

Managing Diversity in the Multicultural Framework of India

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ABSTRACT: After India got independence from the British rule in 1947, the main challenge for the makers of the new constitution was the successful management of the vast ethno-cultural, religious and linguistic diversity of the country. Accommodating minorities in a way that respects their distinctive identity was indeed a great task for constitutional makers. The paper, therefore, intends to study the role of Indian constitution in protecting the deep-rooted diversity of India. It seeks a detailed analysis of the general and specific provisions of the constitution that guarantees the minorities not only a safe survival but their empowerment as well. The study found Indian constitution a multicultural document that ensures minorities a dignified status by conferring them some special rights available only to them.

Key Words: Diversity, Minorities, Accommodation, Constitution

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INTRODUCTION

In modern times, multicultural societies face a big challenge of accommodating the ethno-cultural and religious diversity. The true success of a diversified society can therefore be traced in the institutional mechanism which ensures the survival of minorities through the measure of consensus and negotiation and respects their rational demands. The framing of the constitution in a way that cherishes the plural nature of a society is the most positive and efficient institutional mechanism possible. This is because a constitution is not only a guarantee of rights and freedoms but also reflects the plurality of values, identities, beliefs and ideas. Oliver Wendell Holmes, an eminent American jurist, has stated that “the constitution is not a document of fastidious dialectics, but means of ordering the life of a people. It is an organic growth.”(*Gompers v. United States*, 1914, p. 233 US 604). A just constitution takes into account the diverse ways of life so that each cultural group of society is valued. Granville Austin highlights the importance of an inclusive constitution while stating that “the closer the sense of a constitution is to the inclinations of a people, the greater will be their allegiance to it”(Austin, 1966, p. 309). In a same manner Ronald Watts, an eminent scholar of federalism, enunciates that “the impact of political, social, cultural, economic, geographic and historical forces upon constitution-making has been apparent in each of the new federations”(Watts, 1966, p. 41).

After the independence in 1947, there was a great challenge for India to accommodate such a huge diversity of cultures and religions within a single union. The constitutional forefathers did not let the pains of partition impact over the policy making and tried to save the country from any further disintegration. The challenge of preserving the diversity while holding all the units together, or in other words, to achieve the goal of unity in diversity, was successfully tackled by the framers of the independent constitution. Therefore the new constitutional framework was expected to “provide for a unified but culturally diverse nation-state”(Mahajan, 2005, vol. II). The new constitution was therefore expected to accommodate the demands of all the minority groups.

THEORETICAL REVIEW

The researcher has found a number of existing books and articles on this topic. Atul Kohli has stated that the main reason of the successful working of Indian democracy has been the constitutional guarantees for the cultural, religious and linguistic minorities and the federal structure of the state that distributes the legislative powers between the centre and the states (Kohli, 2001). J. Dasgupta believes that “India’s bold experiment of combining democratic responsiveness to cultural differences with a federal conciliation of regional community, identity, and autonomy claims and a nationally concerted promotion of regional capability, has tended to ensure a novel mode of multicultural national development” (Dasgupta, 2001).H. Bhattacharya mentions that the federal decentralisation has helped India to control the state disintegration, because it is at this level that the problem begins.(Bhattacharyya, 2001; 2003). S. K. Mitra argues that Indian multiculturalism has its base in respecting the traditional plurality of its society and empowered the groups and individuals.The present work intends to explore the constitutional guarantees for the protection of minorities and their implementation (Mitra, 2006).

METHODOLOGY

The researcher has employed a descriptive and historical method in doing this study. It has made use of legislative enactments, constituent assembly debates, the constitution of India various other secondary sources available in the shape of books and articles. The deeply rooted diversity of India in the form of cultures, religions, languages and ethnicities has been studied by using the historical method while keeping in view what C. Wright Mills says, "Every social science or better, every well considered social study requires a historical scope of conception and a full use of historical material" (Mills, 1959). Following the above methodology, the following research aims to offer a descriptive account of the accommodative measure taken by the state to create unity and integrity at the national, regional, and sub-regional levels, focusing on the importance of preserving the diversity and respecting the demands of minority cultural communities in the strengthening of democracy.

RESULTS

The makers of the Indian constitution while framing the multicultural structure of independent India identified four types of communities-religious, lingual, ethnic or tribal and caste groups for protecting the diversity of the country. The lower groups in the hierarchy of caste system had been subject to discrimination perpetuated by the higher caste groups by socially excluding and segregating them. Hence, the pressing concern before the framers of the constitution was to get rid of the prevailing social prejudices against the lower castes by providing them access to resources and opportunities that were enjoyed by others. The main focus for tribal groups (some of them were protected through separation from the non-tribals), along with religious and linguistic communities was on the preservation and protection of the diversity in a way that they could live according to their own way of life and cultural practices.

After the country got freedom from British rule, efforts were made by the members of Constituent Assembly to frame a constitution that represents the interests of all the socio-cultural, ethnic and religious groups. This vision can be clearly seen in the Constituent Assembly speech of Jawaharlal Nehru on 8th of November 1948, in which he said, "The glory of India has been the way it manages to keep two things going at the same time: ... infinite variety and ... unity in that variety"(Constituent Assembly Debates, 1948, vols. VII, 323). The preservation and valuing of the independence of diversified identities, made multiculturalism as the key stone of then ewconstitution. It introduce dinstitutional protections for accommodating such a huge diversity. For protecting the cultural autonomy of the minorities, the constitution introduced both individual as well as collective or group rights. They include, protection through special minority rights, individual freedoms and rights, affirmative action measures, language rights and the educational and cultural rights.

DISCUSSION

As a 'key document of Indian unity,' the constitution is an all-inclusive in offering a broad institutional mechanism that accommodates and negotiates various questions of diversity management. The Indian constitution deals with diversity related issues with different interpretations of equality. Part III of the Indian constitution which deals with Fundamental Rights, are accompanied by Directive Principles of State Policy (DPSP) mentioned in Part IV. These two collectively reflect the inclusive approach of liberal and democratic Indian state which it intends to achieve vis-à-vis individuals and cultural groups. The conception of equality therefore carries different meanings in different contexts.

The constitution of India guarantees six sets of fundamental rights. They are: right to equality, right to freedom, right against exploitation, right to freedom of religion, cultural and education alrights and the right to constitutional remedies. Austin observes that all these fundamental "rights lay down that the state is to deny no one equality before law."(Austin, 1966, p. 51) All the rights contained in Part III (Fundamental Rights) are justiciable in nature.

On the other side, Part IV of the constitution that deals with the 'Directive Principles of State Policy,' is a non-justiciable Part. However, that does not make it less important, because, it lays down guidelines and directions for the law making bodies. This Part aim store form the society or to bring social progress as it is largely taken from the Gandhian and Socialist values. If only few of the provisions of the constitution addressed only the 'formal orprocedural equality,' a major portion of DPSP reflected an initiative to introduce 'substantive equality.' But the provisions, which also reflects Indian or Gandhian philosophy, further contended for a greater good, the '*telos*' of a moral-cum-socialist type of communitarianism.

Article 14 of Part III in the Indian constitution says that "The State shall not deny to any person equality before the law or the equal protection of the laws with in the territory of India." Similarly, Article 15, which is the extension of the previous article or the right to equality principle, for bids any public authority from discriminating on any of the grounds such as, "religion, race, caste, sex, or place of birth." Article 15(2) states "Nocitizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to (a) access to shops, public restaurants, hotels and places of public entertainment; or (b) the use of wells, tanks, bathing *ghats*, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public." This clause was introduced in order to tackle the discrimination happening particularly in the name of caste and religion. Furthermore, Articles 15(3) and 15(4) asserts, "nothing in this article shall prevent the State from making any special provision for women and children" and "the advancement of any socially and educationally back ward classes of citizens or for the Scheduled Castes and the Scheduled Tribes."

Article 16 introduces the principle of 'equality of opportunity' in the conditions of public employment and prohibits authorities from making any kind of discrimination

based on individuals background or affiliation. Clause 3 of Article 16 states, “Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory prior to such employment or appointment.” In order to address the grievances of historically underprivileged groups of society and consequently making special reservations for them, Clause 4A of Article 16 contends that nothing will stop the state “from making any provision for reservation in matters of promotion to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State.” Similarly, Clause 4B of Article 16 introduces the “carry-forward rule”, which states that “ Nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent reservation on total number of vacancies of that year.” Apart from reservation in terms of *quotas* in jobs, Article 16(5) makes another ground of deviation from the principle of formal ‘equality of opportunity’ by stating that “nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body can be a person professing a particular religion or belonging to a particular denomination.”

Article 17 endeavours to abolish the evil social practice of untouchability by stating that “Untouchability is abolished and its practice in any form is forbidden. The enforcement of any disability rising out of Untouchability shall be an offence punishable in accordance with law.”

Article 25 of the constitution mentions “freedom of religion”, or “freedom of conscience and free profession, practise and propagation of religion.” Article 25(1) states that, “Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.” Clause 2 of Article 25 directs the state to restrict this freedom on exceptional grounds. It reads, “Nothing in this article shall affect the operation of any existing law or prevent the State from making any law; (a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice; (b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.” This clause basically prohibits such acts or practices which the state may regard inadequate or inappropriate either in terms of religious exclusion, which includes exclusion of lower castes in religious practices, or reformist legislation which may affect all religious groups or some religions or a section of a particular religion. Clause 2(b) provides an explanation that the word Hindu includes members of three other religions as well; which are, Sikhs, Jains and Buddhists.

Article 26 deals with the freedom of managing the religious affairs. This can be called as a collective right of religious groups, particularly the minorities who do not want external guiding in managing their personal affairs. The Article asserts, “Subject to

public order, morality and health, every religious denomination or any section thereof shall have the right; (a) to establish and maintain institutions for religious and charitable purposes; (b) to manage its own affairs in matters of religion; (c) to own and acquire movable and immovable property; and (d) to administer such property in accordance with law.”

Article 27 and 28 further lays the foundation of a secular state. Article 27 says “No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination.” And Clause 1 of Article 28 states that “no religious instruction shall be provided in any educational institution wholly maintained out of State funds.” However, it has an exception clause; clause 2 which reads: “Nothing in clause 1 shall apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution.”

Article 29 and 30 are the most celebrated and encouraged rights given to minorities of the country. They are together called as ‘Cultural and Educational Rights.’ These two articles allow the minorities to protect, preserve and celebrate their distinctive cultural practices and establish as well as maintain their own educational institutions. Entitled as “Protection of interests of minorities”, Clause 1 of Article 29 states, “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.” Clause 2 establishes a non-discriminatory principle in this regard by stating that, “No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.” On the other hand Article 30 focuses on the educational rights of minorities. It says that, “All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.” Its clause 2 says, “The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.”

Article 29 and 30 are together considered as the backbone on India’s multicultural framework. They guarantee the lingual, cultural and religious minorities a sense of security so that the unity and integrity of the country remains unchallenged. However, there are constitutional analysts like James Massey who consider these two articles not only rights of national minorities but also a saviour of majority cultural community which may be minority in a particular state. He argues, in spite of the fact that Article 29 ensures “protection to the interests of minorities, it does not refer specifically to the minorities whose numerical strength is less.” While mentioning “any section of the citizens”, having a different language and culture, that may actually “belong even to the majority community.” Massey critically examines, as an example, that even “members of the Hindu community living in Punjab or Nagaland will receive protection for their or cultural rights, by virtue of being ‘so-called minorities’ in these States”(Massey, 1999, p. 83).

However, it is commonly believed and accepted that both of these Articles are meant for the protection of religious and cultural minorities (national minorities) of the country. The right of minorities to protect and preserve their cultural identity has been justified on the grounds of the principle of equality by Justice Khanna in ‘*The Ahmedabad St. Xavier’s College Society case of 1974*:

The idea of giving some special rights to the minorities is not to have a kind of privileged or pampered section of the population, but to give to the minorities a sense of security and a feeling of confidence...Special rights for minorities were designed not to create inequality. Their real effect was to bring about equality by ensuring the preservation of the minority institutions and by guaranteeing to the minorities autonomy in the matter of the administration of these institutions. The differential treatment for the minorities by giving them special rights is intended to bring about an equilibrium, so that the ideal of equality may not be reduced to a mere abstract idea, but should become a living reality and result in true, genuine equality, an equality not merely in theory, but in fact (The Ahmedabad St. Xavier's College Society vs. state of Gujarat, 1974).

It is very interesting to note that where the Fundamental Rights Part guarantees rights to religious minorities, Article 44 of the DPSP Part stands in conflict with the freedom of religious minorities to frame their own personal laws. It states that, State shall endeavour to provide for its citizens a Uniform Civil Code (UCC) through out the territory of India." Although this article is non-justiciable in nature and hence its implementation is not binding on the state, but it throws the future legislation open with regard to with drawing of Personal Law System and enforcing of UCC in its place. At present, the debate around this topic is gaining cover age because of the current National Democratic Alliance (NDA) government backing this idea. It has been claimed that the Personal Laws are violative of many of the individual rights and freedom and there fore it becomes necessary to enforce a uniform code for all the religious communities. On the other side the Muslim minority community has challenged this agenda on the grounds that the backing for the enforcement of UCC is not about protecting individual rights but to encroach on the group rights of religious minorities.

Article 46 of DPSP Part suggests the state to secure the interests of those sections of society which are most backward and weaker, particularly the Scheduled Castes (SCs) and Scheduled Tribes (STs). The Article reads, "the state shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation." It is important to note here that Article 46 complements Article 16 on the grounds of equal opportunity for all. Both share the same objective of providing social assistance and other necessary privileges to the historically unprivileged and backward sections of society.

The constitution has mentioned the election related matters from Article 324 to 329 in Part XV. The constitutional framers abolished the separate electorate system established during the colonial period. Article 325, in particular, mentions that. "there shall be one general electoral roll for every territorial constituency." Article 330 to 342 in Part XVI deals with 'Special Provisions Relating to Certain Classes.' This part provides special representation rights for Anglo-Indians (Article 331 and 333) and Scheduled Castes and Scheduled Tribes (Article 332 and 334) in legislatures, putting away the term reservation for SCs and STs. In the like manner, reservation of jobs in

public sector for Anglo Indians are mentioned in Article 336 and for SCs and STs in Article 335. Article 335 states, “The claims of the members of the Scheduled Castes and Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State.” Article 338 directs for the establishment of a ‘National Commission for SCs and STs’ for the purpose of protecting their distinctiveness and promoting their special interests.

Article 343 to 351 in Part XVII, deals with linguistic affairs and safeguards for linguistic minorities. Article 347 introduces a provision for the recognition of a regional language if any section of people demands so. It reads, “on a demand being made in that behalf the President may, if he is satisfied that a substantial proportion of the population of a state desire the use of any language spoken by them to be recognised by the state, direct that such language shall also be officially recognised throughout that State or any part thereof for such purpose as he may specify.” Article 350A prescribes that the state or any local authority within the state shall make efforts “to provide adequate facilities for instruction in the mother-tongue at the primary stage of education to children belonging to linguistic groups.” Furthermore, Article 350 provides that any of the state languages can be used while submitting to any public authority a representation for redressing the grievances of people. In the like manner, Article 120 and 210 empowers the state legislators to express themselves in their mother tongue language during the sessions of legislature if they are unable to speak in English, Hindi or the official language of the state. In this connection, The Official Language Commission stated,

The variety of Indian linguistic media is not a national skeleton to be ashamed of and to be somehow hidden away. It is a wealth of inheritance in keeping with the continental size, ancient history and distinctive tradition of assimilating and harmonizing diverse cultural and racial elements, of which this country can be justly proud. (Oommen, 2007, p. 9)

Therefore, the linguistic minorities have been successfully accommodated by the Indian democratic state by providing them the freedom to protect their regional languages. This way the minorities does not feel alienated from the mainstream body politic, rather they proudly associate themselves with the country and make contributions for its development.

CONCLUSION AND RECOMMENDATIONS

The deep rooted diversity in India has been challenging for the state but it did not result in its breakdown because the balance maintained by the state between diversity and national unity, centre and the federal units and accommodation and integration. Nehru also realised the importance of this balance and believed that the local units would only feel emotionally attached to the union if they are given the freedom and right to govern their own internal affairs.(Sharma, 1969, p. 67)

Most of the states at present are heterogenous i.e., they consist of the people of different languages but all of these groups have been treated equally by the constitution. The linguistic minorities within the states are guaranteed safe survival by the states. The Human Development report of 2004 states, “India asserts a single national identity but

recognizes that its citizenry is extremely heterogeneous. The country's constitutional design recognizes distinct group claims and enables the State to hold together despite enormous regional, linguistic and cultural diversity. Its citizens are deeply committed to the country and to democracy, despite the country's diverse and highly stratified society”(*Human Development Report 2015*, 2015).

It further reports that “to build a viable multi-ethnic society governments must recognize that multiple and complementary identities do not represent a threat to the State. At the same time, they need to build loyalties of all groups in society, through identification, trust and support”(*Human Development Report 2015*, 2015). It is therefore a true depiction that the formation of linguistic states, “is a fulfilment of the aspirations of homogeneous sectors within the national circle, language-based provinces become not contradictory but complementary to the further strengthening of national unity, because they acquire a vested interest in the security and inviolability of their dear country which assures for them identity, individuality, protection and progress”(Krishnaiyer, 2003, p. 126).

The constitutional framework has proved that India follows the multiculturalism in respecting the distinctive identities of all the groups. Multiculturalism requires that the restructuring of internal boundaries for the sake of protecting and flourishing the minorities should satisfy certain principles. They are—a fixed territory, the powers and rights of minorities guaranteed by the constitution, a due representation in decisions that effects them, and equal treatment of all its citizens. The above discussion makes it clear that all these conditions have been fulfilled by the Indian state with respect to linguistic minorities.

FURTHER STUDY

It is a fact that every research leads us to another set of questions. There fore, no research is absolute and final. This paper has discussed the constitutional provisions in the Indian constitution that protects minorities from the tyranny of majority community. The further research can be done on the actual status of the seconstitutional guarantees and accordingly to judge whether they are sufficient in protecting the diversity of the state or other mechanism need to be implemented.

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REFERENCES

- Austin, G. (1966). *The Indian Constitution: Cornerstone of A Nation*. Oxford University Press.
- Bhattacharyya, H. (2003). Multiculturalism in Contemporary India. *Journal on Multicultural Societies*, 5(2).
- Constituent Assembly Debates*. (1948).
- The Ahmedabad St. Xavier's College Society v. state of Gujarat, (1974).
- Dasgupta, J. (2001). India's federal design and multicultural national construction. In *The Success of India's Democracy*. Cambridge University Press.
- Gompers v. United States*. (1914).
https://www.chanrobles.com/usa/us_supremecourt/233/604/case.php
- Human Development Report 2015*. (2015).
https://hdr.undp.org/sites/default/files/2015_human_development_report_1.pdf
- Kohli, A. (2001). *The Success of India's Democracy* (A. Kohli (Ed.)). Cambridge University Press.
- Krishnaiyer, V. R. (2003). *A Constitutional Miscellany*. Eastern Book Company.
- Mahajan, G. (2005). Negotiating Cultural Diversity and Minority Rights in India. In *Democracy, Conflict and Human Security: Further Readings*. International Institute for Democracy and Electoral Assistance.
http://www.idea.int/publications/dchs/upload/dchs_vol2_sec3_4pdf
- Massey, J. (1999). *Minorities in a Democracy: The Indian Experience*. Manohar Publishers.
- Mills, C. W. (1959). *The Sociological imagination*. Oxford University Press.
- Mitra, S. K. (2006). *The Puzzle of India's Governance, Culture, Context and Comparative Theory*. Routledge.
- Oommen, P. T. K. (2007). *Dr. B.R. Ambedkar and Linguistic States in India*.
- Sharma, P. K. (1969). *Political Aspects of States Reorganisation in India*. Mohuni Publications.
- Watts, R. L. (1966). *New Federations: Experiments in the Commonwealth*. Oxford University Press.