

Who are minorities?

- Minority is a widely used term with no consensus on concept over it internationally or nationally.
- Adopted by consensus in 1992, the United Nations Minorities Declaration in its article 1 refers to minorities as based on national or ethnic, cultural, religious and linguistic identity, and provides that States should protect their existence.
- It is often stressed that the existence of a minority is a question of fact and that any definition must include both objective factors (such as the existence of a shared ethnicity, language or religion) and subjective factors (including that individuals must identify themselves as members of a minority).
- The concept of minority has differed from state to state, new debates have emerged to include physically challenged person, people with different sexual orientations in minority groups.

What is the international conceptualization of Minorities?

The mostly agreed definition internationally was given by Francesco Capotorti, Special Rapporteur of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities which says-

- Are less in number to the rest of the population of a state;
- Are in a non-dominant position ;
- Reside in the state, being either nationals or a group with close long-standing ties to the state;
- Possess ethnic, religious, or linguistic characteristics differing from those of the rest of the population; and
- Show, if only implicitly, a sense of solidarity directed towards preserving their distinctive collective identity.

The ethnic groups, migrants, refugees, indigenous people do generally constitute minority

- The nationality criterion included in the above definition has often been challenged, the requirement to be in a non-dominant position remains important. In most instances a minority group will be a numerical minority, but in others a numerical majority may also find itself in a minority-like or non-dominant position,
- For example Blacks under the apartheid regime in South Africa. In some situations, a group which constitutes a majority in a State as a whole may be in a non-dominant position within a particular region of the State in question.

Should PWDS (Person with Disabilities), LGBTs (Lesbian, Gay, Bisexual, Transgender) be called minorities?

- The question often arises as to whether, for example, persons with disabilities, persons belonging to certain political groups or persons with a particular sexual orientation or identity (lesbian, gay, bisexual, transgender or intersexual persons) constitute minorities.
- The United Nations Minorities Declaration is devoted only to national, ethnic, religious and linguistic minorities,
- But it is also important to combat multiple discrimination and to address situations where a person belonging to a national or ethnic, religious and linguistic minority is also discriminated against on other grounds such as gender, disability or sexual orientation.

Indian Constitution, Supreme Court and Minority Concept

- The Constitution of India uses the word 'minority' or its plural form in some Articles viz Article 20 to 30 and 350 A to 350 B, but does not define the word 'minority'. But its mostly understood in linguistic and religious terms.
- In Kerala Education Bill, the Supreme Court through S.R. Das, Chief Justice, while suggesting the technique of arithmetic tabulation held that the minority means a "community which is numerically less than 50 percent of the total population."
- The **National Commission for Minorities Act, 1992** in the Section 2(c) of the act defined a minority as "a community notified as such by the Central government."
- Based on the above Act, on October 23, 1993, the Central government notified the Muslim, Christians, Sikhs, Buddhist and Parsis (Zoroastrian) communities as minorities for the purpose of the Act.
- The Supreme Court in T.M.A Pai Foundation & Ors vs State of Karnataka & Ors (31 Oct 2002) held that **"a minority either linguistic or religious is determinable only by reference to demography of the State and not by taking into consideration the population of the country as a whole"**
- Again in this context in D.A.V College etc vs State of Punjab & Ors (5 May 1971) explained the observation in the above case and it was stated that, **"what constitutes a linguistic or religious minority must be judged in relation to the State in as much as the impugned Act was a State Act and not in relation to the whole of India."**
- The Supreme Court rejected the contention that since Hindus were a majority in India, they could not be a religious minority in the State of Punjab, as it took the State as the unit to determine whether the Hindus were a minority community.
- So Hindu cannot be a minority even in the Islam dominated Jammu & Kashmir, Sikh dominated Punjab or Christianity dominated Nagaland.

Constitutional Rights and safeguards for minorities in India

- 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 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.'

- The set of non-justiciable rights stated in Part IV, which are connected with social and economic rights of the people are known as 'Directive Principles of State Policy (DPSP)', 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). The clauses of DPSP having significant implications for the Minorities are-

1. 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;[Article 38 (2)]

2. 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); [Article 46]

- Apart from that, common domains are Fundamental Rights-Part III of the constitution which is for all.

Separate domain of Minority Rights

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

- right of 'any section of the citizens' to 'conserve' its 'distinct language, script or culture'; [Article 29(1)]
- restriction on denial of admission to any citizen, to any educational institution maintained or aided by the State, 'on grounds only of religion, race, caste, language or any of them'; [Article 29(2)]
- right of all Religious and Linguistic Minorities to establish and administer educational institutions of their choice;[Article 30(1)]
- freedom of Minority-managed educational institutions from discrimination in the matter of receiving aid from the State;[Article30(2)]
- special provision relating to the language spoken by a section of the population of any State;[Article 347]
- provision for facilities for instruction in mother-tongue at primary stage;[Article 350 A]
- provision for a Special Officer for Linguistic Minorities and his duties; and [Article 350 B]
- Sikh community's right of 'wearing and carrying of kirpans; [Explanation 1 below Article 25]

Sexual minorities and human rights

- The Lesbians, Gays, Bisexuals, Transgenders are called sexual minorities
- In the final decade of the 20th century the gay/ lesbian/ bisexual/ transgender movement brought to the fore the rights of those discriminated against because of their sexuality.
- International Human rights organization like Amnesty International have come out in support of rights of sexual minorities.
- The Scandinavian countries and South African constitution expressly prohibited discrimination on the ground of sexual orientation.
- The sexual orientation of LGBTs are termed as frivolous, bourgeois, unnatural, deviant and disease by radical and even by liberal thinkers.
- The ancient religious texts calls sexual practice of LGBTs as serious offense
- In Indian context section 377 of IPC criminalizes by calling it unnatural which makes life difficult for these communities to practice consensual sexuality even in private places.
- This unequal and discriminatory treatment to sexual minorities are violation of basic human rights

Violation of Human rights

- The human rights violations of religious minorities cover a broad spectrum, from illegal detention, torture and fake encounter, killings of detainees to open assault against individuals, their sources of livelihood and in many cases their places of worship. Hundreds of Muslims have been arrested on trumped up charges of terrorism, and have spent several years in prison before being finally acquitted.
- The recent phenomena of cow protection groups taking law into land has led to several mob lynching deaths.
- The laws made to stop forceful or lucrative conversion is used to harass the religious preachers from minority communities.
- The infamous 2002 riot of Gujarat and Kandhamal violence on minorities of 2008 are worst examples of human rights violations
- The special officers for linguistic rights by president is never appointed even after so many years of related amendments.
- There is growing communalization of Indian minds for political gains, a sense of hatred and enmity is being created. This has resulted in fear psychosis among the religious minorities of India. For example in 2015, as per GOI data 97 people were killed and over 2200 were injured.
- The situation in the conflict zones like J&K and North-Eastern parts of India is worse. The special legal provision given to security forces in those area have led to lots of criticism on the violation of human rights.
- Also in 2016, a global index of human rights and social and religious freedoms by Pew Research Center placed India among the worst 10 of the world's 198 countries when judged for "social hostilities"

Sachar Committee Report and plight of muslims in India

- The empowered committee formed in the year of 2005 submitted its report in 2006 on status of Indian Muslims brought notice to some of the dark realities. It shows how Muslims are lagging behind in some cases even behind Scheduled Castes.
- The percentage of Muslims in IAS and IPS are 3% and 4% respectively whereas their population is approximately 14.2%. Their share in police forces is 6.27%
- The works participation among Muslims was 47.5% in 2001 and slightly increased to 49.5% in 2011.
- The literacy rate is 68% as compared to national rate of 73%