

Appendix:

JAIN RELIGION: ISSUE OF MINORITY STATUS*

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1. Introduction

In India, Hinduism is the religion of the majority. Muslims, Christians, Sikhs, Parsis, Buddhists and Jains are religious minorities. The present paper deals with the Jain religion and the issue of its minority status. This has been done with reference to historical background of Jain religion, population of Jain and other religions, Schermerhorn's view on minority groups and Jain religion, similarities and differences in Jain and Hindu religion, Pandit Nehru's observations on Jain religion and judicial decisions the minority status to Jain religion.

2. Historical Background of Jain Religion

Jainism is a religion propounded by a 'Jina' who is a conqueror of worldly passions. Jainism is a set of principles preached by such Jina persons.

About the origin of Jain religion it has been noted that, "the existence (of Jain religion) can be traced not only to the Vedic period but even to the Indus valley period of Indian history. The names of the Jain Tirthankaras (who guide the people to attain liberation) are mentioned in the Vedas and there are evidences, which show that the Indus valley people must be worshipping Rishabhadeva, the first Tirthankara of the Jains along with other details.¹

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¹Sangave V.A., *Jain Society Through the Ages*, New Delhi: Shri Raj Krishen Jain Charitable Trust, 1992, p.1.

3. Population by Religion in India

The Census of India records population by religion. The data for the period 1961-1991 are presented in Table 1.

TABLE-1: POPULATION BY RELIGION: 1961-1991

Religion	1961		1971		1981		1991	
	Number Million	% to total	Number Million	% to total	Number Million	% to total	Number Million	% to total
Hindus	366.5	83.5	453.4	82.7	549.7	82.6	672.6	82.4
Muslims	46.9	10.7	61.4	11.2	75.6	11.4	95.2	11.7
Christians	10.7	2.4	14.2	2.6	16.2	2.4	18.9	2.3
Sikhs	7.8	1.8	10.4	1.9	13.1	2.0	16.3	2.0
Buddhist	3.2	0.7	3.9	0.7	4.7	0.7	6.3	0.8
Jains	2.0	0.5	2.6	0.5	3.2	0.5	3.4	0.4
Others	1.6	0.4	2.2	0.4	2.8	0.4	3.5	0.4
Total	439.2	100.0	548.2	100.0	665.3	100.0	812.3	100.0

Source: Census of India

The table shows that during 1961-1991 the population of all religions has increased. The table indicates that there is decrease in the percentage of Hindu and Jain religions increase in the percentage of Muslim, Buddhist and Sikh religions, fluctuation and decrease in the percentage of Christian religion and constant percentage in other religions.

Note the figures of Jain population for the period of hundred years from 1891 to 1991 are presented in Table-2

TABLE-2: JAIN POPULATION: 1891-1991

Census Year	Jain Population	Percentage increase or decrease	Number per 10,000 of the population who are Jains
1891	14,16,177	-	49
1901	13,34,039	-5.8	45
1911	12,48,182	-6.4	40
1921	11,78,596	-5.6	37
1931	12,52,105	+6.2	36
1941	14,49,286	+15.8	37
1951	16,18,406	+11.7	45
1961	20,27,248	+25.3	46

1971	26,04,646	+28.5	47
1981	32,06,038	+23.7	48
1991	33,52,706	+4.4	40

Source: Census of India.

The table indicates that there has been decrease in Jain population during 1981-1991 and increase since 1961 onwards. The highest increase of 28.5 took place during 1961-71 and lowest increase occurred during 1981-91.

The column number per 10,000 of the population who are Jains shows its nature of microscopic minority. The number has been in the range of 36 to 49 and after the increase by one number from 1951 onwards, it has shown decrease from 48 in 1981 to 40 in 1991.

4. Schermerhorn's Views on Minority Groups and Jain Religion

Schermerhorn R.A. has given the typology of groups as in Table-3.

TABLE-3: TOPOLOGY OF GROUPS

More Powerful Groups (Dominant)			
	Size	Power	
Group A	+	+	Majority Group
Group B	-	+	Elite
Less Powerful Groups (Subordinate)			
Group C	+	-	Mass subject
Group D	-	-	Minority Group

He suggests that by 'combining the characteristics of size, power and ethnicity, it is appropriate to "minority group" to signify any ethnic group in category D. Such a group forms less than half the population of a given society that is an appreciable subsystem with limited access to roles and activities central to the economic and political institutions of the society. On the basis of this definition, the Scheduled Castes, the Scheduled Tribes, Jains, Sikhs, Muslims, Christians, Anglo-Indians, Jews, Parsis and Chinese are singled out as the chief minority groups within India.'²

²Schermerhorn R.A., *Ethnic Plurality in India*, Arizona: University of Arizona Press, 1978, p.16.

Schermerhorn observes:

Though diminutive in size with less than one per cent of the population, the Jains have double prestige in India. In the first place, they are undoubtedly India's oldest religious minority and as such are venerated for their legendary position in history. Secondly, as a group with more than their share of affluent business and industrial leaders, many renowned for their philanthropy, Jains have an elite status. Jainism is so deeply embedded in Indian life that it is difficult to imagine a similar situation in any other society. In accordance with their doctrines, the Jains occupy a silent, gentle and peaceful position in Indian life which has kept them out of the lime light.³

5. Jain and Hindu Religion: Similarities and Differences

Before dealing with the issue of minority status, it will be appropriate to look into the similarities and differences in Jain and Hindu religion.

In this connection Sangave V.A. has observed:

As Jainism, Hinduism and Buddhism, the three important ancient religions of India, are living side by side for the last so many centuries, it is natural that they have influenced one another in many respects. In matters like theories of rebirth and salvation, descriptions of heaven, earth and hell and belief in the fact that prophets of religion take birth according to prescribed rule, we find similarities in the three religions. Since the disappearance of Buddhism from India, the Jains and Hindus came more close to each other and that is why in social and religious life, the Jains on the whole do not appear to be much different from the Hindus. In matters like superstitious beliefs and practices, religious festivals and fasts, occupations and professions, dress and ornaments, sacraments, language and general outlook on life, there are various common things between the Jain and the Hindu and especially the vegetarian Hindu. There are certain castes whose members are found in both the communities and

³Ibid. p.101.

to some extent marital relations are still maintained between Jaina and Hindu sections of the same caste.⁴

It has been observed that "Hindus and Jains always had a common social life without any clashes or conflicts and so it has never occurred to themselves and any one else to regard them as separate religious entities. In a country where even small groups tend to live in water tight compartments, the way Hindus and Jains have lived together, is a most pleasing and helpful feature of the variegated mixture of our national life."⁵

The similarities and togetherness between the two religions has influenced the census figures in two ways. First the census enumerators have included Jains among Hindus, and second some of the Jains unknowingly registered themselves as Hindus. Due to the second factor, Jain organizations had to mobilize their people to get themselves registered in the column of religion as Jains and not as Hindus.

Now the differences between the two religions are presented in Table-4

TABLE -4: HINDU AND JAIN RELIGION: DIFFERENCES

Sr. No.	Item	Hindu Religion	Jain Religion
1.	Sacred books, Vedas, Smritis, Puranas	Accepted	Not accepted
2.	World	Made by creator	Eternal
3.	Worship	Offered to many forms of one God who is creator and ruler of the world	Offered to great ones who have realized their high ideal and attained to godhood themselves
4.	Animal sacrifices	Practiced	No place
5.	Attainment of salvation	Gods alone	Right of human

⁴Sangave V.A., *Jain Community: A Social Survey*, Mumbai: Popular Prakashan, 1980.

⁵Choudhary P.C. Roy, *Jainism in Bihar*, 1956. (Quoted from Schermerhorn R.A., p.123.)

			beings
6.	Karma	Invisible power	Matter which can stick to the soul
7.	Gods, temples, places of pilgrimages, holy days, fasts, festivals and rituals	Different from Jains	Different from Hindus
8.	Marriage	Religious sacrament	Civil contract
9.	Begetting of male children	Prescribed for spiritual welfare of the people	Not considered necessary for spiritual progress of a person
10.	Niyoga and Sati	Practices	Not practiced
11.	Religious practice	Practices of sun-worship, both during eclipses, morning-evening ablutions, fire-worship, worship of edifices, ceremonial bathing, adoration of trees, bowing at the tail of cow and taking cow's urine	Hindu religious practices not followed.

Source: Prepared from the text of Sangave V.A. "Jain Community: A Social Survey", p.382/383.

Thus we find that there are similarities as well as basic differences in Hindu and Jain religion.

6. Pandit Nehru's Observations on Jain Religion

Pandit Jawaharlal Nehru, the first Prime Minister of India, in his speech at Allahabad on 3-9-1949 mentioned that, "there is no doubt that Hindus are majority in India but they should not forget that here Muslims, Christians, Parsis, Jains are minorites. If we call India as Hindu nation, then it will mean that the minorities are not hundred percent citizens of this nation." His letter No.33/94/50 P.M.S. dated 31-1-50 addressed to Mr. S.G. Patil, representative of Jain deputation, New Delhi, notes that, "it is true that Jains are in some ways closely allied to Hindus and have many

customs in common, but there can be no doubt that they are a distinct religious community and constitution does not in any way affect this well recognized position."

On 25th January 1950 as a Jain delegation met the Prime Minister and other central leaders to draw their attention to the provision of Article 25, b-2, Pandit Nehru clearly assured the delegation that Jains are not Hindus. His Chief Personal Assistant B.A. Ghai replied to the appeal 'that Article 25 gives the definition only. This definition implements particular constitutional structure and limits the rule. There is mention not only of Jains, but also of Boudhas and Sikhs also. Boudhas are not Hindus. Similarly Jain is a different religious society; this accepted fact is not hampered in any way.'

7. Jain Religion: Issue of Minority Status

The Constitution of India Section 25 B-2 specifies the minority religions of India and the positions of India and the position of Jain religion qualifies to be a minority religion. As this has not been done, the legal proceedings on behalf of *Dakshin Bharat Jain Sabha* have been started. This section deals with the issue of minority based on article by Bal Patil.⁶

Jains have not gained minority status as has been granted to the Muslims, Christians, Sikhs, Boudhas and Parsis. In some of the states like Maharashtra, Karnataka, the Jain educational institutions have been recognized as minority institutions but Jains are not accorded status of minority on all India basis.

National Minority Commission (henceforth NMC) 1992 Act came into force on 17th May 1992. The Commission has recommended to the Govt. of India on 23rd October 1994 to accord minority status to Jain religion on the basis of four conditions: 1) relevant constitutional provisions, 2) court judgements to date, 3) fundamental difference between Hindu and Jain religion (Ishwarawad and Anishwarwad- Jains do not

⁶Patil Bal, "Jain Dharma ani Samaja yana Dharmik alpasankhyank Darja Hawa", *Daily Maharashtra Times*, Mumbai, 5th December 1999.

consider Ishwar as Srushtikarta - Creator), and 4) minority population of Jain religion in India.

In the constitution of India, Article 25 notes the fundamental right of religious freedom. This article has included Boudhas, Sikhs and Jains in Hindu religion. This might have been done without thorough discussion in the fundamental rights sub-committee, which included the constitutional experts like Dr. Babasaheb Amededkar and Dr. Kanhyailal Munshi.

In the education department of Human Resource Development Ministry - National Monitoring Committee for Minorities Education - resolution No. F-993-SCST dated 28-7-1995, it is noted that as per 1981 census, there are 17.4% religious minorities out of the total population. These minorities are Muslims, Christians, Sikhs, Boudhas and Jains.

Though one department of ministry has accepted it and even NMC has recommended, still the central Govt. is ignoring the issues.

The reasons behind this trend is the dominant Hindu lobby in bureaucracy, government, in the Congress party, United Front and the BJP. The Hindu lobby works on the inspiration from *Vishwa Hindu Parishad's* propaganda that 'Jains are Hindus'. The propaganda has affected on the census figures and in Punjab, Hariyana, Uttar Pradesh, and Bihar, Jains are being recorded as Hindus. This has been reflected in the Jain population which has increased only by four per cent whereas total non-Jain populations has increased by 20 to 24 per cent during 1981-91.

On the one hand there is a process of Hinduization of Jains and on the other hand *Vishwa Hindu Parishad*, *Rashtriya Swayam Sevak Sangh* and *Bajarang Dal* oppose and propagate against conversion by Christian missionaries.

NMC has been reconstituted in November 1996 under the chairmanship of Dr. Tahjr Muhamood. In the first meeting on 17th December 1996, the committee once again recommended to accord minority status to Jain religion, which was done earlier in 1994.

When it was seen that the Central Government is not taking decision even after two recommendations, on behalf of *Dakshin Bharat Jain Sabha*

(Organization working for more than 100 years for social, religious and cultural progress of Jains), Mr. Bal Patil, Mumbai filed a petition to the Mumbai High Court in September 1997.

The High Court bench consisting of Justice Ashok Desai and Justice S.S. Parkar gave the judgement on 20th October 1997 that as per the recommendation of the NMC to accord Jains the status of a minority religion. The Cabinet of ministers should take a decision. But nothing has happened. So Mr. Bal Patil filed second petition in August 1998, in Mumbai High Court. As a reply, the Central Government has made counter affidavit.

The counter affidavit contained two points: 1) The Supreme Court is to constitute a bench consisting of eleven judges to determine which are minorities. 2) The Minority Commission has informed the Central Government that it has received some protest letters against according minority status to Jain religion from some section of Jain religion and members of Parliament. So the Central Government should take the decision after agreement in the Jain community.

The Mumbai High Court bench consisting of Justice Agarwal and Justice Nijjar dismissed the petition without hearing the opinion of the petitioner or the demand raised in the petition.

The eleven-judge bench to be constituted will handle the issue of the already existing minorities in different states of India; scope of their rights and scope of their rights in inter-state situations. Therefore, the proposed eleven-judge bench would not at all be concerned with the issue of according minority status to any community.

NMC, which received protest letters, informed this matter to the Ministry of Social Welfare on 3rd September 1997 when the first petition by *Dakshin Bharat Jain Sabha* was yet been studied. The Central Government had not done counter affidavit in Mumbai High Court at that time and as a result the court gave ex-party judgement.

The United Front government has not submitted counter affidavit, perhaps because of the fact that the protest letter writers included Mr. Sushilkuman Shinde – a senior Congress leader. The counter affidavit was

not submitted as the minister who took oath to be loyal to the constitution was behaving oppositely and the nature of secular government would have been criticized.

There is double role of the chairperson of NMC Dr. Mahmood, Ex Dean faculty of Law, Delhi University. In his interview with the 'Panchjanya'- an official organ of RSS on 2nd March 1997 he has commented that the constitutional provisions applicable to Sikh and Boudhas are applicable to Jains also. The constitution does not recognize Jain, Sikh and Boudhas as Hindus and if the Government has declared Sikhs and Boudhas as minorities, then there is no ground for not declaring Jains as minority.

Dr. Mahmood on Star News Channel on 12th January 1999 in an interview 'Saval Aapake' told that, NMC has recognized Hindus as minority in the State of Jammu and Kashmir. He wrote a letter to Mr. Farroque Abdulla Chief Minister that the facilities of minorities should be made available to Hindus like other minorities in Jammu and Kashmir.

If we look at this decision of NMC in Jammu and Kashmir against the background of agreement in Jain Community in their counter affidavit, then it is objectionable, because under the law, NMC can only recommend but it cannot accord the status of minority to any sect or group.

In an interview in the *Times of India* dated 26th November 1998 Dr. Mahmood observed that 'until now the Govt. of India used to consider minorities on national level. But now we are creating the concept of minority in the States of Jammu and Kashmir, Punjab, Meghalaya, Mizoram, Nagaland & Lakshdweep and Chandigarh'.

Dr. Mahmood's concept does not fit into legal framework. How can the chairperson of NMC accord the status of minority to any group on his own? This is not clarified. The fundamental issue is the criteria of according status of community having less than 50 percent population. But this is also not final according to the Supreme Court's Kerala Education Bill AIR 1958.

According to the Supreme Court, any social group having less than 50 per cent may be called as minority. But the important question is less

than 50 per cent of what? India or a particular state or particular region and this issue has been pending.

The strategy adopted by NMC is not appropriate. NMC is applying different criterion for Hindus and Jains. If the Hindus can be accorded minority status in six states, then why the Jains cannot be accorded this status? Because the Jains according to Census are in minority in India, in any State, in any district or even in any Taluka.

On this background Dakshin Bharat Jain Sabha has filed a petition in the Supreme Court which has been admitted and two hearings have taken place until now.

The events in court matter with reference to minority status to Jain religion are presented in Table-5.

TABLE-5: MINORITY STATUS OF JAIN RELIGION: COURT MATTER

17 th May 1992	National Minority Commission Act come into force
23 rd October 1994	Recommendation of NMC to Govt. of India to accord minority status to Jain religion on four conditions
28 th July 1995	Reconstitution of NMC: Chairperson Dr. Jahir Mahmood
2 nd March 1997	Dr. Tahir Mahmood; no ground for not declaring Jains as minority
September 1997	Mr. Bal Patil, filed first petition in Mumbai High Court to accord minority status to Jain religion on behalf of Dakshin Bharat Jain Sabha
20 th October 1997	Justice Ashok Desai and Justice S.S. Parkar, Mumbai High Court bench-Judgment: decision by cabinet be taken at the earliest.
August 1998	Mr. Bal Patil filed second petition in Mumbai High Court Central Govt. made counter affidavit containing points of bench of 11 judges of Supreme Court and issue of protest letters received to NMC against according minority status to Jain religion. Justice Agarwal and Justice Nijjar dismissed the petition
26 th November 1998	Dr. Tahir Mahmood: concept of minority at state level. Hindus as minority in Jammu and Kashmir, Punjab, Meghalaya, Mizoram, Nagaland and Laksha Dweep.
12 th January 1999	Dr. Tahir Mahmood: NMC recognized Hindus as

	minority in Jammu and Kashmir
July-September 1999	Petition in the Supreme Court, New Delhi, admitted, two hearing have taken place.

8. Rajasthan High Court: Jains are Minority Community

In September 2000, in a landmark judgement the Rajasthan high court has ruled that Jains are a minority community⁷ and hence cannot be deprived of the rights and privileges accorded to minority communities in the constitution.

The order also stated that the non-issue of the notification relating to the inclusion of Jains as a minority community should not deprive them of the rights and privileges enjoyed by minority communities. Justice Rajesh Balia passed the order on a writ petition filed by Vijayshanti Educational Trust of Udaipur. The judge said Jainism was a separate religion and as the community had a limited population, Jains should be treated as a minority community.

The counsel for the petitioner had pleaded that according to the 1991 census, the population of Jains in Rajasthan was a meager 1.28- percent. However, he said, Jains were not given minority community status although Muslims, with a population of 8.01 percent, and Sikhs with a 1.48 percent population, had been included in the minority community list.

He also stated that the Jain community had a right to reserve 50 percent seats in vocational and educational institutions run by the community. "Jains should be given the rights and privileges of a minority community as provided under Article 29 and 30 of the constitution." The petitioner had pointed out that the state minority commission had also recommended that Jains be included in the minority community list, but the state government had rejected the plea as no such notification had been issued by the Centre.

⁷The Times of India, Pune, "Post-script: Jains are minority community-HC", p.7. Sept.17, 2000.

The additional advocate-general had opposed the petitioner's plea, saying that Jains could not be given minority community status unless the Union government issued a notification to this effect. Justice Balia said Jains belonged to a separate religion and the supreme court and the Delhi high court had recognized this fact. "As such, they are entitled to the provisions under Article 29 and 30 of the constitution," the judge said, adding that Jains also had the right to reserve 50 percent seats in educational institutions run by them for people belonging to the community.

9. An Overview

Jain religion is an independent and old religion of India. Jain history can be traced to Indus valley period. In the period 1961-91, the Jain population has increased but its percentage to the total population had decreased. If we take only Jain population during last hundred years, it shows decrease during 1891-1921 and increase since 1931 onwards. In 1991, there were 40 Jains per 10,000 populations, which shows its microscopic minority.

Schermerhorn has defined Jains as one of the chief minority groups in India but at the same time he observes that as a group with more than their share of affluent business and industrial leaders, many renowned for their philanthropy, Jains have an elite status. There are similarities as well as differences in Jain and Hindu religion. Pandit Jawaharlal Nehru has also opined Jain as minority religion at different times through his speeches and writings.

Though in some states like Maharashtra, Karnataka, Jain educational institutions have been recognized as minority institutions, the NMC has not recognized Jains as minority on all India basis. The matter has now assumed the form of a legal battle between Dakshin Bharat Jain Sabha and Govt. of India (from Mumbai High Court) to supreme court and the decision on this issue is awaited.

The Rajasthan high court Justice Rajesh Balia said that Jains belonged to a separate religion and the Supreme Court and the Delhi high court had recognized this fact. As such, they are entitled to the provision under Article 29 and 30 of the Constitution. This judgement may have

effected on NMC and it is expected that NMC will also recognize Jains as minority on all India basis.

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