pandey, Gyanendra, "The Politics of Renaming: Identity, Memory and Resistance," *Economic and Political Weekly*, Vol. 53, No. 5 (2018).
- Shariff, Abusaleh, "Equal Opportunity Commission: Rationale and Design," *Economic and Political Weekly*, Vol. 46, No. 14 (2011), pp. 56–62.

Newspaper and Media Sources

- Faizan Mustafa, “Religious Freedom and Constitutional Morality,” *The Hindu*, 10 May 2022.
- *The Indian Express*, “Karnataka Hijab Row: A Timeline of Events,” *The Indian Express*, 15 March 2022.

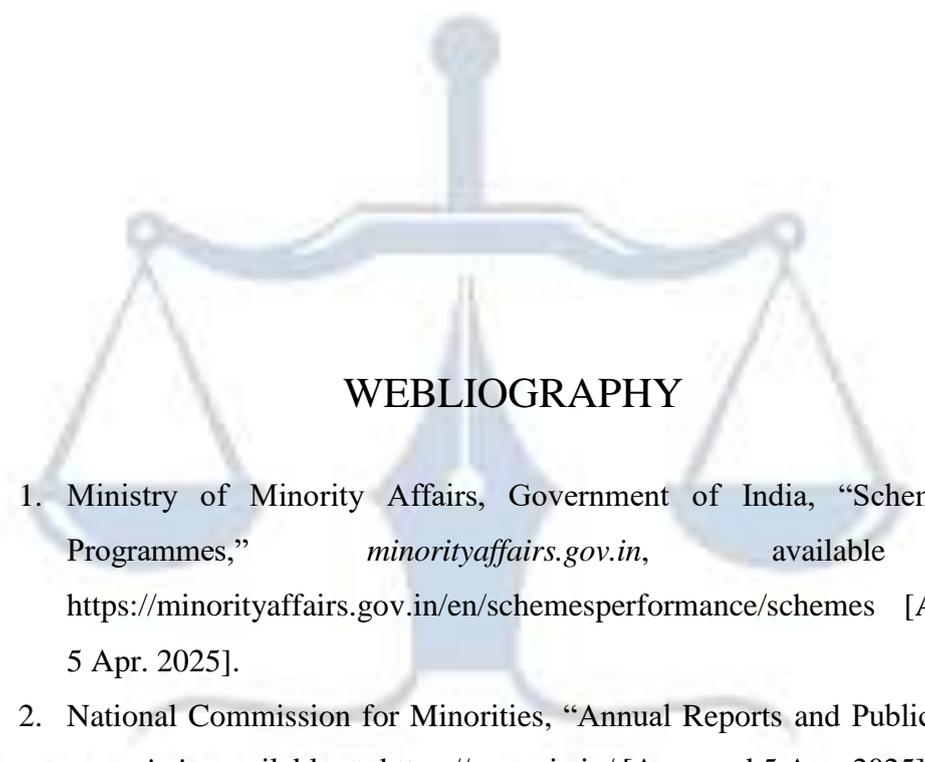
International and NGO Reports

- Human Rights Watch, *Violent Cow Protection in India: Vigilante Groups Attacking Minorities*, HRW Report (2017).
- United Nations Human Rights Council, *Universal Periodic Review – India (Third Cycle)*, UNHRC (2017).

Statutes and Cases

- *The Indian Constitution*, arts. 14, 15, 25–30.
- *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225.
- *Bijoe Emmanuel v. State of Kerala*, (1986) 3 SCC 615.
- *T.M.A. Pai Foundation v. State of Karnataka*, (2002) 8 SCC 481.
- *Indian Young Lawyers Association v. State of Kerala (Sabarimala case)*, (2018) 10 SCC 1.

WHITE BLACK
LEGAL



WEBLIOGRAPHY

1. Ministry of Minority Affairs, Government of India, “Schemes and Programmes,” *minorityaffairs.gov.in*, available at: <https://minorityaffairs.gov.in/en/schemesperformance/schemes> [Accessed 5 Apr. 2025].
2. National Commission for Minorities, “Annual Reports and Publications,” *ncm.nic.in*, available at: <https://ncm.nic.in/> [Accessed 5 Apr. 2025].
3. Office of the United Nations High Commissioner for Human Rights (OHCHR), “India’s Universal Periodic Review – 2022,” *ohchr.org*, available at: <https://www.ohchr.org/en/hr-bodies/upr/in-index> [Accessed 6 Apr. 2025].
4. Human Rights Watch, “India: ‘Cow Protection’ Spurs Vigilante Violence,” *hrw.org*, available at: <https://www.hrw.org/news/2017/04/27/india-cow-protection-spurs-vigilante-violence> [Accessed 6 Apr. 2025].
5. Press Information Bureau, Government of India, “Implementation of the Ranganath Misra Commission Recommendations,” *pib.gov.in*, available at:

- <https://pib.gov.in/PressReleasePage.aspx?PRID=1609654> [Accessed 6 Apr. 2025].
6. Election Commission of India, “Statistical Reports of Lok Sabha Elections,” *eci.gov.in*, available at: <https://eci.gov.in/statistical-report/statistical-reports/> [Accessed 6 Apr. 2025].
 7. United Nations Educational, Scientific and Cultural Organization (UNESCO), “World Report on Cultural Diversity 2023,” *unesco.org*, available at: <https://en.unesco.org/interculturaldialogue/> [Accessed 5 Apr. 2025].
 8. PRS Legislative Research, “Laws on Religious Freedom and Anti-Conversion,” *prsindia.org*, available at: <https://prsindia.org/policy/vital-stats/state-laws-on-religious-conversion> [Accessed 5 Apr. 2025].
 9. National Human Rights Commission of India, “Minority Rights and Human Dignity,” *nhrc.nic.in*, available at: <https://nhrc.nic.in/> [Accessed 6 Apr. 2025].
 10. United Nations Special Rapporteur on Minority Issues, “Reports on Minority Rights,” *ohchr.org*, available at: <https://www.ohchr.org/en/special-procedures/sr-minority-issues> [Accessed 5 Apr. 2025].

WHITE BLACK
LEGAL