

Sabrang FACTSHEET

LEGAL ACTION –CRIMES AGAINST MINORITIES

MINORITY RIGHTS

INDIAN CONSTITUTION

What sections of the law should a person or persons from the minority community do when they do not receive protection from the law enforcement machinery during a riot or at any other time?

What sections of the law should a person of the minority invoke when they are discriminated against in matters of employment, access to resources, a fair share in development?

Invoke the

RIGHT TO EQUALITY (INDIAN CONSTITUTION)

Article 14 Equality before law

The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

Invoke the

RIGHT TO EQUALITY (NON-DISCRIMINATION)

15 Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth. Under Article 15 of the Indian Constitution:

(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or nay of them.

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or nay of them, be subject to any disability, liability, restriction or condition with regard to -

(a) access to shops, public restaurants, hotels and places of public entertainment; or
(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

(3) Nothing in this article shall prevent the State from making any special provision for women and children.

Article 9(4) Nothing in this article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

A person from the minority community may also invoke these articles

16 Equality of opportunity in matters of public employment

17 Abolition of Untouchability

18 Abolition of titles

RIGHTS OF FREEDOM

ARTICLES

19 Protection of certain rights regarding freedom of speech, etc.

20 Protection inn respect of conviction for offences

21 Protection of life and personal liberty

22 Protection against arrest and detention in certain cases

What must an individual or persons or groups belonging to the minority do when their essential freedom, the right to faith, belief and worship and attendant cultural rights are threatened or actually denied?

They must invoke

RIGHT TO FREEDOM OF RELIGION

25. Freedom of conscience and free profession, practice and propagation of religion

- (1) Subject to public order, morality and health and to the other provisions of this part. All persons are equality entitled to freedom of conscience and the right freely to profess, practise and propagate religion.
- (2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law: -
 - (a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;
 - (b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of industry.

Explanation I: - The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion.

Explanation II: - In sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be constructed accordingly.

26. Freedom to manage religious affairs.

Subject to public order, morality and health, every religious denomination or any section thereof shall have the right :-

- (a) to establish and maintain institutions for religious and charitable purposes;
- (b) to manage its own affairs in matters of religion;
- (c) to own and acquire movable and immovable property; and
- (d) to administer such property in accordance with law.

27. Freedom as to payment of taxes for promotion of any particular religion

No person shall be compelled to pay any taxes, the proceeds of which are specifically

appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination.

28. Freedom as to attendance at religious instruction or religious worship in certain educational institutions

- (1) No religious instruction shall be provided in any educational institution wholly maintained out of State funds.
- (2) Nothing in clause (1) shall apply to an educational institution, which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution.
- (3) No person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto.

CULTURAL AND EDUCATIONAL RIGHTS

29. Protection of interests of minorities.

(1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.

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

30. Right of minorities to establish and administer educational institutions.

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

(2) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

The last few years have seen sustained attacks on the religious minorities including especially their places of worship. The demolition of the Babri Masjid in full public view on December 6, 1992 has been followed by scattered attacks on churches all over the country.

What sections of the Indian Criminal Law relate to these crimes?

Chapter XV of the Indian Penal Code is titled 'Offences Related to Religion'. Under this chapter

Sections 295 details an offence: 'Destroying, Damaging or defiling a place of Worship or a sacred object with intent to Insult the religion of any class of persons. Besides, Section 295A deals with the offence of " Maliciously insulting the religion or the Religious beliefs of any class' and can be invoked when these offences take place.

The state through the police is legally and morally *bound* to register these offences but in most cases this just *does not happen* or if at all the preliminary FIRs are filed, no follow-up investigations take place, neither are prosecutions launched.