

Minority Rights

by A.S. Narang

Minority Rights Discussion in India

by I.P. Massey

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The ethnic-minority situation in India presents a very complex and confusing picture. Minorities here are a fact not fiction. History has, in many ways, provided a definite sense of identity to various groups. Like in many other plural societies one critical issue here also is the careful balancing of individual and group rights and their adjudication. The protection of rights—and increasingly the protection of minority rights—has traditionally been perceived as the telor of modern constitutionalism: the principle of *garantisme* against arbitrary rule. The debate, both at academic and policy levels, has been whether there should be fully articulated rights to address minority group concerns. I.P. Massey in his study takes account of this debate in India, as reflected in the constitution, in the context of theoretical debate on the subject.

Massey's basic premise is that threat to nation-building arises not from cultural plurality but from discrimination and prejudice which the collectivities suffer. In Indian context, he tends to agree with the perception that the "melting pot" theory cannot define Indian people. Here what is required to be pursued is not assimilation but integration based on multi-culturalism. He also subscribes to the school that there is no contradiction between individual and group rights. Massey discusses in detail the international discourse on the issue starting from the 1878 Berlin Congress and the Treaty of Berlin to the Declaration of Minority Rights in 1992. He finds that in spite of progress towards acceptance of minority rights the International Conventions, including Universal

Declaration of Human Rights, the two conventions on political and civil rights and social, cultural and economic rights, and lastly the declaration of minority rights, fail to fully meet the aspirations of the minorities.

Massey, however, finds reasonable fulfillment of the need for group rights in the Indian Constitution. According to him in India Minority Rights were protected by two strategies—negative and positive. Negative strategy was aimed at protecting the minorities from governmental discrimination on the basis of their minority characters. Therefore, non-discrimination and equality clause were provided in the constitution to protect minorities against any possible discrimination.

The other strategy, positive in nature, included collective rights which are available to minorities as groups/communities. These rights were designed to allow minorities to preserve their language, religion and culture. Massey finds these positive rights very significant and bestows great praise to framers of the Constitution, particularly to Nehru and his companions. According to him while most of the rights in the Constitution are couched in the negative, minority rights are laid down in the affirmative. Implications of this are that besides being a limitation on the state, it is an empowerment also. Another striking uniqueness of minority rights is that while all other rights are limited rights, minority rights are given in absolute terms, though that does not mean that minority rights are absolute and cannot be regulated by the state.

In looking at the Constitution, what Massey is missing is the fact that even though the problem of minorities in India figured prominently in the Constituent Assembly and the founding fathers bestowed much thought and attention to it in all its facets, except for a few concessions which the Assembly admitted for the Anglo-Indian community, no other religious minority could secure any political rights. In fact, no attempt was made on any occasion even to define the term minority in the precise words. So much so that on the suggestion of T.T.Krishnamachari the words "certain classes" were substituted for the word "minorities" wherever it occurred in the text of the Constitution. Not only is the use of the term minority in the Constitution very rare but also no group is mentioned explicitly as a minority therein. The term 'minority' is mentioned in only two Articles, 29 and 30. Here too the use of the term is not for definitional purposes. In one of the Articles it is used only in the sub-heading of the Article and not in the text. More so, Article 366 of the Constitution, which is exclusively utilized to give the meaning of words and terms used in the text of the Constitution gives meaning to 30 such expressions. But here also the term "minority" is not covered.

It is quite clear that the attitude of the leadership, as reflected in the Constitution, was that by providing equal rights and opportunities to all of India's citizens they were respectful of the cultural specificities of particular ethnic groups. Minority demands for group rights and provisions for assured share

in political power were conveniently swept under the carpet in the name of national unity, integration and development.

Massey, while in introductory chapters delineates the debate on group rights and tends to agree with those favouring them, in the concluding chapter, after developing and elaborating the law relating to constitutional educational rights of religious and languishing minorities to establish and administer educational institutions of their own choice, prefers to remain non-committal on the question of relevancy of these rights in the present day context. This silence is not understandable, particularly in view of the fact that a significant number of minorities have been gradually and systematically eased out of all productive aspects. There are questions which need explanation. Why is there an extreme economic and political marginalisation of minorities? Why competition-driven economy has been virtually closed for some of the minorities? Is it not true that the socio-economic conditions of some minorities do not suggest any appeasement, do not suggest any pampering, do not indicate that anything, not to say special, has been done for them? In a work on minority rights one looks for answers to these questions. Massey, however, seems to be satisfied with the existing constitutional frame work and does not feel the need for further elaboration of minority rights; though he tends to agree with the observation of the Supreme Court that minorities cannot be treated in a religious neutral way.

It is important to keep in mind Will Kymlicka's observation that liberal-democratic states have historically been nation-building states in the following specific sense: they have encouraged and sometimes forced all citizens on the territory of the state to integrate into common public institutions operating in a common language. Western states have

used various strategies to achieve this goal of linguistic and institutional integration: citizenship and naturalization laws, educational laws, language laws, policies regarding public service employment, military service, national media and so on. These policies are often targeted at ethno cultural minorities, who have only limited options when confronted with such a nation-building state. They can accept the state's expectation that they integrate into common national institutions and seek help in doing so, or they can try to build or maintain their own separate set of public institutions (e.g. their own schools, courts, media, legislatures), or they can opt simply to be left alone and live in a state of voluntary isolation.

Each of these reflects a different strategy that minorities can adapt in the face of state nation building. But to be successful, each of them requires certain accommodation from the state. These may take the form of multiculturalist policies, or self-government and language rights, or legal exemptions. These are all forms of minority rights that serve to limit or modify the impact of state nation building on minorities. At this juncture in India, a debate on these is the need of the hour. Massey could have contributed to these by going beyond the apparent Constitutional vision of minority rights.

The discussion on the definition of minorities, which continues to be a serious issue both in Indian political and legal system and at the international community level, has been well taken up by Massey. The historical developments in the growth of minority rights also are quite useful, particularly for students engaged in the study of the subject. There are many repetitions which could have been avoided. Likewise, a detailed bibliography would have been made the work more useful.

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