

CHAPTER- III

LEGISLATIVE FRAMEWORK FOR PROTECTION OF MINORITIES

As we know that our Constitution guarantees full protection to minorities and they cannot be exploited even their strength in legislature is decimal. These constitutional provisions have also been given impetus to ensure rights of minorities by the courts. However, the implementation of these protections is not satisfactory as it is evident from the Sachar Committee Report and some earlier reports. Therefore, National Minority Commission was established through the National Minority Commission Act 1992, in order to give the statutory recognition to the Commission, so that the rights of minorities can be enforced properly and initiative relating to problem of minorities can be taken timely.

A. SPECIFIC LAWS

1. The National Commission for Minority Educational Institutions Act 2004.
2. The National Commission for Minorities Act, 1992.
3. The Karnataka State Minorities Commission Act, 1994.
4. The Andhra Pradesh State Minorities Commission Act, 1998.
5. The Manipur State Minorities Commission Act, 2010.
6. The Maharashtra State Minorities Commission Act, 2005.
7. The Rajasthan State Commission for Minorities Act, 2001.
8. The Uttar Pradesh Commission for Minorities Act, 1994.
9. The Delhi Minorities Commission Act, 1999.

B. GENERAL LAWS

Besides specific laws for protecting the minority rights, there are various other laws at central as well as state level which contains the provisions for the protection of minorities.

- (i) **The Protection of Civil Rights Act, 1955** is applicable across the board to all cases of untouchability-related offences regardless of religion.

(ii) Indian Penal Code, 1860

Section 153A- “Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony.

(1) Whoever (a) By words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, on grounds of religion, race, place or birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, or (b) Commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities, and which disturbs or is likely to disturb the public tranquility, or (c) Organizes any exercise, movement, drill or other similar activity intending that the participants in such activity shall use or be trained to use criminal force or violence of knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, or participates in such activity intending to use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, against any religious, racial, language or regional group or caste or community and such activity for any reason whatsoever causes or is likely to cause fear or alarm or a feeling of insecurity amongst members of such religious, racial, language or regional group or caste or community, shall be punished with imprisonment which may extend to three years, or with fine, or with both.

Offence committed in place of worship, etc.- (2) Whoever commits an offence specified in sub-section (1) in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.”

Section 153B “Imputations, assertions prejudicial to national-integration- (1) Whoever, by words either spoken or written or by signs or by visible representations or otherwise, -(a) Makes or publishes any imputation that any class of persons cannot, by reason or their being members of any religious, racial, language or regional group or caste or community, bear true faith and allegiance to Constitution of India as by law established or uphold the sovereignty and integrity of India, or (b) Asserts, counsels, advises, propagates or publishes that any class

or persons shall, by reason of their being members of any religious, racial, language or regional group or caste or community, be denied or deprived of their rights as citizens of India or (c) Makes or publishes any assertion, counsel, plea or appeal concerning the obligation of any class of persons, by reason of their being members of any religious, racial, language or regional group or caste of community, and such assertion, counsel, pleas or appeal causes or is likely to cause disharmony or feelings of enmity or hatred or ill-will between such members and other persons, Shall be punished with imprisonment which may extend to three years, or with fine, or with both. (2) Whoever commits an offence specified in sub-section (1), in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall be liable to fine.”

Section 295- “Whoever destroys, damages or defiles any place of worship, or any object held sacred by any class of persons with the intention of thereby insulting the religion of any class of persons or with the knowledge that any class of persons is likely to consider such destruction, damage or defilement as a insult to their religion, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”

Section 295A- “Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of citizens of India, by words, either spoken or written, or by signs or by visible representations or otherwise, insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.”

Section 296- “Whoever voluntarily causes disturbance to any assembly lawfully engaged in the performance of religious worship, or religious ceremonies, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.”

Section 297- “Whoever, with the intention of wounding the feelings of any person, or of insulting the religion of any person, or with the knowledge that the feelings of any person are likely to be wounded, or that the religion or any person is likely to be insulted thereby, Commits any trespass in any place of worship, or any place set apart from the performance of funeral rites or as a depository for the remains of the dead, or offers any indignity to any

human corpse, or causes disturbance to any persons assembled for the performance of funeral ceremonies, Shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.”

Section 298- “Whoever, with the deliberate intention of wounding the religious feelings of any person, utters any word or makes any sound in the hearing of that person or makes any gesture in the sight of that person or places any object in the sight of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.”

Section 505(2)- “ Statements creating or promoting enmity, hatred or ill-will between classes: - Whoever makes, publishes or circulates any statement or report containing rumour or alarming news with intent to create or promote, or which is likely to create or promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, shall be punished with imprisonment which may extend to three years, or with fine, or with both.”

Section 505(3)- “Offence under sub-section (2) committed in place of worship, etc.-whoever commits an offence specified in sub-section (2) in any place of worship or in an assembly engaged in the performance or religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.”

(iii) Code of Criminal Procedure, 1973

Under **Sections 125-128** of the CrPC of 1973, the neglected wives, divorced wives, children and parents can seek maintenance orders against their husbands, former husbands, parents and children respectively. This is an anti-vagrancy measure and the relief so ordered is to be eventually adjusted by the competent civil court against due to the claimants under the law applicable.

(iv) Army Act, 1950

Section 64 “ Any person subject to this Act who commits any of the following offences,... by defiling any place of worship, or otherwise, intentionally insults the religion or wounds the

religious feelings of any person; ... be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.”

(v) Air Force Act, 1950

Section 66“ Any person subject to this Act who commits any of the following offences,... by defiling any place of worship, or otherwise, intentionally insults the religion or wounds the religious feelings of any person; ... be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.”

(vi) Anti-conversion Laws

In India, like most other traditional societies, religion has been the foundation of society and whole of its machinery throughout all ages in the process of her transition to a democratic nation. India is not only a place of birth of many religions but also has provided shelter for various other religions that came from different parts of the world. All these religions and their followers have major role in building the modern secular India where an individual as per the Constitutional guarantee is free to profess, practice and propagate religion subject to public order, morality and health.⁴ Religion has been a volatile subject in secular India. The aggressive measures adopted by certain religious groups for proselytization of their faith have thrown challenges to our polity. The issue of conversion from one religion to another- one of the major controversies associated with freedom of religion leads to conflict of inter religious groups and followers thereof. In India many states have enacted laws to regulate conversion from one religion to another and to prohibit conversion through means reprehensible to conscience of the community in order to preserve public order and to protect the larger interest of society.

The ruling of the apex court in *Rev. Stainislaus v. State of Madhya Pradesh*⁵, has answered two important questions raised against the then existing anti-conversion laws enacted by Orissa and Madhaya Pradesh state legislatures. Important principles enunciated by the court are: (i) Right to propagate religion does not include right to convert another person to one's own religion, but to transmit or spread one's religion by an exposition of its tenets, (ii) article 25(1) guarantees freedom of conscience to every citizen, and not merely to the followers of one particular religion, and that in turn, postulates that there is no fundamental right to

⁴ Article 25 of the Constitution of India.

⁵ AIR1977SC908.

convert another person to one's own religion because if a person purposely undertakes the conversion of another person to his religion, as distinguished from his efforts to transmit or spread the tenets of his religion, that would impinge on the freedom of conscience guaranteed to all citizens of the country alike,(iii) as regards legislative competence, the court observed that the impugned Acts fall within the purview of the Entry I of List II of the Seventh Schedule as they are meant to avoid disturbances to the public order by prohibiting conversion from one religion to another in a manner reprehensible to the conscience of the community.⁶

(C) INTERNATIONAL LAWS RELATING TO MINORITY RIGHTS

(i) Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 1992

Article 1

1. States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity.
2. States shall adopt appropriate legislative and other measures to achieve those ends.

Article 2

1. Persons belonging to national or ethnic, religious and linguistic minorities (hereinafter referred to as persons belonging to minorities) have the right to enjoy their own culture, to profess and practise their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination.
2. Persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic and public life.
3. Persons belonging to minorities have the right to participate effectively in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live, in a manner not incompatible with national legislation.

⁶ 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.

4. Persons belonging to minorities have the right to establish and maintain their own associations.

5. Persons belonging to minorities have the right to establish and maintain, without any discrimination, free and peaceful contacts with other members of their group and with persons belonging to other minorities, as well as contacts across frontiers with citizens of other States to whom they are related by national or ethnic, religious or linguistic ties.

Article 3

1. Persons belonging to minorities may exercise their rights, including those set forth in the present Declaration, individually as well as in community with other members of their group, without any discrimination.

2. No disadvantage shall result for any person belonging to a minority as the consequence of the exercise or non-exercise of the rights set forth in the present Declaration.

Article 4

1. States shall take measures where required to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law.

2. States shall take measures to create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs, except where specific practices are in violation of national law and contrary to international standards.

3. States should take appropriate measures so that, wherever possible, persons belonging to minorities may have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue.

4. States should, where appropriate, take measures in the field of education, in order to encourage knowledge of the history, traditions, language and culture of the minorities existing within their territory. Persons belonging to minorities should have adequate opportunities to gain knowledge of the society as a whole.

5. States should consider appropriate measures so that persons belonging to minorities may participate fully in the economic progress and development in their country.

Article 5

1. National policies and programmes shall be planned and implemented with due regard for the legitimate interests of persons belonging to minorities.

2. Programmes of cooperation and assistance among States should be planned and implemented with due regard for the legitimate interests of persons belonging to minorities.

Article 6

States should cooperate on questions relating to persons belonging to minorities, *inter alia*, exchanging information and experiences, in order to promote mutual understanding and confidence.

Article 7

States should cooperate in order to promote respect for the rights set forth in the present Declaration.

Article 8

1. Nothing in the present Declaration shall prevent the fulfilment of international obligations of States in relation to persons belonging to minorities. In particular, States shall fulfil in good faith the obligations and commitments they have assumed under international treaties and agreements to which they are parties.

2. The exercise of the rights set forth in the present Declaration shall not prejudice the enjoyment by all persons of universally recognized human rights and fundamental freedoms.

3. Measures taken by States to ensure the effective enjoyment of the rights set forth in the present Declaration shall not *prima facie* be considered contrary to the principle of equality contained in the Universal Declaration of Human Rights.

4. Nothing in the present Declaration may be construed as permitting any activity contrary to the purposes and principles of the United Nations, including sovereign equality, territorial integrity and political independence of States.

(ii) United Nations Declaration On Human Rights, 1948

Article 1

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

(iii) International Convention On Civil And Political Rights, 1966

Article 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Article 20

...Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

Article 24

Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State...

Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

(iv) International Covenant on Economic, Social and Cultural Rights, 1966

Article 2

The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status...

(v) International Convention on the Elimination of All Forms of Racial Discrimination, 1965.

Article 5

States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the... right to freedom of thought, conscience and religion...

(vi) United Nations Declarations On Religious Intolerance, 1965.

Article 1 reaffirms that freedom of thought, conscience, religion and belief is a human right derived from the inherent dignity of the human person and guaranteed to all without discrimination;

Article 2 urges States to ensure that their constitutional and legal systems provide adequate and effective guarantees of freedom of thought, conscience, religion and belief to all without discrimination, including the provision of effective remedies in cases where the right to freedom of religion or belief is violated;

Article 3 urges States to ensure, in particular, that no one within their jurisdiction is, because of their religion or belief, deprived of the right to life or the right to liberty and security of person, or is subjected to torture or arbitrary arrest or detention;

Article 4 condemns all instances of hatred, intolerance and acts of violence, intimidation and coercion motivated by religious extremism and intolerance of religion or belief; and *condemns* all instances of hatred, intolerance and acts of violence, intimidation and coercion motivated by religious extremism and intolerance of religion or belief;

Article 5 urges States, in conformity with international standards of human rights, to take all necessary action to prevent such instances, to take all appropriate measures to combat hatred, intolerance and acts of violence, intimidation and coercion motivated by religious extremism and to encourage understanding, tolerance and respect in matters relating to freedom of religion or belief;

Article 6 recognizes that legislation alone is not enough to prevent violations of human rights, including the right to freedom of religion or belief,

Article 7 emphasizes that, as underlined by the Human Rights Committee, restrictions on the freedom to manifest religion or belief are permitted only if limitations are prescribed by law, are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others, and are applied in a manner that does not vitiate the right to freedom of thought, conscience and religion;

Article 8 urges States to ensure that, in the course of their official duties, members of law enforcement bodies, civil servants, educators and other public officials respect different religions and beliefs and do not discriminate against persons professing other religions or beliefs;

Article 9 calls upon all States to recognize, as provided in the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, the right of all persons to worship or assemble in connection with a religion or belief, and to establish and maintain places for those purposes;

Article 10 expresses its grave concern at any attack upon religious places, sites and shrines, and calls upon all States, in accordance with their national legislation and in conformity with

international human rights standards, to exert utmost efforts to ensure that such places, sites and shrines are fully respected and protected;

Article 11 recognizes that the exercise of tolerance and non-discrimination by persons and groups is necessary for the full realization of the aims of the Declaration;

Article 12 considers it desirable to enhance the promotional and public information activities of the United Nations in matters relating to freedom of religion or belief and to ensure that appropriate measures are taken to this end, including the dissemination, as a matter of high priority, of the text of the Declaration by United Nations information centres, as well as by other interested bodies;

Article 16 recommends that the promotion and protection of the right to freedom of thought, conscience, religion and belief be given appropriate priority in the work of the United Nations programme of advisory services in the field of human rights, including with regard to the drafting of legal texts in conformity with international instruments on human rights and taking into account the provisions of the Declaration;