

CENTURY OLD JAIN DEMAND FOR MINORITY STATUS IN INDIA

by BAL PATIL*

The Jain demand for minority status is now a century old. When in British India the Viceroy took a decision in principle that the Government would give representation to "Important Minorities" in the Legislative Council, (Petition dt.2nd September,1909,)¹

Seth Manekchand Hirachand, acting President of *Bharatvarshiya Digambar Jain Mahasabha*, thus appealed to the Viceroy and Governor-General of India, Lord Minto, for the inclusion of the Jain community as an Important Minority. The Viceroy responded positively to this petition informing that in giving representation to minorities by nomination the claim of the important Jain community will receive full consideration'. Seth Maneckchand's Petition was transferred to the Government of Bombay and the Secretary to the Govt. Of Bombay stated in his reply dt.15th October,1909.²

"I am directed to inform you that a number of seats have been reserved for the representation of minorities by nominated and that in allotting them the claim of the important Jain Community will receive full consideration."

Presenting the Draft Constitution to the Assembly, Dr.Ambedkar warned against "fanaticism against minorities": (CAD p.766)

We may hearken back to the crucial importance given to Minority safeguards in the Constituent Assembly Debates. The Resolution for the setting up of an *Advisory Committee on Fundamental Rights, Minorities and Tribal and Excluded and Partically Excluded Areas* clearly acknowledged that:

"The question of minorities everywhere looms large in constitutional discussions. Many a constitution has foundered on this rock.. Unless the minorities are fully satisfied, we cannot make any progress: we cannot even maintain peace in an undisturbed manner."

And presenting the Draft Constitution to the Assembly Dr. Ambedkar, referring to the articles on safeguards for minorities, observed"

"To diehards who have developed- a kind of fanaticism against minority protection I would like to say two things. One is that minorities are an explosive force which, if it erupts, can blow up the whole fabric of the State.. It is for the majority to realize its duty not to discriminate against minorities.

The President of the Constituent Assembly Dr. Rajendra Prasad had nominated Shri Kasturbhai Lalbhai, a Jain industrialist as a Jain representative to Minority Advisory Committee to the Constituent Assembly.

Sardar Patel in his letter of 25th August 1946 addressed to Sir Bhagchandji Soni, *President, All India Digamber Jain Mahasabha* assured the Jain community that “in free India there would be no restrictions upon the religious liberty of any community and there need be no apprehensions in this regard”

On 25th January, 1950, a Jain delegation was led to the Prime Minister Jawaharlal Nehru and other central leaders to draw their attention to the anomalous position of the Jains under *sub-clause (b) of Clause 2 of Article 25* and a petition was submitted. Jawaharlal Nehru clearly assured the delegation that the Jains are not Hindus and on 31-1-1950, his Principal Private Secretary, Mr.A.V. Pai wrote the following letter:

"This Article merely makes a definition. This definition by enforcing a specific constitutional arrangement circumscribes that rule. Likewise you will note that this mentions not only Jains but also Buddhists and Sikhs. It is clear that Buddhists are not Hindus and therefore there need be no apprehension that the Jains are designated as Hindus. There is no doubt that the Jains are a different religious community and this accepted position is in no way affected by the Constitution."

As the said *Explanation to Article 25* was wrongly construed the Sikh Community through their leader Mr. Tarlok Singh demanded the removal of clubbing of Sikhs, Jains and Buddhists before the National Commission to review the working of the Constitution headed by the former Chief Justice of India, Mr. Justice M.N. Venkatachalaiah. The Commission had accordingly recommended an amendment to be made. Mr. Tarlok Singh at that time was the Chairman of National Minority Commission. The Central Government has accepted the demand of the Sikh community and has agreed to move a Bill in Parliament for enacting Sikh Marriage Act.

Jainism is an ancient religion of India. Dr. S. Radhakrishnan affirms that the *Bhagawata Purana* endorses the view that ‘Rishabha’ was the founder of Jainism. *Agni Puran, Vayu Puran, Shivpuran* and *Shrimat Bhagvat* are testimony to it. It is now recognized amongst oriental scholars that Jainism is a essentially a non-Vedic religion and philosophy. The Jains have a system of law of their own. They have their own legal jurisprudence. Even prior to 1950 the Judges of the High Courts and Jurists have held that it is wrong to think that the Jains were originally Hindus and later converted to Jainism. They are a distinctive group with its own distinctive culture. They are a religious minority.

In Civil Appeal No.4730 of 1999 (Bal Patil Vs. Union of India) seeking issuance of mandamus/direction to the Central Government to notify Jain as minority community under Section 2(c) of the National Commission for Minorities Act, 1992 which was decided vide order dated 5.8.2005 by holding that in view of TMA Pai Foundation case the issue as to the status of Jain community as a minority community would be decided by the State Government. The Government of Maharashtra has notified vide RESOLUTION NO. RAA 2003/1216/P NO. 114/03/05 MANTRALAYA, MUMBAI 400 002, DATED 7.5.2004 that the Jain Community is a minority community.

In *Jain Shwetamber Terapanth Vidyalaya Vs. Bengal, AIR 1982 Cal 101*, a Division Bench of the Calcutta High Court held that *Jain Shwetamber Terapanth Sect* is a religious and ‘linguistic minority and

is not part of Hindu religion as it possesses a faith different from the Hindu Religion. Their Lordships held that for the purpose of Article 30(1) of the Constitution, the Jains are minority based on religion.

Prof. P.C. Jain (L.L.M.; Ph.D.; Associate Professor, Department of Law, Former Administrative Secretary to Vice-Chancellor, University of Rajasthan, Jaipur – 302 004) in his article *Right of Jains to be Declared as a Minority based on Religion – Some Observations* (cited as : (2004) PL WebJour 10) (<http://www.ebcindia.com/lawyer/articles/705.htm#Ref1>) offers a learned discussion of the Constitutional and legal aspects of Jain minority religion.

In the Aurangabad Bench of Bombay High Court (*Shri Amolak Jain Vidya Prasarak Mandal, Kada v. State of Maharashtra*, WP No. 587 of 2000 decided on 10-10-2002) has also held so for the Maharashtra State. The community which is recognized as a minority based on religion has the right to establish and administer educational institutions of their choice. Article 30(1) of the Constitution declares thus:

“30. (1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.”

If Jains are part of Hindu religion they cannot also be called a minority based on religion. But, on the other hand, if, for the purpose of Constitution, they are not part of Hinduism, and form a separate independent religion can they, for the purpose of Article 30(1), be called a minority based on religion.

The word “religion” has not been defined in the Constitution. But **Mukherjea, J.** speaking for the Court in the case of *Commr. HRE v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*, observed: *AIR 1954 SC 282*. (*AIR para 17*):

“Religion is certainly a matter of faith with individuals or communities and it is not necessarily theistic. *There are well-known religions in India like Buddhism and Jainism which do not believe in God or in any intelligent first cause.* A religion undoubtedly has its basis in a system of beliefs or doctrines which are regarded by those who profess that religion as conducive to their spiritual well-being, but it would not be correct to say that religion is nothing else but a doctrine or belief. A religion may not only lay down a code of ethical rules for its followers to accept, it might prescribe rituals and observances, ceremonies and modes of worship which are regarded as integral parts of religion, and these forms and observances might extend even to matters of food and dress.”

The above observation was also referred by **Gajendragadkar, J.** in *Tilkayat Shri Govindlalji Maharaj VS. The State Of Rajasthan And Others* [1964(1) SCR 561,] and by **Jaganmohan Reddy, J.** in *State of Rajasthan v. Sajjanlal Panjwat*, [1974] 2 SCR 741; (*AIR 1975 SC 706*)

In *Gateppa v. Eramma*, **Kumaraswami Shastri, A.C.J. of Madras High Court** has also said thus: (*Gateppa v. Eramma*, AIR 1927 Mad 228) :

“I would be inclined to hold that modern research has shown that Jains are not Hindu dissenters but that Jainism has an origin and history long anterior to the Smritis and commentaries which are recognized authorities on Hindu law and usage. In fact, Mahaveera, the last of the Jain Thirthankars, was a contemporary of Buddha and died about 527 B.C. The Jain religion refers to a number of previous Thirthankars and there can be little doubt that Jainism as a distinct religion was flourishing

several centuries before Christ. **In fact, Jainism rejects the authority of the Vedas which form the bedrock of Hinduism and denies the efficacy of the various ceremonies which Hindus consider essential.**”

In *Hirachand Gangji v. Rowji Sojpal* Rangnekar, J. of the Bombay High Court also observed that the Jains have rejected the scriptural character of the Vedas, and repudiated the Brahminical doctrines relating to obsequial ceremonies, the performance of shradhas and the offering of oblations for the salvation of the soul of the deceased, that Jains did not believe that a son, either by birth or adoption, confers spiritual benefit on the father, and that they differed from the Brahminical Hindus in their conduct towards the dead, omitting all obsequies after the corpse was burnt or buried and held:

“Now, it is true, as later historical researchers have shown, that Jainism prevailed in this country long before Brahminism came into existence or held the field, and it is wrong to think that the Jains were originally Hindus and were subsequently converted into Jainism.” (*AIR 1939 Bom 377*);

In *CWT v. Champa Kumari Singhi Banerjee*, J. of the Calcutta High Court has also said that:

“The Jains rejected the authority of the Vedas, which forms the bedrock of Hinduism and denied the efficacy of various ceremonies which the Hindus consider essential. It will require too much of boldness to hold that the Jains, dissenters from Hinduism, are Hindus....”

The report of the **Mandal Commission** also places Jain as a religion separate from Hindu religion. In the report while stating percentage distribution of Indian population by caste and religious groups, *Jains have been grouped with Muslims, Christians, Sikhs and Buddhists and under Category II, the heading of which is given as “Non-Hindu Communities, Religious groups etc.”* In the report, Jains have not grouped with Hindus which have been placed in Category III under the head “Forward Hindu Castes and Communities” *AIR 1968 Cal 74*;

By an order made by the President of India in the year 1979 a committee was constituted which is known as Mandal Commission. The Commission in *paragraph 12.22* of its report, gave the percentage of distribution of the population of India by caste and religious groups as under:

Schedule Castes and Scheduled Tribes	20.00
Non-Hindu Communities, Religious group	
<u>Muslims Christians, Sikhs, Buddhists and Jains</u>	<u>16.16</u>
Forward Hindu Castes and Communities	56.30
Other Backward classes	47.70
100.00	

This report has also been accepted by the **Hon’ble High Court and Supreme Court** in *Arya Samaj Education Trust v. Director of Education*, AIR 1976 Del 207) and *Indra Sawhney (Writ Petition (Civil) No.930 of 1990 – Indira Sawhney Vs Union of India And others (16.11.1992)*

In *Babari Masjid case* the Supreme Court has observed Jainism to be a separate religion from Hinduism. The Court stated in: (CWP No. 317 of 1993) before the Supreme Court) “Before we pass final orders, some observations of a general nature appear to be in order. Hinduism is a tolerant faith. It is that tolerance that has enabled Islam, Christianity, Zoroastrianism, Judaism, Buddhism, Jainism and Sikhism to find shelter and support upon this land.”

In the *T.M.A. Pai Foundation v. State Govt. of Karnataka* ((2002) 8 SCC 481) relating to educational rights of minorities, the Supreme Court was to decide the question as to who constitutes a minority. The Court heard the writ petition in February 1997. The seven-Judge Bench of the Hon’ble Supreme Court has deferred the matter to be decided by a Constitutional Bench of 11 Judges and passed the following order: (SCC pp. 596-97, para 180)

Consequently, the matter was referred to the **Constitution Bench of the Supreme Court** comprising of 11 Judges. The Supreme Court in *T.M.A. Pai Foundation v. State of Karnataka* referred various decisions of the Supreme Court and held: that the State will be the unit in relation to which the status of religious minority is to be determined. Therefore, in declaring a community as minority based on religion under Article 30(1) the decision will have to be taken by the respective States. The Court held:

“If, therefore, the State has to be regarded as the unit for determining ‘linguistic minority’ vis-à-vis Article 30, then with ‘religious minority’ being on the same footing, it is the State in relation to which the majority or minority status will have to be determined.”

The 8 August, 2005 Judgment of the **3 Judges Bench of the Supreme Court** consisting of Chief Justice R. C. Lahoti, Justice D. M. Dharmadhikari and Justice P. K. Balasubramanyan, in the *Bal Patil Case (CA 4730 of 1999)*, written by Justice Dharmadhikari has not only declined to act on the recommendation of the National Commission for Minorities for the declaration of Jain community as a religious minority community on par with Muslim, Christian, Sikh, Buddhist and Zoroastrian (Parsi) but also its *obiter dicta* place Hindu religion above all other religions.

The Supreme Court bases its rejection of the Jaina claim for minority status on the 11 Judges Bench decision in the *T.M.A. Pai Case [2002(8) SSC 481]* which was related to the scope of Article 30 of the Constitution on the right of a linguistic, religious or cultural minority to establish and administer educational institutions of its choice.

The Government on Thursday, Nov. 25, 2004 decided that the minority status of the Jain community should be determined by States and not by the Centre.

A decision to this effect was taken by the Cabinet Committee on Political Affairs in the light of the Supreme Court’s directive to the Union Government that it should give its view about the minority status of the Jain community, Defence Minister Pranab Mukherjee told reporters after a meeting of the Committee.

Mukherjee said the Supreme Court in its earlier judgment had held that it was for the States to decide the minority status of the Jain community.

The meeting, chaired by Prime Minister Manmohan Singh, was attended by Mukherjee, Agriculture Minister Sharad Pawar, External Affairs Minister K Natwar Singh, Communication and IT Minister Dayanidhi Maran and Law Minister H R Bhardwaj.

On Monday, May 07, 2007 in replying to an Unstarred Question in Rajya Sabha today the Minority Affairs Minister, Shri A.R. Antulay has stated that the National Commission for Minorities(NCM) had recommended that, as a separate religion, Jains deserve to be notified as a minority community. The Minister stated that as per Census 2001, the total population of Jains is 4,225,053, which is 0.4% of the total population of the country. The Jain community is spread throughout India except in the Union Territory of Lakshadweep.

Shri Antulay further informed that a Civil appeal was filed by *Bal Patil & Another* seeking issuance of a direction to the government to notify Jains as a minority community. In accordance with the recommendation of the Standing committee on Social Justice & empowerment, Government has examined the implications of the judgment in this case and is proposing official amendments to the constitution (One Hundred and Third amendment) Bill, 2004.

The Madras High Court in *A.M. Jain College Vs. Govt. of Tamil Nadu, 1993(1) MU 140* also held that Jains are a distinct religious community, having minority status in State of Madras.

In *ASE Trust Vs. Director Education, Delhi Administration, (AIR 1976 Delhi 207)* it has been held that the Jains are a religious minority community within the Union Territory of Delhi.

In *Hakim Singh Vs. Vardhaman Sthanakwasi Jain Shravak Sangh, 200(4) Mh L.J. 626*, the Bombay High Court, Bench at Aurangabad has held that Jain are a religious minority. The Hon'ble Court relied upon *AIR 1976 Delhi 207* and *1982 Cal. 101*. In *Shri Amolak Jain Vidya Prasarak Mandal Vs. the State of Maharashtra*, replying upon Hakim Singh, a Division Bench vide order dated 10.12.2002 has held that *Shri Amolak Jain Vidya Prasarak Mandal* is a religious minority institution under Article 30 of the Constitution of India and it is entitled to have a certificate of minority institution.

Hope for the Jains

For the Jains in India, however, there are some encouraging judicial straws in the wind. The latest division bench judgement delivered by Dalveer Bhandari in the Supreme Court is a significant pointer that all is not lost for the Jain minority.

The judgement dated August 21, 2006, in the case of *Committee of Management, Kanya Junior High School Bal Vidya Mandir, Etah, UP vs Sachiv, UP, Basic Shiksha Parishad, Allahabad, UP & Others*, delivered by judges, SB Sinha and Dalveer Bhandari, emphatically states:

"(The) Jain religion indisputably is not a part of Hindu religion. The question as to whether the Jains are part of the Hindu religion is not open to debate. Jains have a right to establish and administer their own institution. But only because an institution is managed by a person belonging to a particular religion the same would not ipso facto make the institution run and administered by a minority community. A minority is determinable by reference to the demography of a state. Whether an institution is established and administered by a minority community or not may have to be determined by the appropriate authority in terms of the provisions of the statute governing the field. Furthermore, minority institutions are not immune from the operations of the measures necessary to regulate their functions. To what extent such regulations would operate, however, again is a matter which would be governed by the statute.

"Minority communities do not have any higher rights than the majority. They have merely been conferred additional protection. This has been laid down by an 11-judge bench of this court. [See: *PA Inamdar & Others vs State of Maharashtra & Others, (2005) 6 SCC 537.*]

"The court in the said judgement also dealt with the object of Article 30 (1) of the Constitution. The court in para 97 of the judgement observed the relevant para which reads as under: "The object underlying Article 30 (1) is to see the desire of minorities being fulfilled that their children should be brought up properly and efficiently and acquire eligibility for higher university education and go out in the world fully equipped with such intellectual attainments as will make them fit for entering public services, educational institutions imparting higher instructions including general secular education. Thus the twin objects sought to be achieved by Article 30 (1) in the interest of minorities are: (i) to enable such minority to conserve its religion and language, and (ii) to give a thorough, good, general education to children belonging to such minority. So long as the institution retains its minority character by achieving and continuing to achieve the abovesaid two objectives, the institution would remain a minority institution.""

In view of the foregoing evidence I would respectfully submit that the proposed Freedom of Religion (Amendment) Bill 2006 as passed by the Gujarat assembly is clearly a violation of the constitutional religious identity of Jains and Buddhists and urge that it should be rejected.

POSTSCRIPT:

Following countrywide protests, and representations against the proposed amendment to the Bill the Gujarat Governor, Mr.Nawal Kishor Sharma recently returned the controversial Gujarat Freedom of Religion (amendment) Bill, 2006, saying the legislation violated the right to religious freedom. The bill, meant to check religious conversions, sought to replace the definition of convert by a new one under which a person renouncing one denomination and adopting another denomination of the same religion was to be excluded from the meaning of 'convert'.

Returning '**The Gujarat Freedom of Religion (amendment) Bill, 2006**', the governor said "what made it more objectionable were three explanations stipulating that the Jains and Buddhists shall be construed as denominations of Hindu religion, Shia and Sunni of Muslim religion and Catholic and Protestant of Christian religion.

The provisions of amendment bill violated Article 25 of the Constitution which guarantees to all citizens to freely profess, practice and propagate a religion, Sharma said. The bill should be reconsidered for suitable amendments so as to bring its contents in conformity with the Constitution, he said.

The Gujarat Freedom of Religion Act, 2003, was enacted with a view to preventing conversions of persons from one religion to another by use of force or by allurement or by fraudulent means.

In 2006, the state government had brought the bill to amend the **Gujarat Freedom of Religion Act 2003**.

The law as it stands prior to these amendments provides a shield against forceful or inappropriate religious conversions. However, the proposed amendments would amount to withdrawing the protection against such conversions particularly in case of Jains and Buddhists, the governor said.

In my *Civil appeal No.4730 of 1999* in the Supreme Court of India before a Three-Judge Bench In 2005, the Supreme Court of India declined to issue a writ of Mandamus towards granting Jains the status of a religious minority throughout India. The Court however left it to the respective States to decide on the minority status of Jain religion

In the judgment, the Supreme Court opined:

"Thus, 'Hinduism' can be called a general religion and common faith of India whereas 'Jainism' is

a special religion formed on the basis of quintessence of Hindu religion."

However, the late eminent jurist, Dr.L.M. Singhvi, in a letter to Shri A.R. Antulay, Minister for Minority Affairs, (re: *Bal Patil judgement*) there is a detailed discussion of the issue of the recognition of Jain religion as a religious minority in consonance with the secular faith of the Indian Constitution. Particularly he has stressed how the Jain Sramana and the Vedic traditions "differed substantially and sharply, even though both the traditions flourished among the same people living together in Bharat" and that the "Jains did not accept the authority and the orthodoxy of the absolute adherents of Vedas" just as the Jains also did not "accept the concept of Creator God and Created Universe."

Dr.Singhvi also has referred to the Supreme Court decision in the case (*Bal Patil vs.Union of India*) which he considers to be "an example of utter superficiality."

What he has further noted is that the "judgment was also *per curiam*," and that "the Court simply said that a mandamus cannot be issued to command a recommendation be implemented. What it said was that it was for the Central and State Government to decide on the question. Earlier, larger Benches had recognized Jains as a distinct and separate. The judgment in Bal Patil case is a judgment of three Judges which goes against the judgment of 11 Judges and many previous judgments of larger Benches on the basis of which Jains must be recognized as a religious minority, distinct and separate from from the Hindus. Indeed, inclusive references to Jain and Sikhs in Article 25 of the Constitution clearly indicates that Jains, Sikhs and Buddhists despite being separate and distinct were accepted as minority rreligion ."

In conclusion he notes his "*locus*" as the **Founder President of the World Jain Confederation** commanding the support of all sects and denominations of Jains in India and throughout the world, and requests Shri Antulay to notify "Jains as a religious minority and to provide the much needed assurance to reinforce our Rainbow Pluralism and Unity in Diversity implicit in Indian Secularism"

I am pursuing this matter in the Supreme Court of India for the expunction of certain obiter dicta observations.

That it may be mentioned that the Jain community has been declared as minority religious community under the various state enactments by invoking their authority under Art. 30 of the Constitution of India. But under the provision of the National Commission for Minorities Act, 1992, Muslims, Christians, Sikhs, Buddhists and Zoroastrians have been declared as per the definition of minority, which lays down that minority for the purpose of the Act of 1992 to mean a community notified as such by the central government. There are no guide lines for such declaration. The Jain community has already been declared a minority religious community in Karnataka, M.P., U.P., Jharkhand, West Bengal, Rajasthan, Uttaranchal, Maharashtra and Delhi. In Calcutta, Delhi, Mumbai and Madras Jains have been recognized as a minority by the respective High Courts of that State. In other part of the country conditions of the Jains is the same. Thus there is proper identification on a State basis.

That no distinction can be carved out between minorities as required to be declared under the National Commission for Minorities Act, 1992 or minorities declared under the State Minorities Commission Acts. It may be submitted that minority as per the National Commission for Minorities Act means a community notified as such by the Central Government. Similar definition of minority can be found in the various State Minorities Commission Act where also minority has been declared to be a community notified as such by the Central or State Government. It would thus be clear that the State Commission for Minorities

Act defines minority to mean a community notified by either the Central Government or the State Government. In Maharashtra State the Jain community has been notified as a minority community.

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In view of TMA Pai's case now minority is to be determined State-wise, as such the minority as notified by the Central Government under the State Commission for Minorities Act, will be ultravires or illegal. It would thus be seen that Muslims, Christians, Sikhs, Budhists and Parsis which have been declared as minority community under the National Commission for Minorities Act, 1992 are illegal. The Jain community has been declared as minority vide Notification dated 7.5.2004 by the Maharashtra State Government and there is no other minority community as the Central Government had no authority as per the verdict of TMA Pai Foundation case, consequently the notification dated 23.10.1993 is void and ultra-vires. Thus in Maharashtra Jain community is the only minority community.

That the Central Government had declared 5 communities as minority communities vide notification dated 23rd October, 1993. They are Muslims, Christians, Sikhs, Buddhists and Parsis. In certain judgments Jains have been declared as religious minority for purpose of Article 30 of the Constitution of India. In view of the decision in TMA Pai's case the Supreme Court has given a verdict that it is for the State Government to decide whether the Jain community is a minority community. After the decision by the Supreme Court in TMA Pai Foundation case definition of minority has undergone a change. In the State Commission for Minorities Acts "minority" means a Community declared as such by the State Government. Almost all the State Governments pursuant to their State Commissions for Minorities Act, have declared Jain community as minority community by a notified order. In Maharashtra, Jain community has been declared as a minority community.

The facts are: Statistics about the Jain Community are published in the Census of India 2001 under the heading THE FIRST REPORT ON RELIGION DATA. There are only 4,225,053 Jains in the total population of India of 1.028 billion. It means that there is one Jain among 243 Indians. Though so less in the numbers, Jains are to be found in 34 out of 35 states and union territories. The only union territory without Jains is Lakshdweep. Jains are counted as a major religious community ever since the first Census in India in 1873.

States having more than 0.1 million Jains are only seven and they are:-

	State	Jain Population	
1	Maharashtra	1,301,842	Jain Minority State
2	Rajasthan	650,493	Jain Minority State
3	Madhya Pradesh	545,448	Jain Minority State
4	Karnataka	412,654	Jain Minority State
5	Uttar Pradesh	207,111	Jain Minority State
6	Delhi	155,122	Jain Minority State

7	West Bengal	55,223	Jain Minority State
8	Uttaranchala	9,249	Jain Minority State
9	Jharkhand	16,103	Jain Minority State

Total Jain population Indian according to 2001 Census: 4,225,053

Jain Minority States Population : 3,678,551

Percentage of Jain population in Indian accorded minority status: 88%

Gujarat is the only State having a sizeable Jain population of 525,305 not declared minority status. but the curious fact is that the very section of the Shwetambar Sect Jains who form the majority of the Jains in Gujarat State have secured minority status for their educational institutions e.g Tapovan Trust of Surat. The following is the facsimile of the minority educational certificate. (Attached) And yet the Jains in Gujarat State forming a sizeable population continue to oppose the minority status which gives an excuse to the Government of India and the National Minority Commission that there is no consensus among the Jain community!!

I would like to quote here my correspondence with Mr.Pratapbhai Bhogilalji which brings out the doublethink in the attitude towards the Jain minority status in the Gujarat State:

Maharashtra has the distinction of having the largest number of Jains in the country. The state of Jharkhand, which contains the holiest of holy pilgrimage centre of Samyed Sikharji and is the birthplace of Jainism, is reduced to having a population of only 16,301 Jains. This is a great tragedy.

A matter of great pride brought out by the religious census data is that among all religions, the literacy percentage of Jains is the highest at 94.1% as seen from the table below.

Literacy percentage by Religion, 2001

Religion	Literacy Rate
1 Jains	94.1
2 Christians	80.3
3 Buddhists	72.7
4 Sikhs	69.4
5 Hindus	65.1
6 Muslims	59.1

The remarkable achievement of Jains is that their literacy is highest and their percentage of literacy is 14% more than that of Christians who are famous for their progress in the educational field.

Another aspect where the Jain community has to reform itself is in the work participation ratio of women. It is only by coming out of the four walls of the house and participating in the Economic, Social and Cultural life in the outside world that a woman can develop her total personality. Work participation ratio for males and females demonstrates that while Jain men are at the top with 55.2%, Jain women are at the bottom of work participation with a miserable 9.2% ratio as seen from the following table.

Work Participation Ratio of Males and Females, by religion (Percent)

	Religion	Males	Females
1	Buddhists	49.2	31.7
2	Christians	50.7	28.7
3	Hindus	52.4	27.4
4	Sikhs	53.3	20.2
5	Muslims	47.5	14.1
6	Jains	55.2	9.2

Besides it is strange to find that in Maharashtra State which has the highest Jain population in India-after Muslim- more than the Christian population- and in which Jaina are a minority the reconstituted Maharashtra State Jain minority students are excluded from pre- and post-matriculation scholarships announced by the Central and State

The National Commission for Minorities Act, 1992 does not make any reference to religious minority community but defines minority for the purpose of the Act to mean a community notified as such by the Central Government, whereas, in one way or the other, Jain community has been declared as a religious minority by the various High Courts and by the State Governments pursuant to the definition given in the State's Act or other wise. Whatever may be the position there are six Minority Communities; five declared by the Central Government and the six viz. the Jain Community declared by the various State Governments. All the said six minority communities are religious minority communities though the enactment of 1992 does not make any reference to Article 30 of the Constitution of India. Notifications issued by the State Government merely say that the Jain community is declared as a minority community in the state.

Thus the five National minorities and the sixth the Jain community all are minority communities or the religious minorities. All six minority communities are thus entitled to the benefits which are available to them under various social schemes issued by the Central Government or State Government. All minority communities are equal and fall in the same category or class. This statement is made as if the national minority communities are taken to be valid.

In view of TMA Pai's case Christians now cannot avail the benefit of minority status of Christian community in the eastern States of India. The Sikhs are no more a minority community in the Punjab and the Muslims are no more a minority community in Kashmir as such the notification issued by the Central Government pursuant to Section 2(c) of the Act of 1992 becomes redundant and now is of no use. A new exercise is required to be undertaken for declaring the minorities as per the ratio of the case of TMA Pai Foundation .

It is for this purpose 103rd Constitutional Amendment was introduced and till the amendment is passed Muslims, Sikhs, Christians, Parsis and Buddhists cannot be regarded as religious minority. In fact the notification dated 23rd October, 1993 is violative of Article 14 of the Constitution of India, discriminatory and otherwise also has become meaningless because of the Judgment rendered by the Supreme Court in TMA Pai's case.

Because the notification dated 23rd October, 1993 is discriminatory in nature and as such is violative of Article 14 of the Constitution of India. Either it should be quashed or the Jain community be included in the said notification for claiming the benefits of the

various educational schemes as further benefits be made available to the Jain community as are provided to the other national minority communities.

Prime Minister's new 15 Point Programme for the Welfare of the Minorities was approved by the Cabinet. All States and Union Territories and all Union Ministries/Departments have been advised to implement the programme. Prime Minister has written to all Chief Ministers seeking their cooperation and advised them to put in place a suitable monitoring mechanism. A working group on empowering minorities was set up last year. The recommendations of the working group have been examined by the Ministry and a Plan proposal of Rs. 11724.50 crore for the 11th Five Year Plan and Rs. 11034 crores for the Annual Plan were submitted to the Planning Commission. An out lay of Rs. 560 crore was provided for 2007-08.

Scholarship Schemes

- i) Merit-cum-means scholarship for professional & technical courses: Three new scholarships schemes for students belonging to the minority communities were to be launched during 2007-08. One is the Merit-cum-Means Scholarship Scheme for technical and professional education. The scheme was approved by the CCEA on 21st June, 2007. The scheme is expected to be an effective instrument for the empowerment and mainstreaming of the minority communities. A budget provision of Rs. 54 crore has been made for this scheme in the Annual Plan 2007-08. States/UTs have advertised the scheme inviting applications from eligible students. Ministry has started the process for sanctioning proposals.
- ii) Coaching & Allied Scheme: The Coaching & Allied Scheme has been revised to cater to the

emerging trends of the job market and to ensure that the economically weaker sections of students belonging to the minority communities are able to avail the job opportunities in an era of economic liberalization. A budget provision of Rs. 10 crores has been made for this scheme in the Annual Plan 2007-08.

iii) **Post-Matric Scholarship for Minorities:** A post-matric scholarship scheme for students belonging to the minority communities in class-XI and XII, including technical, professional and vocational courses, and students from undergraduate to Ph.D. course in college/institutes/universities recognized by an appropriate authority. 15 lakh scholarships are targeted for the Eleventh Five Year Plan period.

Prime Minister's 15 Point Programme for welfare of minorities has been recast as follows to make it monitorable to focus action sharply on issues intimately belonging to the social, educational and economic upliftment of minorities to provide for earmarking for outlays in certain schemes and through lack of developmental facilities in minority concentration areas and to prevent communal disharmony and violations. Various steps have been taken for enhancement of opportunity for education. There are many scholarship schemes, one such scheme is open only for students whose family annual income from all sources does not exceed Rs. 2,50,000/ The Government pays fee for the recognized professional and technical courses for several beneficiary apart from Rs. 10,000/ per annum maintenance allowance for the hostellers and Rs. 5,000/ for day scholars.

Free Education up to SSC for minority students in Maharashtra

The Congress NCP Government in Maharashtra has announced to provide free education up to Senior Secondary class (SSC) to minority students the Government will spend Rs. 27 crores on the scheme. It is estimated that eligible candidates could be around 35,800, of which Muslims are 21,680. The Government will spend Rs. 7,400/ on each student. But the Jains have been excluded from its benefit in spite of the fact that the Jain community is a minority community, in the State of Maharashtra.

Government of Maharashtra has declared the Jain community as a minority community like five minorities so declared by the Central Government according to NCM Act. The Central Government as well as the State Government has announced various facilities to the minority communities in the matter of education. Many benefits are available to the so-called national minorities but they are not available to Jains as a minority community. In the circumstances the question is are all the benefits only meant for the national minorities so-called. I am constrained to take a strong exception to the blatantly discriminatory manner in which the Jains declared as a minority in the various states such as Maharashtra, Karnataka, M.P., U.P., Delhi, West Bengal, Uttaranchal, Chhattisgarh, Jarkhand, Rajasthan, comprising 88% of the total Jain population in India as the students of Jain minority in these states are specifically excluded from the benefit of the pre and post-matriculation scholarships announced under the new Prime Ministers 15 Point programme in cooperation with similar State Government institutions.. The action is violative of Article 14 of the Constitution of India. The action is unjust, unfair as unequal treatment has been meted out to the students of Jain community.

A PUBLIC APPEAL FOR NATIONAL JAIN MINORITY STATUS

Delhi state has already declared minority status for the Jain community thanks to the persistent efforts of my colleague and President of the *All India Jain Minority Forum*, Mr.Chakresh Jain, President, Jain Samaj, Delhi I do not think there is any legal or constitutional problem.

The real issue now is declaration of national minority status for the Jain religious community in India. Jains have been declared a minority in Maharashtra, Karnataka, Madhya Pradesh, Uttar Pradesh, Rajasthan, Delhi, West Bengal, Uttaranchal and Jharkhand States. The total population of

the Jain minority declared minority thus comes to 3,678, 551. The total Jain population in India is 4,225, 053. Thus the percentage of the Jain minority population comes to 88%. But being less than 50% to constitute a minority population in the whole of India is no longer taken into account. The government is hoist with its own petard.

But the irony is that inspite of being declared minority in these States the Jain minority community is still treated as not eligible to the sumptuous Scholarships announced by the Prime Minister and the Minority Affairs Minister for Pre and Post-Matriculation students because Jains are not a National Minority !! This is a matter of blatant discrimination. I have already drawn the attention of the Minority Affairs Minister, Shri A.R.Antulay and said that I shall be constrained to file a writ petition on this issue.

Cabinet nod to Constitution Amendment Bill on minorities The Union Cabinet (19th December, 2008) cleared on (19th December, 2008) the Constitution (103rd Amendment) Bill to grant constitutional status to the National Commission for Minorities, envisaging a change in the way minorities are defined. The Bill provides that henceforth minorities will be defined on the basis of their relative population in a State.

"The official amendments to the Bill will be moved in Parliament, incorporating the changes suggested by the Standing Committee," Home Minister P Chidambaram told reporters after the Cabinet meeting.

The Standing Committee had asked the Government to draft the Bill, keeping in view the Supreme Court decision on the definition of minorities. He said the Supreme Court had also given a directive to the Government to decide the minority status of Jains.

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Co-Author: JAINISM (Macmillan Co 1974). with Colette Caillat, (Member Institut de France, Paris,) & A.N.Upadhye, (ex-President, All-India Oriental Conference,), Author:Jaya Gommatesa! Foreword by C.Caillat, Published by Hindi Granth Karyalay Mumbai,2006, Jainism: An Eternal Pilgrimage By Bal Patil, Edited by Manish Modi and Tony Whittington, Published by Hindi Granth Karyalay Mumbai,)Pandit Nathuram Premi Research Volume 23 2008, My translation of Dr.Alsdorf's French *Les Etudes Jaina, Etat Present et TachesFutures* is edited by Dr.Willem Bollee as *Jaina Studies: Their Present State and Future Tasks* and published by ((Hindi Granth Karyalay Mumbai,) My translation of Dr.L. Alsdorf's German *Beitraege zur Geschichte von Vegetarismus und Rinderverehrung in Indien-(History of Vegetarianism and Cow Worship in India)* is presently being edited for publication (Routledge, London) by Dr. Bollee, Indologist. Participant and speaker in the 7th Jaina Studies Workshop on Jaina Law and Jaina Community, Centre for Jaina Studies, SOAS, University of London, & Dept of Indic Religion, Centre for Theology and Religious Studies, University of Lund. Participated and presented a paper on the Evolution of Sramanic Jain Tradition and Its Impact on Indic Civilisation & Religious Fundamentalism in the XIXth World Congress of the International Association for the History of Religion, Tokyo, Japan, 2005. Author: Supreme Court's volte face on Constitutional Amendment (Published by Govt. of Maharashtra, 1980)

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