

Constitutional Provisions

Constitutional rights and safeguards provided to the minorities in India

1. Constitutional safeguards for religious and linguistic minorities of India

Though the Constitution of India does not define the word 'Minority' and only refers to 'Minorities' and speaks of those 'based on religion or language', the rights of the minorities have been spelt out in the Constitution in detail.

2. 'Common Domain' and 'Separate Domain' of rights of minorities provided in the Constitution

The Constitution provides two sets of rights of minorities which can be placed in 'common domain' and 'separate domain'. The rights which fall in the 'common domain' are those which are applicable to all the citizens of our country. The rights which fall in the 'separate domain' are those which are applicable to the minorities only and these are reserved to protect their identity. The distinction between 'common domain' and 'separate domain' and their combination have been well kept and protected in the Constitution. The Preamble to the Constitution declares the State to be 'Secular' and this is a special relevance for the Religious Minorities. Equally relevant for them, especially, is the declaration of the Constitution in its Preamble that all citizens of India are to be secured 'liberty of thought, expression, belief, faith and worship and 'equality of status and of opportunity.'

2.1 'Common Domain', the Directive Principles of State Policy – Part IV of the Constitution

The Constitution has made provisions for the Fundamental Rights in Part III, which the State has to comply with and these are also judicially enforceable. There is another set of non-justiciable rights stated in Part IV, which are connected with social and economic rights of the people. These rights are known as 'Directive Principles of State Policy', which legally are not binding upon the State, but are "fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws". (Article 37). Part IV of the Constitution of India, containing non-justiciable Directive Principles of State Policy, includes the following provisions having significant implications for the Minorities :-

- i. **[Article 38 (2)]**: obligation of the State 'to endeavour to eliminate inequalities in status, facilities and opportunities' amongst individuals and groups of people residing in different areas or engaged in different vocations.
- ii. **[Article 46]**: obligation of State 'to promote with special care' the educational and economic interests of 'the weaker sections of the people' (besides Scheduled Castes and Scheduled Tribes).

2.2 'Common Domain', the Fundamental Duties – Part IVA of the Constitution

Part IVA of the Constitution, relating to Fundamental Duties as provided in Article 51 A applies in full to all citizens, including those belonging to Minorities. Article 51A which is of special relevance for the Minorities stipulates as under :-

- i. citizens' duty to promote harmony and the spirit of common brotherhood amongst all the people of India 'transcending religious, linguistic and regional or sectional diversities; and
- ii. citizens' duty to value and preserve the rich heritage of our composite culture.'

2.3 'Common Domain', the Fundamental Rights – Part III of the Constitution

The Constitution has provided a definite space for both the 'domains' i.e. 'common' as well as 'separate'. In Part III of the Constitution, which deals with the Fundamental Rights is divided into two parts viz. (a) the rights which fall in the 'common domain' and (b) the rights which go to the 'separate domain'. In the 'common domain', the following fundamental rights and freedoms are covered:

- i. **[Article 14]** people's right to 'equality before the law' and 'equal protection of the laws'.
- ii. **[Article 15 (1) & (2)]**: prohibition of discrimination against citizens on grounds of religion, race, caste, sex or place of birth
- iii. **[Article 15 (4)]**: authority of State to make 'any special provision for the advancement of any socially and educationally backward classes of citizens' (besides the Scheduled Castes and Scheduled Tribes).
- iv. **[Article 16(1)&(2)]**: citizens' right to 'equality of opportunity' in matters relating to employment or appointment to any office under the State – and prohibition in this regard of discrimination on grounds of religion, race, caste, sex or place of birth.
- v. **[Article 16(4)]**: Authority of State to make 'any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.
- vi. **[Article 25(1)]**: people's freedom of conscience and right to freely profess, practice and propagate religion – subject to public order, morality and other Fundamental Rights.
- vii. **[Article 26]**: right of 'every religious denomination or any section thereof – subject to public order, morality and health – to establish and maintain institutions for religious and charitable purposes, 'manage its own affairs in matters of religion', and own and acquire movable immovable property and administer it 'in accordance with law.
- viii. **[Article 27]**: prohibition against compelling any person to pay taxes for promotion of any particular religion.
- ix. **[Article 28]**: people's 'freedom as to attendance at religious instruction or religious worship in educational institutions' wholly maintained, recognized, or aided by the State.

2.4 'Separate Domain' of Minority Rights

The Minority Rights provided in the Constitution which fall in the category of 'Separate Domain' are as under:-

- i. **[Article 29(1)]**: right of 'any section of the citizens' to 'conserve' its 'distinct language, script or culture'.
- ii. **[Article 29(2)]**: restriction on denial of admission to any citizen, to any educational institution maintained or aided by the State, 'on grounds only of religion, race, caste, language or any of them'.
- iii. **[Article 30(1)]**: right of all Religious and Linguistic Minorities to establish and administer educational institutions of their choice.
- iv. **[Article 30 (2)]**: freedom of Minority-managed educational institutions from discrimination in the matter of receiving aid from the State.
- v. **[Article 347]**: special provision relating to the language spoken by a section of the population of any State.
- vi. **[Article 350 A]**: provision for facilities for instruction in mother-tongue at primary stage.
- vii. **[Article 350 B]**: provision for a Special Officer for Linguistic Minorities and his duties; and
- viii. Sikh community's right of 'wearing and carrying of kirpans; [Explanation 1 below Article 25]

3. India's multi-culturalism interwoven in the Constitution

The various Articles of the Constitution providing rights to the minorities, clearly and firmly point out to only one direction: that of a multi-religious, multi-cultural, multi-lingual and multi-racial Indian society, interwoven into an innate unity by the common thread of national integration and communal harmony. By the yardstick adopted by the framers of the Constitution and crystallized into its provisions the Indian Nation is not just a conglomeration of individual inhabitants of this State; it comprises of two distinct categories of constituents. The two-tier commonwealth of Indian Nation includes, on one hand, every citizen of India individually and, on the other hand, the multitude of religious, linguistic, cultural and ethnic groups among its citizens. The Indian Nation is an enormous coparcenary in which the individual citizens are also members of their own respective branches taking the form of religious, cultural, linguistic and ethnic groups. And all these groups, like all individuals, have the same Fundamental Rights to enjoy and the same Fundamental Duties to discharge.

4. Protection of weaker sections in Indian pluralistic society

The social pluralism of India, as fortified by the unique Constitutional concept of secularism, raises the need for the protection and development of all sorts of weaker sections of the Indian citizenry – whether this 'weakness' is based on numbers or on social, economic or educational status of any particular group. The Constitution, therefore, speaks of Religious and Linguistic Minorities, Scheduled Castes, Scheduled Tribes and Backward Classes and makes – or leaves room for making – for them special provisions of various nature and varying import.