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**Minority Rights Protection in India and
Greece -A Comparative Study of Recent
Developments**

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Minority Rights Protection in India and Greece -A Comparative Study of Recent Developments

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Abstract

Minorities are groups of people who are held together by ties of common descent, physical characteristics, traditions, customs, language or religion or any combination of these and who in relation to some other groups with which they are associated, occupied sub-ordinate status, received differential treatment and are excluded from full participation in the life and culture of the society of which they are a part. A minority is not always a numerical minority in the sociological sense, but a group of individuals who are less dominant and devoid of power. In other words a minority group is a group which is politically less influential when compared to other sections of the society and very frequently subjected to exclusions, discriminations and other differential treatments. A minority in terms of international law is a group of individuals residing within a sovereign nation comprising less than 50 percent of the population of that nation's society and who share common characteristics of ethnic, religious or linguistic nature that sets them apart from the rest of the population. Societies consist of various cultural and religious communities who are proud of their identities and therefore wish to preserve them. Bifurcation of population into a majority and several minorities based exclusively on their religious or cultural identities is but natural to any pluralistic society. A secular state does not believe in religion, however it provides equal rights and protection to all religious and other minorities and prevents discrimination between citizens on the ground of religion. Hence the idea of minority protection is a feature of equality and very much present in a secular state like India.

This paper explores the dimensions of protection accorded to minorities in India and Greece, since both the countries have considerable groups of minorities. In India religious minorities particularly the Muslims who form the largest religious group are provided equal rights and constitutional safeguards. Whereas the Greek government defines the rights of Muslim communities in Western Thrace, both Turkish and Pomak, on the basis of religion rather than ethnicity in accordance with the Lausanne Treaty since the treaty grants the Muslim minority the right to organize and conduct religious affairs free from government interference.

Keywords: Minority groups, Bifurcation, Rights protection.

Introduction

Minority rights have become a significant and relevant issue all over the world. India being a multi-ethnic, multi-religious, multi-linguistic and multi-cultural society is no exception. Diversity is the very soul and essence of India. Whereas in Greece, the question of minorities has been deeply entwined with history, politics, and foreign policy considerations.¹ ‘Minorities’ mean “groups of people who are held together by ties of common descent, physical characteristics, traditions, customs, language or religion or any combination of these and who in relation to some other groups with which they are associated, occupy sub-ordinate status, receive differential treatment and are excluded from full participation in the life and culture of the society of which they are a part”². A minority in the sociological sense is not always a numerical minority of the population, but a group lacking power and which is non-dominant³. In other words a minority group is also one which is less influential politically than other sections of population and often subjected to certain exclusions, discriminations and other differential treatments⁴.

In the international sphere “minority is any group of persons resident within a sovereign state which constitutes less than half the population of that national society and whose members share common characteristics of ethnic, religious or linguistic nature that distinguishes them from the rest of the population”⁵. Societies consist of various cultural and religious communities who are proud of their identities and therefore wish to preserve them. Bifurcation of population into a majority and several minorities based exclusively on their religious or cultural identities is but natural to any pluralistic society. Division of population into a majority and several minorities exclusively based on their respective religious or cultural identities is natural.⁶ However history tells us that such minorities have been targets of persecution for the majority whose objective always was to wipe out the distinct identities and culture of such minorities. Therefore the essence of minority protection is

¹A succinct description of the issue of the minorities in Greece and Turkey was formulated in 2010 by a Resolution of the parliamentary Assembly of the Council of Europe. Resolution 1704 (2010), Freedom of Religion and other Human Rights of Non-Muslim minorities in Turkey and for the Muslim minority in Thrace (Eastern Greece), <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta10/ERES1704.htm>.

²16 *Collien's Encyclopedia* (Macmillan Education Corp, New York, 1978), p.336.

³See *New Encyclopedia Britannica*, at 261, for instance, in parts of southern states of U.S.A., blacks form a clear majority of the population, they are nonetheless a minority group in relation to the numerically smaller dominant group of whites.

⁴*International Encyclopedia of Social Sciences* (1972), p. 365.

⁵See F. Capotorti, “Minorities”, in R. Bernhardt (ed.8), *Encyclopedia of Public International Law* [1985], p. 385. See also Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities (UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, UN Doc E/CN.4/Sub.2384, 1979).

⁶See Saral Jhingran, “Religion and Communalism”, 2(4) *Towards Secular India* 64, 65, (1996).

the preservation of the distinct religious and cultural identities of such minorities and prevention of discrimination.¹

Since a secular state does not have any religion, it provides equal rights and protection to all religious and other groups and prohibits discrimination between citizens on the ground of religion.² As a consequence a secular state should ensure that in all circumstances religious minorities should have same rights and privileges as the majority and do not suffer any disability on account of their belonging to a minority group.³ Thus the concept of minority protection is a facet of equality and exists in a secular state to ensure that religious minorities are in every respect equal with the majority and suitable means are provided for preservation of their identities, peculiarities, traditions and natural characteristics⁴ and to ensure their participation in the democratic processes from a position of equality.⁵ The object of the minority protection is also instill confidence in them and to create the feeling that they will not be overrun by the majority and to homogenize the pluralities into a civil society and to integrate minorities fully and equally into the national life of the state characterized by the ethos and interest of the society.⁶ Jawaharlal Nehru has

¹See Neera Chandhoke, "Individual and Group Rights" in (Zoya Hasaan (ed.) *India's Living Constitution*, 2002), p.207,208; Iqbal A Ansari, "Minorities in India" 1(2) *Indian Journal of Secularism* 115, 117 (1997); Note: "The Anti-discrimination Principle in the Common Law," 102 *Harv.L.R.* 1993, 1994 (1989).

²See K.M.Panickar, "The Composite Secular State", 1(1) *Towards Secular India* 107, 108 (1995); see also Soli Sorabjee, "Constitution, Secularism and Freedom of Religion", 1(2) *Towards Secular India* 61 (1995); See Lekshmi Nair, "Concept of Secularism and Secular State in India", 28 *Ac.L.R* 1, 22-27 (2004); On secular state remaining neutral on religious matters see Alexandrowicz C.H., "The Secular State in India and in the United States", 2 *JILI* 273, 274 (1960).

³See Shrawan Kumar Singh, "Secularism in India: Concepts & Practices", 4(3) *Indian Journal of Secularism* 50 54(2000); see also P.Lekshmy, "Protection of Educational Rights of Minorities under the Constitution", 19 *Ac.L.R.* 31, 32 (1995); According to D.E.Smith, religious minorities have played a creative and significant role in the development and evolution of the secular state in the west, D.E.Smith, *India as a Secular State* (1963), pp.41, 405.

⁴See Iqbal A.Ansari, "Minorities in India", *supra* n. 9 at 126, 127. On minority protection being a facet of equality.

⁵See Neera Chandhoke, "Rethinking Minority Rights", 3(1) *Towards Secular India* 31 (1997); see also Iqbal A.Ansari, "A Note on Hindu Muslim Community Relations Towards a Relevant Approach", 2(2) *Towards Secular India* 91, 96 (1996). For the view that protection of ethnic minorities is a component a prescriptive equities equal protection clause jurisprudence & and egalitarian political philosophy, see generally Christopher J. Peters, "Equality Revisited", 110 *Harv.L.Rev.* 1211, 1232-1259 (1997); Kent Greenawalt, "Perspective Equality Two Steps Forward", 110 *Harv.L.Rev.* 1265, 1273, 1174 (1997).

⁶See A.S.Narang, "Ethnic Consciousness in Post Independent India", 1(3) *Towards Secular India* 65, 70 (1995); see also Bhikku Parekh, "Managing Multi-cultural Societies". According to Supreme Court, the object of minority protection is "to integrate them in the mainstream of the society to instill a sense of confidence in the minorities so that none might have a feeling that other section of the population would trample upon the fundamental rights guaranteed under the Constitution". *P.G. Institute of Medical Education v. K.L.Narasimhan*, (1997) 6 SCC 283, 307. The minority protection ensures that minorities "may not suffer from a sense of inferiority complex and are able to throw themselves into the mainstream of the economic and political life of the country so as to march forward with the temper of the times and the needs

observed: “The history shows that there can be no stable equilibrium in any country so long as an attempt is made to crush a minority or to force it to conform to the ways of the majority.”¹

Therefore every democracy should have constitutional safeguards to ensure that majority does not tamper with the interests of the minorities² and any version of democracy which neglects the existence of minorities is not only inadequate but happens to be a vulgar interpretation of the principles of equality.³ At the international level also protection of minority is a well accepted norm as a fundamental principle of International law.⁴

This paper considers protection of all kinds of minorities such as religious minorities, linguistic minorities, the rights of minorities to establish and administer educational institutions and sexual minorities in India and Greece. The focus of the paper is limited to the legal framework established by the Indian and Greek constitutions for the protection of minorities.

Mandate under the Indian Constitution

The protection of minorities in India took two forms in the Constituent Assembly.⁵ First was the inclusion of freedom of religion as a fundamental right and the specific fundamental rights provisions relating to protection of rights of minorities.⁶ Secondly, for protection of minorities interests, provisions for adequate minority representation in legislatures and civil services were

of the nation”. *Managing Board of the Milli Talim Mission, Bihar Ranchi v. Bihar*, (1984) 4 SCC 500 at 503.

¹See “Historical Document: Jawaharlal Nehru’s Note on Minorities, 15 May, 1930”, 2(3) *Towards Secular India* 127 (1996).

²Saral Jhingran, “Minorityism, Majorityism and the Category of the Community”, 1(1) *Towards Secular India* 98, 102 (1995) see also Rudolf C.Horedia, “Secularism & Secularisation: Nation Building in a Multi Religious Society”, 1(3) *Towards Secular India*, 44, 46, 47, 56 (1995).

³Neera Chandhoke, “Rethinking Minority Rights”.

⁴Article 27 of International Covenant on Civil and Political Rights 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”; Article 30 reads: “In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with the other members of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language”, see also Art.1 of the UN Declaration of Minorities, Advisory opinion in *Minority Schools in Albania*, PCIJ Reports, 1935; *Oppenheim’s International Law* (Jennings and Watts ed.), pp 972-975.

⁵Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (1972). P. 66.

⁶Articles 29 and 30 of the Indian Constitution.

included.¹ Articles 29 and 30 specifically deal with religious and linguistic minorities.²

The inclusion of Article 30 to provide protection to the minority is a significant issue because it provides specific protection to the minorities where as Article 29 does not. Article 30(1) gives religious and linguistic minorities the fundamental right to establish and administer educational institutions of their own choice. Article 30(2) prohibits discrimination in the grant of aid to educational institutions on the ground that it is run by religious or linguistic minority.³

The Greek Parliament in 2005 adopted law 3304/2005 on the implementation of the principle of equal treatment regardless of race or national origin, religion or other beliefs, disability, age or sexual orientation and also prohibits direct or indirect discrimination.

Minority Determination

Before discussing the constitutional provisions, the term ‘minority’ needs to be defined; unfortunately the constitution of India⁴ does not define it. However, the question of determination of minorities was considered seriously in *Re Kerala Education Bill*.⁵ In this case the Supreme Court of India held that since the legislation in question applied to the whole of Kerala state, the existence of minority “must be determined by reference to the entire population of the state and that by this test Christians, Muslims and Anglo Indians will certainly be minorities in the state of Kerala.”⁶ In another case the Kerala High Court adopted the numerical test i.e. in *A.M. Patroni Vs E.C. Kesavan*⁷ the court held that minority means “ a community which is numerically less than 50% of the population” with reference to the state. However, the Supreme Court reiterated its previous view in *D.A.V. College Vs Punjab*⁸ and laid down down that Arya Samajis a religious and linguistic minority in the state of Punjab although not so in the whole country or other states. On the same

¹Articles 331,333 and 336 of the Constitution respectively provide reservation for Anglo-Indian community in the Parliament and State Legislative Assemblies and special provisions for Anglo-Indian community in certain services.

²The expression “minorities” finds space only at five places in the Constitution i.e. the head notes of Articles 29 and 30 and clauses (1) (1A) and (2) of Article 30.

³Article 30(1) of the Constitution reads as follows: “All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice”.

⁴D.D. Basu, Commentary on the Constitution of India, (6th ed.), Vol. D. p. 265; Anwarul Yaqin, “Determination of Minority Status: the Judicial Approach”, 22 *JILI* 538, 540-542 (1980).

⁵A.I.R. (1958) SC 956.

⁶*Ibid* at 977.

⁷A.I.R. (1965) Ker. 75.

⁸(1971) 2 SCC 269.

ground Jains and Sikhs were held to be religious minorities in the union territory of Delhi.¹

In *A.P. Christians Medical Educational Society Vs. Govt. of Andhra Pradesh*² the claim of minority status for an educational institution by the petitioner was rejected by the court stating that apart from the words, “as the Christian minorities” and “Educational institutions” occurring in the memorandum of association, there was nothing to claim that the educational institution to be started is a minority educational institution. The court further held that the government, university and eventually the court have the undoubted right and the power to pierce the “minority veil.”

Except the Muslim minority, which is a recognized minority the courts in Greece do not apply any kind of test such as the numerical test to determine the minority status of other communities. The Greek government maintains that there are no ethnic or linguistic minorities in Greece except the Muslim minority in Western Thrace. The Muslim minority which is close to 100,000 individuals, consists of three classes: (a) Turkish origin constituting 50% (b) Pomaks 35% (c) Roma 15% of the minority population. The legal status of the Muslim minority is based on the Treaty of Lausanne 1923,³ which creates rights and obligations for Greece toward its Muslim minority. The most debatable issue of the Treaty of Lausanne is the so-called reciprocity clause which is interpreted and used extensively by Greece and Turkey and has been raised several times by both the States mainly on questions relating to religious rights, education and wakfs (religious foundations).

Religious Minorities

The words “minority based religion” used in Article 30(1) mean that the principal basis of a minority is either adherence to one of the many religions and not a sect or a part of the religion. In all religions sub-sections, sects, denominations or classes exist and they cannot claim minority status.⁴ It is pertinent to note that, the claim of Ramakrishna Mission to religious minority status was rejected by the Supreme Court in *Bramchari Sidheswarshai Vs West Bengal* on the ground that it was a denomination within the Hindu religion.⁵ It is evident from this that there cannot be a minority within a religion, though there can be a religious denomination within a religion. Hence, the minority

¹See *Arya Samaj Education Trust Delhi Vs Director of Education*, A.I.R. (1976) Del. 207.

²1986 AIR 1490

³Treaty of Peace with Turkey signed at Lausanne (Lausanne Treaty), July 24th, 1923, 18 L.N.T.S. 11 (1924), reprinted in 18 *Am.J.Int’L*. 4 (Supp. 1924), available at [http://www.lib.byu.edu/index.php/Treaty of Lausanne](http://www.lib.byu.edu/index.php/Treaty_of_Lausanne).

⁴*Supra* Note 6 at 211.

⁵A.I.R. (1995) SC 2089. The court while rejecting the claim of the mission as a minority institution under Article 30(1) upheld its religious denominational character within the meaning of Article 26(a) and it was held that it being a religious denomination was entitled to administer educational institutions. This case was referred to affirmatively in *Sri Adi Visheshwara of Kashi Vishwanath Temple Vs Uttar Pradesh* (1997) 4 SCC 606, 626 and 627.

contemplated under Article 30(1) must be one that is based upon a religion which is totally distinct when compared to other religions.

In *Shri Amolak Jain Vidya Prasarak Mandal, Kada Vs Maharashtra*¹ the Aurangabad Bench of Bombay High Court held that Jain community was a minority based on religion. The government has notified five communities, viz, Muslims, Sikhs, Christians, Bhudhists and Zorastrians as minorities at the national level,² but the government so far has not notified Jains as a minority at the national level.³

Unlike the Indian Constitution, which recognizes various religious minorities listed above except the Jain community, the Greek Constitution recognizes explicitly only one single minority that is the Muslim minority in Western Thrace and does not recognize any other minority. With regard to those persons who claim to belong to a “Macedonian minority”⁴, the State of Greece categorically states that it does not recognize that “a distinct ethnic or linguistic minority exists in its territory by the name ‘Macedonian’ ”⁵. Greece also maintains that minority status cannot be granted to other groups because of lack of fulfillment of objective criteria⁶. The Greek Constitution defines the Eastern Orthodox Church of Christ⁷ as the prevailing religion in Greece and over 95 percent claim to be its members. The Lausanne Treaty and the Greek government recognize and define the rights of Muslim communities in western Thrace comprising both Turkish and Pomak on the basis of religion rather than ethnicity.

Linguistic Minorities

The problem of national integration in India had been posing severe difficulties after independence. The language proved to be difficult and challenging and was testing India’s quest for national unity. However the Indian Constitution provided under Articles 29 and 30 certain rights to the

¹W.P. No. 587 of 2000, decided on 10-10-2002.

²Notification dated 23-10-1993 issued by the Ministry of Social Justice and Empowerment by virtue of Section 2(c) of the Minority Commission Act, 1992.

³*Bal Patil Vs Union of India (No.2)*, (2005) 6 SCC 690, 697 (per Dharmadhikari J.).

⁴The term “Macedonian minority” refers to a small group of people who live in the region of Macedonia in Greece, speak a Slavic dialect, and seek official recognition from Greece as an ethnic or linguistic minority.

⁵Comments of the Greek Government on the Report of the Independent Expert on Minority Issues Following Her Visit to Greece, Gay McDougall, Geneva, Mar. 6, 2009, Annex 3, United Nations General Assembly A/HRC/10/G/5, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/119/60/PDF/G0911960.pdf?OpenElement>.

⁶The National Human Rights Commission opines that Greece’s “assertion that there is no other minority than the Muslim minority is not borne out of facts.” E.U. Network of Independent Experts on Fundamental Rights, Thematic Comment No. 3: The Protection of Minorities in the European Union, Appendix A – The Definition of Minority and Its Status in Domestic Law, at 72, http://ec.europa.eu/justice/fundamental-rights/files/cfr_cdf_them_comments2005_en.pdf.

⁷Article 3 of the Greek Constitution.

minorities to preserve their language, religion and culture on the one hand and enjoins the government on the other to use minority languages in education and administration and safeguard the interests of the linguistic minorities in matters of education, administration and employment. India being a multilingual nation, every state in the country has a sprinkling of linguistic minorities and despite multi-linguist nature of cosmopolitan cities, it remains a fact that regional language occupies a predominant position in all of them. Metro cities in India such as Delhi, Calcutta, Mumbai, Chennai, Hyderabad and Bangalore may be considered as multilingual clusters because large sections of people in these cities speak different languages.

The purpose of Article 29 of the Indian Constitution is to facilitate migration. For instance if a few individuals from Delhi were to come and settle down in Chennai or Hyderabad, then they would constitute a cultural and linguistic minority in Tamilnadu and Andhra Pradesh. Their culture, language and script would be protected by Article 29. Article 29(1) gives a fundamental right to linguistic minorities to conserve their language, culture and script. It is wide in its application and includes the right to agitate for protection of the language which was underlined by the Supreme Court in *Jagader Singh Sidhanti Vs Pratap Singh Daulta*.¹ According to Article 29(2) an individual of a linguistic minority cannot be denied admission to a state-aided school on the ground of his language.²

The constitution was amended in 1956 by incorporating Article 350(A)³ for the protection of linguistic minorities. The Article imposes upon every state and every local authority within a state to provide adequate facilities for instruction in mother tongue at the primary stage of education to children belonging to linguistic groups and Article 350(B) lays down that a special officer shall be appointed by the President of India to investigate matters relating to linguistic minorities under the constitution. Subsequently an Office of Commissioner for Linguistic Minorities was established on 30th July 1957.⁴ Linguistic minorities have a right to demand official recognition of their language under Article 357. When the demand is made the President of India may, when convinced that a substantial proportion of the population of a state desire any language spoken by them to be recognized by the state, direct that such language shall be recognized officially throughout that state or any part thereof for such purpose as he may specify.⁵

With regard to Turkish community, the Greek government provides for Turkish language public education and the community enjoys total equality under the law. They are allowed to maintain their own Turkish language schools which cater to thousands of minority students. The Muslim minority

¹A.I.R. (1965) SC 183.

²See *Ramesh Vs Principal, B.B. Inter College*, A.I.R. (1953) All. 90. See also *Nageshwara Rao Vs Principal, Medical College*, A.I.R. (1962) A.P. 212.

³The Constitution (Seventh Amendment) Act, 1956.

⁴The commissioner submits annual reports to the President who causes them to be laid before each House of Parliament.

⁵Article 347 of the Indian Constitution.

has the right to establish, manage and control at its own expense, schools and other establishments for instruction and education, with the right to use its own language and the subject of religion is taught by teachers who are experts in religion. Greece also adopted an affirmative action measure regarding minority students, designed to make possible the entry of minority students into universities that are state-funded in which entry is based on national exams. The Greek government refers to the Turkish community as Greek Muslims or Hellenic Muslims and does not recognize a Turkish minority in Western Thrace. Greek courts have rejected the use of the word 'Turkish' to describe the community.

Minorities right to run Educational Institutions

The right guaranteed to religious and linguistic minorities under Article 30(1) to establish and administer educational institutions of their own choice has generated a lot of controversy and debate. The constitution guarantees the right only to minorities. *Justice K.K. Mathew in St. Xavier's College Vs Gujarat*¹ held that such treatment is an essential facet of the equality clause. The idea behind conferring the right to minorities is to ensure equality between the majority and the minority. However it was pointed out that when minorities emerge as a powerful group acquiring the ability to change the electoral fortunes of national and regional parties as well as influencing government policies, then the special protection seems to lose its relevance.

The law of the land states that the right to administer educational institutions is not an absolute right and is subject to the regulatory power of the state.² The right to administer does not include right to maladministration may not be said to infringe Article 30(1).³ Though the state may regulate the right of administration, it has no power to impose any restriction which is destructive of the right itself.⁴ Furthermore any law which interferes with the constitution of the governing body of a minority educational agency is an abridgement of Article 30(1).⁵

Regulation made in the true interests of efficiency of instruction, discipline, health, sanitation, morality, public order and the like may undoubtedly be imposed, such regulations are not restrictions on the substance of the right which is guaranteed.⁶ *In All Bihar Christian Schools Association Vs Vs Bihar*,⁷ it was held that the minority institution cannot claim immunity from from contract law, tax measures, economic regulations, social welfare

¹(1974) 1 SCC 717, 798, 799.

²*Ahmedabad St. Xavier's College Vs Gujarat*, (1974) 1 SCC 717; *Rev. Msqr Mark Netto Vs Kerala* (1978) 1 SCC 23, 28; *Lilly Kurian Vs Sr. Lewina*, (1979) 2 SCC 124, 137.

³*Theclamma Vs Union of India*, (1987) 2 SCC 516, 517.

⁴*Lilly Kurian Vs Sr. Lewina*, Supra n. 2 at 137.

⁵*Bihar State Madarasa Education Board Vs. Madarasa Renifa Arabic College, Jamaber*, (1990) 1 SCC 428, 429, 431, 432.

⁶*Rev. Sidharjbai Sabhai Vs Gujarat*, A.I.R. (1963) SC, 540 at 545.

⁷(1998) 1 SCC 206, 221.

legislation, labour and industrial laws and similar other measures which are intended for the needs of the society.

The majority bench in *St. Xavier's College* has laid down that the right under Article 30(1) was absolute to the extent that even state necessity is not a ground for imposing regulation on the said right of administration and only such regulation for maintaining excellence of the institution was held permissible.¹ *Rev Sidharjbai* and *St. Xavier's College* place minority interest over public and national interest. However, the stance shifted with *St. Stephens Vs University of Delhi*² where it was held that the essence of Article 30(1) was to ensure equal treatment between majority and minority institutions and that the right could not be such as to override national interest and only regulation which put a minority institution at a disadvantage could be struck down as unconstitutional. Subsequently in *Unnikrishnan V. State of A.P.*³ it was observed that "any law or rule or regulation that would put the educational institutions run by the minorities at a disadvantage when compared to the institutions run by the others will have to be struck down. At the same time there also cannot be reverse discrimination.

This position was upheld in *T.M.A. Pai Vs Maharashtra*⁴ where a majority majority of the judges of the constitution bench laid down that any regulation framed in national interest should be applicable to both majority and minority institutions, it was further held that regulations framed in the interest and welfare of the students and teachers and those intended to provide a proper academic atmosphere would not interfere with the right of the administration and management under Article 30(1). In *Islamic Academy*, it was categorically held that the essence of Article 30(1) is to ensure equal treatment between majority and minority institutions and that minority is to have higher right in terms of Article 30(1) and the said right is subject to national and public interest.⁵ In *Inamdar* case⁶ both *T.M.A. Pai* and *Islamic Academy* were interpreted in a manner which affirmed the concept of equality inherent in minority protection laid down in the above judgments by observing that "the laws that serve national interest do not impinge upon Article 30(1). The above decisions are correct and proper in terms of a secular state.

The Constitution of Greece has no provision which speaks of minorities education. Issues regarding minority education are dealt by Articles 40 and 41 of the Treaty of Lausanne and the Cultural Cooperation Agreement between Greece and Turkey signed in 2001.⁷ In pursuance of Article 40 of the latter Agreement the Muslim minority has the right to establish, manage and control schools and other establishments at their own expense with the right to use its

¹*Supra* Note 2.

²(1992) 1 SCC 558.

³(1993) 1 SCC 645.

⁴(2002) (8) SCC 481.

⁵See *Islamic Academy*, (2003) 6 SCC 697, 759-764.

⁶*Inamdar* (2005) 6 SCC 537,590,591.

⁷Iris Kalliopi Boussiakou, The Educational Rights of the Muslim Minority under Greek Law, J. Ethnopolitics & Minority Issues in Europe 1/2007, http://www.ecmi.de/fileadmin/downloads/publications/JEMIE/2007/issue1/1-2007_Boussiakou.pdf.

own language, providing significant autonomy in minority education. However, the community representatives have expressed that the quality of education in primary schools is below standard when compared to Greek public schools. According to the proposed law (Bill 3536) Islamic teachers required to teach Koran in schools would be appointed by a Committee of five orthodox Greeks with no Muslim in the Committee. This is a decision that would affect the affairs of the Muslim community and religion.

A positive initiative that has been taken by the Greek government is the 0.5 percent special quota for providing admissions to students of Muslim minority to universities, which has come into effect in 1996. Another initiative is the 0.5 percent quota in public sector employment for minorities which has become law.

Recent Developments – Right to Education Act - 2009

The Supreme Court of India on 12th April 2012 delivered a landmark judgment on the Right to Education Act (RTE), which was passed by the parliament in 2009 after receiving the presidential assent. Under the Act education is a fundamental right and the state is obliged to provide free and compulsory education for children between 6 and 14. The court in the case filed by the *Society for unaided Private Schools in Rajasthan and Others*,¹ upheld the constitutional validity of the Act which compulsorily reserves 25 % seats for children belonging to “weaker sections and disadvantaged groups” in private and government run schools. In the said case the court stated that “However, the said Act of 2009 and specifically Sections 12(1) (c)² and 18(3)³ violates the fundamental freedom guaranteed to unaided minority schools under Article 30(1) and as a consequence applying the principle of severability,⁴ the above Act of 2009 shall not apply to such schools.

In *Hajinural Hasan Master v State of Gujarat & others*, the learned single judge held that the direction of ordering absorption of surplus teachers to the school receiving grant in aid, whether minority or non minority the position would be the same and shall be governed accordingly and it held that the clause directing the religious/linguistic minority institute to absorb the surplus teacher declared from other minority institute is neither violative of Article 30(1) of the Constitution of India nor the same is discriminatory and it is held that minority institutions are bound by the same, failing which there shall be grant cut as they are getting grant in aid from the State Government. It was further held that, once the State Legislature has also protected the rights of minority

¹(2012) 6 SCC 102.

²It is school's responsibility that at least 25% of strength of the class shall be children belonging to weaker section and disadvantaged group in the neighborhood and provide free and compulsory elementary education till its completion.

³The prescribed authority shall by order withdraw recognition of schools which contravene conditions of recognition.

⁴*R.M.D. Chamarbaugwalla Vs Union of India*, 1957 SCR 930.

institutions to appoint a person teaching and non-teaching of their choice, it is submitted that which is not permissible directly cannot be imposed upon minority institutions indirectly and that too by way of Grant-in-Aid Code and through executive action by issuing a Resolution. The Court also declared that compelling linguistic or religious minority institutions to absorb surplus teaching or non-teaching staff from other minority institutions who are declared surplus from other minority institutions is in violation of rights guaranteed under Article 30(1) of Constitution of India.

In a most recent development the Supreme Court passed a ruling on May 6th 2014 where it upheld the constitutional validity of Articles 15(5)¹ and 21A² of the Constitution. However, it stated that the Right of Children to Free and Compulsory Education Act, 2009 in so far as it applies to minority schools, aided or unaided is unconstitutional. The petitioners contended that Article 15(5) which enables the state to enact laws to provide reservation for socially and educationally backward classes in private unaided institutions (except minority institutions), infringed upon their freedom of occupation under Article 19(1)(g).³ It was further argued that the responsibility envisaged under Article 21A to provide free and compulsory education to children between the age of 6 and 14 was cast upon the state and it cannot be delegated to private unaided institutions conveniently by the state.

The petitioners also contended that private educational institutions in the present case⁴ do not fall within the purview of the state under Article 12 and that Article 21A, to the extent of allowing reservations in private unaided institutions, would be a violation of Article 19(1)(g). The court observed that no constitutional rights were violated by Articles 15(5) and 21A as it only empowered the parliament to enact laws for ensuring that all children between ages 6 and 14 receive education. However, the court in a total deviation from its previous judgment held that the entire set of minority schools are a separate class entitled to exemption from the ambit of the RTE Act of 2009. Therefore the Act of 2009 when applied to minority schools is ultra-vires the Constitution.

Sexual Minorities

Sexual minorities include those persons who are discriminated against because of their sexual identity or orientation or gender identity. From times

¹Added by the Constitution (93rd Amendment) Act, 2006 providing for reservation of backward and scheduled classes and scheduled tribes including private educational institutions.

²The Constitution (86th Amendment) Act, 2002 has added a new Article 21A which provides that “ the State shall provide free and compulsory education to all children of the age of 6 to 14 years in such manner as the State may, by law, determine.”

³Article 19(1)(g) guarantees that all citizens shall have the right “to practice any profession, or to carry on any occupation, trade or business.”, subject to reasonable restrictions.

⁴*Pramati Educational and Cultural Trust and Ors Vs Union of India and Ors* [WP (C) No. 416 of 2012] Judgment delivered on May, 6th 2014.

immemorial all religions except Hinduism, considered homosexuality as a sin.¹ The Quran considers Islam to be a “religion of nature.” The purpose of sex is procreation and homosexuality an aberration of Allah’s will. Christianity also considers homosexuality as unethical as well as unbiblical. Hebrew and Christian scriptures denote Lesbians, Gays, Bi-sexuals and Transgenders (LGBT) as moral transgressors who stand outside the circle of human rights.²

In India, it is too early to predict what measures the Government of India will take to bring about a change in the lives of sexual minorities. The bone of contention was Section 377³ of the Indian Penal Code. In a landmark judgment delivered on July 2nd 2009 the Delhi High Court upheld their rights by recognizing the anachronism associated with Section 377 of IPC by interpreting it to exclude sexual acts between consenting adults, thus decriminalizing homosexuality.⁴ The court ruled Section 377 of Indian Penal Code as violation of Articles 21, 14 and 15 of the Indian Constitution. The judgment was well received across the nation. However, religious institutions challenged the Delhi High Court’s decision before the Supreme Court in *S.K.Koushal V. Naz Foundation*⁵.

The Supreme Court held that section 377 of IPC does not suffer from the vice of unconstitutionality and the declaration made by the Division Bench of Delhi High Court is legally unsustainable. The court further stated that it had merely pronounced on the correctness of the view taken by the Delhi High Court on the constitutionality of section 377 of IPC and found that the said section does not suffer from any constitutional infirmity. Notwithstanding this verdict the competent legislature shall be free to consider the desirability and propriety of deleting section 377 of IPC or amend the same.

Homosexuality has been a feature of human culture since early history, generally and most famously in ancient Greece. The condemnation of anal sex, however, predates Christianity, arising in ancient Greece, where the theme of action “against nature” originated. In Europe including Greece, there are no laws against homosexuals. A wave of violence in Greece was a consequence of the economic crisis which crippled the nation with debt and the highest unemployment rate in EU has prompted extremist groups such as the Neo-Nazi and Golden Dawn Party to target minorities including (LGBT) activists.

Conclusion

¹Ruth Mazo Karraz, “Common Women: Prostitution and Sexuality in Medieval England,” Oxford University Press, NY 1996, p.3.

²Christopher W. Blackwell, Janice L. Ricks and Sophia F. Dziegielewski, “Discrimination of Gays and Lesbians: A Social Justice Perspective,” 19(4) *Journal of Health and Social Policy* (2004), p. 31.

³Section 377 of IPC states as follows “Whoever voluntarily has carnal intercourse against the order of nature with any man, woman, or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

⁴*Naz Foundation Vs NCT of Delhi and Others*, 160 (2009) DLT 277.

⁵(2014) 1 SCC 1.

After 64 years of the Indian constitution there is a need to review the nature of protection required for minorities and minority institutions in a secular state, keeping in mind the conditions prevailing in the country today. The recent ruling of the Supreme Court in 2014 (minority institutions) discloses a much needed change in recognizing that Article 30(1) of the Indian Constitution is merely a feature of equality and is opposed to reverse discrimination. Regarding sexual minorities the Apex Court has given discretion to the government to decide.

The Greek Government's interpretation of the term "minorities" is too restrictive as per prevailing standards. Greece does not recognize ethnic or linguistic minorities. Apart from the Muslim minority in Western Thrace, the rights of other minorities are curtailed in respect of full enjoyment of their rights of self-identification and the protection due to them as minorities. The government is appreciated for the positive initiatives that it has taken in respect of quality of education and the reservation for minority students in universities. Being a sovereign state, it is entitled to frame policies which are convenient for its governance. However, the protection of minorities in Greece is not of the same degree as India.

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