

**CONTEMPORARY TRENDS IN COMPARATIVE CONSTITUTIONAL  
LAW: DELIBERATING THE ISSUES AND CHALLENGES**

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**ABSTRACT**

"A civilization can be judged by the way it treats its minorities."

-Mahatma Gandhi

*The most recent Manipur occurrence highlights the question of whether the rights guaranteed by the constitution—which encompass equality and individual liberty etc—are only written on paper? Does the marginalized population not have the freedom to move about without worrying about harassment? Although nature has made each of us physically unique, but does this mean that our differences should be present when it comes to exercising our rights or leading a free life? The answer is no. Our differences, whether they be cultural, social, or gender-based, should not exist. For this reason, we should remember the principles of equality and liberty when we draft the Constitution, who's Preamble itself mentions justice, equality, and the integrity of the individual. However, the curse of discrimination based on gender, religion, or other factors has been present in the nation since ancient times. This concept, which ultimately affects people's progress—be it social, economic, or otherwise—has been attempted to be addressed by the judiciary and parliament on multiple occasions yet the problem of marginalisation still exist in country. This paper attempts to address the grey areas in legislation, the judiciary, and society that allow this curse to persist through a thorough and comparative analysis. The study attempted to provide a remedy or recommendation to remove this evil of marginalisation on basis of gender, religion and caste from society by a comparative examination of the marginalization situation in India, so achieving the goal set forth by the framers of the Constitution—a nation characterized by equality and peace where the individual irrespective from any gender, caste, religion could live life with liberty, equality and freedom.*

**KEYWORDS:** *Marginalization, India, Gender, Caste, Religion, Discrimination, Social Justice, Equality, Inclusivity, Societal Challenge.*

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## 1. INTRODUCTION

"Marginalization" denotes the deliberate exclusion of individuals deemed undesirable by human civilizations, limiting their options and survival. Peter Leonard defines "marginality" as being outside mainstream productive and social activities. Despite legislative initiatives like the SC/ST Aristocracies Act and Fundamental Rights in the Indian constitution, marginalized groups still face deprivation of rights. This research explores why certain individuals are marginalized and examines the consequences for these groups, questioning their access to equal opportunities. Despite legislative efforts, marginalization persists, impacting the growth and existence of these individuals. The research paper, employing case studies and recent court decisions, sheds light on legislative and judicial ambiguities that perpetuate societal marginalization. Analysing marginalized groups through statistical and analytical approaches, the paper concludes by proposing potential solutions for the advancement of these groups in society. It underscores the need for a comprehensive understanding of the issue to address the persistent challenges faced by marginalized communities despite existing legal frameworks.

### **Research Methodology:**

The research methodology for the paper "Marginalisation in India" involves a comprehensive and multi-faceted approach to understanding the issue of marginalization based on gender, caste, and religion in India. The methodology encompasses a literature review, comparative analysis, and utilization of case studies and recent court decisions to provide a thorough examination of the topic.

The authors have conducted an extensive literature review, gathering information from various sources such as books, articles, and reports to gain a comprehensive understanding of the historical, social, and legal aspects of marginalization in India. This approach ensures that the paper is grounded in existing knowledge and provides a well-rounded perspective on the issue. Furthermore, the authors have employed a comparative analysis to examine the marginalization situation in India, comparing and contrasting the experiences of marginalized groups based on gender, caste, and religion. This comparative approach allows for a nuanced understanding of the complexities and intersections of marginalization in the Indian context.

Additionally, the paper utilizes case studies and recent court decisions to support its arguments and shed light on legislative and judicial ambiguities that perpetuate societal marginalization. By incorporating real-life examples and legal perspectives, the paper strengthens its analysis and provides practical insights into the challenges faced by marginalized communities.

Overall, the research methodology employed in the paper "Marginalisation in India" demonstrates a rigorous and multi-dimensional approach to studying the issue of marginalization, drawing on diverse sources and analytical tools to provide a comprehensive and insightful examination of the topic.

## **2. WHAT IS MARGINALISATION AND WHO ARE MARGINALISED?**

Marginalization refers to the exclusion of individuals or groups perceived as undesirable or lacking utility, limiting their access to societal structures, protections, and integration. Marshall (1998) defines it as the denial of access to significant positions and symbols of power, noting that marginalized groups may constitute a numerical majority but lack access to economic or political influence. Danel, et.al. (2002) highlights how marginalized groups face restricted access to resources crucial for economic, political, and self-determinative empowerment, often marked by poor access to education, health, and social welfare. The concept's interpretation hinges on historical and socio-economic contexts.<sup>1</sup>

## **3. HOW ARE MARGINALISED GROUP?**

When a group or individual is marginalized, it indicates that they are viewed as undesirable by the rest of society and are denied chances and privileges because of their gender, caste, rank, or even religion. Considering the Indian context, individuals are classified as marginalized based on a variety of factors, including gender, caste, religion, and so on. For marginalized groups based on gender, these encompass the transgender, females, and LGBTQIA++ communities. as far on religion it includes Muslims, Christians, Sikhs, Buddhists, Jains, and other groups of people .and the marginalized groups in India are the Scheduled Castes (SCs), Backward Classes, and others.

## **4. GENDER AS BASIS OF MARGINALISATION.**

The concepts of "gender" and "sex," which are viewed as social constructs and biological categories, respectively, aid in our analysis of how societies and their institutions are gendered. Socialization institutions such as the family, educational system, media, culture, religion, legal system, and others are crucial in shaping gender roles and upholding patriarchal beliefs. Controls over women's productivity, reproduction, sexuality, and movement are some of the ways that gender is expressed.

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<sup>1</sup> Dr. S.R. Myneni, Principles of Sociology (Allahabad law Agency 2<sup>nd</sup> Edition 1<sup>st</sup> Jan 2017)

In India, despite a 1.4 percentage point improvement in the Global Gender Gap report's<sup>2</sup> overall score in 2023, ranked 127 out of 146 countries, gender-based marginalization persists. Women, transgender, and LGBTQIA++ communities, considered marginalized groups, continue to face issues such as rape and harassment. Despite the cultural significance of women as Aadishakti, there is a pressing need for further enhancement in addressing and mitigating these challenges.

#### 4 (A) WOMEN AS VICTIM OF MARGINALISATION

In India, women have long been revered as Aadishakti, but unfortunately, they have also been subjected to various social evils such as rape, gender inequality, and domestic violence. According to the NCRB report, a staggering 4,28,278 cases of crimes against women were reported during the Covid-19 period in 2021, marking a 15.3% increase from the previous year. The majority of these cases were registered under the category of 'cruelty by husband or his relatives,' followed by 'assault on women with intent to outrage her modesty' and 'kidnapping and abduction of women.'

#### 4 (B) ATROCITIES AGAINST WOMEN<sup>3</sup>

- I. **Dowry death:** - According to section 304-B of the Indian Penal Code, a person causing dowry death is liable to be punishable with the minimum imprisonment of seven years but which may be extended To imprisonment for life.
- II. **Sexual offence:** - under section 375 to 376 –D 377 and 509 of the Indian Penal Code, punishment with imprisonment of not less than seven years which may be extended to either ten years or even life imprisonment for the offence of rape.
- III. **Kidnapping and Abduction:** - A person is punishable under 359 to 374 of the Indian Penal Code with a maximum imprisonment of ten years for kidnapping and abduction of a women, i.e. Compelling by force or inducing by any deceitful means any women, to /from any place.
- IV. **Causing miscarriage without consent:** - Under sections 312 to 318 of the Indian Penal Code, if death of women is caused while causing miscarriage without her consent the offence is punishable with life imprisonment.

<sup>2</sup> World Economic Forum, 17<sup>th</sup> Edition of the Global gender gap index, Global Gender Report 2023, (20 June 2023)

<sup>3</sup> C.N. Shankar Rao, Indian Social Problems (S. Chand & Company Pvt. Ltd. Ram Nagar, New Delhi 1<sup>st</sup> Edition 2015)

#### **4 (C) Legislation Measures to Uplift the Statue of Women in India during British Period and after independence.**

- I. **The Prevention of Sati pratha Act, 1829-** In 1829, Raja Ram Mohan Rai initiated the Prevention of Sati pratha Act, which caught the attention of Lord William Bentinck. Bentinck personally intervened and put an end to the practice by enacting the Prevention of Sati Act. This act made it a punishable offense to burn or bury widows alive, classifying it as culpable homicide with penalties of fines and imprisonment.
- II. **The Civil Marriage Right Act, 1872-** Kesavachandra Sen successfully got the Act passed. In addition to allowing widow marriage and intercaste marriage, the Act raised the age of female population to 14. It also made marriage a secular ritual. The Act's requirement of monogamy was one of its most notable provisions.
- III. **The Hindu Married Women's- A whole Right to Representative Housing and Maintenance Act of 1945** This Act states that a wife may obtain preservation from her husband by divorcing him in certain unavoidable situations.
- IV. **Hindu Marriage Act 1955-** The Hindu Marriage Act of 1955 was primarily designed to outlaw polygamy. For girls, the recommended marriage age was fifteen, and for boys, it was eighteen. The age was raised to majority age for girls and 21 years for the boys. This Act provided the opportunity to those women who were divorced by her husband.

#### **4 (D). CASE OF VISHAKA<sup>4</sup> –AN EXAMPLE OF GENDER AND CASTE INTERSECTIONALITY.**

In 1985, Bhanwari Devi undertook the role of a social worker in Rajasthan, aiming to combat child marriages. Her responsibilities included working with families and reporting cases to the police. A conflict arose when she tried to prevent the marriage of Ramkaran Gujjar's infant daughter, leading to a severe backlash and social boycott. In retribution, Bhanwari Devi was gang-raped by five men, including Ramkaran Gujjar, in September 1992. The police response was inadequate, with limited investigation and insufficient support. Even during the medical examination, which was delayed by 52 hours, a male doctor refused to examine her properly. Despite filing a complaint against the accused, the trial court acquitted them due to insufficient evidence. Bhanwari Devi's case spurred activism, with women's groups and NGOs, including VISHAKA, filing a petition in the Supreme Court on sexual harassment in the workplace. The landmark

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<sup>4</sup> Vishaka & Ors. V State of Rajasthan & Ors. [(1997) 6 Scc 241]

Supreme Court judgment on August 13, 1997, resulted in the Vishaka Guidelines, providing a framework to address and prevent sexual harassment in the workplace, marking a crucial milestone in the fight against gender-based violence and discrimination.

## 5. ISSUES RAISED:-

The Supreme Court looked into the case, which brought to light the severe social issues of rape, workplace sexual harassment, and gender inequality. It also outraged women's modesty. Does the employer bear any accountability for sexual harassment committed by its staff?

- **Summary Court Verdict** • Foundation of Examination: The Supreme Court examined sexual harassment in the workplace as a form of discriminatory violence against women, grounded on the principles of gender equality.
- **Legal Framework:** Emphasized the right to life with dignity, citing violations of Indian Constitution articles 14, 19(1)(g), 21, and Article 15, making it the responsibility of legislation to guarantee safety and dignity.
- **International Perspective (CEDAW):** Referenced CEDAW, highlighting Article 11(1)(a, f) on the right to work, health protection, and safety, Article 24 on national measures, and Recommendation 19 urging elimination of violence and discrimination against women.
- **Enforcement of Gender Equality:** The court took measures aligning with universal human rights norms to enforce gender equality and non-discrimination.

## GUIDELINES

Section 2(d) of the Protection of Human Rights Act 1993 defines human rights, and the court established some rules using this definition. Article 141 said that these rules would be deemed laws until suitable legislation was drafted.

- 1) Duty of the employer or other individuals at work places and other institutions.
- 2) It is the employer's responsibility to stop or discourage sexual harassment at work and in other organizations.
- 3) The complaint procedure: It is necessary to develop a suitable preventative procedure for the complaint's redresser.
- 4) Disciplinary action: When sexual harassment occurs, the employer should report the incident to the appropriate authorities.
- 5) No interference with any rights that fall under the purview of human rights protection.

- 6) Workers Initiative: At workers meetings, workers should be allowed to bring up harassment or sexual assault concerns.
- 7) Awareness: By making the rules known, awareness of the rights of female employees in this regard should be raised.

## **6. ANALYSIS AND COMMENT**

The Vaisakha case's positive impact is evident in its recognition of sexual harassment as a significant workplace issue, enhancing women's safety. Judicial activism peaked as the court proactively addressed societal problems. Challenges persist for Indian women, encompassing exploitation, violence, and societal factors. Criticism targets delayed legislative action despite the Nirbhaya case's pivotal role. Disappointment surrounds slow preventive measure implementation since 1997, and the delayed Sexual Harassment at Workplace Act in 2013. Justice Pasayat's poignant quote underscores the profound impact of rape on women's souls. In summary, the commentary emphasizes positive strides, persistent challenges, and the ongoing imperative for societal and legal improvements in ensuring women's safety.

## **7. CASTE AS BASIS OF MARGINALISATION**

Three pillars support the Indian social structure: the village community, the joint family system, and the caste system. Because of its ties to the social, political, and economic spheres, the caste system seems to be one of the most important aspects of Hindu culture. Certain sects are naturally marginalized when there is a caste system in effect. According to Manu Smriti, the ancient mythology divides society into four main groups: the Brahmin's, the Kshatriyas, the Vaishiyas, and the Shudras. Due to this division, the Sudharas are now considered the lowest caste, and they have faced marginalization as well as social, economic, and political inequalities from ancient times.

### **7(A) WHO ARE UNTOUCHABLES IN INDIA ?**

Individuals who are at the bottom of the Indian social hierarchy are frequently referred to as "untouchables". All of them fall within the group known as the "Scheduled Castes" under our Constitution. The term "untouchable" refers to the segment of the Hindu community that is detested and viewed as inferior.

According to **Dr. D.N. Majumdar**, "the untouchable castes are those who suffer from various social and political disabilities many of which are

traditionally prescribed and socially enforced by higher castes." In fact, he uses the term Scheduled Castes to refer mainly to the untouchable castes<sup>5</sup>

### **7(B) MEANING OF UNTOUCHABILITY**

Untouchability is a mass phenomenon of group prejudices and discrimination affecting about 140 million people. It is an ignoble practice associated with the Indian caste system.

#### **Caste-Based Crimes in India:**

Caste-based crimes encompass a range of offenses such as physical assault, murder, rape, sexual harassment, torture, arson, social boycott, economic exploitation, land grabbing, forced displacement, and other forms of humiliation and violence.

According to the Annual Crime in India Report 2019 published by the National Crimes Records Bureau, there has been a notable increase of over 7% in crimes against SCs and 26% against STs in the year 2019.

The same report also reveals that India witnesses 88 rape cases on a daily basis, with some of these cases being linked to caste-based crimes.<sup>6</sup> Regional differences play a significant role in crime rates and the approach taken by different states to combat these crimes.

For instance, Madhya Pradesh (MP) had the highest crime rate against SCs in 2021, and it also held this position in 2020. In 2019, it ranked second, just behind Rajasthan. However, data also indicates that MP had a higher rate of filing charge sheets compared to most other Indian states, while its neighbouring state, Rajasthan, lagged behind in this aspect, emphasizing the need for the state police to take more proactive measures.

### **7(C). CASTEISM IN INDIAN SOCIETY: UNDERSTANDING THE CAUSES OF MARGINALIZATION**

- The caste system, an outmoded social stratification premised on ancestry and occupation, produces a strict hierarchical structure in which people are divided into several castes.

<sup>5</sup> C.N. Shankar Rao, Indian Social Problems Pg 396 (S. Chand & Company Pvt.Ltd. Ram Nagar, New Delhi 1<sup>st</sup> Edition 2015)

<sup>6</sup> Annual Report of NCRB, 2019 available at <https://www.ncrb.org/ncrb/About-NCRB/Annual-Reports> (accessed on November 2023)



- **Social norms and cultural ideas** are powerful tools that perpetuate the idea of superiority and inferiority caste - based. These views are frequently passed down through generations.
- **Economic Exploitation:** There are instances where caste-based violence is motivated by earning money. People from lower castes may experience economic oppression, forced labour, and exploitation at the hands of upper caste groups, which can spark conflict and bloodshed.
- **Political Power Struggles:** It appears that caste-based violence and political power struggles are related. Dominant caste groups may use violence to suppress the political aspirations and representation of people from lower castes in order to maintain their own dominance and power. Marriages Across Castes: When two people choose to marry outside of the established caste system, some orthodox groups in society may react violently and with animosity in an effort to maintain the caste's purity.
- The effective application of laws against caste-based violence remains a difficulty in many locations, despite legislative safeguards. This has resulted in a culture of impunity for those who commit such crimes.

#### **7(D). HATHRAS GANG RAPE ;-INTERSECCIONALITY OF CASTE AND GENDER BASED MARGINALISATION.**

##### **Hathras Gang Rape Case (2018):<sup>7</sup>**

##### **Incident:**

A 19-year-old girl allegedly raped by four Upper Caste men, sent to Delhi for treatment, and tragically died.

##### **Facts:**

- Victim found brutally injured, FIR delayed by UP Police.
- Accused Sandeep Sisodhia attempted to kill the victim.
- Victim's statement alleged rape by Ramu, Sandeep, Lavkush, and Ravi.
- Victim died on 29 September, cremated by UP Police without family consent.

##### **Issues Raised:**

- **Delayed FIR:** Allegations of police and political pressure to withdraw the FIR.

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<sup>7</sup> Salil Tiwari, "Hathras Gang Rape Case Judgement", *Lawbeat*, 04 March 2023, available at: <https://lawbeat.in/news-updates/hathras-gang-rape-case-judgment-victim-might-have-been-tutored-allege-gang-rape-up-court> (last visited on 4March,2023)

- **Political Power:** Victim's brother tortured to retract the FIR, pressure from the magistrate.
- **Rape Confirmation:** Conflicting statements from police on whether rape occurred.

#### **Police vs. Public Narrative:**

- **Social Media Pressure:** Rumours spread, police claimed no sperm found, and victim not raped.
- **Alleged Pressurizing:** Magistrate accused of pressuring the family to change their testimony.

#### **Arrest & Acquittal:**

- **CBI Investigation:** All accused arrested for attempted murder, gang rape, and violations under SC, ST (Prevention of Atrocities) Act.
- **Court Outcome:** 3 out of 4 accused acquitted; Sandeep found guilty of culpable homicide, not rape.

#### **Legal Response:**

- **Transfer to CBI:** Case transferred; Allahabad High Court deems hurried cremation a violation of human rights.

This case exposes issues of delayed justice, political influence, conflicting narratives, and challenges in securing convictions for gender and caste-based crimes.

### **8. WHAT ARE THE POTENTIAL REMEDIES TO STOP AND ADDRESS MARGINALIZATION BASED ON CASTE IN INDIA?**

1. **Enhancing the Application of Laws:** the Protection of Civil Rights Act of 1955, the SC/ST Act of 1989, and the Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act of 2013.
2. **Developing state institutions:** the government agencies of Justice, Prevention, Education, Health, and Welfare to stop, look into, punish, and rehabilitate criminals.
3. **Empowering Sensitization and Awareness Among All Stakeholders:** Religious leaders, political parties, media, educationalists, civil society organizations, people from higher and lower castes, and others.
4. Providing education, employment, land rights, political representation, social mobilization, legal aid, and counseling services to empower Social Workers and Citizens (STs).

5. Building trust and solidarity, dispelling myths and prejudices, and advocating for respect for human dignity and variety are all part of fostering dialogue and reconciliation.

## 9. RELIGION AS BASIS OF MARGINALISATION

India is a nation with multiple languages and religions. While Hindus make up the majority of the population in this country (80.44%), members of other religious communities, including Muslims (13.42%), Christians [2.33%], Sikhs [1.84%], Buddhists [0.68%], Jains [0.38%], and others [0.65%], coexist with Hindus by having access to roughly equivalent opportunities and privileges. Hindus are by nature the majority due to their sheer number, with the other religious communities.<sup>8</sup>

### Concept of "Minority": Definitions

According to the UNO, minority is a "group numerically inferior to the rest of the population of the state, in a non-dominant position, whose members - being nationals of the state possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language."

### 9(A). MUSLIMS AS MARGINALISED GROUP IN INDIA ON THE BASIS OF RELIGION

#### WHO ARE MUSLIMS?

Muslims are followers of the monotheistic religion of Islam, which is rooted in the Abrahamic heritage. They believe that the Quran, the primary sacred text of Islam, is the exact word of Allah, the God of Abraham, as revealed to Muhammad, the principal Islamic prophet.

#### WHICH STATE REPRESENT MUSLIM MAJORITY IN INDIA

Informing headline "Top 10 Indian States with the Highest Muslim Population in 2023" addresses your query. Based on the census 2011 statistics and the anticipated growth rates, the Muslim population in the following Indian states is expected to be the largest in 2023

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<sup>8</sup> Census of India report available at <https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://censusindia.gov.in/&ved=2ahUKEwi4t8SAncGFAXyUGcHHbbDcQQFnoECB4QAQ&usg=AOvVaw2erTjsBJ9zoHeZNajIkOVt>(assessed at November 2023)

1. **Lakshadweep** : Lakshadweep has the largest percentage of Muslims in India, at 96.58%. It is an Indian union territory made up of several islands in the Arabian Sea.
2. **Jammu and Kashmir**: This region has the second-highest Muslim population in India, with 68.31% of its people subscribing to Islam <sup>1</sup>. It is an Indian union territory that is situated in the nation's north.
3. **Assam**: Having 34.22% of its people adhere to Islam <sup>1</sup>, Assam has the third-highest Muslim population in all of India. This state is situated in the northeastern region of India.

The Muslim populations of West Bengal, Kerala, Uttar Pradesh, Bihar, and other Indian states are also substantial. However, the percentage of Muslims in India is higher in the aforementioned three states.

#### **WHICH STATES HAS MINORITY OF MUSLIM POPULATION?**

The Indian states with the lowest Muslim populations in 2023, based on the census 2011 statistics and the anticipated growth rates are:

1. **Mizoram**: The state of Mizoram has the lowest percentage of Muslims in India, at 1.35%. It is a state located in India's northeast.
2. **Sikkim**: Sikkim has the second-lowest Muslim population in India, with 1.62% of its people practicing Islam . It is a state located in India's northeast.
3. **Punjab**: Punjab has the third-lowest Muslim population in India, with 1.93% of its people adhering to Islam.

#### **9(B). SOME SPECIFIC PROBLEMS OF THE MUSLIM MINORITIES IN INDIA**

##### **A) Problems of Muslim Minorities in India<sup>9</sup>**

Muslims constitute the biggest religious minority group in India and their numerical strength exceeds 16 crores. In addition to the problems of the minorities mentioned above, the Muslims in India, in are faced with a few other problems among which the following are important

1. **Poverty Among the Muslims**: Approximately 29.5% of the total population in India [as per Rangarajan's Report for the year 2011-12] are to pay found to be extremely poor. Of the various minorities, the Muslims are the poorest in India. As per 1999-2000 report, more than 26.8% of the Muslims [Indian average for the same period 27.0%] in the rural area and 34.2% in the urban

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<sup>9</sup> C.N. Shankar Rao, Indian Social Problems Pg 396 (S. Chand & Company Pvt.Ltd. Ram Nagar, New Delhi 1<sup>st</sup> Edition 2015)

area [Indian average 23.45] live below the poverty line. The poverty condition of the urban Muslims is worse than that of the OBCs. Collapse of the handloom industry and the introduction of synthetic yarn adversely affected lakhs of Muslims who were mainly dependent on the industry. Due to their poor education, they could not get into other jobs easily and remained poor.

2. **Widespread Illiteracy:** As per 2011 census report, 74.04% of the Indians are literate and Muslim's Intermarry position is definitely less than that. Added to this, only a very small number of Muslims have received higher level of education. Hence, employability of the Muslims in the modern economic scenario is comparatively less. Muslim women's educational position is still worse.
3. **No Proper Leadership:** There is no proper guidance for the Muslim masses. Those who receive good education are joining the mainstream of India by securing important positions in administration, judiciary, etc. Yet another section of the highly educated Muslims are tending to migrate to the Western countries, and a small number even to Pakistani. This factor has deprived the Muslim masses of the good leadership of their educated brethren. In the absence of good leaders, they often fall a prey into the hands of some fanatic leaders.
4. **Absence of Entrepreneurship:** Entrepreneurship demands leadership, taking bold decisions and accepting challenges. It requires courageous initiatives also. It presumes hope, self confidence and trust. It often needs good financial backing also. The religious education which they receive in the madrasas or elsewhere is of not much help in this direction. The social is thus not favourable for the Muslims to develop entrepreneurial capacities.
5. **Religious Mentors Hindering the Progress of the Community:** Most of the Muslims cling on tenaciously to their religious beliefs and practices. Their religious leaders time and again overemphasize this aspect. The religious oriented Muslims do not accept the priority of poverty alleviation, removal of illiteracy or of any economic Programme. The traditional mindset of the Muslim scholars as well as activists is not encouraging.
6. **Discrimination in Recruitment in Government Services:** There is no special consideration from the side of either the Central Govt or the State Govt to recruit the personnel belonging to the minority communities. Hence, in the army, railways, postal services, banking, and police forces, the percentage of their recruitment is far from satisfactory. Poor educational position of the Muslims is a big hurdle in this direction.

### 9(C). CASE STUDY: THE ISSUE OF HIJAB AGAINST MUSLIM WOMEN <sup>10</sup>

- **Controversy Initiation:**
  - Six Muslim girls denied college access in Udipi, Karnataka, triggering protests over dress code rules.
  - College administration insists on uniform compliance; students abstain from classes.
- **Escalation and Opposition:**
  - Boys respond by wearing saffron shawls, creating tension.
  - MLA urges adherence to dress code until government decision.
  - Boys wear blue shawls, chanting Jai Bhim, sparking opposing views across Karnataka.
- **State Government's Action:**
  - Karnataka Education Act, 1983 grants government authority over educational directives.
  - 2013 directive argues hijab isn't an essential Muslim practice, leading to protests.
- **High Court Involvement:**
  - Petition filed challenging hijab ban, arguing protection under Article 19(1)(a) and violation of Article 14.
  - Reference to 2018 case sets precedent.
  - Case referred to Chief Justice; senior advocates move to Supreme Court.
- **Supreme Court Hearing:**
  - Divisional Bench questions petitioners challenging hijab ban.
  - Split verdict: Justice Dhulia sets aside ban, Justice Gupta upholds.
  - Matter referred to Chief Justice for further directions.
- **Essential Religious Practice Debate:**
  - Quranic guidance on women's attire creates clash.
  - High Court yet to determine if hijab is an essential religious practice under Article 25.

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<sup>10</sup> Aishat Shifa Vs. The State Of Karnataka & Ors. SC 842

- **Case Conclusion and Critique:**

- Restrictive hijab norms criticized for reflecting patriarchal logic
- Call for a nuanced approach respecting women's autonomy in decision-making.

## **9(D). WELFARE OF MINORITIES**

### **1. Constitutional Provisions For the protection of Minorities**

Constitutional provisions that are made for protecting the interests of the minorities can be classified into two groups: **(a) General provisions, and (b) Specific provisions**

#### **a) General Provisions:**

The Constitution of India treats the minorities on par with the other people.

- **Article 14** of the Constitution assures them equality before law,
- **Article 15** prohibits discriminatory treatment.
- **Article 16** provides equal employment opportunities in the public sector,
- **Article 29(2)** provides for equality of educational opportunities.
- **Article 325 and 326** provide for right to universal adult franchise to all, including the minorities, and
- **Article 44** makes provision for "common civil code".

#### **b) Specific Provisions**

There are certain specific provisions in the constitution to protect the minorities. The Constitution of India, enshrined in **Articles 29 and 30**, protects the linguistic, educational, and cultural rights of minorities. It asserts that every community in India has the right to maintain its unique language, script, or culture. It also guarantees that the state will not discriminate against institutions belonging to linguistic or religious minorities.

### **Fifteen Point Programme For the Welfare of the Minorities**

- A) Protection Against Communal Riots
- B) Appointment in State and Central Services
- C) Other Programmes
- D) Special Recommendations of the Central Cabinet Committee for the Protection of Minority Interests.

### **National Commission for Minorities Act, 1992**

- Appointment of Commissioner for Linguistic Minorities
- Pre-Examination Coaching Scheme For Minorities

### **NATIONAL MINORITIES DEVELOPMENT AND FINANCE CORPORATION**

The Indian government has established a National Minorities Development and Finance Corporation with a 500 crore share capital to support economic and developmental activities for backward minorities, with preference given to occupational groups and women. The Corporation has provided loans to 22,510 beneficiaries since 1994-95.<sup>11</sup>

### **9(E). WAKFS ADMINISTRATION TO SUPPORT MUSLIM INTERESTS**

The Wakfs are organizations that safeguard Muslim interests and further religious, pious, or charitable objectives. They are managed by the Ministry of Welfare of the Central Government. The advancement and development of society are facilitated by better administration.

The **1995 Wakfs Act**: To improve the management of Wakfs throughout the nation, the Wakfs Act 1995 was passed in 1995. It did away with earlier laws and sought to democratize Wakfs Boards and create a decentralized structure. Although a Wakf Board established by each State Government holds overall supervision, each Wakf management maintains their autonomy. The State Wakfs Boards and the Central Wakfs Council are governed by the Central Government. In 1997, the Central Wakfs Council was reorganized.

#### **The Education Foundation Maulana Azad**

The Maulana Azad Education Foundation, established by the Central Wakf Council to promote education for minorities and backward classes, received grants-in-aid from the Indian government from 25.01 crore in 1994-95 to 40.00 crore in 1997-98.

#### **The National Organization for Communal Peace**

To assist women and children impacted by terrorist attacks and communal disturbances, the Central Government founded the National Foundation for Communal Harmony. The foundation seeks to support the welfare of all

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<sup>11</sup> Note: Source of the Statistics India – Year Book 1999 and 2000



minorities and make adequate preparations for children affected by future riots, so promoting political and social stability.

## 10. CONCLUSION

The Research paper highlights the issues faced by the marginalised group of the society, by deeply diving into the root causes of marginalisation .firstly the paper categories the set of society which are in marginalised group furthermore explains the root causes of their being the deprived sector of the society, and by taking the help of case study the paper tries to give possible solution to the problem of marginalisation in the society .the paper also have dissected the marginalisation into various form like caste based marginalisation etc,with the comparative and critical analysis of the various segments of marginalisation we have tried best to give every possible solution to the issue of Marginalisation.

### SUGGESTIONS:

On the basis of comparative and critical analysis of present situation of marginalisation in India, we have tried to give the following suggestions cum solution to the issue of marginalisation in India: -

- a) **Concept of Gender Justice:** - the female since the ancient times have been the victim of gender-based Marginalisation leading to the deprivation of the opportunity to stand in as like of male in the society that ultimately lead to the wastage of such human capital therefore the efforts should be made to promote gender equality by eradicating the gender-based discrimination.
- b) **Promotion of public schooling system at village level :-** As in the villages people don't have that much access the high education or skilled oriented education which is common in urban areas' s schools apart from the non-accessibility to such school the public or government schools in village areas are not much job oriented and upgraded therefore the government should spend more on the improvement of education facilities in these schools so as to promote equality in term of education quality.
- c) **Change in education policy :-** with the introduction to the new education policy in India in year of 2020 a ray of hope has been seen to reduce the issue of gender ,class based marginalisation in India yet this is the initial step further more such steps should also be taken into consideration.
- d) **Setting of Redressal commission :-** Though for the redressal of discrimination on the basis of caste the Atrocities Act has been enacted yet some commissions should also be established such as to provide quick disposal ,economical way of solving of cases .

- e) **Keep eye on suspicious religious conflicts :-** The hijab controversy points out how some malicious actors ,politicians for their own benefits tries to provoke and hurt the religious sentiments of the individual leaving to disturbance in peace and integrity of the Nation therefore a mechanism should be established so as to protect the nation from such malicious activities .