

Contextualising Multiculturalism and Minority Rights in the Indian Constitution

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Introduction

Democracy is a widely accepted way of political life of nation states and where each and every citizen of the state has their role and participation, directly or indirectly, in the day to day decision making process and political administration.¹ India is a land of diversity and the real success of its democracy depends on the extent to which minorities sheltering here enjoy the maximum protection, security and confidence. It is a well acknowledged fact that India has diversities in terms of culture, ethnicity, language, religion, caste and class differences. It has people from all the major religions in the world—Hindus, Christians, Muslims, Sikhs, Buddhists, Jains and Zoroastrians (Parsis). Here, religious diversity is accompanied with vast cultural diversity and linguistic. As per 2011 Census, India's population is estimated to be over 1.21 billion people. About 80 per cent of the population is Hindu and the Muslim population is estimated to be 14.6 per cent of the total, with other minority religious groups (Christians, Sikhs, Buddhist, Jains, Animist and others) ranging from 2.4 to 0.41 per cent of the total population (Census 2011). The Scheduled Caste (SC) population stood at 16.6 per cent in 2011, and when combined with the Scheduled Tribes (8.6%), it comprised a quarter of the Indian population. These different linguistic, religious, ethnic groups have their own history and tradition, totally embedded in the Indian sub-continent due to their long relationship with the Indian State.

An historical insight into India's culture and civilization would reveal that Indian roots are deeply multicultural. The concluding years of the British rule in India were marked by dissensions and communal riots. This resulted in a feeling of distrust between the two communities of Hindus and Muslims and demands were raised by a

section of the Muslims for a separate homeland which eventually resulted in the Partition of the country. Independent India had to address these issues and its leadership was called upon to make good its promise to ensure equality for all communities. In recent years, India is recognized as a successfully functioning democratic state in as much as it is able to manage its diversities. The real success of Indian democracy lies on how well it has accommodated the demands raised by different groups especially the demands for decentralization of power.² India linked equality for the individual with equality for diverse communities and always laid great stress on communal amity and accord wherein people belonging to the different religions should all have a feeling of equality and non-discrimination.

The workings of the last 70 years of Indian democracy, amidst all odds, have proved that multiculturalism as a policy and as a principle have gained wide recognition in India. The question is how? In India, unlike other multicultural states, the ethno-communities have multilayered and multi-dimensional identities that impress upon each other in a no stratified and vivacious manner. Different identities have been residing together for ages without relinquishing their individualities. In spite of such heterogeneities, India still remains a unified State into which different elements of diversity are integrated thereby maintaining the balance and harmony among different ethnic identities with no danger of "spilling over". Despite the enormous cultural diversity in India over the centuries, we all have shared a common cultural heritage that developed a feeling of oneness, knitted its people together and promoted tolerance towards other cultures, communities and religions.

Multiculturalism: Equality in a Diverse Society

To begin with, virtually every society in this world is multicultural. Multiculturalism is a term which has been

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used in two senses- descriptive as well as normative. From the descriptive point of view, India is viewed as a land of diversity. Multiculturalism is used to refer to a state in which diverse or distinct cultures are cherished, minority groups are safeguarded and social diversity is acknowledged. India falls under the second category. The Indian debate on multiculturalism as distinct from the western one has mainly focused on two distinct aspects: (1) Multiculturalism is viewed as an ideology that stresses identity, culture, rights, relationship between state and community, secularism, personal laws etc. and (2) as a public policy designed to maintain unity among the different identities.

So, multiculturalism is used not only to illustrate a culturally diverse society, but also to refer to a type of policy that is intended to protect cultural diversity. It refers to the existence, acceptance, and/or promotion of multiple groups of cultures existing within a single domain, generally observed in terms of relationships with an aboriginal ethnic group and foreigner ethnic groups. Multiculturalism speaks about equality of culture and argues that in a democracy, all communities must be entitled to an equal status in the public domain.³ Multiculturalism is a social doctrine that distinguishes itself as a positive alternative for policies of assimilation, suggesting a form of politics that recognizes cultural identities and citizenship rights of ethnic minority groups an affirmation to the value of cultural diversity. There are two issues that are central to everyday life when we think about multiculturalism, one is that to what extent ethnic minority groups are able to maintain their culture and the other is their adaptation to majority group.

Multiculturalism advocates and acknowledges the existence of diverse cultures and accepts the equality among the different groups. On the contrary, multiculturalism is often criticized as being anti-integration or fostering segregation. It could be argued that recognizing and institutionalizing diverse cultural identities may weaken the feeling of national solidarity and make it troublesome to achieve the goal of common good. The question therefore is how to manage the risks, remove the fear associated with multiculturalism and adopt diversity as a public policy. In this line, different schools of multiculturalism have developed having unanimous views regarding multiculturalism,

Bhiku Parekh supports Moral Monism which asserts that one way of life is the best and from which all other values flow. This is based on the assumption that human nature is homogenous; that is, all human beings however segregated by time and space, share a common nature, incorporating certain distinct capacities, desires and dispositions. Parekh takes a very constricted outlook of

human nature and disregards the importance of diverse values in the life of human beings.⁴

Pluralism, by comparison acknowledges the existence of plural cultures and the importance and value of cultural diversity in human life. While all pluralists emphasize cultural diversity, they fail to emphasize the existence of diversity within each society, that is, the existence of internal plurality within each culture.

Liberalism, advocated by John Rawls, Joseph Raz, and Will Kymlicka recognizes both the existence of cultural diversity as well as cultural embeddedness of human beings. Moreover, no culture is superior to another within the same society. In a multicultural society, the State belongs to them all, and the fact that some of them are in a minority should make no difference to their claims on it. Does Kymlicka's, presumption in favour of tolerance, equality and individual freedom, public values and constitutional norms all push in the direction of multiculturalism, even in the face of diffused anxiety about diversity?⁵ He emphasizes that men are basically cultural creatures since culture defines and structures their world and provides them a sense of identity and thereby strengthens cohesiveness and trust. Charles Taylor also has the same view that multiculturalism is not recognizing differences but it is also about toleration and respecting differences.⁶

Gurpreet Mahajan advocates that multiculturalism is all about equality of cultures and asserts that in a democracy, all communities must be equally empowered.⁷ She argues that multiculturalism reflects upon the status of different cultural communities within a polity. Further, multiculturalism asserts that each culture has attributes that deserve our respect.⁸ Mahajan stresses on equality of cultures, while Rajeev Bhargava, opines that multiculturalism stresses the importance of cultural belonging and legitimizes the desire to maintain difference.⁹ Bhargava designates it as egalitarian multiculturalism. Egalitarianism is again subdivided in to liberal and authoritarian multiculturalisms. Liberal multiculturalism is liberal because an equal recognition of cultural groups must be compatible with requirements of basic individual liberties and perhaps even with individual autonomy. Authoritarian multiculturalism affirms equal recognition of all cultural groups including ones that violate freedom of individuals.¹⁰

In the contemporary period, multiculturalism's entry into the theoretical realm has helped many societies to solve the problems and conflicts on the basis of religion, language, and ethnicity. India, being a land of diversity, has various provisions in its Constitution to safeguard the minorities rights.

Minorities and the Constitution of India

*"The promotion and protection of the rights of persons belonging to national or ethnic, religious and linguistic minorities contribute to the political and social stability of States in which they live"*¹¹. This, however, is possible only when minorities get adequate recognition in the Constitution.

Literally, "minority" means, "A group numerically inferior to the rest of the population of a State, in a non-dominant position, and who possess ethnic, linguistic or religious attributes which are distinct from those of the rest of the population. Nearly all States have one or more minority groups within their national territories, which are characterized by their own cultural, ethnic, religious or linguistic identity which varies from that of the majority population. Peaceful relations and coordination between one minority group with another or between the minority group and the majority is of great importance to the multi-cultural and multi-ethnic diversity of global society. Therefore, the safeguarding of the minority rights is a *sine qua non* for a healthy democracy. This differential treatment is necessary to preserve the basic characteristics which they possess and which distinguish them from majority of the population.

The Constitution of India has afforded protection to the minorities in the country. The differential treatment with minorities by granting special rights were designed to bring them about an equilibrium by preserving the minority institution by guaranteeing autonomy in the matter of administration of these institutions. In India, the safeguards for minorities under the Constitution of India are in form of fundamental rights. The Preamble of India begins with the phrase "We, the People of India...". This itself reveals that the Constitution was not meant for any one community but for all citizens inhabiting this vast country irrespective of caste, creed, race or religion, implying the notion of multiple identities belonging to different cultural markers. This feeling of oneness is further intensified with the insertion of the words 'fraternity' and 'unity and integrity' involving a spirit of brotherhood and harmony amongst all the people.¹²

The framers of the Indian Constitution guaranteed all necessary freedoms and rights to the minorities but have nowhere defined the expression "minority". The Motilal Nehru Report (1928) and Sapru Report (1945) showed a prominent desire to afford protection to minorities and also proposed a Minorities Commission. Under the Chairmanship of Sardar Vallabhbhai Patel, an Advisory Committee was set up on Fundamental rights incorporating rights of minorities, with the twin objective of reducing or removing the chance of religion exploiting the State and vice versa. According to Sardar Vallabhbhai Patel, "the entire problem of the minorities is that the State

should be run in such a manner that the minorities group should stop feeling oppressed by the mere fact that they are minorities and that, on the contrary, they should feel that they have as honorable a part to play in the national life as any other section of the community".

Part III of the Constitution entitled 'Fundamental Rights' provides six categories of rights inclusive of individual and collective rights. Here, the term 'minority' is mentioned in Articles 29 and 30 in Constitution. These two Articles are very closely related, since the safest way to maintain and protect the language, culture, or religion of a group or minority is through the establishment of separate educational institutions. Articles 29 and 30, which guarantees minorities, privileges are given below:¹³

Article 29: Protection of interests of minorities

- (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.
- (2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of race, religion, language, caste, language or any of them.

Article 30: Right of minorities to establish and administer educational institutions

- (1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice. (1A) In making any law providing for the compulsory acquisition of any property of any educational institution established and administered by a minority, referred to in clause (1), the State shall make sure that the amount determined under the law for the acquisition of such property would not limit the rights which are guaranteed under that clause.
- (2) The State shall not discriminate in granting aid to educational organization or institutions, on the ground that it is under the management of a minority, whether based on religion or language. It is thus evident, that the Indian Constitution establishes that the Indian State shall be secular, in the sense that it is not allowed to give preference to any particular religion.

Besides these, to provide for equality in the political sphere, Article 325 provides for universal adult franchise, whereby it is provided that there shall be one general list and no person is ineligible for being included therein on

the ground only of religion, race, caste or sex. Furthermore, to protect the interests of the minorities, seats are to be reserved for the Scheduled Castes and Scheduled tribes in Lok Sabha (Article 330) and in the State Legislative Assemblies (Article 332).

Provisions have been made for the setting up of Tribal Advisory Councils and separate departments in the States and the appointments of a Special officer at the Centre to promote their welfare and safeguard their interests (Articles 164 and 338 and Fifth Schedule of the constitution). Again, under Article 339 (I) President may appoint a Commission at any time, and must appoint it after 10 years of the commencement of the constitution, to report on the welfare of the Scheduled Tribes in States and the administration of the Scheduled Areas. For the protection of the Scheduled Tribes and the prevention of atrocities, Parliament has enacted the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

These provisions were to give religious and linguistic minorities' security and confidence, and develop their own culture. It aims to bring equality by preserving minority institutions and also by guaranteeing to the minorities autonomy relating to the administration of these institutions. The reason for the differential treatment with the minorities by giving them special rights is to bring them to about an equilibrium, so that the principal of equality is not restricted to a mere abstract idea in theory but also in fact should become a living reality and that results in true or genuine equality among all the people.

Dealing with Linguistic Diversity

Language is considered to be the most noteworthy facet of a culture in determining ethnicity. In order to give due recognition to the different linguistic entities as many as twenty-two languages have been 'officially' recognized and placed under the Eighth Schedule of the Indian Constitution. In addition to this, English is given the status of an associate official language. Despite apprehensions, the creation of linguistic identity-based states has not weakened the nation-state. If anything, it has strengthened democracy, made it more inclusive, and given opportunities to previously excluded groups to share in the political decision-making process.

Accordingly, Article 343 provides that the official language of the Union shall be Hindi in Devanagiri script. Further, Article 351 of the Indian Constitution reads: "It shall be the duty of the Union to promote the spread of the Hindi language, to develop it so that it may be provide or serve as a medium of expression for all the sections or components of the complex culture in India."¹⁴

While, Article 345 provides that every State Legislature is empowered to adopt any one or more languages for use in the State for any or all the official purposes of the State concerned. Moreover, in order to protect the interests of the linguistic communities, the Constitution has incorporated Article 347, whereby the President is empowered to direct a state Government to recognize a particular language for official purposes either for the whole or a part of the State, if he is convinced, on a representation made to him in this regard, that a considerable part that state population need or desires such recognition. Article 350, which provides that every person is entitled to submit a representation for the redress of any grievance to any officer or authority of the Union or a State in any of the languages used in the Union or in the State, as the case may be. Similarly, Articles 210 and 212 of the Constitution provides that the business of the Parliament of State Legislature will be transacted in the language of the State or in English or Hindi but if a Legislator is unable to express himself in the afore-mentioned languages then he can communicate in his mother-tongue.

Accommodating Religious Diversity

Pluralism India being a land of numerous religions the Constitution grants the citizens right to profess, practice and propagate any religion. However, one unique feature of Indian Constitution is the right to propagate one's religion. India has no official or established state religion. It treats all communities as equal. This is enlarged by the constitutional provisions that safeguard religious liberty.

Article 25 seeks to embody the principles of religious tolerance and serve to emphasize the secular nature of Indian democracy which the founding fathers considered should be the very basis of the Constitution. Religious communities also have the right to set up their own religious and charitable institutions; they can establish their own educational institutions, and above all, these institutions can receive financial support from the state.

Special Rights for Tribal Communities

The Constitution identified some areas where tribal communities lived with some form of 'protective segregation' as 'excluded' or 'partially excluded' regions. The special status accorded to these communities and regions brought into effect what has since been called asymmetric federalism. What this means is that the constituent units of the federal polity do not all enjoy identical powers. Over the years, the Indian State has also introduced new political and administrative structures, in the form of multi-level federalism, to accommodate the special concerns of communities within a region.

National Commission for Minorities is another institutional mechanism to safeguard the rights of minorities. This commission is required to perform a number of functions to protect the rights and to look into matters of welfare and development of minorities.

What Needs to be Done to Accommodate Deep Differences?

There are enough debates to consider India as a perfect multicultural society but the question that remains to be answered is to what extent it has been realized. The experiences derived from the last five decades underscore the fact that there is a need to integrate cultural diversities in the public arena. But the path India has pursued has also drawn attention to the problems that we may confront in realizing this goal of accommodation. The cumulative experience has yielded some valuable lessons that we should reflect upon as we confront issues of peaceful coexistence in democratic politics today. India has the diversities of religion, language and culture. Each kind of diversity, whether of religion, language or tribe, has been subject to construction, both by the State and by the agents themselves. Identities not only define who we are; they also operate as objects that are open to manipulation and instrumental use. Identities can be mobilized to secure access to valued social and economic goods. When identities are mobilized, it is necessary to address concerns of recognition. Ignoring the latter often alienates a community. In situations of considerable scarcity, therefore, recognition given with a view to accommodating diversity can often pose new challenges.¹⁵ We need to approach the issue of coexistence and accommodation by taking note of this, and recognizing that issues of identity cannot be settled by merely referring to history or the original position. What we need are political—normative and institutional—solutions that take note of communities and identities as they exist and assert their claims. The task that confronts developing democracies then is to find ways of accommodating differences in the public arena while simultaneously protecting the rights of other minorities. But when the state endorses and expresses the identity of one community, other communities within the polity are disadvantaged. This is a common source of ethnic conflict at the national and the regional level. To minimize these conflicts the state has to explore ways of accommodating all communities as equals. Identities that exist and which are seeking equal space in the public arena are far from natural entities.

Multiculturalism can be grow when there is an accompanying feeling of inter-culturalism. Greater

exposure and interaction between communities needs to be fostered in order to overcome negative stereotypes. Second, communal violence (where members of one community targeted by another) challenged the obligation to cultural diversity, the commitment to cultural diversity. Even though incidents of communal violence have decreased over the years, they remain a permanent reminder of the vulnerability of the minority communities. The point that must be emphasized here is that policies that promote cultural diversity are not in themselves sufficient to check communal violence.¹⁶ Ignorance about the other certainly provides a fertile ground for breeding sentiments of hatred and animosity.¹⁷ Peaceful coexistence of different communities therefore requires both a vigorous defense of the basic rights of individuals as citizens and an institutional and normative framework that acknowledges and values diverse ways of life.

In India, we have provided for accommodating diversity in the constitution but policy measures which are needed to sustain it have often fallen short of expectations. The task of protecting diversity is more complex and challenging. In the first instance, formal recognition for the language/s of the minorities is itself contested within the nation-state. Even when this hurdle is overcome, a web of policies is needed to ensure that formal status translates into actual reality on the ground. This is not always easy and is dependent upon the will of the political party in power and the extent of mobilization on the issue. So, accommodating heterogeneity requires not only bold initiatives and innovation, but also sustained adherence to these initiatives.

At one level, it appears that the general framework India has used to accommodate different kinds of diversity can have wide applicability. The settlement of heterogeneity can take many different forms. To determine what is suitable for a specific country depends on a number of coexisting conditions; the key is the history of the nation-state and the connection between the State and community. It is universally known that States that are unable to identify their internal diversity, and those who pursue to unite a strong nation-state on the basis of a single cultural identity, are progressively confronted with identity-based conflict. And, perhaps even more importantly, when such conflicts are ignored or suppressed with the might of the State, they tend to take on a more violent and intractable form. The longer and more violent the conflict is, the less will it be possible to settle it by allowing special cultural rights. Often, it is entailed special political rights along with accommodation on the cultural and symbolic plane. Hence, not only can granting special political rights, or self-governance rights, to a minority community raise

concerns of minority nationalism (which is as dangerous as majority nationalism) but cultural community rights can be a source of unfair treatment for vulnerable groups within the community. Hence, even though there is a compelling need to accommodate diversity, the concern for diversity has to go hand in hand with the equally important concern for equal rights for all citizens. Diversity, in other words, is not intended to undermine equality.

Conclusion

Ethnic identities and affiliations created within the framework of the variable richness of multicultural society are in no way 'pure', original or connected with a fixed past; rather, they relate to the dilemmas and conflicts of the present. We cannot study people and cultures today through a magnifying glass – as if they were a fossilized 'ethnographic present' – without making the prism of contemporary cultural complexity visible. It is a well-accepted fact that the Indian State is a mosaic of many segments—ethnic, regions, caste, tribes, linguistic, regional and cultural.

India, being a land of diversity has various provisions in its Constitution to safeguard minorities rights. Certain similarities between prescriptions of multiculturalism and provisions on rights of minorities in the Indian Constitution have led to consider Indian Constitution as a multicultural document. The Indian Constitution is a treasure where minorities can find various articles and provisions that safeguard their rights and privileges. It is an archetypal instance of accommodating and adjusting various claims of people belonging to multifaceted cultures and identities. The Constitution of India provides numerous provisions through which the minorities protect their rights. It contains the ideals which are embodied in the 'preamble', 'Directive Principles of State Policy', 'Fundamental Rights' and a number of other articles and provisions. In this manner the Indian Constitution plays a decisive role and is an important source of guaranteeing the privileges and rights to the minorities community living in India.

To protect the rich diversity of our composite culture, what is necessary is a multi-tier dialogue, accompanied with participatory political processes and institutions. In terms of political arrangements, what is essential is adoption and implementation of institutions and structures that meet the aspirations of the different ethnic nationalities and control over their own affairs in a manner that is not inconsistent with ultimate sovereignty.¹⁸ In the process of providing autonomy, institutional arrangements and structures should not be restricted to

the state level but should be extended below the state level to accommodate those ethnic identities which cannot be contained or given recognition within the framework of federalism. It is only through the process of multicultural decentralization that the grand co-existence of different identities under the same "political roof" can be lawfully maintained.

Thus, in conclusion, it can be said that the highly complex cultural unity is the result of protracted interaction and interrelationship of the diverse cultural traditions nurtured over thousands of years, truly reflecting not unity in diversity but unity through diversity. It is these religious, cultural and linguistic linkages that ultimately define India's peculiar multiculturalism.

Notes

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