Constitution on Minority Rights (19-12-2024)

Why in news?

Minorities Rights Day is observed on December 18.

What was the origin of minority rights?

- **Austrian constitution** – In 1867, Austrian Constitutional Law acknowledged that ethnic minorities have an absolute right to maintain and develop their nationality and languages.
- **Hungary & Swiss** - Hungary's Act XLIV of 1868 and the Constitution of the Swiss Confederation of 1874, granted the three languages of the country equal rights in civil services, legislation and in courts.
- **WWI peace treaty** - The provisions of the peace treaties after the First World War, focused particularly on the status of minorities.
- **UDHR** - Article 27 of the Universal Declaration of Human Rights gives every individual a right to community , that is the right to enjoy their own culture and to participate in cultural forums, associations etc.
- **UN declaration** - UN General Assembly adopted a declaration on the 'Rights of Persons Belonging to National, or Ethnic, Religious and Linguistic Minorities' on December 18, 1992.

"No democracy can long survive which does not accept as fundamental to its very existence the recognition of the rights of minorities" - Franklin Roosevelt

What were the debates in the Constituent Assembly?

- **Constitution committee** - The Advisory Committee on Fundamental Rights, Minorities, and Tribal and Excluded Areas ,chaired by Sardar Vallabhbhai Patel , was formed in 1947.
- **Sub committees** - The problems and safeguards for minorities were discussed, debated and settled mainly by the sub-Committee on Minorities and the Sub-Committee on Fundamental Rights

Sub-Committee on Minorities was headed by H.C. Mookherjee and the Sub-Committee on Fundamental Rights headed by J.B. Kripalani.

- **Sub-Committee on Minorities** - It was entrusted with the specific task of considering and suggesting about the rights and safeguards proposed to be incorporated in the Constitution.

- **Objectives Resolution** – It stated that adequate safeguards shall be provided for minorities, backward and tribal areas, and depressed and other backward classes.

What are the minority rights enshrined in the Constitution?

- **No constitutional definition** - Though the term 'minority' has been used in four places in the Constitution, no definition of the term 'minority' has been given.
- **Minority population** - Muslims, Sikhs, Christians, Buddhists, Jain and Zoroastrians (Parsis) have been notified as minority communities under Section 2 (c) of the National Commission for Minorities Act, 1992.

*As per the Census 2011, the percentage of minorities in the country is about **19.3%** of the total population of the country.*

- **State level minorities** - In the *TMA Pai Foundation* (2002) case, Supreme court held that only the State can determine the status of a religious or linguistic minority.

Hindus are a religious minority in Punjab, Kashmir and in the northeastern States and There are hundreds of Hindu minority institutions in India.

Fundamental Rights of Minorites
Right to freedom of religion (Articles 25–28) • **Article 25** - Freedom of conscience and free profession, practice and propagation of religion. • **Article 26** - Freedom to manage religious affairs. • **Article 27** - Freedom from payment of taxes for promotion of any religion. • **Article 28** - Freedom from attending religious instruction or worship in certain educational institutions.
Cultural and educational rights (Articles 29–30) • **Article 29(1)** - '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'. - **Significance** - It concedes that different groups do have different cultures and that all people may not have just one culture. - It accepts that the right to culture is an individualistic right, and individuals have been given the right to preserve their distinctive culture. • **Article 30** – It guarantees that all religious and linguistic minorities shall have the right to establish and administer educational institutions of 'their choice'.
Linguistic Rights • **Article 350 A** – It provides for instruction in the primary stages of education in the mother tongue • **Article 350 B** – It provides for the appointment of a special officer for linguistic minorities.

In Aligarh Muslim University (2024) case, Supreme court held even an institution of national importance can claim minority character.

- **Personal laws** - Religion based personal laws have also been constitutionally protected, for example, the customary law of Nagas.
- **Institutional protection** - National Commission for Minorities and National Commission for Minority Educational Institutions deal with the problems of minorities.

What is the rationale behind minority rights?

- **Principles of minority rights** - Multiculturalism, differences, diversity and the rights of minorities that mark contemporary political theory.
- **Preservation of diversity** - Protecting the diverse socio-cultural elements and people of the diverse country.
- **Inadequacy of individual rights** - Individualistic rights under Articles 14-18 (equality), 19 (free speech) and 25 (freedom of religion) are not enough for the conservation of language, script or culture which comes under Article 29.
- **Group discrimination** - One may not be individually unjustly treated but it hurts, if the group to which one belongs is subjected to ridicule or denied any value.
- An individual's right to culture holds little meaning or significance, unless the community of which a person is a member of, or is identified with, is accorded the right to exist in a viable form.
- **Cultural conservation** - Linguistic and religious cultures are valuable for their member and they need to be given explicit rights to conserve their own culture.
- **Conducive environment** – Cultural conservation requires not only the presence of a group that shares a common culture but a conducive environment in which such cultures can flourish.
- **Ensuring equality** - Conferring the right on minorities under Article 30 is to ensure that there will be equality between the majority and the minority.

A seven judge Bench in Aligarh Muslim University (2024) in unequivocal terms described Article 30 as a 'facet of equality and non-discrimination'.

- **Prevent majoritarian domination** - Minority cultures face disadvantages in a majoritarian society and special rights are need to balance the strength of majoritarianism.
- **Basic structure** - In *Keshavananda Bharati* (1973), rights under Article 30 were held to be part of the basic structure which even Parliament cannot change through a constitutional amendment.

Reference

[The Hindu | Constitution on minority rights]

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