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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **THE IMPORTANCE OF RELIGIOUS AND MINORITY RIGHTS IN INDIA: A CRITICAL STUDY**

AUTHORED BY – ADV. ARATHY A<sup>1</sup>

*“One of the benefits of a properly functioning democracy is minority rights and majority rule”*

– *Noam Chomsky*

## **ABSTRACT**

India is a secular state which does not have any state religion. People are absolutely free to practice any religion according to their wish. With the 42nd amendment of the constitution of India in the year 1976, the preamble to the constitution asserted that India is a “secular” nation. The meaning of a secular state is that it does not prioritize any one religion for the country and its people.<sup>2</sup> The persons belonging to minorities have the right to participate effectively in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live, in a manner not incompatible with national legislation. The persons belonging to national or ethnic, religious and linguistic minorities have the right to enjoy their own culture, to profess and practice their own religion, and use their own language, in private and public freely and without interference or any form of discrimination. Article 29 protects the interests of minorities by making a provision that any citizen or section of citizens having a distinct language, script or culture have the right to conserve the same. It also mandates that no discrimination would be done on the ground of religion race, caste, language or any of them and highlights the rights of minorities, different vulnerable groups in India, historical background of religious minorities in India and constitutional provisions for minorities as well.

**KEYWORDS:** *Minority Rights, Secularism, Religious Rights, Personal Laws, Constitution of India, Non-Discrimination, Right to Equality*

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## **INTRODUCTION**

India has diverse religion live together. Religious diversity is one of the important concepts in country like India. According to 2001 census Hinduism estimated for 80.5% of the population of India. Islam 13.4%, Christianity 2.3% and Sikhism 1.9% and there many other religious people who are residing in India.<sup>3</sup> The constitution of India prevents any type of discriminatory practice on the ground of religion, race, caste, sex or place of birth.<sup>4</sup> The constitution of India provides space for the minority religious communities to establish their own educational institutions and even introduced some other rights that would enable them to protect their distinct identity.<sup>5</sup>

In the colonial era the 'depressed classes' were called as minority but they are no longer depicted so after independence. During partition in 1947, it played a crucial role in shaping the discourse on the minority-majority question. Thus, the majority-minority distinction has over the years has come to be identified with religion. Since the national minority commission Muslim, Christian, Buddhist, Sikhs and Paris are notified as religious minority communities under section 2(c) of National Minority Act, 1992. Minorities in the country are about 18.4% of the total population of the country. This is said by the National Minority Commission of India.

In India constitution recognizes namely two kinds of minorities such as religious and linguistic minorities. In the time of reorganization of state after the independence on linguistic basis in the year 1956 and a number of monolingual states were newly formed. Though the states were formed more or less on linguistic basis, each of the state came to have linguistic minorities as well. Usually there is one dominant language group in every state and several smaller language groups which will different from the dominant language group. Those who are small language groups speak of their mother tongue different from the majority groups. These are known as linguistic minorities.<sup>6</sup> The constitution framers knew their problems and had made the provisions to meet those situations in an effective manner.

According to the National Minority Commission has recognized five groups as minorities for example Muslims, Christians, Sikh, Buddhist and Paris. According to their understanding two groups like Sikhism and Buddhist have originated in Indian soil and the remaining three such as

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<sup>3</sup> Padmanabh Samarendra, *Census in Colonial India and the Birth of Caste*, Economic and Political Weekly, AUGUST 13-19, 2011, Vol. 46, No. 33 (AUGUST 13-19, 2011), pp. 51-58, Economic and Political Weekly, <https://www.jstor.org/stable/23017849>

<sup>4</sup> Article 15, The Constitution of India

<sup>5</sup> Article 30, The Constitution of India - Right of minorities to establish and administer Educational Institutions

<sup>6</sup> Manoj Kumar Sinha, *Minority Rights: A Case Study of India*, International Journal on Minority and Group Rights, 2005, Vol. 12, No. 4 (2005), pp. 355-374, Brill, <http://www.jstor.com/stable/24675308>



Muslims, Christian and Parsis have their roots outside India this the understanding of National Minority Commission of India.<sup>7</sup>

The preamble to the constitution of India expresses India as a Sovereign Socialist Secular Democratic Republic and to secure to all its citizens, Justice, Liberty, Equality and Fraternity. Secular word expresses equal treatment, equal respect and tolerance of all religious minorities. India being a secular country it does not have any official religion as such. It is enshrined in the preamble to the constitution of India the right to practice, preach and propagate any religion under Article 25. The right to freedom of religion is fundamental right according to the constitution of India. In India most of the religious minorities are administrated by their own personal laws, customs and traditions. The minority communities have rights to establish and administer educational institutes of their choice in India and these rights are fundamental rights which are enshrined in the constitution of India. Religious minority can run the institutions without any instructions of governments for the development country.

## **THE RELIGIOUS MINORITIES IN INDIA: AN OVERVIEW**

India is the largest democratic nation in the world in terms of population and considered to be the seventh largest in terms of its territorial area and second largest in terms of population in the whole world. India consists of several group of citizens who is coming from various cultural backgrounds with various forms of cultures and traditions. One of the main issues which takes place in India is that whether the backward classes can also be considered as a religiously minor group and whether are able to get the same opportunities that are being given to the other minority communities.<sup>8</sup> India is known for its religious harmony all over the world since even though India is equipped with Hindu denomination as the highest majority of around 84% of the total population of the nation, since there are other large and small minority communities who are there in India who leaves in a peaceful manner with the idea of common brotherhood among all the Indians. Now, we can analyze the various minority groups in India and how their participation affects the minority structure of India.

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<sup>7</sup> Sambuddha Ghatak and E Ike Udogu, *Human Rights Issues of Minorities in Contemporary India: A Concise Analysis*, Journal of Third World Studies, SPRING, 2012, Vol. 29, No. 1, Global Change, Shifting Dynamics and the Third World (SPRING, 2012), pp. 203-230, University Press of Florida, <https://www.jstor.org/stable/45194859>

<sup>8</sup> Dinesh Higde, *Religious Minorities and Backward Class Constituency in Karnataka: An Interface*, The Indian Journal of Political Science, OCT. - DEC., 2010, Vol. 71, No. 4 (OCT. - DEC., 2010), pp. 1201-1211, Indian Political Science Association, <https://www.jstor.org/stable/42748947>

# **ISLAMIC RELIGION: THE FASTEST GROWING**

## **MINORITY COMMUNITY IN INDIA**

The Muslims practiced religion of Islam. According to 2011 census Muslim population is 14.23% in India a second largest community after Hindus. The many of the Muslims community in India belong to so called Indian ethnic groups. Their ancestors are from Persia and as well as from central Asia. Muslims represent majority of local population in Lakshadweep and Jammu and Kashmir. According to 2011 census the high concentrations of Muslims are live in th3e three states of Uttar Pradesh, West Bengal and Bihar. In India Muslims population are second largest groups in respect of other group of religion. Sometimes, there is heavy conflict between the majority religious community in India, that is, Hinduism and this Islam community since their political ideologies are so much different in nature. The election trends in India also depicts the facts that the majority Hindu religion are not comfortable with the minority Muslim population to an extent in India.<sup>9</sup>

According to the historians Muslims came to India as traders in 630 AD. It is said that first Arab Muslims traders settled on the Indian coast in the last part of 7th century AD. According to the historians the Arab Merchants and Traders brought the new religion long with and they preached the religion wherever they went.<sup>10</sup> It is said that the first Mosque was built in 629 AD, In Kodugallur in Kerala. The place called Malabar where the first community accepted Islam as their religion. It is said by the historians that Islam was established in Saudi Arabia and Islam was spread in India by the non-Arab countries such as they began coming to India from the 11th century onwards. The first spreaders of Islam came from Bukhara, Turkey, Iran, Yemen and Afghanistan etc. According to the historians the most preacher of Islam in India was Khwaja Chishti, who came from Iran and preached for Sufism and he was successful in spreading Sufism in India. According to the historians the actual process of converting Indians to Islam began in 8th century itself, when the Arabs people started invading north India which is presently known as Pakistan. It is known fact that these invasions by Muslims in India lands were not incessantly, it took gradual time to spread and some of the invaders were not so Islamic fanatics for example Moghul emperor, Akbar was very liberal in his approach. Emperor Akbar established a new religion called Din E Elhi, which means beliefs from different religions. According to the

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<sup>9</sup> Amalendu Misra, *Hindu Nationalism and Muslim Minority Rights in India*, International Journal on Minority and Group Rights, 2000, Vol. 7, No. 1 (2000), pp. 1-18, Brill, <https://www.jstor.org/stable/24675146>

<sup>10</sup> Amit Dey, *Islam and Gandhi: A Historical Perspective*, Social Scientist, March-April 2013, Vol. 41, No. 3/4 (March-April 2013), pp. 19-34, Social Scientist, <https://www.jstor.org/stable/23610469>

historians' views many of the monuments built by emperor Akbar was symbols of different religions which were very visible. Aurangzeb, the grandson of Emperor Akbar was very Fanatic Muslim in his approach to Islam and he worked ardently for spreading Islam in India.

There are two main sects in Islam religion in India, Sunni and Shia. it is said that each set has many different schools. There are some Muslims who also claim that they are descendants from the daughter of Prophet Muhammad.<sup>11</sup> In India there are different communities who accepted or adopted the Islam in various ways having different names such as Bohra and Khoja Community. In the state of Kerala south India, the Mophilla community is from the descendants of Arab merchants. In India a well-known community is called Pathan. They came from Afghanistan. Their surnames and originated from the Tribes of Israel.

## **CHRISTIANITY AND MINORITY RIGHTS IN INDIA**

According to the 2011 census Christianity is the third largest religion in India which has 2.3% of the population. This religion is originated in Israel and its people were Jewish cult. Jesus and his disciples were originally Jewish and most of his preaching is done in Europe. The Apostle St. Thomas was arrived to India in 1st century and Christianity was introduced in India. He was one the twelve apostles of Jesus Christ. The Christianity is a foreign religion in India which was introduced in South India first in Kerala. Christianity has many denominations, such as Roman Catholic, Oriental Orthodox, Anglican and Protestants etc.

According to the historians Christianity was introduced to Indian twice. It was first introduced by St Thomas in 1st century and 2nd by the Europeans in the 13th Century.<sup>12</sup> It was said that Protestantism was brought to India in 18th century by the British and American Missionaries. It rapidly grew in the protection of European Colonization and protection missionary hard work. There are other denominations like Syrians, Baptists, Anglican, Armenian, Methodists, Jehovah and Anglo-Indian are mostly found in India who are part of Christianity.

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<sup>11</sup> K M Sajad Ibrahim, *Islam, Fundamentalism and the Challenges to Nation-Building in India*, India Quarterly, July-Dec. 2000, Vol. 56, No. 3/4 (July-Dec. 2000), pp. 71-86, Sage Publications, Ltd., <https://www.jstor.org/stable/45073235>

<sup>12</sup> Sonja Thomas, *Chapter Title: Who Are the Minorities? Gender, Minority Rights Contesting, and the 1959 Liberation Struggle*, Syrian Christianity, Gender, and Minority Rights in Postcolonial India, Privileged Minorities, University of Washington Press, <https://www.jstor.org/stable/j.ctvcwnx2t.8>

## **THE OFFSPRING OF HINDU RELIGION: A REAL MINORITY COMMUNITY?**

Even though India is a Hindu majority populated nation, it derives the characteristics of secularism from the Constitution of India as well as the basic morale laws of India. India is considered to be a country who always tolerates and possessing a welcoming mind towards the religious minority community. There are so many religions which are considered to be the offspring of Hindu religion and the personal laws applicable to them are same as that of the Hindu personal laws. Then also, these groups are considered to be the minority communities, specifically the religious minority communities because of their smaller number of population and miniscule presence in the common society. The following religions are considered to be the offspring of Hindu religion but are then also be treated as the religious minority communities in India where these said religious communities get the same rights and reservation policies of the government which is actually allocated to the religious minority communities in India. Thus, through the said provisions, these communities can also receive grants and aids from the concerned government. Sometimes, even India is considered to be the largest democratic nation in the world with largest minority community groups in existence, the governments who are in power are denying the rights of these minority communities. The judicial wing plays a prominent role to protect these minority communities from further exploitation and to uplift them as well as to bring them to the forefront of the society and to the main front in educational and occupation fields as well.<sup>13</sup>

## **SIKHISM IN INDIA: ORIGIN, GROWTH AND DEVELOPMENT**

The Sikh religion began in state of Punjab in northern India. Highest population of Sikh are found in state of Punjab today. They are living within towns and villages. Punjab has holy Golden temple where many Sikhs come to worship their God. In Punjab they have many Gurdwaras where many community people come and pray together daily. According to the 2011 census there are currently 25.8 million Sikhs in the world, and 75% Sikhs are living in the Punjab.

Sikhism was founded by Guru Nanak in 1469-1539. This is a new religion in India. Guru Nanak was born in a Hindu family in Punjab region in 1469. Guru Nanak learned and preached humanity.

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<sup>13</sup> A G Noorani, *Minority Rights and Human Rights*, Economic and Political Weekly, May 6-12, 2006, Vol. 41, No. 18 (May 6-12, 2006), pp. 1741-1742, Economic and Political Weekly, <https://www.jstor.org/stable/4418165>

Through his teaching and preaching got the title Guru which means teacher. Thereafter Guru Nanak developed a new religion, now this religion called Sikhism. Called Sikhs traditionally their hair and do not shave their beard and moustache. They cover their head hair with a turban. It is said that Guru Nanak tried to abolish some of the Indian customs and traditions for example the caste system and sati Partha.<sup>14</sup> In Sikh religion everyone has got equal rights such as caste, creed, colour, race, sex or religion. The Sikhism does not believe in pilgrimage, fasting, superstitions and many other such rituals.

## **BUDDHISM AS A MINORITY RELIGION IN INDIA**

Buddhism also is one the world religion which originated around ancient Magadha in Bihar. It was mainly based on the teaching of Gautama Buddha. The main distinct character of the said religious community is that after Buddha, no one was there to preach the religion but is fully based on the philosophies of Dharma which means values and of Nyaya which means the lawfulness.<sup>15</sup> It is said that Buddha lived and taught his philosophy of religion (Buddhism) sometime between the 6th and 4th centuries BC in northern India. He was an enlightened person and shared his thoughts and insights to help people to come out from ignorance (avidya). Even Buddha taught about Nirvana which the goal of life is to escaping the cycle of birth and death by achieving a state of spiritual understanding. Buddhists people have to follow the eight -step path to get Nirvana (the state of understanding). It is said that Buddhism spread gradually in time of Emperor Ashoka who was an ardent supporter of this religion. According to census of 1991 the Buddhist population is around 0.77% in India. It is said that there has not been significant growth and development in Buddhist population in the down the centuries.

## **JAINISM: ANOTHER OFFSPRING OF HINDU RELIGION**

Jainism is one the old religion in India. It is originated along with the Hinduism in down to the history. The mean of word Jainism is derived from Sanskrit word “follower of the Jain or conqueror. Jainism is started by Mahavira in the 6th century BC. Jainism is considered to be one among the noble religion all over the world with so much of followers and the religious

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<sup>14</sup> Himadri Banerjee, *Sectional President's Address: The other Sikhs: Sikhs and Sikhism in Eastern India*, Proceedings of the Indian History Congress, 2005-2006, Vol. 66 (2005-2006), pp.552-583, Indian History Congress, <https://www.jstor.org/stable/44145871>

<sup>15</sup> E Dale Saunders, *Buddhism in India*, Buddhism in Japan, With an Outline of Its Origins in India, University of Pennsylvania Press, <https://www.jstor.org/stable/j.ctv51320g.7>

communities are always following the harmonious lifestyle in the society.<sup>16</sup> According to Jainism, the universe is eternal and nothing that exists now was ever created and nor will it be destroyed. They believe that the universe comprises of three things such as Heavens, Earth and the Hells. Jain population is 0.41% of the total population of India. According to the census of 2011 there has been some increase in the population of Jain by 0.37%.

Thus, India is being considered as the nation with so much of diversity and with a vast number of religious communities, it tries to follow the religious harmony among the members as well as among the whole section of the society. Thus, we should need to consider the efforts made by the government and the concerned religious minority groups as well as their spiritual leaders in order to keep this harmony and sense of common brotherhood in the society.

## **CONCLUSION**

The main cornerstone of every nation is the ideal balance of interest of the people living in that particular nation and how the said communities who are coming from different cultural backgrounds with different customs goes hand-in-hand. India being considered as the largest country with wide variety and vast sect of population who cannot be compared in any aspect. Even though India is the second largest country in terms of population in the whole world, it can be considered as the largest democratic nation in the world with the principles of secularism which is being followed in the society and being incorporated in the Constitution as well.

India is known for its cultural diversities and religious practices all over the world. There are innumerable number of religious communities in India who are having their own culture, religious beliefs and traditions and they all are trying to lead a harmonious life in the Indian society. Even though we preach the sense of brotherhood at every time, sometimes these religious minorities in India are being discriminated and demarcated from the other groups which is an intolerable activity from the side of the majority population. The political ideologies and agendas are one among the important factors in order to regulate and guide the same in the Indian context. Thus, it is a high time in need to rethink the minority rights that are being provided in India and we should need to consider whether these rights that are being enjoyed by them in the present scenario is

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<sup>16</sup> Bansidhar Bhatt, *Evaluation of Jainism*, Annals of the Bhandarkar Oriental Research Institute, 1985, Vol. 66, No. ¼ (1985), pp. 85-95, Bhandarkar Oriental Research Institute, <https://www.jstor.org/stable/41693598>

sufficient enough for their upliftment in the society.<sup>17</sup> Thus, the concerned ruling government who are in power both at the union level and the state levels must need to make and implement proper agendas in order to guide and facilitate the upliftment of minority communities and to protect them from any form of exploitations which will harm them in a very adverse manner.

Thus, through proper implementation and monitoring system, we can ensure the upliftment of these religious and other minority groups in India and only through their development also, we can uphold the principle of right to equality and equal protection of laws which will be availed by all the citizens of the nation. Thus, the society will get uplifted and finally it will result in the overall economic and social development of the nation as well.

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<sup>17</sup> Neera Chandoke, *Rethinking Minority Rights*, India International Centre Quarterly, SPRING 1996, Vol. 23, No. 1 (SPRING 1996), pp. 123-136, India International Centre, <https://www.jstor.org/stable/23003564>