



MINORITY RIGHTS AND RELIGIOUS AUTONOMY: THE SPECIFICS OF THE INDIAN CASE

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Abstract

India's Constitution safeguards minority rights and religious autonomy through fundamental rights, ensuring equality (Art -14,15) and specific protections like the right to conserve culture (Art 29) and establish educational institutions (Art 30) for religious and linguistic minorities, fostering a secular framework with active state protection for diverse faiths, through debates continue over implementation and recent laws like the Waqf Amendment Act. Equality before law prohibit discrimination based on religion, race, caste, sex, or place of birth, ensuring equal protection for all citizens, including minorities. Freedom of religion guarantees freedom of conscience, practice, profession, and propagation of religion for all, while ensuring no person is forced to pay taxes for promoting a specific religion and prohibiting religious instruction in state funded schools. Cultural and educational rights protect any section of citizens to conserve distinct language, script, or culture. The right also prevents denial of admission to state-aided educational institutions on grounds of religion, race, caste, or language. The right also grants all minorities the right to establish and administer educational institutions of their choice. Protection of minority rights prohibits the state from discriminating against minority-run institutions in granting aid.

Key Words: *Minority, Discrimination, Cultural Rights, Religion, Autonomy, Propagation, Freedom.*

I. Introduction

The value around which the entire edifice of democracy was constructed in India is non-discrimination. On the one hand, the framers of the Indian constitution wanted to dismantle the structure of social discrimination perpetuated by the caste system and on the other they were concerned about the possibility of religious discrimination in independent India. To ensure that existing social prejudices did not result in the continued exclusion of some caste communities from the social and public life of the polity, the constitution envisaged a system of reservations. In a similar vein, to safeguard against the possibility of religious discrimination, the constitution provided special cultural rights to minority communities. Thus special consideration was provided to prevent discrimination of communities in society.



While non-discrimination and the possibility of exclusion were the reasons that justified special consideration at the time of drafting the constitution, these initial concerns have been set aside over the years. Communities have demanded the continuation and even extension of reservations and other privileges to other groups on grounds of under representation and backwardness. In a society faced with acute scarcity, the agenda of development and transformation has taken over the concern for non-discrimination. As a result, the consensus that prevailed earlier on the issue of reservations and special consideration has been eroded and replaced by social group confrontations.

II. Cultural Heterogeneity and Autonomy to Religious Community

While reservations were supposed to ensure that no community was excluded from social and political life, cultural community rights were supposed to enhance cultural heterogeneity by providing autonomy to different religious communities in India. In recent times, the attempt to forge a national identity around the culture of the Hindu majority has tended to justify the need for such autonomy. However, despite the exigencies of the present predicament, it must be recognized that the priority granted to cultural community practices has posed several problems in India. In addition to hindering the realization of gender equality, community rights have left the issue of intra-group equality completely unattended. To some extent, the principle of non-discrimination itself raised the issue of group equality, minority rights reaffirmed this priority. What was neglected because of this was the question of equality within the group.

The individual was marginalized both by the priority accorded to cultural and religious communities as well as the concern for the territorial integrity of the Indian state. On the other hand, community practices were protected even when they conflicted with the rights of individuals as citizens on the other, the liberty of the individual citizen was curtailed in the interest of national security and unity. On both counts the space for the expression of individual autonomy was severely reduced by the Indian constitution (Kymlicka,1991).

Cultural practices of communities were protected in India before equal rights of citizenship were ensured for all categories of people within the communities. Further, the priority given to cultural practices of religious communities reinforced the authority of religious community leaders. In a society where the hegemony of the religious domain over social life had not been displaced, the sanctity accorded to religious and cultural community practices reaffirmed the special status of religious leaders within the community and the rest of society. More importantly, it has restricted the possibility of assessing and reconsidering ongoing community practices.

Within the framework of Indian democracy, the judiciary has played an important role in restricting state intervention in religious and cultural matters. Indeed, the Supreme Court



has frequently adjudicated in favour of religious communities and institutions (ibid). It has restricted the ability of the state to regulate and redefine religious practices. In the process, the court has often taken up the responsibility of interpreting religious texts and determining essential aspects of religious practices. While such pronouncements by the Supreme Court have been questioned by religious communities, the role played by the judiciary in restricting state intervention in religious matters has only enhanced the autonomy of religious and cultural communities.

III. Religious Diversity and Autonomy to Religious Community

Religious diversity and autonomy for religious communities are values that are pursued even within liberalism. By the middle of the twentieth century, liberal democratic states in the western world frequently granted to religious groups and organizations all those facilities and freedoms that were given to other associations in society. However, in these societies autonomy for religious organizations came at a time when religion had ceased to be a parallel source of sovereign authority within the nation-state. To put it another way, when religion contested the sovereignty of the state and acted as an independent source of law, the state restricted the autonomy of religious institutions. To challenge the hegemony of religious leadership, western liberal states regulated and legislated upon religious matters (Gray,1988). They even supervised over the relatively 'secular' activities of religious institutions. For instance, the state in France monitored the functioning of schools that were being run by Catholics. It examined the administration of these institutions and scrutinized the school curriculum. In other words, through a variety of policies, the democratic liberal state sought to challenge the control exercised by religious institutions. Once these religious bodies were subordinated to the state and ceased to be a contending source of sovereign authority they could be treated as autonomous associations in society.

This transformation in the position of the church vis-à-vis the state is significant because it allows the church to be treated as any other voluntary association. So much so, that contemporary theorist identified the church as an institution of civil society (Barber,1996). The situation in India is markedly different. Here autonomy was given to religious groups and communities without asserting the complete authority of the political domain over all aspects of social life. Since religion was not penetrated by the universalizing practices of the state, it continued to retain its independence. What is perhaps equally important is that it remained an alternative source of authority, challenging the sovereignty of the Indian state. The constitution on independent India reinforced this structure through the principle of religious autonomy which reinforced the authority of religious leaders in society and made religion an important player in the political arena (Kymlicka,1991).

IV. Accommodating Cultural and Religious Rights in Liberal Democratic Society



The point that needs to be reiterated is that the liberal agenda has changed over the centuries. Liberal democratic states have used a variety of policies in the process of democratizing society. Policies towards religious institutions and communities have varied and the liberal perception of religion and church has altered significantly with time. If the compulsion to treat all religious communities equally led to liberals to support dis-establishment of religion, the need to ensure that religious groups are not discriminated against in the public domain has compelled liberals to defend their autonomy and freedom. Moreover, in recent times when religious tolerance has been accepted as a general norm, liberal democratic states are willing to assist minority religious communities in the interest of promoting diversity and religious autonomy. By accepting and endorsing the principle of religious autonomy, the constitution of India did not contradict contemporary liberal sentiments. However, the differences in the historical context and societal structures yielded quite different results. In India, autonomy granted to religious communities hindered to some extent, the process of democratization and social equality (Kymlicka, 1991).

The historical context in which cultural community rights were granted in India posed specific problems. Above all, it disadvantaged women as a group and neglected the issue of intra-group equality. An additional problem was posed by the way in which the concept of minority rights was interpreted in India. Seen as an instrument for enhancing cultural diversity, it has resulted in the proliferation of minorities without taking care of the issue of minoritization (Parekh, 1993).

In this connection what needs to be noted is that minority rights are justified on two quite distinct grounds: (a) for ensuring equal treatment by overcoming structured patterns of discrimination; and (b) for promoting cultural diversity. While both justifications are opposed to the homogenizing policies of the state, they invoke different values. The principle of equality is frequently used by minorities who feel that the cultural policies of the state place them at a disadvantage in society. Pointing to the official national language, medium of instruction in educational institutions, examinations for public services or declaration of public holidays, minorities argue that state policies on these matters reflect the cultural orientation of the majority or dominant groups (Kymlicka, 1991). In all matters relating to language, minorities are placed at a disadvantage and again on questions of religious holidays and cultural practices, they are treated unequally. For example, while Christian religious festivals such as Christmas and Good Friday are declared public holidays, similar consideration is not given to other minority religious communities. The state culture does not reflect minority religions. Moreover, the choice of official language frequently places minorities at a disadvantage in public life. In all these situations, minorities invoke the principle of equal treatment and ask for the same consideration for their religious sentiments and practices.



Cultural rights for minorities have also been justified on the ground that diversity of cultural practices is desirable. Like all other forms of diversity, plurality of cultures enriches social life. Besides the presence of diverse cultures increases the range of options from which individuals can choose their own way of life. In other words, cultural diversity would make the right to choose meaningful. Within this perspective diversity is valued and in fact is associated with democratic existence per se. Furthermore, cultural diversity (ibid) is sought to be protected by securing the cultural rights of minorities. At times, in the interest of preserving a cultural way of life, communities are given special privileges for self-governance or separate representation.

In India, minority rights have most often been associated with the preservation of cultural diversity. While these rights have also prevented cultural hegemony of the majority religious community, minorities have claimed these privileges for preserving their distinctiveness. That is cultural communities and sects have pointed to the distinctive nature of their beliefs and practices and on these grounds of difference they have asked to be treated as distinct minorities. Besides, even at the time of framing the constitution, India was described as a multi-cultural society. Preserving the rich cultural mosaic has, since then been regarded as a valuable good. Minority rights were in this perspective, seen both as safeguards for preserving the cultural autonomy of minority communities as well as measures that would protect cultural diversity. To some extent, the autonomy provided to communities was also a means of preserving cultures and the diversity of practices that they embodied (Barber, 1996).

Once again, though the concern for rights of minorities is a justifiable liberal concern, the centrality accorded to diversity has generated a peculiar dilemma in India. It has triggered off a process of splintering that is sects within recognized religious communities have, on grounds of cultural distinctiveness, sought minority status. Some of these claims have also been recognized by the Supreme Court. Therefore, the list of minorities has become a society of minorities with the majority itself being fragmented into smaller groups. In the recent past there have been some attempts to weld the different groups of Hindus into a homogeneous, coherent majority. A similar desire to constitute a majority has also brought together a number of different communities under the rubric of Other Backward Classes. Hence, while new community ties are being forged in the hope of forming a majority, new minorities are also emerging within society (Parekh, 1993).

V. Governance Reforms Through Institutional Autonomy and Representation

The Waqf (Amendment) Act, 2025, introduces sweeping reforms to the administration of Islamic endowments in India, aiming to enhance transparency, digitize records, and improve institutional efficiency. However, the Act has ignited controversy for provisions that critics argue undermine minority rights and religious autonomy. Key concerns include the inclusion of non-Muslims in Waqf Boards, the application of the Limitation



Act to Waqf properties, and changes to traditional practices like “Waqf by User.” While the government promotes the Act as a modernization effort, legal experts and community leaders warn that it may erode constitutional protections and interfere with the self-governance of Muslim institutions.

Waqf, a pivotal institution in Islamic philanthropy, refers to the permanent dedication of property for religious, charitable, or pious purposes, and is deeply rooted in Islamic tradition and legal interpretation. Historically, Waqf has played a vital role in supporting educational, religious, and social welfare initiatives within the Muslim community. In India, the legal framework governing Waqf has evolved significantly, from colonial-era judgments like *Abdul Fata Mahomed Ishak v. Russomoy Dhur* (1894) to the enactment of the Waqf Act, 1995 and its subsequent amendments. The Waqf (Amendment) Act, 2025, represents a major shift in this legal landscape.

Introduced with the stated aim of improving transparency, digitalizing Waqf records, and enhancing administrative efficiency, the Act proposes sweeping reforms such as redefining Waqf, centralizing registration, and increasing state oversight. However, the Act has also drawn criticism for its perceived political and communal undertones. Key objections include the nomination of non-Muslims to Waqf Boards, the exclusion of non-Muslims from donating to Waqfs, and changes to the foundational definitions of Waqf. These provisions have sparked concerns about the government’s intentions and the broader implications for minority rights and religious autonomy in a secular, pluralistic democracy like India.

The inclusion of two non-Muslim members in both State and Central Waqf Boards has triggered a strong backlash. Critics argue that Waqf is a religious institution, and its governance should reflect Islamic jurisprudence and community norms. The move is perceived as undermining community autonomy, particularly when viewed alongside restrictions on non-Muslim donations to Waqf—a contradiction that underscores concerns about selective inclusion. The Act takes a progressive stance by reinforcing women’s rights in Waqf contexts. It ensures that female heirs receive their legal inheritance before a Waqf dedication is accepted and includes protections for widows, orphans, and divorced women. These reforms are commendable in aligning Islamic charitable practices with contemporary human rights standards.

Perhaps the most culturally sensitive provision is the restriction on “Waqf by User”—the recognition of Waqf through informal, long-standing public use of property. Historically validated under Islamic law and Indian precedent, its removal or dilution is seen as eroding community traditions and oral histories of religious endowment. Critics argue that formal registration cannot replace centuries of customary practice in defining religious spaces.



Therefore, it becomes clear that reforming religious institutions in a secular democracy is a delicate balance between improving efficiency and respecting the cultural, theological, and constitutional dimensions of minority practices. The Act exposes tensions between modernization and tradition, especially when legal reforms overlook community sentiments and historical context. While digitization and accountability are necessary, they must be implemented with community consultation and respect for religious autonomy under Article 26 of the Constitution. This case also illustrates the broader issue of state-centralization in religious affairs, which, if unchecked, can erode the pluralistic and decentralized ethos of India's secular framework.

VI. Conclusion

Within liberalism there are no ready solutions for these predicaments. Neither liberal neutrality nor tolerance are sufficient by themselves for protecting the autonomy and distinctiveness of minorities and cultural communities. The Waqf (Amendment) Act, 2025, presents a complex interplay of modernization efforts and contested interventions in religious autonomy. From the government's perspective, the Act is framed as a necessary step towards enhancing transparency, curbing corruption, and improving governance in the Waqf sector. Key reforms such as the digitization of property records through a Central Waqf Portal, mandatory audits for financially significant institutions, and a reduction in the mandatory contribution from Waqf incomes are positioned as mechanisms to strengthen institutional efficiency and ensure better utilization of endowment assets for community welfare. Additionally, progressive elements like reinforced protections for women's inheritance rights and social safeguards for vulnerable groups are highlighted as efforts to align Islamic philanthropy with contemporary standards of social justice. On the other hand, critics contend that the Act threatens the constitutional rights of religious minorities, particularly the Muslim community, by introducing provisions that are seen as intrusive and inconsistent with the spiritual foundations of Waqf. The inclusion of non-Muslim members in Waqf Boards and the exclusion of non-Muslims from donating to Waqfs have been flagged as contradictory and politically motivated. The application of the Limitation Act to Waqf properties is perceived as undermining the concept of perpetual religious endowment, potentially invalidating longstanding community claims. Moreover, critics view the abolition or dilution of "Waqf by User" as a disregard for customary religious practices, weakening the historical and communal basis upon which many Waqfs were established. The increasing bureaucratization of Waqf governance, particularly through tribunal restructuring and heightened state oversight, is further seen as a departure from Article 26 of the Constitution, which guarantees religious denominations the right to manage their own affairs. The Act attempts a balanced approach that incorporates community



consultation, respects theological traditions, and upholds constitutional values is essential to ensure that modernization does not become a vehicle for marginalization.

In protecting the rights of religious community constitution guarantees equal respect for all religions, not strict separation with the state actively protecting minority rights. National Commission for Minorities (NCM) an autonomous body (1992 Act) oversee implementation of safeguards and advice the government on minority welfare. Religious community were given autonomy to manage their own affairs, customs and institutions (like personal laws) with courts reinforcing these rights. Debates and challenges arise for Laws like the 2025 Waqf Amendment Act sparked the debate over potential interference with Muslim institutional self-governance, while the Citizenship Amendment Act (CAA) faced criticism for potentially discriminating on religious grounds highlighting ongoing tensions. In essence, India's Constitution provides robust frameworks for minority rights and autonomy, but their interpretation and application remain subjects of ongoing legal and political discourse, as seen with the Waqf Act and the CAA. Moreover while analysing Indian democracy it is necessary to underline the different contexts in which democratic political structures emerged in India. It is equally necessary to stress that the framework of Indian democracy was shaped by twentieth century liberalism which was committed to the ideals of tolerance and autonomy.

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