PROTECTION OF CULTURAL RIGHTS OF CITIZENS OF INDIA

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Abstract:
Culture is a fundamental to individual rights because it provides a Conglomeration (mixture) of interlocking (engage) practices which may constitute the range of life. Which is open to one who is socialized within the society. Culture mostly practices as foundational to personal autonomy (rights). To understand cultural narratives Language, Education, Religion, Custom, Myth, Symbols, Morals, History and Manners. It is a necessary precondition to make a bright judgement about our lives. Culture plays a vital role for the congenial (pleasing) development of society who belong to the community of minorities. All over the world it has been found that there is a huge gap between the minority and the majority communities. For the sake of equality and a healthy relationship between the communities there should be a special provision to the minorities as mention under Article 29 of the Constitution of India. Therefore, Cultural and Educational rights of the minorities are very important and essential which work as a tool for the upliftment of the minorities.

Keywords: Conglomeration, interlocking, personal autonomy, congenial.

Introduction:
India is a diverse country containing several sub-cultures, religions, ethnic groups and language. Given this extraordinary diversity, the Constitution of India acknowledge cultural rights in various forms and includes safeguards to protect the minority languages as well as religious and cultural practices. Culture consist of the way in which we think act as members of the society.

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1 Available at. Indian culture and Heritage-DDCE, Utkal University (visited on February 10,2020).
Thus, all the achievements of group life are cooperatively called culture. Culture is an output of such an organization and expresses itself through language and art, philosophy and religion. It also communicates itself through social habits, customs, economic organizations and political institutions. Indian culture is the oldest of all the cultures of the world. In spite of facing ups and downs Indian is shining with all its pride and grandeur. culture is the soul of the nation which one can experience the benefits of its past and present.

In our Indian constitution, the right to Cultural and Educational Rights is protected under article 29 and 30 of the Indian Constitution which states that all minorities community whether Religion or Linguistics have their right to start and run Educational institutions of their choice. If they belong to the citizens of India as per the provision article 29 of the Indian Constitution. The state on the grounds of granting an Aid of right to Educational institution shall not Discriminate any person belonging to the category of minority which had already mention under article 29 of the Indian Constitution. This article also states that on the ground of Race, Caste, Creed, Language etc. no countrymen shall be deprived of admission into any state-run or aided educational institution.

**Meaning:**

The meaning of the term CULTURE has been highly as a developing the behavior of human life such as activity, behavior and communication. The word CULTURE derived from a French term which in turn derives from a Latin colere which means to tend to the earth and grow or cultivation and nurture. It is a way of life of the minorities in which they adopt right from the ancient ancestors. Such as the way of their living habits, the language they speak, their different way of worshiping. In simple term, we can say that culture is the embodiment in which they think and do things it is also the things which they inherit from the member of their society the belong and adopt.

Culture varies from place to place and country to country. The process of operating in a local, regional or national context is based on its development. For Example, they differ their ways of greeting others, their clothing, food habits, social and religious customs and practices from the west. In others, the people of any country are characterized by their distinctive cultural traditions.

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2 See, the Constitution of India (One hundred and Second amendment) Act 2018.
3 Ibid.
5 Available at. India culture and heritage by Dr. Binod Bihari Satpathy.
Historical of Culture in India:
Cultural development is a historical process. Our ancestors learnt many things from their ancestors. With the passage of time they also added to it from their own understanding and gave up those which they did not reflect useful. We have learnt many things from our ancestors in return. As time goes, we continue to figure new thinking, new concept to those which had already existed and sometimes we give up some which we do not reflect useful anymore. This is how culture pass on and carried forward from generation to generation. The culture we inherit from our ancestors is called our cultural heritage.
Whole Humanity has inherited a culture which may be called human heritage. A nation also inherits a culture which may be termed as national cultural heritage. Cultural includes all those aspects or values of culture pass on to human being from generation to generation. They are admired, protected and continue by them with unbroken continuity and they feel proud of it. A few examples which clarifies the concept of culture heritage. The Taj Mahal, Jain caves at Khandagiri and Udayagiri, Bhubaneswar, Sun Temple Konarak, Jagannath Temple, Puri, Lingaraja Temple, Bhubaneswar, Red Fort of Agra, Delhi’s Qutub Minar, Mysore Palace, Jain Temple of Dilwara (Rajasthan) Nizamuddin Aulia’s Dargah, Golden Temple of Amritsar, Gurudwara Sisganj of Delhi, Sanchi Stupa, Christian Church in Goa, India Gate etc., are all important places of our heritage and are to be protected by all means.

Cultural Rights in the Indian Constitution:
India got independence from the British in 1947, but it only adopts the republican Constitution in 1950 after more than two years of long and careful discussion within its Constituent Assembly. The debate in the Assembly were much about the rights to make judicial i.e., enforceable by Courts. Some members of the Assembly favored including provisions on social and economic justice as enforceable rights. K.M. Munshi drafted the “Rights of Workers” and “Social Rights,” which included also the right to a living wage and protections for women and children. Dr. B.R. Ambedkar, the Chairman of the Drafting Committee, who favored a social scheme to nationalize all major industries which would be effect ten years after the Constitution was adopted. In the end this view did not overcome. The Indian Constitution finally adapt and includes provisions of Article 19, though they are questionable, but they are not frame as Directive Principles of States Policies. It divides the fundamental rights.

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8Granville Austin, The Indian Constitution: Cornerstone of a Nation (New Delhi, Oxford University Press, 1996).
9Austin, The Indian Constitution, at 78.
10bid.

Fundamental rights were placed in Part III of the Indian constitution, while Directive Principles of State policies were placed in Part IV of the Indian Constitution. Articles 32" and 226" of the
Constitution allow the Supreme Court and High Courts, by agreement, to redress violations of fundamental rights. However, Article 37\textsuperscript{13} makes clear that the DPSPs shall not be enforceable by any court. Directive Principles of State Policies are unjustifiable because they represent aspirational long-term objective of the state that will continuously be realized over time. The Constitution choose to give elected representatives the flexibility to go after these objectives without the courts interfering in their enforcement. Cultural rights, however, unlike some economic and social rights, like the right to food, cultural rights are protected at the international level both within the International Covenant on Civil and Political Rights as well as the International Covenant on Economic, Social and Cultural Rights. This is because the guaranteed aspects of culture such as protecting minority cultural practices are viewed as civil rights, while other aspects like improving greater access to a community’s cultural life and scientific improvement.

1. Article 2\textsuperscript{14} Similar approach were taken by the framers of the Indian Constitution. Cultural rights are therefore located both in Parts III and Part IV of the Indian Constitution. Part III includes the following provisions as fundamental rights. Article 19(1) of the Indian Constitution guarantees ‘any section of citizens’ with a distinct language, script or culture the right to conserve it. Therefore, this Article guarantees the minorities their right to protect and preserve their culture.

2. Article 29(2)\textsuperscript{15} it guarantees protection against discrimination based on any religion, race, caste or language of any person who is a citizen of India.

3. Article 32\textsuperscript{16} allows permits cultural and language minorities to establish and administer their own educational institutions. Therefore, this right protects the rights of minority groups to promote their cultures and languages they followed.

4. Article 30(2)\textsuperscript{17} prohibits the government from denying minority educational institutions state funds or aid. In other words, it prohibits discrimination and ensures equal protection of groups in the field of education. Part IV of the Constitution Directive Principles of State Policy also includes provisions related to cultural life.

\textsuperscript{11}See, the Constitution of India (One hundred and Second amendment) Act 2018.
\textsuperscript{12}ibid.
\textsuperscript{13}ibid.
\textsuperscript{14}ibid.
\textsuperscript{15}ibid.
\textsuperscript{16}ibid.
\textsuperscript{17}ibid.
Article 43\(^{18}\) imposes a positive liability on the state to ensure that all workers can fully enjoy social and cultural opportunities. This is like the provisions of the Universal Declaration of Human Rights that recognize the right to enjoy and engage in cultural life.

Article 51A(f)\(^{19}\) enforce a duty on citizens of India to conserve and value the complex culture and culture of the nation. Therefore, the DPSPs place responsibility on both individuals and the state to preserve and promote India's cultural tradition. In Dayanand Anglo Vedic College v. State of Punjab (1971),\(^{20}\) several colleges within the DAV institution filed writ petitions under Article 32\(^{21}\) of the Indian Constitution challenging the constitutional validity of certain foundation of the Guru Nanak University Act 21, of 1969. These colleges claimed violations of Art. 14, 19(1)(c)\(^{22}\) and (f), 26, 29(1)\(^{23}\) and 30(1)\(^{24}\) of the Constitution. In a recent case, the Right to Education Act was challenged on grounds of integral fundamental, that it violated minority rights under the Indian Constitution.

In Society for an Un-Aided Private Schools of Rajasthan Vs. Union of India (2012)\(^{25}\). The Supreme Court was asked to determine if Section 12(1)(c)\(^{26}\) of the Right of children to free and Compulsory Education Act 2009 is ultra vires of the Constitution insofar as it applies to unaided private schools and minority schools. In this provision the court found, the requirement of private schools to reserve 25 percent of their seats for disadvantaged groups, was not a legitimate restriction, as they do not receive any government cooperation. It also found that this restriction breaches the right of minority groups under Article 30(1) to establish and govern their own educational institutions.

**The Fundamental Right to Culture:**

Reenacting Customary Legal Systems. Article 29(1)\(^{27}\) of the Indian Constitution grant on any section of the citizens having a recognizable language, script or culture of its own\(^{19}\) the right to preserve the same. One may note the attention on the distinguishing condition for the enjoyment of the right to culture. In other words, unless the language, script, or culture is "distinct," the protection fundamental right under Article 29(1) is not fully enjoyed.

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\(^{18}\)See, the Constitution of India (One hundred and Second amendment) Act 2018.

\(^{19}\) Ibid.


\(^{21}\) See, the Constitution of India (One hundred and Second amendment) Act 2018.

\(^{22}\) Ibid.

\(^{23}\) Ibid.

\(^{24}\) Ibid.


\(^{26}\) See, the Constitution of India (One hundred and Second amendment) Act 2018.

\(^{27}\) Ibid.
This contingency is a constitutional recognition of the distinguished concept of culture in sociology. The traditional customs are based on legal system which specific the aspect of tribal culture for protecting the dissimilarity of tribal culture. It, therefore, followed that the legal system may be conserved as part of a tribe's fundamental right to culture under Article 29(1). Indeed, the current Judiciary, in its decisions, has formally recognized the traditional customs based legal system as an integral part of tribal culture. For a State that prides itself on its cultural diversity, judicial pronouncements on the nature and scope of the fundamental right to culture under Article 29(1) are surprisingly few.

In Jagdev Singh v. Pratap Singh,28 explaining the right to conserve language under Article 29(1), nature the Supreme Court held: The Constitution has thereby conferred the right, among others, to conserve their own language in the citizens of India. Right to conserve the language of the citizens includes the right to agitate for the protection of the language. Unlike Article 19(1), Article 29(1) is not subject to any reasonable restrictions. The right conferred upon the section of the citizens residing in the territory of India or in any part thereof to conserve their language, script or culture is made by the Constitution Absolute. This "absolute" status of the right to conserve culture under Article 29(1) has far reaching constitutional implications.

The Supreme Court held that in the face of visible obstruction put up by the conscious tribal people affectionate their own customs, traditions and usages, judicially enforcing on them the principles of personal laws suitable to others, on a discriminatory path or on equality principle, by judicial involvement, is a challenging and mind-overwhelm effort. It does not only govern its culture but also its customary laws, succession, inheritance, marriage, worship of Gods, etc. In addressing the question of whether transformation to another religion amounts to disapproval of the tribal status, the Supreme Court noted that if a different religion a long time back, his/her ancestors by conversion have not been following the customs, rituals and other traits, which are lack to be followed by, the members of the tribe who had not been following the customary laws of succession, inheritance, marriage etc. he may not be accepted to be a member of a tribe to practice their culture. Thus, the Courts left it up to the tribes to determine for themselves who can and cannot be a member of their tribe. In Madhu Kishwar v. State of Bihar30, a petition was filed under Article 32 challenging the constitutionality of the Chotanagpur Tenancy Act of 1908 on grounds that the provision in favor of male succession to property is discriminatory and arbitrary against women and, thus, violates equal rights.

281965 AIR 1964 SCR (6) 750, SC 583.
29See, the Constitution of India (One hundred and second amendment) Act 2018.
30(AIR 1996 S SCC 125).
31See, the Constitution of India (One hundred and second amendment) Act 2018.
An interesting question on tribal legal rule was contested in the Supreme Court. Dai-ul-Mutlaq' and the head of the Dawodi Bohra community challenged the constitutionality of the Bombay Prevention of Excommunication Act of 1949. The petitioner, as the Head Priest of the Dawodi Bohra, claimed to be the delegation of Imam in Public. In his status as the Imam in seclusion, the Dia not only have civil powers as head of the sect, but also ministerial powers as a religious leader of the community. In the community as well as the trustee community, he had the power of removal. The petition claimed that the Dia-ul-Mutlaq, as the religious leader of the community, was entitled to suspend any member of the Dawodi Bohra community for an offense which, according to his religious sense, justified expulsion. Therefore, he argued, any infringement on his right to dismissal was beyond the permissible scope of Bombay's authority to legislate.

The matter is argued by the counsel for the petitioner under Article 26(b)\textsuperscript{33}, which confers upon every religious denomination, or any section thereof, the right to manage the matters of religion on its own affairs. Every religious denomination is entitled to ensure its continuity by managing the bond of religious unity and discipline, which would secure advance cooperation by its devotee to certain essential tenets, doctrines and practices and that the right to continuity involves the right to accomplish discipline argued by the petitioner, if necessary, by taking the extreme step of dismissal. While agreeing to the submission made by the respondent that the effect of the dismissal would be to deprive the person of his civil rights, the majority of the Court upheld the petition on the ground that the "fundamental right under Article 26(b) was not subjected to preservation of civil rights" and, therefore, it was of no consequence that the excommunicated person would lose his civil rights.

Judge Iyengar, in his concurring opinion, observed that "the identity of a religious denomination consists in the identity of its doctrines, creeds and tenets and these are promise to ensure the unity of the faith which its adherents profess and the identity of the religious views are the bonds of the union which binds them together as one community. "Defining dismissal as a "judicial exclusion from the right and privileges of the religious community to whom the offender belongs," he held the impugned legislation as ultra vires on the ground that it denied the religious head the right of punishment as a part of community discipline. While the Supreme Court did not direct the question from the perspective of the right to culture under Article 29(1)\textsuperscript{34}.

\textsuperscript{32}(AIR 1962 SC 853).
\textsuperscript{33} See, the Constitution of India (One hundred and Second amendment) Act 2018.
\textsuperscript{34}ibid.
The court could have reached the same conclusion through judgement of that right. The right to culture may not have been put forward in the instant case because of the criterion of "religious denomination" that the Dawoodi Bohra community enjoys under Article 26. However, where legislation find another way to take the power of dismissal from any community not distinguishable on grounds of religious denomination, it seems quite possible to protect the practice under Article 29(1). The Sardar Syedra Taheer Saifuddin Saheb Court, even without a discussion of the scope of the right to culture, softly recognized the status of distinct legal systems which were being protected by provisions of Part III of the Constitution.

The protection under Article 29(1) can only be more secure in the light of the absolute nature of the right, especially when Article 25 and the protection therein is Subject to public order, morality and health. Quite clearly, in recognizing the customs and traditions of the tribal communities in Bihar or that of the Dawoodi Bohra community, the Supreme Court impliedly acknowledged the institutions that sustain and enforce these customs and traditions. For without recognition of the customary legal system, the right to tribal custom may not mean much. As discussed above, there are fundamental differences between the positivistic legal system practiced in "Courts" and the tribal traditional legal systems. To require the tribal communities to enforce their customs within the general framework of law may effectively deny them their right of access to justice. These judicial judgements, in other words, recognize the right of tribal to have both their spiritual and temporal disputes resolved by their own institutions.

Constitutional Consequences: Is Culture Constant?

Are the nature consequences which makes it flow from the recognition of that right? If Article 29(l) of the Indian Constitution guarantees a fundamental right to a traditional legal system as part of the fundamental right to culture, The Supreme Court held that right to conserve language under Article 29(1) is absolute. Accordingly, the fundamental right to conserve culture must also be granted the same as the right to conserve language. Unlike the right to equality, the freedom of speech and expression, the right to life and personal liberty, the right to religion, the right to manage and administer religious denomination, the right to conserve culture has not been made subject to any reasonable restrictions. Additionally, in the context of the Constitutional provision does not qualify or circumscribe the right in any manner. In order to understand article 29(1), the reasonable restriction on the right to conserve culture would amount to re writing of the constitutional provision which is not within the limits of judicial functioning.

35See, the constitution of India (One hundred and Second amendment) Act 2018.
36See, the constitution of India (One hundred and Second amendment) Act 2018. Part III.
37Ibid.
38Without the recognition; Tradition and custom may not mean much. The SC implied
The fundamental right to conserve culture must be interpreted as absolute in the following circumstances:

First, the provisions contained in Articles 37(1)(A) and 37(1)(G)\(^{39}\) of the Indian Constitution exclude the applicability of any law made by Parliament to customary law and procedure or the administration of civil and criminal justice involving decisions according to customary law of Nagaland and Mizoram\(^{40}\). They must, therefore, be read as merely illustrative. In other words, all scheduled areas wherein tribes that have their customary law and a distinct traditional legal system are exempt from the applicability of such laws made by the Parliament. Accordingly, the provisions relating to Nagaland and Mizoram must be read as merely illustrative of the general exemption rule for all tribal areas with a distinct legal system. It also follows that the power of the State Legislative Assembly to extend the application of such laws by a resolution must be interpreted as a resolution with the consent of the tribal community. In other words, the power of extending the application of these laws would then be appropriately dependent on the consent of the tribal communities to be governed by such enacted laws.

Second, if the right is conceptualized as absolute, social reform of tribal cultural institutions by legislative enactments would not be possible. Interfering with the customary system on grounds of introducing social reform would in effect amount to a denial of the right. Exception in favor of social welfare and reform as a ground for legislative intervention has been made only in Article 25\(^{41}\) (the right to religion), and there can be no rational basis for importing the same limitation under Article 29(1)\(^{42}\) where none exists. The prohibition on social welfare and reform is crucial because of the practices often found in tribal communities. For example, in the *Sardar Syedra Taher Saifuddin Saheb case*, the Supreme Court held the legislative prohibition on the power of excommunication by the fifty-first Dai-ul-Mutlaq unconstitutional on grounds that it interfered with the religious practices of the Dawoodi Bohra community. It is important, however, to note that there are tribal communities wherein the power of excommunication is recognized as a temporal power of the "judges" in their traditional legal system. The power is purely a custom with no basis in religion. Without a prohibition on social reform by legislative intervention, a law banning excommunication as a valid punishment would not be struck down since the defense of religious practice would not be available to the community. That would render meaningless the "absolute" fundamental right to conserve culture.

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39 First provision of Indian Constitution Art 37 (1) (A) & (G).
40 Customary Law of Nagaland and Mizoram.
42 Ibid.
Conclusion:

Customs which are based on traditional legal systems are part of the inherited wisdom of India's tribal communities. The last century has seen an increasingly marked attack by formal law and policy on tribal cultural law than has probably been the case before. Recognition of traditional legal systems will enable tribal communities to revive their practices, determine their pace of integration and most importantly, to enable them to exercise their meaningful control over their cultural rights.

The process of degeneration of culture is a real threat to the one that calls for immediate attention. Constant legislative imposition into the customary practices of the tribal communities and the denial of traditional systems a rightful place within the national constitutional scheme will only hasten their attrition. The development of separation may be looked upon as far less inequitable process if the State values the customary practices of the tribal communities and their cultural importance. To deprive affected communities in the process of national development is to shame the preamble values of equality and fraternity in the Indian Constitution. Tribe members are also a part of the nation, and development that totally disregards the effect on its constituent parts cannot be, even in the most liberal sense, national development. The fundamental right to culture implied the recognition of India's diversity and the right of the framers of the Constitution found worth fundamental protection. More importantly, tribal consent is to recognize traditional legal systems is not only to keep alive the diverse cultural tradition of the Indian polity but also to honor the historical promise of cultural autonomy.

Traditional legal systems, as the process for enforcing tribal practices and values, themselves the expressions of indigenous culture. "National development," "integrating Traditional legal systems, as part of the fundamental right to culture and provide an effective voice in this diminutive process and thereby legitimize it. Unless India acts to recognize traditional legal systems, the continuing dispossession, displacement, and discrimination of tribal groups will leave India without her pride.