



# Rights and Minorities: The Case of Indian Muslims

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## ABSTRACT

Rights are inalienable in nature. They are the basic entitlement of every citizen in democracy. They guarantee the minimum basic need of an individual in a society. Rights have been recognized fundamental to every human being for their survival in society as well as in a nation. It is the guarantee of the State to provide and safeguard the rights of its citizens. Rights have been well documented in several International forums as well as in the constitution of countries. Minorities occupy a special place in any country of the world. India as a country believes in unity and diversity and boasts about its religious pluralism. Indian constitution has provided several safeguards for the minorities to bring them into mainstream and to protect them from arbitrary discrimination of the majority. Muslims in India are recognized as the largest minority and their strength is more than the total strength of all other minorities in the country. Despite such a sizeable share of the population, they are largely backward and poor in all aspects of development. This paper discusses the concepts of rights recognized at International forums as well as in the constitution of India, and discusses the prevailing condition of Indian Muslims despite all the safeguards and rights available to them.

**Keywords:** Rights, India, constitution, Muslims, development

Rights are regarded as established pillars of society and culture and fundamental to a civilization. They are inherent among individuals, and cannot be taken away. Rights are regarded as claims, for which an individual is entitled as being a member of society. Although the rights were first defined by the Scottish scholar John Locke (1632-1704) as "an absolute moral claim and entitlements to life, liberty and property" the best-known expression of human rights is in the Virginia Declaration of Rights in 1776 which proclaims that "All men are by nature equally free and independent and have certain inherent rights, of which, when they enter a state of society, they cannot, by any compact, deprive or divest their posterity." Loudon defined rights as "Rights are permissions rather than requirements. Rights tell us what the bearer is at liberty to do."

Weinar (2015) described as "Rights are entitlements (not) to perform certain actions, or (not) to be in certain states; or entitlements that others (not) perform certain actions or (not) be in certain states."

Rights sanctions, what actions are permissible and which institutions are just in a society. To accept a set of rights, is to approve the distribution of freedom and authority among individuals, and so to endorse a certain view of what may, must, and must not be done in a society.

Minorities must have a say in the major decisions, that affect their lives is something essential for the protection of their rights. A number of International standards argue right of minorities to participation like, 'United Nations Declaration on the Rights of Minorities' of 1992 and the 'Council of Europe's Framework Convention for the Protection of National Minorities' 1998. Last two decades have witnessed marked shift towards a more active engagement of the state in facilitating the development of minority cultures and promoting a political role for minorities. Notions of identity, emphasizing states' responsibility to promote minorities' culture, language and religion, and the rights of minorities to public participation, are some

of the features which provide understanding of the protection of minorities in recent times.

Democracy constitutes several values in it like, tolerance, pluralism, freedom of expression, participation and accountability. The recognition of minority rights as an essential component of a democratic society. In contemporary times, the framework of rights is measures the social and political progress, including the situation of minorities.

The Universal Declaration of Human Rights (UDHR) protects the rights of minorities: *“freely to participate in the cultural life of the community to enjoy the arts and to share in the scientific advancement and its benefits”*. (Article 27)

Since 1964, the United Nations has discussed mainly the rights of women and minorities through various specific treaties like the ‘International Convention on the Elimination of All Forms of Racial Discrimination’ (1965); ‘the Convention on the Elimination of All Forms of Discrimination Against Women’ (1979); ‘the Convention on the Rights of the Child’ (1989), and ‘the Convention on the Rights of Persons with Disabilities’ (2007). These specifically addressed treaties allow international norms to address unique problems of particular groups like women, minorities and disables.

Minorities are often the victims of violence by the majority. Human right norms direct the government to protect the minorities from any kind of violence in the hands of majority. ‘International Covenant on Civil and Political Rights’ (ICCPR) protects the right of minorities to take part in government or in the conduct of public affairs. Under the UDHR (Universal Declaration of Human Rights) and the Covenants, members of minorities are equally entitled for the rights as members of the majority group. In order to ensure effective participation of minorities, it is essential that special procedures, institutions and arrangements must be established through minorities can make decisions, exercise legislative and administrative powers, and develop their culture.

Article 27 of the ICCPR reads:

‘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 own religion, or to use their own language.’

A broader approach in the interest is reflected in the UN Declaration on the ‘Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities’ adopted by the UN General Assembly in 1992. The Declaration emphasizes particularly upon the right of minorities ‘to participate effectively in cultural, religious, social, economic and public life’ (Article 2.2). ‘They also have the right to participate in decisions on national and regional levels concerning the minority to which they belong or where they live’ (Article 2.3). Three specific participation rights are guaranteed to the minorities as per the declaration — “the right to maintain their own associations (Article 2.4), to maintain contacts with members of other (minorities and citizens of other states to whom they are related by national or ethnic, religious or linguistic ties (Article 2.5), and the right to participate fully in economic progress and development” (Article 4.5)

### **Constitutional Rights and Safeguards Provided to the Minorities in India**

In India, Rights of Minorities have been safeguarded through several constitutional arrangements and laws mentioned in the constitution. These are:

**1. Constitutional safeguards for religious and linguistic minorities of India:** Though the Constitution of India does not define the word ‘Minority’ and only refers to ‘Minorities’ and speaks of those ‘based on religion or language’, the rights of the minorities have been spelt out in the Constitution in detail:

**2. ‘Common Domain’ and ‘Separate Domain’ of rights of minorities provided in the Constitution:** The Constitution provides two sets of rights of minorities which can be placed in ‘common domain’ and ‘separate domain’. The rights which fall in the ‘common domain’ are those which are applicable to all the citizens of our country. The rights which fall in the ‘separate domain’ are those which are applicable to the minorities only and these are reserved to protect their identity. The distinction between ‘common domain’ and ‘separate domain’ and their combination have been well kept and protected in the Constitution. The Preamble to the Constitution declares the State to be ‘Secular’

and this is a special relevance for the Religious Minorities. Equally relevant for them, especially, is the declaration of the Constitution in its Preamble that all citizens of India are to be secured 'liberty of thought, expression, belief, faith and worship and 'equality of status and of opportunity.'

### 2.1 'Common Domain', the Directive Principles of State Policy – Part IV of the Constitution

The Constitution has made provisions for the Fundamental Rights in Part III, which the State has to comply with and these are also judicially enforceable. There is another set of non-justifiable rights stated in Part IV, which are connected with social and economic rights of the people. These rights are known as 'Directive Principles of State Policy', which legally are not binding upon the State, but are "fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws" (Article 37). Part IV of the Constitution of India, containing non-justifiable Directive Principles of State Policy, includes the following provisions having significant implications for the Minorities:

- (i) Obligation of the State 'to endeavor to eliminate inequalities in status, facilities and opportunities' amongst individuals and groups of people residing in different areas or engaged in different vocations; [Article 38 (2)]
- (ii) Obligation of State 'to promote with special care' the educational and economic interests of 'the weaker sections of the people' (besides Scheduled Castes and Scheduled Tribes); [Article 46] and

### 2.2 'Common Domain', the Fundamental Duties – Part IVA of the Constitution:

Part IVA of the Constitution, relating to Fundamental Duties as provided in Article 51 A applies in full to all citizens, including those belonging to Minorities. Article 51A which is of special relevance for the Minorities stipulates as under:

- (i) Citizens' duty to promote harmony and the spirit of common brotherhood amongst all the people of India 'transcending religious, linguistic and regional or sectional diversities; and
- (ii) Citizens' duty to value and preserve the rich heritage of our composite culture.'

**2.3 'Common Domain', the Fundamental Rights – Part III of the Constitution:** The Constitution has provided a definite space for both the 'domains' i.e. 'common' as well as 'separate'. In Part III of the Constitution, which deals with the Fundamental Rights, is divided into two parts viz. (a) the rights which fall in the 'common domain' and (b) the rights which go to the 'separate domain'. In the 'common domain', the following fundamental rights and freedoms are covered:

- (i) People's right to 'equality before the law' and 'equal protection of the laws'; [Article 14]
- (ii) Prohibition of discrimination against citizens on grounds of religion, race, caste, sex or place of birth; [Article 15 (1) & (2)]
- (iii) Authority of State to make 'any special provision for the advancement of any socially and educationally backward classes of citizens' (besides the Scheduled Castes and Scheduled Tribes); [Article 15 (4)]
- (iv) Citizens' right to 'equality of opportunity' in matters relating to employment or appointment to any office under the State – and prohibition in this regard of discrimination on grounds of religion, race, caste, sex or place of birth; [Article 16(1)&(2)]
- (v) Authority of State to make 'any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State; [Article 16(4)]
- (vi) People's freedom of conscience and right to freely profess, practice and propagate religion – subject to public order, morality and other Fundamental Rights; [Article 25(1)]
- (vii) Right of 'every religious denomination or any section thereof – subject to public order, morality and health – to establish and maintain institutions for religious and charitable purposes, 'manage its own affairs in matters of religion', and own and acquire movable immovable property and administer it 'in accordance with law'; [Article 26]
- (viii) Prohibition against compelling any person to pay taxes for promotion of any particular religion'; [Article 27]

- (ix) People's 'freedom as to attendance at religious instruction or religious worship in educational institutions' wholly maintained, recognized, or aided by the State. [Article 28]

**2.4 'Separate Domain' of Minority Rights:** The Minority Rights provided in the Constitution which fall in the category of 'Separate Domain' are as under:

- (i) Right of 'any section of the citizens' to 'conserve' its 'distinct language, script or culture'; [Article 29(1)]
- (ii) Restriction on denial of admission to any citizen, to any educational institution maintained or aided by the State, 'on grounds only of religion, race, caste, language or any of them'; [Article 29(2)]
- (iii) Right of all Religious and Linguistic Minorities to establish and administer educational institutions of their choice; [Article 30(1)]
- (iv) Freedom of Minority-managed educational institutions from discrimination in the matter of receiving aid from the State; [Article 30(2)]
- (v) Special provision relating to the language spoken by a section of the population of any State; [Article 347]
- (vi) Provision for facilities for instruction in mother-tongue at primary stage; [Article 350 A]
- (vii) Provision for a Special Officer for Linguistic Minorities and his duties; and [Article 350 B]
- (viii) Sikh community's right of 'wearing and carrying of kirpans; [Article 25 Explanation 1]

## DISCUSSION

The above literature suggests that Minorities right have been recognized as an important concept on the International platforms as well as in Indian constitution. Despite the availability of number of provisions for safeguarding the rights of Minorities in Indian constitution, Muslims in India which are the largest minority group in the country constituting 14.2% population of the nation (census 2011), are still backward, marginalized and poor. They have a deep sense of discrimination and alienation against the government. They feel, that they have been denied their fundamental right

of equality in matter of education and public employment. Sachar Committee (2006) pointed that Muslims have a widespread perception of deprivation in India. It added that Muslims in India "live with an inferiority complex as every bearded man is considered an ISI agent. The perception of being discriminated against is overpowering amongst a wide cross section of Muslims resulting in collective alienation." There are very few above primary level school and colleges in Muslim localities, as the Sachar committee mentioned "There is a clear and significant inverse association between the proportion of the Muslim population and the availability of educational infrastructure in small villages". This has adversely affected their participation in education, especially in higher education. Muslims have a low literacy rate than the national average. Drop-out rate among Muslims is highest than all religious groups, in each level of education (primary, secondary and higher secondary). The disparity in graduation attainment rate is increasing between Muslims and all other religious groups since 1970s. Muslims have a very low participation in higher education (one Muslim student is found in premier colleges of the country among twenty five students in graduation and one out of fifty in post-graduation). Unemployment rate among Muslims graduate is highest than all socio-religious group in India. Muslims have lowest probability of completing graduation degree against all socio-religious group and they have very low anticipation of outcome from education.

Muslims are largely engaged in self-employment activities, and they are badly represented in salaried jobs (public and private sector). Participation of Muslims in security services is very low; they are badly represented in administrative jobs of the country e.g. 3% in the IAS, 1.8% in the IFS and 4% in the IPS (Sachar Committee, 2006). The participation of Muslims in managerial job is again very low. Muslim concentrated villages lacks social and physical infrastructure. There are scarcity of roads and local bus stops in Muslim concentrated areas. "The concentration of Muslims in states lacking infrastructural facilities implies that a large proportion of the Community is without access to basic services. Compared to the Muslim majority areas, the areas inhabiting fewer Muslims had better roads, sewage and drainage, and water supply

facilities. Incidence of poverty among Muslims in urban areas is the highest. Poor Muslims consume only 75% of the poverty line expenditure on an average which is lowest of the socio-religious communities. Share of Muslims in employment in various departments is abysmally low at all levels. Representation of Muslims is very low in the Universities and in Banks. Representation of Muslims in the Education Department is just 6.5% and 7.3% in the Home department. Overall the share of Muslims as police constables is only about 6%. The representation of Muslims in the Health Departments is just about 4.4%. The representation of Muslims in the Transport Department is just 6.5%.

The presence and participation of Muslims in the Judiciary has been a major point of concern." Thus the committee observed that "there is considerable variation in the conditions of Muslims across states, the Community exhibits deficits and deprivation in practically all dimensions of development." The above data on the condition of Muslims in India revealed that Muslims are marginalized in every sphere of life and development in comparison to other religious groups in India. Indian Constitution advocates for the equality of its citizen in the eyes of law, and allows State to make special provisions for those groups, who are backward and need special favour of the state. Keeping in mind the data regarding the backwardness of Muslims on almost all fronts of life, it can be argued that, they have been not guaranteed equal treatment by the state in matters of development, be it education, infrastructure, and employment. Khan (2011) stated There is no denying the utter failure of the state in the largest democracy in the world to provide a conducive environment for growth and development to its largest minority." They are socially marginalized, economically deprived, and educationally backward. They have been treated as unequal citizens by the State. Muslims have a high sense of discrimination and alienation against the State, which is not a healthy sign for a pluralistic society like India.

India is country which boasts on its religious diversity and unity in diversity, and therefore it is the duty of the State to guarantee equality of opportunities for Muslims in every sphere of life and development and make special provisions to bring them at par with other religious groups in the

country. "There has been a serious lack of attention to the condition of Muslim community by various actors, but more so by the State over the last six decades" (Khan 2011). Without bringing such a sizeable population of the country, India will never able to compete with the developed countries of the world. There is need of bringing Muslims into the mainstream development, so that their capabilities can be harnessed for the national development as well as for the development of the community on every front of life.

## CONCLUSION

From the above discussion, it has been clear that Muslim – the largest minority group of India are backward on all front of life and development. They have been clearly denied equal treatment by the state in matters of education, employment and development. The Indian state has failed in providing them the constitutional safeguards, which is enshrined in Indian constitution for their protection against discrimination and alienation. The Indian state has failed in treating Muslims as the equal citizen of the country, and they have been continuously neglected by the state in matters of development. The underdevelopment of Muslims in India is clearly a violation of their rights, which has been recognized on different International forums as well as in Indian Constitution. It is the duty of the Indian State to address the socio-economic, educational and developmental needs of Muslims, either through special provisions or through proper implementation of existing provisions available in the Constitution. They must be extended those rights, which they are entitled for and those are inalienable in nature, it's a great injustice on the part of State that Muslims in India are denied their fundamental rights.

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