



## PROTECTION OF MINORITIES: AN OVERVIEW

**Ms. Shaikh T. Y.**

I/c. Principal,  
M.S.S. Law College, Jalna (MS)

### **Introduction:**

Protection for minorities refers to legal, social, and institutional measures designed to ensure that individuals and groups who differ from the majority population, due to ethnicity, religion, language, culture, gender identity, or other characteristics, can enjoy equal rights, dignity, and security

The Population of India has several groups based on religion, language, caste, or backwardness. The scheduled castes, Scheduled Tribes, Anglo-Indians, Muslims, Parsis, Sikhs, and Indian Christians, etc. are the different groups of minorities.

The framers of the Indian Constitution took care to safeguard the interests of minorities. Several provisions have been incorporated in the constitution for safeguarding the social, economic, and educational interests of minority groups. The policy of the constitution is to do away with caste and strive to create a casteless society.

On the eve of independence, Mahatma Gandhi realized that India could never grow into a Nation unless these lower castes were lifted up to the level of the rest of the community.

The act of drafting the constitution was assigned to Dr. Ambedkar so that he could incorporate into the constitution such safeguards as might redeem the inferior castes from their pre-constitution disabilities and also enable them to have adequate opportunities for their economic and educational advancement.

The constitution makes various provisions for the protection of the interests of the scheduled castes and tribes.

Measures for the advancement of the scheduled castes and Tribes are exempted (Art.15(4)) from the general ban against discrimination on the ground of race, caste and the like, contained in Art.15.<sup>1</sup>

If special provisions are made by the state in favour of the members of these Castes and Tribes, other citizens shall not be entitled to impeach the validity of such provisions on the ground that such provisions are discriminatory against them.

Minority protection refers to legal, political, and social measures taken to safeguard the rights and identities of groups that differ from the majority population in terms of ethnicity, language, religion, culture, or other distinguishing features.

### **Definition of Minorities:**

Minorities are communities that are numerically smaller or politically underrepresented in a given society. They may differ by race, religion, language, caste, ethnicity, sexual orientation, or indigenous status.

Minorities refer to groups that are numerically smaller, less powerful, or socially and politically marginalized within a larger population. This includes:

- Ethnic minorities (e.g., Kurds, Tamils)
- Religious minorities (e.g., Christians, Muslims, Jews in some contexts)



- Linguistic minorities (e.g., Catalan speakers in Spain)
- Indigenous peoples
- Gender and sexual minorities (e.g., LGBTQ+ communities)

### **Objectives of Minority Protection**

- Ensure equal rights and freedoms for all citizens.
- Preserve cultural, linguistic, and religious identity.
- Prevent discrimination and marginalization.
- Promote political participation and representation.

### **Legal and Constitutional Provision for Minority Protection**

Legal frameworks are essential for protecting minority groups. These include:

#### National Legal Protections:

- Anti-discrimination laws
- Language rights (e.g., the right to use and be educated in one's mother tongue)
- Cultural autonomy (e.g., managing their own educational and religious institutions)
- Affirmative action (e.g., reservations in public employment and education)

#### Constitutional Provisions

- Article 14: Equality before the law
- Article 15: Prohibition of discrimination
- Article 16: Equality in public employment
- Article 25-28: Freedom of religion
- Article 29-30: Protection of cultural and educational rights

#### International Instruments:

- UN Declaration on the Rights of Minorities (1992)
- Universal Declaration of Human Rights (1948)
- International Covenant on Civil and Political Rights (ICCPR)
- European Framework Convention for the Protection of National Minorities (1995)

### **Forms of Protection**

Minorities are protected in a variety of ways, including:

- i. Political Representation
- ii. Reserved seats in legislatures
- iii. Electoral quotas
- iv. Special councils and minority commissions
- v. Freedom to preserve and promote languages, religions, and customs
- vi. Right to establish and manage educational institutions
- vii. State support for minority languages in education and media
- viii. Scholarships, grants, and economic programs
- ix. Access to healthcare and employment schemes
- x. Land rights for indigenous groups
- xi. Protection Against Violence
- xii. Legal penalties for hate crimes and incitement to violence
- xiii. Police reforms and sensitivity training
- xiv. Mechanisms for rapid redressal of rights violations

### **Abolition of 'Untouchability' (Act. 17)**

One of the earliest attempts to do away with the evil of untouchability was the "Temple Entry Proclamation" issued by the Maharaja of Travancore in 1936. It declared



that there should be no restriction on any Hindu, whether by birth or religion, entering or worshipping at any temple controlled by the Maharaja or his government.<sup>ii</sup>

Immediately after Independence, there was a crop of legislation in the states for temple entry and for the removal of civil disabilities. The enforcement of any disability arising out of untouchability shall be an offence punishable in accordance with law.

The Untouchability Offences Act, 1955, was passed by parliament to punish the evil practices of imposing any religious, social or economic disabilities on “Untouchables”.

Though Gandhiji resolved to abolish untouchability in a period of ten years and though he worked to that more than any single individual, he was prophetic in starting. “Untouchability will not be removed by the force even of Law. It can only be removed when the majority of Hindus realize that it is a crime against God and men are ashamed of it”. We have passed many laws, but during the period of twenty years, the result has not been at all encouraging. In spite of the laws, “We have not in the words of Vinobaji, done much for the untouchables.” The remedy lies not so much in improving the laws as changing the attitude of the people. Untouchability, like war, stands in the minds of men, and if we want to eradicate the abnoxious evil, it is the minds of men that will have to be changed.<sup>iii</sup>

The problem of untouchability, and indeed all the major problems concerning the scheduled castes and scheduled tribes, can be solved in the ultimate analysis, only through a revolutionary change in the socio-economic and political structure in India.

Land is the key link in the emancipation of scheduled castes and tribes. The ownership of land in the rural community by its very nature, enhances social status and economic independence and reduces any chances of social oppression. Unless the monopoly hold of landlords on the agricultural land in the country is broken through radical reforms and the surplus land distributed to landless agricultural workers, social oppression including the practice of untouchability cannot be effectively curbed. The spread of literacy and education and the guarantee of gainful employment are equally important measures in this direction.<sup>iv</sup>

The claims of the members of scheduled castes and scheduled Tribes shall be taken into consideration, consistently with the maintenance of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a state (Art.16 (4), 353).

There shall be a special officer of the Scheduled Castes and Scheduled Tribes to be appointed by the president (Art 338). It shall be the duty of the special officer to investigate all matters relating to the safeguards provided for the scheduled castes and Scheduled Tribes under the Constitution. The special officer has to report to the president on the working of those safeguards. The president shall cause all such reports to be laid before each House of Parliament. Such an officer is now designated the commissioner for scheduled castes and Tribes. He submits annual reports.

The president may, at the expiration of ten years from the commencement of this constitution, by order appoint a commission to report on the administration of the scheduled areas and the welfare of the scheduled Tribes in the states. (Art.339 (1)).

The executive power of the Union shall extend to the giving of directions to any such state as to the drawing up and execution of schemes specified in the direction to be essential for the welfare of the Scheduled Tribes in the state (Art.339(2)).

With a view to associating members of Parliament and other members of the public in the due discharge of the above functions by the Government of India, three parliamentary committees have been set up. Their function is to formulate and review the



working of schemes for the welfare of the scheduled castes and Tribes and to advise the Government of India on matters relating to these classes and tribes.

Financial aid for the implementation of these welfare schemes is provided for in Art 275(1) which requires the Union to give grant-in-aid to the states for meeting the costs of schemes of welfare of the scheduled Tribes and for raising the level of administration of the scheduled Areas in a state to that of the administration of the areas of that state.

The proviso to Art.164 lays down that in the states of Bihar, Madhya Pradesh and Orissa, there shall be a Minister in charge of tribal welfare, who may also be in-charge of welfare of the Scheduled castes and other backward classes.

In practice, such welfare Departments have been set up in other states.

Special provisions are laid down in the fifth and sixth schedules of the constitution, read with Art-244, for the administration of areas inhabited by scheduled Tribes.

There is a general directive in Art.46 that the state shall promote with special care the educational and economic interests of the weaker sections of the peoples, and in particular of Scheduled castes and Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

There are temporary provisions for special representation of and reservations of seats for scheduled castes and scheduled tribes in the legislatures (Art.330, 332, 334).

A standing committee of parliament has been set up to examine the implementation of the constitutional safeguards for the welfare of Scheduled Tribes.

The states have taken various measures for the welfare of the S.T., including Tribal Research and Training Institutes. The states have included in their plans, plans for the development of the Tribal people in the following respects:- Financial assistance to families below the poverty level.

Taking up programmes for raising the productivity of the beneficiary families in agriculture, horticulture, animal husbandry, and the like.

Elimination of exploitation of tribal people in matters such as alienation of land, moneylending. Human resources development through education and training programmes. Development of vulnerable tribal areas like forest villages, migrant tribals.

### **Upgradation of the environment of tribal areas.**

The object of these plans is (a) to narrow the gap between the development of tribal areas and other areas, (b) to improve the standard of living of the tribal communities (c) to protect their interests through legal and administrative support.<sup>v</sup>

Under the Indian constitution, no body can be discriminated against on account of his caste or the like because of Cl. (1) of Art. 15, Cl. (2) of 16 or Cl. (4) of Art. 15 or 16, the fundamental right of the individual who denied for admission or employment because such admission comes into play, but Cl.(4) offers to save it. Hence, arises the question of the respective scopes of Cl.(1) and Cl. (4).

It is interesting to note that in the original constitution there was no Cl. (4) in Art. 15. When in the constituent Assembly Prof. Shah moved for adding a provision like this in Art.9 of the Draft constitution, it was Dr. Ambedkar who opposed that motion and on his opposition, it was rejected. Dr. Ambedkar argued that in making special provisions for the scheduled castes or Tribes, we should not segregate them, say by opening special schools for them. It was only When the supreme court struck down a communal order which provided for reservation of seats on th basis of communities that Cl. (4). was inserted into Art. 15 by passing constitution (First Amendment Act 1951.)



In the constituent Assembly, Dr. Ambedkar also observed that unless the reservation was limited to a minority of the seats, it would violate the principle of “equality of opportunity” guaranteed to the non-backward classes by the equality provisions referred to at the outset.

All such assurances have, however, been violated by some zealous state Governments, as is demonstrated by reported decisions of some of the High Court and the Supreme Court, State of U.P. V/s Tandon A. 1975 S.C.563, Arti V/s State of J & K A 1981 S.C. 1009. The reasonable limits of reservation have been transgressed in several ways.

Anglo-Indians constitute a religious, social as well as a linguistic minority. The constitution contains some special provisions safeguarding the interests of the Anglo-Indian community.

Beside the scheduled castes and scheduled tribes, the constitution extends some protection to backward classes, as these classes have been neglected for long. Backward classes are to be found amongst all religious groups – Hindus, Muslims, and Christians etc. Under Art. 15(4), the state is empowered to make any special provision for the advancement of any socially and educationally backward class besides the scheduled castes and the scheduled tribes.

A linguistic minority is a class of people whose mother tongue is different from that of the majority in the state or part of a state. The constitution provides for the protection of the interests of linguistic minorities.

Art. 350-A imposes a duty on the state to Endeavour to provide adequate facilities for instruction in the mother tongue at the primary stage of education to children belonging to linguistic minority. The president is authorized to issue such directions to any state, as he considers necessary or proper for securing the provisions of such facilities.

Art.350 B empowers the president to appoint a special officer for Linguistic Minorities. It is the duty of the special officer to investigate all matters relating to the safeguards provided for Linguistic Minorities under this constitution and report to the president upon those matters at such intervals as the president may direct. The president shall cause reports to be laid before each House of Parliament and send to the Government of the State concerned.

The provisions with regard to the safeguards of minorities and backward classes in the constitution have been criticized on the ground that these might have a very injurious effect in the long run and instead of working as safeguards for some time, might perpetuate themselves and created a class of people who feel that they have certain privileges which can not be taken away in the higher interests of the country. Dr. Ambedkar justified those safeguards for minorities as it has done. In this country, both the minorities and the majorities have followed the wrong path. It is wrong for the majority to deny the existence of minorities. It is equally wrong for the minorities to perpetuate themselves. A solution must be found that will serve a double purpose. It must recognize the existence of the minorities to start with. It must also be such that it will enable majorities and minorities to merge some day into one.<sup>vi</sup> The Solution proposed by the Constituent Assembly is to be welcomed because it is a solution that serves the two-fold purpose. To diehards who have developed a kind of fanaticism against minority protection, I would like to say two things. One is that minorities are an explosive force that, if it erupts, can blow up the whole fabric of the state.<sup>vii</sup> The history of Europe bears ample and appealing testimony to this fact. The other is that the minorities in India have agreed to place their existence in the hands of the majority. In the history of negotiations for preventing the partition of Ireland, Redmond said to Carson, “Ask for any safeguard you like for the protestant minority but let us have a



United Ireland” Carson’s reply was: “Damn your safeguard we don’t want to be ruled by you.” No minority in India has taken this stand. They have loyally accepted the rule of the majority, which is basically a communal majority and not a political majority. It is for the majority to realise its duty, not to discriminate against minorities. Whether the minorities will continue or will vanish must depend upon this habit of the majority. The moment the majority loses the habit of discriminating against the majority, the minorities can have no ground to exist. They will vanish”.<sup>viii</sup>

#### **Conclusion:-**

To ensure that the safeguards provided to the various groups under the constitution do not just remain paper safeguards but are implemented effectively, the constitution makers felt it necessary to set up machinery to keep a continuous watch and vigilance over the working of these safeguards throughout the country, and also to bring to the notice of the government and the legislature concerned and defects existing in the protection of these various groups.

The Indian society needs certain safeguards for the minorities as against the majority. The constitution of India has recognized the minorities’ legitimate claim to protect their religion, language, and culture.

#### **References:**

---

<sup>i</sup> M.P.Jain- Safeguard to Minorities, Scheduled Castes, Scheduled Tribes and Backward Classes. P.P.750

<sup>ii</sup> K.D. Gangade- Social Legislation in India Volume I P.237

<sup>iii</sup> S.D. Balsara on Legal Aspects of Untouchability. “Social Legislation In India” Volume II P. 248 by K.D. Gangrade

<sup>iv</sup> Social Legislation in India Volume I P.256 by K.D. Gangrade

<sup>v</sup> “The constitution of India” p. 133 by Dr. (Justice) Durga Das Basu.

<sup>vi</sup> B.Shivam, The Framing of India’s constitution. Select Documents Volume VI: The Indian Institute of Public Administration New Delhi. 1908 P.430

<sup>vii</sup> Constituent Assembly Debates Vol. VII Part I P.38, 39

<sup>viii</sup> Ibid P. 39