

## Constitution on Minority Rights (19-12-2024)

### Why in news?

Minorities Rights Day is observed on December 18.

### What was the origin of minority rights?

- **Austrian constitution** - In 1867, Austrian Constitutional Law acknowledged that ethnic minorities have an absolute right to maintain and develop their nationality and languages.
- **Hungary & Swiss** - Hungary's Act XLIV of 1868 and the Constitution of the Swiss Confederation of 1874, granted the three languages of the country equal rights in civil services, legislation and in courts.
- **WWI peace treaty** - The provisions of the peace treaties after the First World War, focused particularly on the status of minorities.
- **UDHR** - Article 27 of the Universal Declaration of Human Rights gives every individual a right to community, that is the right to enjoy their own culture and to participate in cultural forums, associations etc.
- **UN declaration** - UN General Assembly adopted a declaration on the 'Rights of Persons Belonging to National, or Ethnic, Religious and Linguistic Minorities' on December 18, 1992.

*"No democracy can long survive which does not accept as fundamental to its very existence the recognition of the rights of minorities" - Franklin Roosevelt*

### What were the debates in the Constituent Assembly?

- **Constitution committee** - The Advisory Committee on Fundamental Rights, Minorities, and Tribal and Excluded Areas, chaired by Sardar Vallabhbhai Patel, was formed in 1947.
- **Sub committees** - The problems and safeguards for minorities were discussed, debated and settled mainly by the sub-Committee on Minorities and the Sub-Committee on Fundamental Rights

*Sub-Committee on Minorities was headed by H.C. Mookherjee and the Sub-Committee on Fundamental Rights headed by J.B. Kripalani.*

- **Sub-Committee on Minorities** - It was entrusted with the specific task of considering and suggesting about the rights and safeguards proposed to be incorporated in the Constitution.

- **Objectives Resolution** - It stated that adequate safeguards shall be provided for minorities, backward and tribal areas, and depressed and other backward classes.

### What are the minority rights enshrined in the Constitution?

- **No constitutional definition** - Though the term 'minority' has been used in four places in the Constitution, no definition of the term 'minority' has been given.
- **Minority population** - Muslims, Sikhs, Christians, Buddhists, Jain and Zoroastrians (Parsis) have been notified as minority communities under Section 2 (c) of the National Commission for Minorities Act, 1992.

*As per the Census 2011, the percentage of minorities in the country is about **19.3%** of the total population of the country.*

- **State level minorities** - In the *TMA Pai Foundation* (2002) case, Supreme court held that only the State can determine the status of a religious or linguistic minority.

*Hindus are a religious minority in Punjab, Kashmir and in the northeastern States and There are hundreds of Hindu minority institutions in India.*

### Fundamental Rights of Minorities

#### Right to freedom of religion (Articles 25-28)

- **Article 25** - Freedom of conscience and free profession, practice and propagation of religion.
- **Article 26** - Freedom to manage religious affairs.
- **Article 27** - Freedom from payment of taxes for promotion of any religion.
- **Article 28** - Freedom from attending religious instruction or worship in certain educational institutions.

#### Cultural and educational rights (Articles 29-30)

- **Article 29(1)** - 'Any section of the citizens residing in the territory of India or any part thereof having a distinct language script or culture of its own shall have the right to conserve the same'.
  - **Significance** - It concedes that different groups do have different cultures and that all people may not have just one culture.
  - It accepts that the right to culture is an individualistic right, and individuals have been given the right to preserve their distinctive culture.
- **Article 30** - It guarantees that all religious and linguistic minorities shall have the right to establish and administer educational institutions of 'their choice'.

#### Linguistic Rights

- **Article 350 A** - It provides for instruction in the primary stages of education in the mother tongue
- **Article 350 B** - It provides for the appointment of a special officer for linguistic minorities.

*In [Aligarh Muslim University \(2024\) case](#), Supreme court held even an institution of national importance can claim minority character.*

- **Personal laws** - Religion based personal laws have also been constitutionally protected, for example, the customary law of Nagas.
- **Institutional protection** - National Commission for Minorities and National Commission for Minority Educational Institutions deal with the problems of minorities.

### What is the rationale behind minority rights?

- **Principles of minority rights** - Multiculturalism, differences, diversity and the rights of minorities that mark contemporary political theory.
- **Preservation of diversity** - Protecting the diverse socio-cultural elements and people of the diverse country.
- **Inadequacy of individual rights** - Individualistic rights under Articles 14-18 (equality), 19 (free speech) and 25 (freedom of religion) are not enough for the conservation of language, script or culture which comes under Article 29.
- **Group discrimination** - One may not be individually unjustly treated but it hurts, if the group to which one belongs is subjected to ridicule or denied any value.
- An individual's right to culture holds little meaning or significance, unless the community of which a person is a member of, or is identified with, is accorded the right to exist in a viable form.
- **Cultural conservation** - Linguistic and religious cultures are valuable for their member and they need to be given explicit rights to conserve their own culture.
- **Conducive environment** - Cultural conservation requires not only the presence of a group that shares a common culture but a conducive environment in which such cultures can flourish.
- **Ensuring equality** - Conferring the right on minorities under Article 30 is to ensure that there will be equality between the majority and the minority.

*A seven judge Bench in Aligarh Muslim University (2024) in unequivocal terms described Article 30 as a 'facet of equality and non-discrimination'.*

- **Prevent majoritarian domination** - Minority cultures face disadvantages in a majoritarian society and special rights are need to balance the strength of majoritarianism.
- **Basic structure** - In *Keshavananda Bharati* (1973), rights under Article 30 were held to be part of the basic structure which even Parliament cannot change through a constitutional amendment.

### Reference

[The Hindu | Constitution on minority rights](#)