

CONSTITUTIONAL RIGHTS OF MINORITIES: A CRITICAL ANALYSIS

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I. Introduction/Statement of Problem:

The features of postcolonial governance of India have long been held up as a success story: “the world’s largest democracy, whose citizens enjoyed freedom of speech and religious tolerance. It is seen to have escaped the military dictatorships that had been the fate of so many former colonies and despite several marks of sectarian conflicts; it continues to be the largest democracy of the world.”¹ Yet, much of the intellectual work of dissent argue that “the promise of national emancipation was fulfilled, if not fraudulently, then certainly by the forcible marginalization of many who were supposed to have shared in the fruits of liberation”.² As an index of the continuity of the exclusionary politics one may turn to the distinct “cultural problem” of religious minorities in India.³The founding members of the Constitution of India had rejected the idea of “Clash of Civilizations”⁴underpinning the Partition of India and proclaimed that every citizen of India, irrespective of religious belief is absolutely equal before law. Despite such commitments to equality and inclusive society, in the new-nation state, what we have come to see is the hegemonic paternalism of the dominant religious groups which demarcated its practices and tradition as distinct not only from the West but also from the vast swathes of marginalized people whom it had sworn to democratize. Out of this constellation has followed the rise of fundamentalist movements⁵ and strong

¹Shabnum Tejani, ‘Defining Secularism in the Particular: Caste and Citizenship in India 1909-1950’ [2013] Religion and Politics section of the American Political Science Association, 705

²Partha Chatterjee, *Nation and its Fragments: Colonial and Postcolonial Histories* (Princeton University Press, 1993) p. 156

³Partha Chatterjee, *Nation and its Fragments: Colonial and Postcolonial Histories* (Princeton University Press, 1993), P.134

⁴Ernest Barker, *Principles of Social and Political Theory* (1951, paper back) Preface: pp. vi, ix

⁵ Fundamentalist movements are basically political movements which have religious and ethnic roots. These movements can be of wide variety but their primary purpose is to

communitarian feelings within each group and sectarian identities who felt alienated from each other. The recent political developments in India have witnessed conflicts and tension between the majority communities and the minority communities in many parts of the country. Thus rendering the question of minority group rights and protection of their identity central to the political discourse of India.

In this backdrop this paper will look into the constitutional rights of the minorities in India. The constitution of India and more generally the international documents on human rights provides for the necessity of providing positive discrimination or ensuring affirmative action's for upliftment and welfare of the minorities. Simultaneously it imposes negative injunction on every form of discrimination, nevertheless, these legal and constitutional provisions have been abused by the political establishment for its own political end. The same provisions meant for the better protection of the minorities has been used by the fundamental forces as a counter argument that minorities are also citizens of this country and hence they also should be treated equal like any citizen of this country since they are also equal before law.⁶ Therefore this will move beyond the given constitutional framework as to explore how these rights have been engaged with in resolving the difficult question of “minority problems”⁷ in India.

The attempt to define “Minority”, particularly in a multi-ethnic and multi-cultural polity like India faces an inherent challenge; on what basis can a group or community be attributed minority status? Nevertheless, the most essential

bring the state and its instrumentalities under the strictures of their religious belief or gospel.

⁶Minorities and their backwardness in nation and minorities

⁷I use the term minority problem as a phrase to bracket all cultural, religious and political dilemmas faced by the minorities in India

requisite to be a minority group is the group must be non- dominant. In keeping with this understanding the Constitution of India through its various provision recognises; (i) religious minorities (ii) linguistic minorities (iii) cultural minorities and (iv) minorities possessing a script of their own. However, this broad classification of minorities may be over simplistic. It is important to note that the understanding of minority in India is not just about capturing the non-dominant groups in pure particularism of its numerical strength. It is primarily about understanding the relationship between different groups present in varied equation to each other in differing locations and how these groups stand in their relationship with the state and institutions of Democracy.⁸ I proceed with a clear understanding of this difficulty in defining minorities in India and for the purpose of this paper limit its scope to religious minorities only⁹.

II. Historicising the Constitutional Rights of Minorities:

The critics of the Indian nation-state and its relation to the pluralistic society generally argue that; the concept of India as a nation-state had its roots in European nationalism.¹⁰ Initially the European polities were committed to homogeneity; to the building of strong homogenous national communities, which have led them to be supremely impatient with any manifestations of diversity. The postcolonial critics, argue, that India treaded on the similar path, therefore, the idea of nation has always been compromised of the dreams of homogenous communities and therefore leaving behind very little scope for

⁸Nation and Minorities, p116 (Prakash Louis : Minorities and their Backwardness)

⁹The Central Government through the National Minorities Commission Act, 1992 notified the following five groups as minorities under section 2 (c), namely: Muslims, Christians, Sikhs, Buddhists and Parsis. In January, 2014 Jains were included in the list of Minorities under section 2 (c) of the National inorities Act.

¹⁰ See, Menon, N., & Menon, N. (2010). Introduction. In Chatterjee P. (Author), *Empire and Nation: Selected Essays* (pp. 1-20). Columbia University Press. Retrieved from <http://www.jstor.org/stable/10.7312/chat15220.4>

minority identity and aspirations to flourish.¹¹ The political practice of Indian polity was sectarian and divided and therefore it failed to achieve the 'participatory parity' promised for all individuals and groups constituting the totality of the Indian population. The Hindu majoritarian identity came to be represented as the national identity thereby blocking egalitarian distribution of resources and denying due recognition for culturally variant social groups. Under such circumstances these groups found themselves in a double bind-excluded from nationalism but at the same time trapped within the nation-state. Hence, this served as a breeding ground for several micro-identities.¹² As an obvious result of all these political vagaries there emerged a number of groups and communities as "minorities, marginalized, plainly excluded/ subalternized, these groups even though formed a part of the Indian nation-state but were excluded or at best subordinately included in the modern Indian society."¹³

The freedom movement thus played a dual role in relation to the emergence of such regional and community consciousness. On the other hand, by invoking a greater loyalty to the Indian motherhood in a united struggle against British rule, it apparently subjugated the urge of the people of the various regions for developing into separate nationalities. In general, behind the apparent struggle between the communities with their slogan of India- a United Nation and the British rulers who highlighted the multiplicity of castes, communities, tribes and linguistic groups, was the reality that India was developing its national unity against the British but along with it the various

¹¹Nirja Gopal Jayal (1993), 'Ethnic Diversity and the Nation-State', *Journal of Applied Philosophy*, vol.10, no.2, pp. 147-53, at p.147

¹² G. Aloysius, *Dalit-Subaltern Self-Identifications: Iyothee Thassar & Thamizhan* (Critical Quest, New Delhi, 2010)

¹³ *ibid*

linguistic, cultural groups were being consolidated into distinct ethnic and communal groups.¹⁴

In recognition of this fact the members of the members of the constituent assembly had emphasised the on making provisions for pluralism, however this was subject to debate and disagreements. In the Constituent Assembly, Dr. B.R. Ambedkar clearly stated¹⁵:

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 which, if it erupts, can blow up the whole fabric of the state. The history of Europe bears ample of appalling testimony to this fact. The other is that the minorities in India have placed 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 safeguards, we don’t want to be ruled by you.” No minority in India has taken this stand. They have loyally accepted the rule of majority and not political majority. It is for majority to realise its duty not to discriminate against minorities. Whether the minorities will continue or vanish must depend upon this habit of the majority. The moment the majority loses the habit of discriminating against the minority, the minorities can have no ground to exist. They will vanish.

Dr. Ambedkar’s speech quoted herein reiterates the importance of achieving the nationalist project of forming a ‘nation-state’ through constitutional consensus, particularly when there is no pre-existing cultural unity within the population.¹⁶

¹⁴ Narang, A.S., *Ethno- Nationalism and Minorities in Akhtar Majeed (eds.), India in Nation and Minorities: India’s Plural Society and Its Constituents* (Centre for Federal Studies, Hamdard University, New Delhi, 2002) pp.68

¹⁵ *ibid*

¹⁶ See, Dilip Simeon, Book Review. **Shabnum Tejani**, *Indian Secularism: A Social and Intellectual History, 1890-1950*. Bloomington: Indiana University Press.

III. The Constitutional Consensus for the Resolution of the Minority Question:

Keeping in view the importance of providing rights and protection to the minorities in India the Constituent Assembly had setup an Advisory Committee under the chairmanship of Sardar Patel on the subject of Fundamental Rights including rights of minorities.¹⁷ The Advisory Committee thus appointed five sub-committees on fundamental rights, and of the sub-committees was particularly on minorities headed by H.C. Mukherjee.

The sub-committee made various recommendations regarding the safeguards for minorities in India. One such recommendation was about separate electorates for minorities; however, this recommendation was rejected referring to the past experience of sharpened communal differences. Thus it was decided that all elections to Central and Provincial legislatures were to be held on the basis of joint electorates with reservation of seats for certain specified minority groups according to their population ratio. It was also proposed that the reservation of seats was to be done on experimental basis for only ten years, and final position with respect to reservation to be considered at the end of ten years.¹⁸ The Advisory committee finally decided that seats for recognised minority groups (namely; Muslims, Sikhs, Christians, Anglo-Indians, Parsis and tribals living in the plains of Assam) should be reserved in the legislatures in accordance to their population.

These recommendations of the Advisory Committee were incorporated in the draft constitution as of October, 1947. However, later in the wake of partition of the country, it was felt that given the situation of the country it would no longer be possible to reserve seats for the minority groups on the basis

¹⁷ Narang (n15)

¹⁸ ibid

of their religion.¹⁹ Thus in a subsequent meeting the Advisory Committee made few new set of recommendations to the Constituent Assembly with respect to the minorities, which include the following²⁰:

- (i) The minorities in every part of the country shall be given protection with respect to their language, culture and religious scripts and no law to the contrary shall be enacted.
- (ii) There shall be no discrimination against the minority group (be it religious, linguistic or ethnic) with respect to admission to educational institution maintained out of public funds, nor shall specific religious instruction be imposed against them.
- (iii) All minorities (based on religion, language or community identity) in any part of the country shall be free to establish and administer education institutions.
- (iv) The state while providing funds should not discriminate against the educational institutions established and administered by the minority groups.

These recommendations were revised by the Constituent Assembly and took shape of articles 29 and 30 in the final draft of the Constitution of India. On overall the constitutional rights of minorities can be broadly placed under *common domain* and *separate domain*. The rights which fall in the category of *common domain* are enjoyed by all the citizens of our country. *Separate domain* includes those rights which are applicable to the minorities only and these rights under this domain are meant to protect the identity of the minorities. To this end the Constitution of India provides three sets of rights to the minorities: (i) right to preserve their culture and language (ii) administer and

¹⁹ *ibid*

²⁰ Massey J., *Minorities and Religious Freedom in a Democracy*, Centre for Dalit Subalter Studies (Manohar, 2003)pp. 24

manage minority institutions and (iii) provide religious education in an institution which is managed and aided by the minority communities.

However, the ‘common domain’ of the constitutional rights comes under both-the Fundamental Rights (Part III of the Indian Constitution) and the Directive Principles of State Policy (DPSP) (Part IV of the Indian Constitution). The DPSP, is a set of non-justifiable rights which are connected with the social and economic rights of the people. These rights are legally 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 of the Indian Constitution). The DPSP includes the following provisions which have significant implications for the minorities of our country:

- 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 Schedule Tribes [Article 46];

Part IV A of the Indian Constitution, which deals with the Fundamental Duties applies to all citizens, including those belonging to Minorities. Article 51A, which is of special relevance for the Minorities, has the following provisions for them:

- 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.

Part III of the Indian Constitution, which deals with the Fundamental Rights, is divided into two parts: a) rights which come under the common domain and b) rights which fall under the 'separate domain'. In the 'common domain', the following fundamental rights and freedoms are guaranteed for the minorities in India:

- 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 and 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].

The Constitution guarantees the following minority rights which fall under the ‘separate domain’:

- 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 [Article 350 B]; and
- viii) Sikh community’s right of ‘wearing and carrying *kirpans* [Article 25].

With the gradually growing realization among the Indian policy makers that the minorities in the country are confronted with diverse and unique challenges from time to time, there developed a necessity to look into the special needs of the minority communities separately and accordingly provide provisions for their welfare and development in the various national Five Year Plans. Some of these efforts have been discussed herein

Minority Commission:

The “Minorities Commission”, aimed to safeguard and protect the interests of the minorities, was set up by the Government of India in January, 1978. This Commission became a statutory body and was renamed as the “National Commission for Minorities” with the enactment of the National Commission for Minorities Act, 1992. Under Section 2(C) of this Act, the Government of India, vide notification dated 23rd October, 1993, notified five religious communities, namely, Muslims, Christians, Sikhs, Buddhists and Zoroastrians (Parsis) as minority communities in India. Similarly, in the Sixth Plan (1980-85) it was acknowledged that the minorities were a separate socio-economic group and hence special provisions were made for them through the Minimum Needs Programme²¹.

The Sachar Committee:

A Prime Minister’s High Level Committee was formed in 2005 to assess the social, economic and educational status of Muslims in India. This is because there was a lack of reliable information on this issue. This Committee, popularly known as the Sachar Committee, in its detailed report published in the end of 2006, highlighted the poor socio-economic status of the Indian Muslims in comparison to the general population. Being alarmed by the findings of this

²¹ Massey J., Minorities and Religious Freedom in a Democracy, Centre for Dalit Subalter Studies (Manohar, 2003)

report, the Union government stepped up its commitment to address the problems of inequality, deprivation and exclusion among the Muslims in the Eleventh Five Year Plan. This was undertaken through educational and economic empowerment, better access to public services, strengthening of minority institutions and area development programmes. The PMO listed the terms of reference of the committee, which included obtaining relevant information from departments/agencies of the Central and state governments besides conducting an intensive literature survey for identify published data, articles and research on the relative, social, economic and educational status of Muslims in India at the state, regional and district levels.

The Sachar committee report provides details of the socio-economic and cultural status of Muslims in India. It includes the following:

- 25% Muslim children in the 6-14 group have either never attended school or have dropped out;
- Only one out of every 25 undergraduate and 50 postgraduate students in premier colleges is a Muslim;
- Workforce participation rate among Muslim women is only 25%. In rural areas, 29% of Muslim women participate in the workforce as compared to 70% of Hindu women;
- 61% of the total Muslim workers are self-employed as against 55% of Hindu workers. 73% of Muslim women are self-employed as compared to 60% for Hindus;
- Only about 27% of the Muslim workers in urban areas are engaged in regular work as compared to 40% SC/ST, 36% OBC and 49% Hindu upper caste workers;

- Less than 24% of Muslim regular workers are employed in the public sector or in government jobs as compared to 39% regular SC/ST workers, 37% Hindu upper caste and 30% OBC workers;
- The share of Muslim male workers engaged in street vending (especially without any fixed location) is 12% as against the national average of less than 8%; and
- The share of Muslims among defence personnel is only 4%. Compared to other regular workers, a much larger proportion of Muslim regular workers have no written contract (73%, against 52% for Hindu upper caste and 63% each for Hindu-OBCs and SCs/STs) and no social security benefit (71% against the national average of 55%).

The Sachar Committee report made several recommendations to the government to improve the poor socio-economic status of Muslims. Based on the recommendations, various programmes and schemes were formulated and areas of intervention were figured out for implementation by the Government.

Rangnath Mishra commission on minorities:

The Justice Ranganath Mishra Commission was appointed by the Centre for Religious and Linguistic Minorities, Government of India in October 2004 to study various aspects of religious and linguistic minorities. The Commission has made many recommendations to provide reservations for the Muslims, Scheduled Castes and Other Backward Classes in government jobs. The Rangnath Mishra Commission report was tabled in Lok Sabha by Minority Affairs Minister Salman Khurshid. The Commission submitted its report to the government in May 2007. Its main recommendations include:

- The Commission for Minority Educational Institutions set up under the National Commission for Minority Educational Institutions Act, 2004

should be amended to make it broad-based in its composition, powers, functions and responsibilities. Further it recommended that it should work as the watchdog for enforcement of all aspects of minorities' educational rights;

- Establishment of a national level Coordination Committee consisting of representatives of all the nationalized banks and other financial institutions to work under the Reserve Bank India for monitoring credit flow to the minorities;
- To delink the Scheduled Caste (SC) status from religion and abrogation of the 1950 Scheduled Caste Order, which “still excludes Muslims, Christians, from the SC net;
- Ten per cent of the Central Government jobs should be reserved for Muslims and five per cent for other minorities in all cadre and grades;
- Fifteen per cent of posts in all cadres and grades under the Central governments should be earmarked for minorities;
- Ten per cent reservation for Muslims and five per cent for other minorities in all government welfare schemes like the National Rural Employment Guarantee Act (Scheme), the PM RozgarYojana and the GrameenRozgarYojana; and
- Appointment of Minority Welfare Committees consisting of official and local experts in all districts of the country to act as the nodal agencies of NCM, State Minorities Commission and all other Central and State-level bodies working for the minorities.

The Prime Minister's 15 Point Programme:

In June 2006, one of the important programmes adopted for the welfare of the minorities under this Ministry is the Prime Minister's 15 Point Programme.

This provides programme specific interventions, having definite goals which are to be achieved within a specific time frame.

A very important aim of this programme is to ensure that the benefits of various government schemes for the underprivileged reach the disadvantaged sections of the minority communities. In order to ensure that the benefits of these schemes flow equitably to the minorities, this programme envisages location of a certain proportion of development projects in minority concentration areas. It also provides that, wherever possible, 15 per cent of targets and outlays under various schemes should be earmarked for the minorities.

The schemes included under the 15 Point Programme, which are amenable to earmarking, are:

- the Integrated Child Development Services (ICDS) Scheme by providing services through the Anganwadi Centres (Ministry of Women & Child Development);
- Sarva Shiksha Abhiyan (SSA);
- Kasturba Gandhi Balika Vidyalaya Scheme (KGBV) (Ministry of Human Resources Development);
- Aajeevika (Ministry of Rural Development);
- Swarnajayanti Shahari Rojgar Yojana (SJSRY) (Ministry of Housing & Urban Poverty Alleviation);
- Upgradation of Industrial Training Institutes (ITIs) (Ministry of Labour & Employment); and
- Bank credit under priority sector lending (Department of Financial Services).

Multi-sectoral Development Programme:

In addition to the existing educational schemes for minorities, a special scheme called the Multi-sectoral Development Programme (MsDP), was launched in the rural and semi-rural areas of 90 minority concentrated districts, during the year 2008-09. These are Pre-matric scholarship scheme, Post-matric scholarship scheme, Merit-Cum -Means scholarship scheme, *Maulana Azad* National Fellowship, Free Coaching and Allied Scheme etc.

The larger aim of this programme is to improve the socio-economic and basic amenity facilities for improving the quality of life of the people and reduce imbalances in the Minority Concentration Districts (MCDs).

Leadership Development of Minority Women Scheme

The Ministry of Minority Affairs launched this scheme in the area of gender empowerment, and has started implementation of this scheme from the year 2012-13. The objective is to empower and instil confidence in women, by providing knowledge, tools and techniques for interacting with government systems, banks, and intermediaries at all levels so that they are emboldened to move out of the confines of home and community and assume leadership roles and assert their rights, collectively and individually, in accessing services, facilities, skills and opportunities besides claiming their due share of development benefits for improving their lives and living conditions.

National Minorities Development and Finance Corporation (NMDFC)

The National Minorities Development and Finance Corporation (NMDFC) provides for concessional loans for self-employment and income generating activities to persons of minority communities, having a family income below double the poverty line. NMDFC provides loans through (i) State

Channelising Agencies (SCAs) nominated by the respective State /UT Governments and (ii) through Non-Governmental Organizations (NGOs). The micro financing scheme of NMDFC mainly focuses on poor minority women aiming their empowerment by way of meeting their credit needs in an informal manner through Non-Governmental Organizations and Self Help Groups

One can conclude that minority rights are essentially the recognition of one's separate cultural identity by the state. Through these provisions the state is obligated to ensure that the minorities have the freedom to live in accordance with the practices of their community and have the opportunity to develop to fullness.

III. Problems of Religious Minorities in Contemporary Political Discourse of India:

The issue of religion continues to remain a remarkable salient feature for any adequate understanding of the social reality of Independent India. The founding myth of "centrist ideology" constructed out of the experience of the nationalist and the trauma of partition has sustained even after almost sixty nine years of independence. The contradiction in India's concept of secularism was its simultaneous commitment to communities and to equal citizenship.²² This contradiction became more manifest when these commitments were challenged owing to the political episode that took place in the post- independence phase, mounting distrust amongst the Sikhs, Hindus and the Muslims. The rapid rise of Hindutva (Hindu nationalism) in the late 1980s is an example of such fundamentalist surge. In 1989, Bhartiya Janta Party (the electoral wing of Hindu right) won the general elections. This party's advent to power was followed by many violent and destructive riots between Hindus and the Muslim minorities.

²²Lloyd I. and Susan H. Rudolph, In Pursuits of Lakshmi (Chicago, 1987)pp. 38-39

The anatomization between these two communities deepened with the Babri Masjid controversy in 1992. Babri Masjid, a mosque built in 1528 in Ayodha (a Hindu dominated district of Uttar Pradesh, India) was also claimed by the Hindu right to be the birthplace of god Ram. Later, on 6th December 1992, thousands of Hindutva volunteers had demolished the mosque, which led to resurgence of the rivalries between these two communities.²³ As Tejani notes, “[t]he violence of 1992 appeared to many in the Western media as evidence that the Indians had fallen short in the task of over-writing their “traditional” identities of religion and sect with the “modern” identities of nation, class and occupation.”²⁴ This event, thus marks the birth of the communal politics of the state, which had left every Indian citizen with a dual identity-one identifying him/her with the national community and the other to the particular religious community he/she belonged to.

In contemporary India communalism has emerged as a discourse for articulating differences. In run-up to the Parliamentary election of 2014 the differences between the Hindus and the Muslims of India was articulated through communal riots originating in Muzaffarnagar district of Uttar Pradesh. The event which initially began with an altercation in a locality of Muzaffarnagar, later led to a nationwide rage and claimed many innocent lives. Inflammatory speeches by right –wing Hindu leaders and allied groups led to three days of mass violence and riot in most of the districts of Uttar Pradesh. The violence ceased after a curfew was imposed and Indian army was deployed to restore peace and order. The incidents had massive repercussion on the lives of the local Muslims. Nearly hundreds were killed and Muslim citizens from

²³ Anupama Roy, *Gendered Citizenship: Historical and Conceptual Explorations* (Orient Black Swan Press, 2005)

²⁴Shabnum Tejani, ‘Defining Secularism in the Particular: Caste and Citizenship in India 1909-1950’ [2013] Religion and Politics section of the American Political Science Association, 705

almost 150 villages had to flee from their homes. The local groups working with victim has reported that even today approximately 27000 Muslims from Muzaffarnagar and neighbouring district remain displaced.²⁵ Despite, their being a proper framework of rights and safeguards for minority protection under the constitution, the failure of the state to surmount this has resulted in failure of consensus.

The distribution of the government jobs and access to economic resources in the modern India is a reflection upon dramatic inequities. Tracing from the colonial ear, the data shows that the Muslims who had 35% jobs in the government offices now have only 3.5 % job in free India, likewise Christians had 15% their figure has dropped to 1%. But the most striking contrast is in employment of the Brahmins. Under the colonial administration the Brahmins had 3% employment in government offices, fractionally less than the proportion of their 3.5% population. In independent India the figures raised to 70% of government jobs. They do equally well in electoral post, of the 503 Lok Sabha members 190 are Brahmins and of the 244 members of Rajhya Sabha 89 are Brahmins. These figures clearly indicate that 3.5% of the Brahmin community in India holds 36% to 63% of the plump jobs of the country.²⁶ Apart from discrimination in access to resources, minorities in India have also been the victim of hate politics. In a recent incident in October 2015 four Muslim men were killed by Hind vigilante groups in separate incidents across the country, based on suspicion that they had killed or stolen cows for beef. The violence was perpetrated by aggressive Right wing Hindu groups who of their own

²⁵ See, The Plight of Religious Minorities in India, Tom Laqtos Human Rights Commission Testimony by Human Rights Watch.

²⁶ Dominic George, "Mandal commission and the Failure of Dalits," Journal of Dharma, Vol. XVI, No.1, Jan-March 1991, 67

accord undertook the task of protecting cows and put a ban on beef consumption, because they are considered scared by Hindus.²⁷

Similar incidents of attack were reported against the Christian minorities in India. In 2015, churches were attacked in several states of India, promoting fear of growing Hindu militancy under the BJP government. Reportedly there were almost eighty five such incidents across twenty states of India. These incidents were violent enough to claim life of nearly eight thousand Christians.²⁸

Invariably the Muslim and the Christian minorities have been the targets of hate politics in India. The violence against these communities have existed ever since the formation of the Indian nation-state, however, the trajectories of these recent incidents reveal that India's commitment to communities versus India's commitment to equal citizenship, the political balancing act which worked well in the first decades of the independence is proving impossible to sustain over the long haul. In these recent cases violence against minorities are perpetuated and sustained by the State.

The present situation needs to be evaluated critically to give the minorities in multicultural societies their perspective and place in democratic polity. Democracy is significant not simply in terms of free speech and other things, it is significant because its overall purpose is to bring different point of views, and different sensibilities into constant creative interaction, as truth can only come out of intercultural dialogue. Modern societies in the west have adhered to federalism, sub-national constitutions, regionalism and affirmative action to protect the rights of minorities. But in the case of India where the modernity of society is in quite early stage (remaining more as an illiberal society), both the

²⁷ Ibid, 25

²⁸ See Reports from Times of India, available at <http://timesofindia.indiatimes.com/india/85-major-anti-Christian-incidents-in-2015-claims-NGO/articleshow/50618719.cms>

federal package and affirmative action politics are not designed to protect the rights of minorities from majoritarianism. Many West European countries which are not multicultural as India have been thinking seriously to be considerate to the rights of the non-majority groups. Nicole Topperwien says that participation of rights can render states able to respond to the multicultural challenge.²⁹ Participation rights are here understood as guaranteed and institutionalised special influence on the decision making process in state institutions- this could be proportional, over-proportional, or equal representation of the groups. The adoption of rights and safeguards for minorities, the spirit of secularism and equality in the constitution already fulfils this requirement. However, what we lack is the political will of reinforcing these of these constitutional values by strengthening and fortifying them. Secularism and equality may not be able to stand as a foundational concept by itself; hence there is a need for stronger political will in order to meet the challenges faced by these concepts.

²⁹ Chandhokle. N., *Beyond Secularism: The Rights of Religious Minorities* (Oxford University Press, 1999) p.49