

## CHAPTER- I

### INTRODUCTION

The term 'Minority Rights' embodies two separate concepts: first, normal individual rights as applied to members of racial, ethnic, class, religious, linguistic or sexual minorities and second, collective rights accorded to minority groups. The term may also apply simply to individual rights of anyone who is not part of a majority.

The Oxford Dictionary defines 'Minority' as a "smaller number or part; a number or part representing less than half of the whole; a relatively small group of people, differing from others in race, religion, language or political persuasion". A special Subcommittee on the Protection of Minority Rights appointed by the United Nations Human Rights Commission in 1946 defined the 'minority' as those "non-dominant groups in a population which possess a wish to preserve stable ethnic, religious and linguistic traditions or characteristics markedly different from those of the rest of the population."

The word 'minority' liberally interpreted is interchangeable with subordinated and oppressed classes/segments. Asbjorn Elder in the Report of the Sub-Commission on the Prevention of Discrimination and Protection of the Minorities gave a working definition as to who constitutes minority:<sup>1</sup>

*A minority is any group of persons resident within a sovereign state which constitutes less than half of the population of the national society and whose members share a common characteristic of ethnic, religion or linguistic nature that distinguish them from the rest of the population.*

These definitions almost emphasize either upon certain common characteristics present among the members of the group which serve as the mark of distinction and such objective test and it is only in some cases that the factor of relationship between the dominant and the non-dominant group is regarded as the main determination of minority status which in turn at least in some cases render relative numbers in and out of the group concerned as irrelevant for definitional purpose. Consciousness of the difference with the majority on the

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<sup>1</sup> United Nations Commission On Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, 45<sup>th</sup> Session Report, E/CN. Sub. 2/1993/34, para 27, 29 (1993).

basis of certain characteristics is therefore considered yet another distinguishing mark which may at times seem to be vague and uncertain.

India is a country that has not only religious but also linguistic and cultural diversity. It is among the most diverse societies in the world having people from all the major religions. Although the Hindus constitute an overwhelming majority, but there are also a considerable number of Muslims, Christians, Parsis, Buddhist and Jains. Thus, in India religious diversity is coupled with linguistic diversity.

The unique diversity which once India boasted of sadly became the decisive force which threatened the unity of country when the Constitution of India was framed. Those who framed the constitution were conscious of stupendous task of converting a traditional society stratified into numerous social groups bound by the usages and conventions prevailing in them and owing allegiance to them into one untied political community.<sup>2</sup> The Preamble of the Constitution of India sets up a sovereign, social, secular, democratic, republic, the assumption of which is a united political community, assures to every individual liberty of thought, expression, belief, faith, worship, equality of status and of opportunity, promoting through such liberty and equality, fraternity amongst all ultimately leading to the unity of all groups. Though the majority party runs the government and political power is distributed among them, yet the political and social rights are guaranteed to all the citizens. The purpose is to assure the members of the minority community that they do not suffer from the whims and caprices of the majority. It also aims to provide the members of the minority community a sense of belongingness. Therefore, the Constitution provides not only basic rights to the minorities but also such rights as would help them conserve their religion, culture, language and socio-economic status.

Coming to the core issue of the rights given to the minorities under the Indian Constitution which uses the word 'minority' in Articles 29, 30, 350A and 350B, but does not define it anywhere. Article 29 has the word "minorities" in its marginal heading but speaks of "*any sections of citizens ... having a distinct language, script or culture*". This may be a whole community generally seen as a minority or a group within a majority community. Article 30 speaks specifically of two categories of minorities – religious and linguistic. The remaining two Articles – 350A and 350B – relate to linguistic minorities only. In common parlance, the expression "minority" means a group comprising less than half of the population and

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<sup>2</sup> Mohd. Imam (ed.), *Minorities in Indian Democracy* 53 (N.M. Tripathi, Bombay, 1972).

differing from others, especially the predominant section, in race, religion, traditions, culture and language, etc.

The present work covers almost all the rights of minorities given in the Constitution of India, ranging from the need of minority rights to the Constituent Assembly debates in addition to the constitution scheme related to the rights of minorities along with the judicial decisions and interpretations relating to same.

Various High Courts and the Supreme Court have also interpreted many other rights of the minorities, though they are not directly related to them and come under common domain and not under specific domain, but courts have interpreted these rights so far as they infringe on the religious minorities. The most important rights come under the common domain may illustratively be the freedom of practice or business, freedom of speech and expressions, and freedom of practice of one's religion etc. It also covers anti-conversion laws made by various state legislatures as they sometimes adversely affect the freedom of propagation of faith or religion.<sup>3</sup>

Various religious minorities and their personal laws like marriage, maintenance etc. which are interpreted by Supreme Court and high courts from time to time have also been taken into account. The provisions of the IPC and the Cr. P.C. pointed out by the minority commission in its observation, UN Charter and some other International Instruments, have also been covered in this compilation. Similarly the statutes, both central and state, conferring any right on minorities has also been spelt out. The reports of various commissions relating to the minority rights have been included specifying that the rights of minorities do form part of the compilation, as pointed out by the Commission.

The object of the project is to consolidate all the relevant texts whether it is case laws, reports, statues and other materials which are related to minority rights either directly or indirectly. These rights are put together. Besides, the compilation covers all the important case laws pertaining to specific and general rights of minorities. Not only the text of the important case as required by the commission but also the summaries of the all the cases have been prepared and included in the report so that the reader can have direct access over the

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<sup>3</sup> For details see "A Study of Compatibility of Anti-Conversion Laws With Right to Freedom of Religion in India", Conducted by Indian Law Institute, New Delhi, Submitted to National Commission for Minorities, Govt. of India, New Delhi (2007).

case at a glance. Constituent Assembly debates, constitutional provisions, international instruments, legislations, reports have also been included in the compilation.

The text of all the material was not possible to compile in one volume, therefore, the report is divided into two volumes. The first volumes comprise of various constitutional safeguards available to minorities as well as various state, national and international laws containing provisions for the protection of minorities. It also contains some important points of the reports relating to minority rights and the summaries of high court and Supreme Court cases from 1995 to present. This volume also contains list of cases, full text of Supreme Court and High courts cases and reports. The second volume contains text of relevant portion of Constituent Assembly Reports, relevant provisions of the Constitution of India, full text of specific laws relating to minorities, relevant provisions of general laws and relevant text of international laws relating to the subject. The contents have also been provided to have easy access to the reader to go through particular portion of the compilation.

After interim committee report which had been submitted to the Commission long back and all its observation received in February 2011 so far they are relevant have been covered in this compilation.. However, they are much far beyond the original contract between the Institute and the Commission. Even then, almost all the post demands of the Commission have been fulfilled and accordingly the final report is prepared (as per direction of the Commission).