ISSN 2582-0311 (Print)
ISSN 2582-0303 (Online)

Volume 4
Issue I

August 2022

VIPS STUDENT LAW REVIEW

VIVEKANANDA INSTITUTE OF PROFESSIONAL STUDIES - TECHNICAL CAMPUS

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Volume 4, Issue I August, 2022 ISSN 2582-0311 (Print)
ISSN 2582-0303 (Online)

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Rising Religious Majoritarianism in India: The Impediment to Minority Rights and Representation

VIPS Student Law Review
August 2022, Vol. 4, Issue 1, 184-200
ISSN 2582-0311 (Print)
ISSN 2582-0303 (Online)
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https://vslls.vips.edu/vslr/

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Abstract

Today, India is witnessing a wave of polarization and majoritarian politics. The root of this polarization lies in the conflict between Secular nationalists and Hindu nationalists. Independent India witnessed a constant growth in the majoritarian and communal politics. The period between 1947 and 1964, was a period of tolerance and diluted polarization under the leadership of Pt. Nehru. In 1948, the assassination of Gandhi cost the popularity of majoritarian right-wing organizations. Till the 1980s, congress fostered secularism and had a broadly inclusive vision for India. Surprisingly, the subsequent periods witnessed a changed political approach, which was based on pseudo-secularism and manipulation of religion as a vote bank. Post-2014, a new wave of communalism and true Majoritarianism got injected into the Indian society which involved the appeasement of the majority especially the religious majority for the success in the elections.

The purpose of the paper is to scrutinize the status of minorities' constitutional rights and representation in the parliament in such a majoritarian environment. The question of law for this research is whether the decision of constitution framers of abolishing reservations for minorities in the legislature and granting a charter of rights under fundamental rights to the minorities was a feasible decision considering current India's political scenario? The approach of research is purely doctrinal research which involved the usage of legislation, reports, journal articles, and case laws for research purposes. The paper

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analyses various themes and subthemes associated with this topic and provides solutions for the prevailing problems.

Keywords: *Majoritarianism, communalism, minority, representation, rights, reservation*

I. Introduction

The Indian subcontinent has always been a culturally and religiously diversified region which constituted 100 different languages, more than 700 tribes and home to all the prominent religions of the world.[1] Before its colonization by the Britishers, the region composed of various kingdoms and principalities who were involved in constant conflict among each other. Subsequently, with the conquest of this region by the British East India Company, it led to the rise in the spirit of nationhood among all the Indians irrespective of their caste, color, gender and religion. This rise in the nationalism leads to the Indian freedom struggle against the British occupation of this territory.[2] But unfortunately, this unity among Indians did not last long and soon religious polarization entered for political purposes. Although India gained independence from British rule, due to the ill effects of religious polarizations, Indian subcontinent was partitioned and a new country was carved out of it that is Pakistan. Today, the post partitioned India is still witnessing the ill effects of religious polarizations with the rising demand of some groups for converting India from a secular country to a Hindu Rashtra.[3] The very root of the Indian politics revolves around the question of whether India shall be a Hindu state or a secular state.[4]

In the era of 1970s, the country witnessed a rise in the prominent Hindu Nationalist organizations which leads to a sharp divide among the diversified communities especially Hindus and Muslims.[5] The main goals of these organizations were to appease the majority community, inject hatred, and incite the majority community to commit crimes like lynching the minorities. In the year 1992, a dark incident took place, when a large group of religious bigots calling themselves 'Kar Sevaks' demolished the Babri Masjid and as a result the gap

1 Greater Pacific, https://www.greaterpacificcapital.com/thought-leadership/indias-diversity-is-a-strategic-asset (last visited Nov. 7, 2021).

2 MyGOV, https://blog.mygov.in/freedom-fighters-who-fought-valiantly-in-indias-independence-movement/ (last visited Nov. 7, 2021).

3 Niranjan Sahu, *Mounting Majoritarianism and Political Polarization in India*, Carnegie Endowment For International Peace https://carnegieendowment.org/2020/08/18/mounting-majoritarianism-and-political-polarization-in-india-pub-82434 (last visited Nov 8, 2021, 8:34 P.M.)

4 Mani Shankar Aiyar, *Politics and Religion in India*, 34 India Int'l Centr Qtly 42, 43 (2007).

5 Sahu, *supra* note 3, at 2.

between majority community and minority Muslims widened.[6] Since then, the country has witnessed a steady rise in religious violence, lynching, and mob attacks. Unfortunately, the ruling party is pretending to be oblivious to these incidents[7]. These sorts of events have led to an extreme rise in the magnitude of Majoritarianism within the country.

In simple terms, Majoritarianism arises when the views which express the will of the majority community are legitimately accepted by the political authority without concerning the interest of the minority community. Therefore, the main research questions that have been scrutinized by this paper are as *firstly*, whether India is shifting from a representative form of democracy to a majoritarian form of democracy? And *secondly*, what would be the status of Minority rights and political representation in the majoritarian democracy?

II. The Concept of Majoritarianism

The concept of Majoritarianism is used interchangeably with majoritarian democracy and majority rule. Under this concept, a majority of the population in terms of religion, language or any social class attains certain degree of primacy in society and decisions in the society are taken as per their will.[8] It is axiomatic that the last few years saw a dramatic rise in communalism and the political sentiments have consolidated around the symbol of one religious' identity. In majoritarian democracy, the political narratives are framed in the form of perception, wherein the religion of majority community is perceived to be weak and under threat.

The majoritarian politics has the most accentuated influence in the region of South Asia. In the last decade, the region has witnessed a meteoric rise in the magnitude of majoritarian politics. The instance of India, the BJP ruled government which is considered a Hindu supremacist has consolidated its majoritarian base by appeasing Hindus and establishing the narratives of Hindu Rashtra, Ram Rajya etc.[9] The instance of Pakistan on the other hand,

6 The Freepress Journal, https://www.freepressjournal.in/india/babri-masjid-demolition-anniversary-timeline-of-events-from-construction-of-mosque-in-1528-to-cbi-court-judgement-in-2020 (Last visited Nov 8, 2021).

7 Manoj Joshi, *Rise of Majoritarianism – needs the check*, Times of India, (Oct. 21, 2020, 15:51 IST) https://timesofindia.indiatimes.com/readersblog/mythoughtsviews/rise-of-majoritarianism-needs-the-check-27376/

8 Ranjan Ray, *The Necessity for Delinking Democracy from Majoritarianism*, The Wire, (Feb. 25, 2021) https://thewire.in/rights/democracy-majoritarianism-india.

9 Radhika Govindrajan, Bhoomika Joshi and Mubbashir Rizvi, *Majoritarian Politics in South Asia: Introduction,* Society for Cultural Anthropology, (Mar. 16, 2021) https://culanth.org/fieldsights/majoritarian-politics-in-south-asia-introduction.

reflects a military-state nexus under the leadership of PTI which establishes a narrative of Riyasat-e-Madina for moulding a glorious medieval Muslim empire.[10] The instance of Sri Lanka can be considered as the best example of Majoritarianism; it is a fact that Sri Lanka gone through a civil war between 2 communities that is the Sinhala and Sri Lankan Tamils. In the civil war, Sinhala community which is also a majority in Sri Lankan population, succeeded and established its government without giving any representation to Sri Lankan Tamils.[11]

It is pertinent to note that judiciary does play an important role in countering Majoritarianism. The landmark case of *Naz Foundation* is known for decriminalising homosexuality but, actually the court went much beyond by reinterpreting Article 15 of the Indian Constitution and dealt with the issue of minorities. The court observed that, religion is an immutable status and fundamental choice of an individual; thereby it is the foundation for personal autonomy under Article 15.[12] Ultimately, court while granting an unprecedented constitutional protection under Article 15 represented a new deal for minorities. In today's India, it would not be wrong to use the term 'minorities and 'vulnerable groups' interchangeably. Apart from numerical strength, other dimension of minority includes political vulnerability, social vulnerability and economic vulnerability.[13]

The further sections of this paper would be discussing the current outlook of Indian democracy. The paper would be discussing contentious issues like firstly whether India is shifting towards majoritarian democracy? Secondly, what is the impact of majoritarian politics in India? And thirdly how the majoritarian politics is impacting minority rights?

III. Indian Democracy: A Shift Toward Majoritarianism

The Indian democracy was moulded on the secular and representative framework. As it has been expressly declared by Nehru in his speech in the Constituent Assembly that the country like India that has got a huge diversity would never function satisfactorily until a secular and representative framework to run the country is adopted. Therefore, it is axiomatic that the idea of Indian democracy is moulded upon the idea of secularism and

10 *Ibid.*

11 Ben Davis, *What Is An Example Of Majoritarian Politics?*, MV Organization, (Oct. 8, 2019) https://www.mvorganizing.org/what-is-an-example-of-majoritarian-politics/.

12 Naz Foundation v. Govt. of NCT of Delhi, (2009) 111 DRJ 1(SC).

13 Tarunabh Khaitan, *Reading Swaraj into Article 15: A New Deal for All Minorities*, 2 NUJS L Rev 419, 421 (2009).

non-communalism.[14]

During the initial period just after independence, under the leadership of Indian National Congress, there was a clear ideological schism between advocates of secularism and communalism. However, with end of Indira Gandhi era, the country witnessed a breakdown of secular structure that was constructed by Nehru and initial congress leaders. There were certain events and steps of the government that lead to more communal divides. For an instance, the assertion of Islamic code in Pakistan and Bangladesh had its impact in India. Moreover, In India there two landmark decisions - Firstly, decision on Muslim women and Protection or rights on Divorce Bill, 1986 and secondly, the decision of Babri Masjid 1986 in favour of Hindus marked the turning point in the relation between Hindus and Muslims.[15] These events were the reason for escalation of polarization between the two communities.

1. Emergence of majoritarianism

In a study conducted by anthropologist, it was observed that everywhere the community of people tends to differentiate themselves from the other communities living in the same state. This tendency of human beings gives birth to the Majoritarian politics, wherein majority represents "the people" and considers minority as its "natural enemy".[16] In politics, there can be two ways through which politics and religion can overlap. The First, is when the minorities in order to protect their self-respect demands self-respect and second, is when the majority community makes a false perception about religious minorities by considering them to be internal threat or anti nationals.[17]

As far as minority inspired religious politics is concerned, it is merely limited to the province of Kashmir. On the other hand, Hindu Majoritarianism had a telling impact when it comes to religious politics. In politics, Majoritarianism is impactful and stimulates best results for the political leaders but, it is exercised at the nation-state arena rather then, being limited to just one or two provinces. There is a best example of Shiva Sena which is a pure Hindu Nationalist political party. The Shiva Sena had its influence merely limited to the province of Maharashtra which made it difficult to promote its narrative about south Indians (Communists) and Muslims at national level as no national party aligned with it, in fear of losing seats in other states. In contrast, BJP which is currently ruling the nation

14 Zoya Hasan, *Changing Orientation of the State and the Emergence of Majoritarianism in the 1980s,*18 Social Scientist, 27, 28 (1990).

15 *Ibid*.

16 Dipankar Gupta, *Citizens versus People: The Politics of Majoritarianism and Marginalization in Democratic India*, 68 Sociology of Religion, 27, 32 (2007).

17 *Ibid*.

promoted its Hindu Majoritarian narratives like Ram Mandir, Love Jihad and Hindutva and Hindu Rashtra at nation-state arena and ultimately succeeded in elections.

2. Majoritarian politics and election manifesto

India has adopted Universal Adult Franchise which grants every single individual in the country who is above the age of 18, a right to vote. As already noted, that India has got a huge diversity in terms of religion, caste and languages, this opens up the way for mainly two forms of politics named, caste politics and communal politics.[18] The more election dates come closer, the more marginalisation takes place in terms of castes and religion. During elections, far right-wing parties exploit religion of majority communities in order to attain success. While majority of Hindu got appeased by majoritarian politics but, the huge percentage of largest minority that is Muslims voted for Congress and other leftist party rather than voting Muslim parties.[19]

A study conducted by Pew found that about 49% of Hindus voted for BJP which is quite higher in comparison with the percentage of people belonging to minority groups. The study further stated that Congress which is the largest opposition against the ruling BJP government is popular among Muslims and other minority groups. It is about 30% Muslims out of the total population that voted in favour of Congress and other left parties because of their secular framework and promises for reforms.[20]

It is an unfortunate situation that the country does not have any specific and separate legislation for the proper governance of political parties. There is no law that regulates the conduct of the political parties rather it is the election commission who has been granted with a large delegated power to make rules regarding the code of conduct of the political parties.[21] Since, there is an absence of any specific law for the political; this raises a question that whether Majoritarian politics is legitimate or illegitimate in India?

As aforementioned that Election commission has the jurisdiction to deal with political parties, it can even act as tribunal, in case of dispute between parties. It is pertinent to note that under Part VIII, it has been specified that election manifesto published by a political

18 Jayshree Bajoria, *India's Electoral politics*, Council on Foreign Relation, (Apr. 14, 2009 2:29PM (EST)) https://www.cfr.org/backgrounder/indias-electoral-politics

19 *Ibid*.

20 Adit Phadnis, *20% Muslims Voted For BJP In 2019 General Elections, Says Pew Survey*, Business Standard, (June 30, 2021 00:51 IST) https://www.business-standard.com/article/politics/20-muslims-voted-for-bjp-in-2019-general-elections-says-pew-survey-121063000059_1.html.

21 Mumtaj Ahmed Khan v. ECI, Writ Petition No.8359/2019

party shall be in consonance with the principles of the Constitution and spirit of the other provisions of the model code of conduct.[22] Further, Clause 1(1) and (3) has been inserted in order to prevent religious and communal politics. These two provisions of the model code of conduct explicitly bars the political parties from spreading hate among communities and usage of any religious place in order to fulfil their agendas.[23] Furthermore, the Election Commission has also been authorized any action in case of any violation of the provisions of model code of conduct to ensure its compliance.

In India, there is no specific law that deals with the prohibition of majoritarian politics. Nevertheless, it has been barred under Part 1(1) and (2) (i.e., general conduct) of the model code of conduct laid by election commission of India.[24] However, India is still witnessing divisive, communal and majoritarian politics. For an Instance, BJP, the ruling party, In April 2019 releases its election manifesto wherein they iterate their stand on the controversial religious matter of *Ram Janm Bhoomi case* and promises to construct the temple in the disputed land.[25] Surprisingly, in the month of April, the dispute was pending in the Supreme Court and there was no clarity regarding the construction of temple or mosque. Therefore, the mentions of *Ram Mandir* in the election manifesto, in itself a practice of majoritarian politics. It was nothing but a tactic to appease the Hindu voters in order to succeed in 2019 general elections. Surprisingly, Election Commission was silent and refrained from taking any action against such election manifesto.[26] Further, the Election Commission's response to hate speeches during 2020 Delhi Assembly election were also weak and ineffective.[27] It can be inferred from this discussion that the laws and regulation that has been framed in order to prohibit the majoritarian politics are almost toothless and ineffective because independence of Election Commission has also been doubtful and contentious issue for discourses. Furthermore, there is no legislation of parliament that directly regulates the behaviour of political parties during elections. On this regard, the observation of Supreme Court in the case of *S. Subramaniam Balaji vs. State of Tamil Nadu* stands reasonable, when the court declared that there is no enactment that directly governs

22 Election Commission of India, https://eci.gov.in/mcc/ (Last visited Nov. 10, 2021)

23 *Ibid.*

24 *Id.*

25 Press Trust of India, *BJP Releases Election Manifesto; Promises Ram Temple, Firm Hand In Dealing With Terror And A $5 Trillion Economy,* The Hindu, (Apr. 08, 2019 17:06 IST) https://www.thehindu.com/elections/lok-sabha-2019/bjp-releases-sankalp-patra-election-manifesto-makes-75-pledges/article26769193.ece)

26 Arjen Boin, ET. AL. *Guardians of Public Value,* 54 (Palgrave Macmillan 2020).

27 The Wire Staff, *ECI's Conduct of 2019 Elections Raises 'Grave Doubts' About Its Fairness: Citizens' Report,* The Wire (Mar. 15, 2021*)* https://thewire.in/rights/election-commission-bjp-polls-fairness-citizens-commission-on-elections-report.

the contents of election manifesto.[28] Representation of people act which governs the electoral aspects in the country is only applicable to candidates and not to political parties.[29] Section 123(3A) of Representation of Peoples' Act which bars "the practice of promoting enmity between different classes of citizens" is only applicable only to candidates and not to political parties or election manifestoes. Further, the Supreme Court also considered the fact that political parties intentionally release election manifestoes before the announcement of election dates in order to escape the actions by election commission.[30] Thereby, in this particular judgment Supreme Court recorded the need for "separate legislation for governing political parties in the democratic society" and "directed the election commission to make exception regarding election manifesto in order to take action even if it is released before the announcement of election dates".[31]

This particular judgment by the Supreme Court was pronounced in the year 2013 but unfortunately there is no measure taken by either legislature or election commission till date. Neither there is strict implementation of model code of conduct nor there any legislation for governing the behaviour of political parties during elections. Further, the Supreme Court in the case of *Jagdev Singh Sidhanti vs. Pratap Singh Daulata* laid down the test for determining the corrupt practice under Section 123(3) of the Representation of People Act. The Court iterated that "in order to decide the corrupt practice under Section 123(3) of the act, the impugned speech shall be considered under the light of the relevant political controversy". By applying this particular test on the hate speeches made by the candidates of the ruling government during 2019 Lok Sabha election, it can be observed that such speeches were corrupt practice by the virtue of Section 123(3) of the Representation of People Act. However, Election Commission never took the cognizance of such speeches and those candidates were elected seamlessly.

IV. Status of minority rights and representation in Indian democracy

In a representative participative form of democracy, the representation of minorities is important as it strengthens representational links, allows political participation of minority community and maintains positive attitude of the country's population toward the government[32]. The representation of minorities in the decision making of the country

28 S. Subramaniam Balaji v. State of T.N., (2013) 9 SCC 659.

29 *Ibid*.

30 *Ibid*.

31 *Ibid*.

32 Susan A. Banducci, ET. AL., *Minority Representation, Empowerment, and Participation*, 66 The Journal of Politics 534, 538 (2004)

is important for their empowerment.[33] As per the empowerment theory, the descriptive representation and visible political leadership by the members from minority community ensures the trust in the government, participation and pride of minorities.[34] The political empowerment of the minority sends a contextual cue to minority citizens that participation in voting is better than not voting.[35]

The concept of political empowerment involves the power sharing with the people from disadvantageous group. It implies that access of various political offices, position in the government and decision making shall be opened for the people belonging to the vulnerable groups.[36] As discussed earlier in this paper that in the situation of majoritarian politics, the minority community can also be considered under the category of vulnerable groups.[37] In common parlance, the minority is group of people who are distinct from the dominant political group and seeks to maintain their separated identity.[38] Under Section 2(c) of National Commission for Minority Act 1992, there are five religious communities that are Sikhs, Muslims, Parsis, Buddhists and Christians who have been termed as minority.[39]

The principal issue that the minorities globally face is the 'discrimination'. The minority do not have the same rights as to the majority community. The United Nation Commission on Human Rights viewed these minorities' issues as a great global problem. Thereby, in the 1st session only, the UNHRC established a sub commission on Prevention of Discrimination against Minorities.[40] This commission sets up some human rights standards in the form of Universal Declaration on Human rights and two covenants that are International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights.[41] The protection of minority rights has been dealt under Article 27 of International Covenants on Civil and Political Rights. This provision states that "no rights shall be denied to the people belonging to minority communities, they shall have the right to protect, profess, practice and propagate their religion and culture".

33 Lawrence Bobo, ET. AL., *Race, Sociopolitical Participation, and Black Empowerment*, 84 American Political Science Review 377, 382 (1990)

34 *Ibid.*

35 *Ibid.*

36 Alex C. Michalos, *Encyclopedia of Quality of Life and Well-Being Research,* 4876-4879 (Springer 2014)

37 Joshi, *supra* note 7, at 3.

38 Abdul Kalam Biswas, *Empowerment of Muslim Minorities Through Reservation in India*, Shodhganga https://shodhganga.inflibnet.ac.in/handle/10603/186512 (Last visited Nov. 15, 2021, 8:00 PM)

39 National Commission for Minorities Act, 1992, §2, No. 19, Acts of Parliament, 1992 (India).

40 Refworld, https://www.refworld.org/publisher/UNSUBCOM.html (Last visited Nov. 15, 2021)

41 Abdul, *supra* note 38 at 10.

1. Evolution of minorities rights and political representation in India

During the Constituent Assembly debates on the aspect of minority rights, a subcommittee on minorities was set up represented by people belonging to schedule caste, Muslims, Parsis, Christians, Schedule tribes, Anglo Indians, Sikhs and Hindu. The aim of this subcommittee was to discuss the minority rights and recommend relevant amendments for securing the rights of minorities.[42] There were four major issues relating to minorities were dealt by this subcommittee[43] that are *first,* whether the representation shall be given to minorities through separate electorates or joint electorate? S*econd,* whether seats in the cabinet should be reserved for minorities? *Thirdly,* whether seats shall be reserved for minority representation in public service? *Fourthly*, whether there shall be an administrative body for ensuring minority rights?

While dealing with the 1st issue, the committee gone through a serious discussion and final outcome of this discussion was that "adopting separate electorates for minority representation would be suicidal for minority, as they would enter into separate isolation".[44] Thereby, the idea of joint electorate was adopted along with some reservation of seats in legislature for minority communities for the period of ten year.[45] For the purpose of this reservation, there was three categories were made of all the "recognized minorities", wherein Anglo Indians, Parsis, Tribesmen were considered minorities with the population of 0.5% of the total population.[46] Second category included Sikhs and Indian Christians were treated as minorities having population less than 1.5% and third category included Muslims and Schedule caste having population exceeding 1.5%.[47]

On the aspect of reservation for minorities in cabinet and public service, members of the subcommittee reached to an agreement that there shall be no statutory provisions regarding the same. However, they supported the adoption of paragraph VIII of *instrument of instruction* and incorporated it under *directive principles of state policy*. This instrument suggests that the government shall be obligated to frame policies regarding the appreciation of representation of minorities in public service and cabinet.[48]

42 Constitution of India. https://www.constitutionofindia.net/blogs/desk_brief__the_minority_report (Last visited Nov 16, 2021)

43 Joshi*, supra* note 7, at 3.

44 3 B. Shiva Rao, *The Framing of India's Constitution* 757-58 (Universal 2015).

45 *Ibid*.

46 *Ibid*.

47 *Ibid*.

48 *Ibid*

In one interesting attempt to propose the idea of separate electorate voting, on 24th July 1947 K.T.M Ibrahim moved an amendment before the constituent assembly, specifying that the reservation shall be made on community basis and a candidate from a particular community must poll at least 35% votes in order to secure that reserved seat for the same community. However, the proposal was rejected by the majority of members in the constituent assembly.

Further, after India's partition, the framer of the constitution decided to abolish the reservation of seats in the legislature. However, in the constitution itself, a charter of rights for minorities were inserted under Part III to make sure that the minorities do not feel like the second-class citizens and their culture and religion stay protected.[49] Moreover, Article 15, Article 25-30 and Preamble were enacted within the constitution for protecting the rights of minorities and maintain unity and integrity of the nation by eradicating discrimination against minorities.[50] The Article 15 in the Constitution was incorporated in the Constitution with an intention of giving a blanket protection from discrimination to every citizen of the country whether he/she belongs to majority community or minority community.[51] It is pertinent to note that during the initial discussion in the Constituent Assembly several demands for reservation in legislature were put forth by the representatives of minority community but, framers did not accepted their demands. However, the framers incorporated several minority friendly provisions in the constitution for their welfare and protection. Accordingly, representatives from minority community dropped their demands for reservations in the legislature as they positively believed that such provisions would protect them from any kind of suppression and discrimination.[52]

It can be understood from the above discussion that the minorities rights enshrined in the Constitution were incorporated with an optimistic intention of protecting the minority from discrimination and securing their culture and religion. Here emerges a question that whether these constitutional rights without any reservation in the legislatures are actually sufficient for protection of minorities in today's India?

2. Fading constitutional rights and absent political representation

In this era of majoritarian religion-based politics, the policies of Indian government have put the minorities of the country especially religious minorities into the state of marginalisation

49 Ibid, 769

50 Bal Patil v. Union of India, (2005) 6 SCC 690.

51 State of Bombay v. Bombay Education Society, (1955) 1 SCR 568.

52 Ahmedabad St. Xavier's College Society v. State of Gujarat, (1974) 1 SCC 717.

and extreme pressure.[53] Today, the country is witnessing an increment in the hate crimes against minorities. This can be understood from the fact that in the year 2009, the total religiously motivated hate crimes were 3, whereas, in 2018 this number increased to 63.[54] Between June 2014 and the year 2018, a sum of 195 hate crimes were committed against minorities out of which 83.08% were against Muslims, 14.87% were against Christians and 2.05% were against Sikhs.[55] As per Sachar Committee Report, it is not only about hate crimes but, as far as access to social benefits like health, education, employment, housing and shelters are concerned, the minorities particularly Muslims are the most deprived community. A report of National Commission for Religious and Linguistic Minorities highlights social and economic problems for different minority groups.[56] In Muslim community, the major concern is relating to high degree of illiteracy.[57] Muslim community has the lowest percentage of educated people as compare to other minority groups.[58] Furthermore, Muslim community also face highest number of hate crimes in the country.[59] For Christian community, the major concern is high unemployment and poverty. As per periodic labour force survey, 6.9% Christian rural males and 8.9% Christian urban males are suffering due to joblessness.[60] Christians has the highest rate of unemployment as compare other minorities.[61] The Sikh community of the country has to face physical insecurities for life and properties because of anti-Sikh sentiments originated in the 1980s.[62] For Zoroastrian community of the country the major issue is with respect to low fertility which is causing their population to reduce.[63] The fertility rate of the Zoroastrian community is below 1 which means many spouses in the community are not having child. The infertility among Zoroastrians has caused their population to reduce from 69,000 in

53 Human Rights Watch, https://www.hrw.org/news/2021/02/19/india-government-policies-actions-target-minorities (Last Visited Nov. 16, 2021).

54 Deepankar Basu, *Majoritarian Politics and Hate Crimes Against Religious Minorities in India 2009-2018, 146(C*) World Development, Elsevier (2021) https://www.sciencedirect.com/science/article/abs/pii/S0305750X21001522.

55 *Ibid*.

56 Ranganath Misra Committee, *Report of National Commission on Religious And Linguistic Minorities*, National Commission Religious And Linguistic Minorities (Sept. 12, 2010), https://www.minorityaffairs.gov.in/sites/default/files/volume-2.pdf

57 *Ibid*.

58 *Ibid*.

59 *Ibid*.

60 Onmanorama, https://www.onmanorama.com/news/india/2019/06/27/unemployment-christians-india-religion.html (Last visited Nov. 20, 2021)

61 *Ibid*.

62 Basu, *supra* note 54, at 14.

63 *Ibid*.

2001 to 57,000 in 2011.[64]

As far as, representations of religious minorities in the Indian parliament are concerned, the facts are more surprising. In 2019 Lok Sabha, it is 90.4% of the total MPs who belong to Hindu majority community.[65] On the other hand, total numbers of MPs representing different minority communities is only 10 %(approx.), although 19.96% (approx.) of the Indian population is composed of different religious minorities.

Therefore, it would not be wrong to infer that amidst of this majoritarian politics; the minority community are being deprived in every aspect. Be it political representation, access to human development or security to profess their religion, the minorities are being deprived in every aspect. This raises a serious concern upon the decision of the constitution framers of abolishing the reservation of seats for minority community. India's anti-terror laws like UAPA with just 2% conviction rate are being used more as political weapons to terrorize the minorities and critiques of the ruling government.[66] As already discussed, in India political parties are more concerned about Hindu appeasement and vote bank politics rather than social welfare. Considering, the hardship suffered by minorities amidst the majoritarian politics, there is a grave violation of fundamental rights be it right to equality (Article 14 – 18), right to life (Article 21), right to religion (Article 25-28) and Cultural and educational rights of minorities (Article 29 and 30), the minorities are being deprived of almost every fundamental rights. In current scenario, right of minorities are merely available in paper and not in real sense.

Therefore, the enough representation of minorities is very crucial to strengthen the Indian democracy. The reservation of seats for the minority communities in the parliament would encourage the participation of minority communities in the Indian politics. Such participation would be beneficial to everyone in the country. It will improve the quality of political life, facilitate social integration and prevent conflict in the societies.[67] The issues of the minorities would be raised by their respective representative in the parliament

64 Manoj Nair, *As Their Population Declines, Parsi-Zoroastrians Struggle To Manage Religious Properties,* Hindustan Times (Jan. 20, 2019 10:44PM IST) https://www.hindustantimes.com/mumbai-news/as-their-population-declines-parsi-zoroastrians-struggle-to-manage-religious-properties/story-9ldRw9KNefTO5c7CSn65OL.html.

65 Priyamvada Trivedi, *From Faith to Gender and Profession to Caste: A Profile of the 17th Lok Sabha*, Hindustan Times (May 25, 2020 07:39AM IST) https://www.hindustantimes.com/lok-sabha-elections/from-faith-to-gender-and-profession-to-caste-a-profile-of-the-17th-lok-sabha/story-Mnp5M4pRX3aUji1UFFVy2N.html.

66 Bilal Kuchay, *With 2% Conviction, India's Terror Law More a Political Weapon*, Aljazeera (Jul. 2, 2021) https://www.aljazeera.com/news/2021/7/2/india-terror-law-uapa-muslims-activists

67 Dr. Oleh Protsyk, *The Representation of Minorities and Indigenous Peoples in Parliament*, Inter Parliamentary Union (Jan. 1, 2010) http://archive.ipu.org/splz-e/chiapas10/overview.pdf

and ultimately the policy makers would be compelled to work for the welfare of citizens including minorities.

3. Protection for religious minorities in existing constitutional framework: analysis

India is a country that has been gifted with a huge diversity in terms of cultures, ethnicities and languages. The first Prime Minister of India, Pt. Nehru used the phrase "unity in diversity" to describe India in his book named "Discovery of India" published in the year 1946.[68] It is worth to note that during Constituent Assembly debates, the secular state model was adopted for India in order to maintain the multi-culturalism of the country.[69] The Charter of Rights was introduced under Part III of the Constitution to preserve the secularity of the state. Article 14 which is one of the key provisions in the charter of rights declares "Equality before the law and equal protection of the law". However, Equality does not mean universal application of law to every citizen rather; it is based upon the premise of "like must be treated alike and unlike must be treated unlike".[70] The idea behind this particular concept is to implement protective discrimination for any group who is weak and vulnerable or disadvantaged.[71]

In light of the previous discussions with respect to minorities' pathetic social status, it would not be wrong to consider religious minorities as the vulnerable groups. Special rights to the religious and linguistic minorities were granted under Article 29 and 30 of the Indian Constitution. In this context the Supreme Courts observation in the case of *Ahmedabad ST. Xavier College Society v. State of Gujarat* gets pertinent, wherein the court stated that the special rights for minorities were not granted to give them any special privilege rather, to ensure protection to the minorities and give sense of security.[72]

Under Article 15(1) and (2), the Constitution imposes negative obligation upon the state to refrain from discriminating among citizens on the ground of religion, race, caste, sex and place of birth.[73] In 1951, Clause (4) was inserted in the Constitution which allowed

68 NCERT, SOCIAL AND POLITICAL LIFE, Ch. 1 (NCERT 2022) https://ncert.nic.in/textbook/pdf/fess301.pdf

69 Suhrith Parathasarthy, *Constitution Building in Culturally Diverse States: The Case of India,* Melbourne Forum on Constitution Building (2018) https://law.unimelb.edu.au/__data/assets/pdf_file/0009/2925801/MF-2018-India-Paper-FINAL-clean-formatted.pdf.

70 B.K. SHARMA, INTRODUCTION TO THE CONSTITUTION OF INDIA 67 (Prentice Hall of India Pvt. Ltd 2004)

71 Abdul, *supra* note 38 at 10.

72 Ahmedabad ST. Xavier College Society v. State of Gujarat, (1974) 1 SCC 717

73 INDIA CONST. art. 15

state to make special provision for socially or educationally backward classes of citizens or for the schedule castes or for the schedule tribes.[74] Here arises a question whether religious minorities can be placed under socially backward classes mentioned under Clause (4) of Article 15? It is pertinent to note that in a matter before the Supreme Court wherein 'affirmative action of treating Muslims as special class was challenged', National Commission through its affidavit asserted that "Minorities have to be treated as a weaker section".[75] The Sachar Committee and Ranganath Misra committee reports discussed previously clearly highlights the poor social status and serious problems of minorities in India. Moreover, in a survey recently conducted by Common Cause, it is found that minorities face religious discrimination even in a professional department like police.[76] Therefore, it is inferable that minorities can be treated as socially backward within the meaning of clause (4) of Article 15. However, it is an upsetting fact that despite of social backwardness and atrocities the minorities face in India, there is hardly any concrete special provision and prevention from the state till date like for.

The Constitution framers provided every possible protection to religious identities of minorities by incorporating Article 25 and 26 in the charter of Fundamental rights. Declared under Article 25 of the Constitution, all persons are equally entitled to freedom of conscience and right to freely practice, profess and propagate religion.[77] Further, Article 26 allows every religious denomination to maintain religious institutions, manage its religious affairs, and acquisition and administration of moveable and immoveable property for religious purpose.[78] The right to religion enshrined under Article 25 and 26 affirms the positive secularism of India which means that every person has right to practice, profess and propagate his religion but, state will have no religion of its own.[79] Justice Ahmadi, in the landmark case of *S.R. Boomai vs. Union of India* laid an interesting observation regarding secularism of India. Ahmadi J. states that "the concept of secularism is based upon the principle of accommodation and tolerance".[80] Moreover, Justice Kuldeep laid *in*

74 *Ibid*

75 Press Trust of India, *Minorities Have To Be Treated As 'Weaker Sections': NCM*, The Hindu (Aug. 29, 2021, 4:15 P.M.) https://www.thehindu.com/news/national/minorities-have-to-be-treated-as-weaker-sections-ncm-to-supreme-court/article35691794.ece.

76 Common Cause, *Status of Policing in India 2019,* Common Cause and Lokniti – Centre For The Study Developing Society(CSDS), https://www.commoncause.in/uploadimage/page/Status_of_Policing_in_India_Report_2019_by_Common_Cause_and_CSDS.pdf

77 INDIA CONST. art. 25

78 INDIA CONST. art. 26

79 Shefali Jha. Secularism in the Constituent Assembly Debates, 1946-1950, 37 Economic and Political Weekly 3175–80 (2002).

80 S.R. Boomai v. Union of India, (1994) 2 SCR 644.

S.R. Boomai case that "whatever the attitude of the state toward religion but in secular state religion shall not be mixed with secular activities of the state".[81] Further it is pertinent to mention here that in the landmark case of *Kesavananda Bharati vs. State of Kerala*[82], the Supreme Court declared Secularism to be the part of the basic structure of the constitution which means any law passed by the parliament can never contravene the secular spirit of the Constitution. The Hon'ble Supreme Court has been time and again interpreted the term 'secularism' in Indian context, the most recent example of such interpretation can be found in *M. Siddiq vs. Mahant Suresh Das* popularly known as *Ram Janmbhoomi case*, wherein court interpreted secularism by using the quote *Sarwa Dharma Sambhava* from *Yajur Veda, Atharva Veda* and *Rig Veda* which means tolerance of all religion.[83] In spite of such a secular framework of the constitution, the Minorities especially Muslims places of worships are under threat in today's India because of Majoritarianism.

After safeguarding religious identity, the Constitution framers while attempting to preserve the cultural and linguistic identity inserted Article 29 and 30 in the Constitution. The purpose of these two provisions was to provide the protection to the culture and language of the minority groups. Moreover, Article 30 allowed the religious and linguistic minorities to set up and administer their own educational institution.[84] Further clause (3) of Article 30 imposes another negative obligation upon the state to refrain from discriminating while providing financial aid to any such institution. Justice Ray's observation in the case of *Ahmedabad St. Xaviers College* case is pertinent because his observation provides the reason for inclusion of Article 30 in the constitution. Ray J. states that "minorities have the choice to establish their own educational institution so that their children can get general secular education and become good citizens of the country".[85]

On the basis of the above evaluation of existing constitutional protection for minorities, it can be inferred that even after dropping the idea of reservation for the minorities in parliament; the Constituent Assembly ensured some constitutional safeguards to minorities. However, in the era of majoritarianism and communal politics the status of minorities is degrading because of social problems they are facing. The representation percentage of minorities in parliament is below their population that is causing them lack of voices in the parliament. Thereby, the social issues of minorities are prevailing with no signs of resolution and the charter of rights that they got from constitution framers only exists on paper.

81 Ibid

82 Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225.

83 M. Siddiq v. Mahant Suresh Das, (2020) 1 SCC 1.

84 INDIA CONST. art. 30

85 Ahmedabad ST. Xavier College Society v. State of Gujarat, (1974) 1 SCC 717.

V. Conclusion

Due majoritarian politics, it is a saddened reality that status of Indian democracy is constantly backsliding. Recently, UK based 'Economists Intelligence Unit' in its democracy index 2021 placed India in the category of 'Flawed democracies'.[86] Moreover, in the democracy report 2022 released by a renowned global platform, Sweden based V-Dem institute, India has been declared as an elected autocracy.[87] The unrepresented minority groups in the parliament are facing constant fundamental rights violations. The minority rights provided under constitution are exists for name's sake. Minorities without proper representation don't have much say in the Indian parliament.

Therefore, reservation for minority community in the parliament is the need of an hour. As already mentioned, the idea of reservation of minority was dropped because of the sole reason of partition. Since, today India has much stronghold and fear of partition has somewhat vanished, it would be a positive step to grant reservation for the minority communities as per their population percentage at the national level for parliament and at the state level for the reservation in the state legislature. The Part XVI of the initial draft constitution that provided "special provisions for minority citizen" can be restored in the constitution.

The reservation of seat would allow the minority to grasp enough representation and say in the parliament. Accordingly, the laws and policies would be framed for whole of India with common consensus with every community rather than just majority community. With enough representation of minorities in the parliament, the ramification of majoritarianism will reduce. Further, in order to completely end the practice of majoritarianism, a special law should be introduced to govern the behaviour of political parties during elections and there shall be strict implementation of model code of conduct by the Election Commission.

The time has come to introspect into the political system of the country because it is not the reservation that would give oxygen to the fears of partition rather, it is the majoritarian politics that can have worst effect on the population and geography of the country.

86 Economist Intelligence Unit, https://www.eiu.com/n/democracy-index-2021-less-than-half-the-world-lives-in-a-democracy/ (Last visited Apr. 2, 2022).

87 Vanessa A. Boese, *Autocratization Changing Nature*, V-Dem Institute (Mar. 3, 2022) https://v-dem.net/media/publications/dr_2022.pdf.