

**"THE UNITED NATIONS AND PROTECTION OF MINORITY
RIGHTS: A CASE STUDY OF INDIA"**

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CERTIFICATE

This is to certify that the dissertation entitled "The United Nations and Protection of Minority Rights: A Case study of India," submitted by Anurag Pandey in partial fulfillment of the requirements for the award of the degree of Master of Philosophy of this university is his original work according to the best of our knowledge and may be placed before the examiners for evaluation.

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Dedicated to ...
My Mummy & Papa

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PREFACE

As by historical experience there are numerous problems associated with religious minority groups, India falls in the same fray. In India the religious minority groups especially Muslims and Christians have evidenced several problems. Neither the national government, nor the international bodies have been successful in preventing these serious developments what more, the world intelligential seems to be least concerned about it. Thus the principal objective, underline this study is an modest attempt in identifying and analyzing the role of the United Nations in protecting the rights of these religious minorities in India. Moreover the focus of the current research is aimed at, to systematically study and scrutinize the problems of minorities in India, what role the United Nations has played in protecting the underlying problems of minority protection in India? It will also seek to assess and examine the result of the United Nations efforts and the problems and limitations or with which it is confronted.

Within this perspective the current study takes up the issue area of minorities protection in India along with the role of United Nations. The issues that are subject of rigorous scrutiny and examination are:

Chapter one-examines the definition of minority at both national as well as international level, including provisions for their protection in the United Nations and India. The detailed study of the problems of religious minorities in India has been discussed in Chapter two. Chapter three presents a detailed and spatial study of role of the United Nations in protecting the rights of minorities in India. The

concluding chapter gives an overall assessment of the United Nations efforts, and suggests some probable ways for the better protection of minorities.

The methodology adopted in this study is primarily characterized by a deductive analytical approach. The study is based on such primary sources as UN reports, publications and documents on Minorities, UN reports on Human Rights and related mechanisms. These have been supplemented by secondary sources made available from books and well researched articles from various other journals.

CHAPTER - 1

PROVISIONS FOR MINORITIES IN UNITED NATIONS

AND INDIA

In contemporary world each and every nation has some kind of minority community, whether it is religious, linguistic, cultural or ethnic. The issue of minorities is not a new concept, which used to exist from ancient time, but the issue gained currency after the formation of international organizations i.e. the League of Nations and the United Nations. Under these organizations provisions for the protection of different minorities, existing globally, embodied in the form of various treaties, declarations, charters, and covenants etc.

As far as the formation of minorities at global level is concerned, it is Firstly, related to the act of persons moving from one place to another. For example the case of Jews can be cited who moved from Cannon to Egypt and after their movement, they became a religious minority group. Samaritans in ancient Palestine and Christians in early Roman empire are the other examples depicting other minorities. Secondly, the ravages of both world wars led to division of some states which eventually resulted in alteration of the boundaries and territories of some states to other and people inhabiting these divided states found themselves in entirely new milieu, because of their sharp distinction in language, culture, tradition, religion and faith compared vis-à-vis to majority groups, they were ultimately referred to as 'minorities in the new states. In order to substantiate our claim to the concept of minorities, after World War I, Russian minorities in Poland and Rumania, Hungarian minorities in Romania and Yugoslavia and German and Slave minorities in Italy. At this crucial juncture where large scale movement of people from on state

to another was witnessed, the cause of protection of minorities was evidenced at the global level, which fortunately coincided with the formation of League of Nations, which at first sight in order to overcome the protection of problem of minorities, made an attempt to define the status of minorities in the form of definition under Permanent Court of International Justice (PCIJ). A body, of League of Nations. It defined the terms minority as;

‘By tradition...’ the community is a group of persons, living in a given country or locality, having a race, religion, language and traditions, maintaining their form of worship, ensuring the instruction and upbringing of their children in accordance with the spirit and traditions of their race and rendering mutual assistance to each other.¹

Moreover, numerous treaties were also signed in the auspicious of League of Nations, i.e., Treaty between the Principal Allied and Associated Powers and Poland, Versailles, 28 June 1919, Treaty of Peace between the Allied and Associated Powers and Austria, Saint-Germain-en-Laye, 10 September 1919, Treaty between the Allied and Associated Powers and Bulgaria, Neuilly-Sur-Seine, 27 November 1919, Treaty between Principal Allied and Associated Powers and Hungary, Trianon, 4 June 1920 etc.

But after the Sad demise of League of Nations, the United Nations which came into existence after World War II, championed the cause of protection of

¹ PCIJ, Series B. No. 17, pp. 19, 21,22 and 23, Quoted by Franscesco Capotorti; Study on The Rights of Persons Belonging to Ethnic, Religious or Linguistic Minorities, United Nations, New York, 1991, Paragràph 21, p. 5.

human rights at an international arena, since its birth in 1945, it has vigorously persuaded task of dealing with the problem of human rights. The purposes of the United Nations is discussed in the UN Charter which was adopted at San Francisco in 1945, one of its purpose is related to Human Rights – it read,

Article 1

(3) To Achieve international Co-operation in solving international problems of an economic, social, cultural or humanitarian character and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion.²

To achieve protection of human rights, the Commission on Human Rights was established in 1945, which is a subsidiary body of Economic and Social Council. And to deal with the problems and protection of minorities this commission on Human Rights established the Sub-Commission on the prevention of discrimination and the protection of Minorities. The right of persons belonging to ethnic, religious and linguistic minorities were the subjects of one of its early studies.³

Before the establishment of this Commission, there was no attempt made to define the term by the United Nations. The Sub-Commission defined the term only in 1950 through a memorandum submitted by the Secretary General, it read,

² Charter of the United Nations and Statue of the International Court of Justice. United Nations - New York, Oct 2000 p. 5

³ Study of the Rights of Persons belonging to Ethic, Religious and Linguistic Minorities, prepared by Francesce Capotorti, Special Rapporteur appointed by the Sub Commission at its twenty-fourth session in 1971, Quoted by Leah Levin- Human Rights- NBT India p. 32, 1998.

The term 'minority' is frequently used at present in a more restricted sense; it has come to refer mainly to a particular kind of community, and especially to a national or similar community, which differs from the predominant group in the state. Such a minority may have originated in any of the following way.

- (a) It may formally have constituted an independent nation with its own state (or more or less independent tribal organization).
- (b) It may formerly have been part of nation living under its own state, which was later segregated from his jurisdiction and annexed to another state; or
- (c) It may have been or may still be a regional or scattered group which although bound to the predominant group by certain feelings of solidarity, has not reached, even a minimum degree of real assimilation with the predominant group.⁴

According to this definition, Minorities want to preserve their separate identity and do not want to assimilate with the rest of the population. But this definition also contain some loopholes, as it is based exclusively on the experience of Europe where minorities like nationalities are largely minorities by will. Religious and linguistic and/or cultural minorities fall in this category.... But there is another type of minority also prevalent in a number of countries based on race, caste, etc. These, for example, are the Negroes in the United States and Scheduled

⁴ United Nations Publication, Sales No. 1950; XIV, 3, paras, 37-38, Quoted by Francesco Capotorti: Study on the Rights of Person Belonging to Ethnic, Religious or Linguistic Minorities: United Nations, New York, 1991, Paragraph 26, p. 6.

Caste and Scheduled Tribes in India. These are not minorities either by choice of will; but they are minorities by force...⁵

Francesco Capotorti (Special Rapporteur of the Sub Commission/interpreted the term minority as, " an ethnic, religious or linguistic minority is a group numerically smaller than the rest of the population of the State to which it belongs and possessing cultural, physical or historical characteristics, a religion or a language different from those of the rest of the population."⁶

But there were found mix responses on this definition, the Spanish government, the Finnish government, the Italian government, the German government, and the Swedish government approved this provisional interpretation of the term but the government of Netherlands, the Yugoslavia government, the Bulgarian government, the Australian government, the Romanian government and the Swedish government did not approve it. They criticized it expressing, that "the definition proposed by the special reporter was incomplete and too vague".⁷

Satish Chandra remarks that----- "the question has so often been complicated by a desire on the part of some government to restrict or refine the definition that no minority is recognized as existing in their territory, and that

⁵ Kamlesh Kumar Wadhwa, *Minority Safeguards in India*, (Constitutional Provisions and their Implementation, 1975, p.4.

⁶ Francesco Capotorti: Study on The Rights of Persons Belonging to Ethnic, Religious or Linguistic Minorities, United Nations, New York 1991 Paragraph 28 p.7

⁷ Ibid. Paragraph 31 p. 7

consequently, no international obligation arises for them in relation to the protection of minorities.⁸

Thus it can be said that there is not a single definition of the term minority, which is acceptable to all the Nations. One view does not find favour with the other and the difficulty is greatly enhanced by the fact that those who write about it are not always thinking of the same thing.⁹

Protection of Human Rights of Minorities under the United Nations and India

Now it is necessary to analyse the human rights of minorities. Historically, human rights came into existence from western countries. This development can be divided into three stages. The First stage begins with the bourgeois revolutions, particularly the French and the American. One of the main demands at this stage was that the state should not impose any restriction on the sharing of information. The second stage of human rights development took place with the Socialist revolution, during the first quarter of the twentieth century in countries like Mexico and Russia. The main focus and emphasis during the second stage was on economic, social and cultural rights of the people and the state was supposed to assist in importing these. The third stage of the development of human rights began during the second quarter of the twentieth century with the anti colonial revolutions, with the stress on national self-determination and non-discrimination.¹⁰

⁸ Satish Chandra - Minorities in National and International Law (ed.) Deep and Deep Publications, New Delhi - 1985, p.16

⁹ Kamlesh Kumar Wadhwa opp. cite. p. 4

¹⁰ Media Development, No.4/1998, Vol.XXXV, Journal of World Association for Christian Communication, London p.1, Quoted by James Mersey: Minorities In A Democracy (The Indian Experience), Manohar Publishers, New Delhi, 1999 p. 77

Because of these revolutions in Western World, the Universal Declaration of Human Rights came into force in 1948 by United Nations General Assembly. The purpose of this declaration was to promote and encourage respect for human rights without any distinction. But minorities enjoy their rights in the declaration specifically? It can be said that there is no special provisions for minorities in this Declaration. Patrich Thornbery Says that the minorities as such do not enjoy rights in this declaration. Dr. Thornbery also observed that from the time the Universal Declaration of Human Rights was promulgated; the protection of minorities has been more or less absorbed into the wider concept of human rights.¹¹

But there has been introduced some instruments later which recognizes the rights of minorities. The best example is the UN covenant on Civil and Political Rights introduced in 1966 and came into force on 23 March 1976. Its Article 27 is related to protection of Minorities, it read.

Article 27

In those states in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practices their own religion, or to use their own language.¹² (For full text of the Covenant see Appendix-1).

¹¹ Dr. Patrich Thornbery: Minorities and Human Rights Law. A Minority Rights Group Reports, London, 1991, p. 1 Quoted by James Massey; Minorities In A Democracy (The Indian Experience), Manohar Publishers, New Delhi, 1999 p. 77

¹² General Assembly resolution 2200 A (XXI) of 16 December 1966.

It can be concluded after analyzing the Article 27 of ICCPR that it guarantees protection to ethnic, religious or linguistic minorities only, to enjoy their own culture, to profess and practice their own religion and to use their own language.¹³

The Covenant is legally binding for the states, which are parties to them. This Covenant gives the political and civil rights to the people such as rights to life, privacy, fair trial, freedom of religion, equality before law etc.

In 1981, the General Assembly passed a resolution (36/55-25 Nov. 1981) which is prominent in the field of religious tolerance. Resolution was, Declaration on Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. (See Appendix –II)

Besides this declaration of 1981, Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities by General Assembly, in 1992, is prominent in the field of minorities. It is inspired by Art 27 of ICCPR and deals with the rights of persons belonging to minority communities. the UN through this Declaration clears the earlier doubts regarding the rights for Minorities and also the scope of minority rights is expanded. All the Articles of this Declaration deals with protection and Welfare of Minorities but Art1, Art 3 and Art 4¹⁴ are important among them. (For full text of the Declaration See Appendix-III.

13 Satish Chandra opp cite. p. 14

14 General Assembly resolution 47/135, 18 Dec. 1992

Article 1

State shall protect the existence of national or ethnic, cultural, religious and linguistic minorities within their respective territories, and shall encourage the promotion of that identity.

State shall adopt appropriate legislative and other measures to achieve those ends.

Article 3

Persons belonging to minorities may exercise their rights, including those set forth in this Declaration, individually as well as in community with other member of their group, without any dissemination.

Through this article 3 the UN has accepted individual as well as collective rights. It has been accepted in a Manual on Human Rights Reporting of the UN which read, Human rights are formulated in a way that makes the individual human being the main beneficiary... Some human rights combine individual and collective aspects, for instance, freedom to manifest religion or belief can be exercised either individually or in a community with other...But there are also rights which by their very nature and their subject are rights of large collectivities. Cases in point are the right of minorities, comprising considerable number of persons with common ethnic, religious or linguistic ties, as right to development, the right to peace and security, and the right to a healthy environment.¹⁵

¹⁵ Manual on Human Rights Reporting, under six major International Human Rights instruments, United Nations, Geneva 1997 p.6-7 Quoted by James Massy opp. Cite. p.78.

Article 4

1. State shall take measures where required to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full of equality before the law.
2. States shall take measures to create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs, except where specific practices and in violation of national law and contrary to international standards.
3. State should take appropriate measures so that, wherever possible, persons belonging to minorities may have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue.
4. State should, where appropriate take measures in the field of education, in order to encourage knowledge of the history, traditional language and culture of the minorities existing within their territory. Persons belonging to minorities should have adequate opportunities to gain knowledge of the society as a whole.
5. State should consider appropriate measures so that persons belonging to minorities may participate fully in the economic progress and development in their country. By this article 4, “the declaration.... has directed member states

about the protection of the human rights and fundamental freedoms of the minorities”.¹⁶

Thus, this was the status of relationship between Human Rights and Minority rights and provisions within UN to deal for with the problem of minorities. But why did the UN take more than four decades to start efforts in protecting the rights of minorities? James Messey says that “May be it was, because, originally, human rights were the product of the historical context of the western countries, which were far less pluralistic in nature. But now as the reality of pluralism has entered their context also, possibly its pressure has made this change easy”.¹⁷

WHO ARE MINORITIES IN INDIA (Problem of Defining the Term Minority).

As migration is the principal cause behind the formation of minorities, India is no way different from other. In India, also, the influx of minorities made their way during ancient and medieval period. to name a few Christians and Jews from middle east, Muslims during Moughal rule and Parsees from Persia. Apart from this by the end of 17th century the Sikh religion was also established as a distinct religious group in India

The constituent Assembly faced the problem to define the term 'Minority' while the constitution was being framed, but there was no attempt to define the term precisely. Although the term minority occurs in Art-29 & Art 30, it does not define

¹⁶ James Massey-Minorities In a Democracy The Indian Experience. Manohar Publishers of Distributors 1999. P. 78.

¹⁷ Ibid.p.79

the term. Sunita Gangwal says that the members of the constituent Assembly made no attempt to define the term while Article 23 of the Draft constitution corresponding to the present Articles 29 and 30 was being debated and presumably left it to the wisdom of the courts to supply the omission.¹⁸

The constitution nowhere defines the term "minority" nor does it lay down sufficient indication to test the determination of a group as minority. Confronted perhaps, with the fact that the concept of "Minority" like its problem was intricate¹⁹ the frames of the constitution could not find the definition of the term.

The question of defining the term minority was posed in Kerala Education Bill. The court commented that minority is a term which is not defined in the constitution, and in the absence of any precise definition it must be held that, 'a minority community means a community which is numerically less than 50% but then the question is not fully answered, for part of the question has yet to be answered 'namely 50 per cent of what? It is 50 per cent of the entire population of India or 50 per cent of the population of a state forming part of the Union?'²⁰ The government of Kerala contended for minority to be less in the particular region, where educational institution was situated, to claim for their fundamental rights. And in support of its contention it made a reference to the case of Assam High court *Ramani Kanta Bose V. Guahati Municipality*.²¹

¹⁸ Sunita Gangwal-*Minorities In India- A study of communal process and Individual Rights*. Arihant Publishing House-Jaipur, 1995, p.25.

¹⁹ Henry K. Junkerstoff, "World Minorities (Calcutta, Bookland, 1962, p.29) Quoted by Sunita Gangawal, *Ibid* p. 25

²⁰ AIR 1958 SC 976-Quoted By Kamlesh Kumar Wadhwa *opp. Cite*. p.6

²¹ AIR 1951 Assam 163-Quoted By Kamlesh Kumar Wadhwa, *opp. Cite*. p.6.

But the Supreme Court denied and raised a question if a part of the state is to be taken then the problem is "where to draw the line and what is the unit to be taken into consideration? Are we to take as our unit a district or a sub-division or a talk or a town or its suburbs, a municipality or its wards?"²²

The court said 'that when a Bill is passed by a state Legislature which extends to the whole of the state, the minority must be determined by reference to the entire population of the state.²³ It is clear if the term is used in connection with an Act of Union, minority will be determined in terms of nation as a whole.

But this definition of minorities also has some loopholes: "One possibility may be that state might constitute of different type of communities who are less than 50% and can claim for being a minority. The second problem about this definition is that there might be some communities which are minority in Union level and at the same time majority in State level and because of this these communities will be known minority as well as majority at different levels. For example, Muslims in J&K, Sikhs in Punjab Christians in Nagaland are majority communities in their states and at the same time minority in India as a whole.

Thus, after analyzing these definitions, the following definition of minorities can be concluded in terms of India section of the citizens, being small in number in a definite area in respect of religion, language or on any other ground, seeking equal

²² Loc.cite.977-Quoted by Kamlesh Kumar Wadhwa, *Opp cite, p.6.*

²³ AIR 1958, SC977-Quoted by Kamlesh Kumar Wadhwa, *Opp cite, p.6.*

preferential treatment either to maintain its identity or to be assimilated with the majority, is a minority.²⁴

Assembly of India-The Chief Draftsman of the constitution of India Dr. B.R. Ambedkar explained this term in the Assembly in this way. "The word is used not merely to indicate the minority in the technical sense of the word, it is also used to cover minorities which are not minorities in the technical sense but which are, none the less, minorities in the culture of linguistic sense."²⁵

PROVISIONS FOR MINORITIES IN INDIA

India is a vast country where many religious, linguistic and cultural groups can be found. It recognizes the existence of minorities and also gives them safeguards through for the people. First is General Rights or common domain and second is for all and special rights or separate domain is for minority communities. Now we shall discuss it separately.

General rights or Common domain

- A. Art-14 Through this article, constitution provides equality before Law.
- B. Art-15 Condemn the discrimination on grounds of religion, race, caste, sex or place of birth.
- C. Art-16 guarantees equality of opportunity in matters of public employment.
- D. Art-19 gives protection of certain rights as speech, expression etc.

²⁴ Sunita Gangwal opp. Cite.p.71.

²⁵ CAD VII,p.922 Quoted by Kamlesh Kumar Wadhwa opp. Cite.p.7

- E. Art-20 provides protection in respect of conviction for offences.
- F. Art-21 deals with protection in respect of life and personal liberty.
- G. Art-22 gives protection against arrest and detention in certain cases.
- H. Art -23 Condemn traffic in human beings and forced labour.
- I. Art-24 Prohibits the employment of children in factories etc.
- J. Art-25 gives freedom of conscience and free profession, practice and propagation of religion.
- K. Art-26 gives freedom to manage religious affairs.
- L. Art-27 gives freedom to pay taxes for promotion of any particular religion.
- M. Art-28 gives freedom to attend at religious worship in certain educational institutions.

Besides these general rights or common domain, Constitution of India also gives special protection to minorities through rights or separate domain to the minorities underlined by Art 29 and 30. But here it must be noted that while Article 29 is applicable to all the citizens of India, Art 30 is specially applicable only to religious and linguistic Minorities ²⁶

²⁶ James Massy-Minorities In a Democracy. The Indian Experience, Manohar Publishes, New Delhi-1999.p.28.

Within the separate Domain, Art 29, as said above, is meant for all citizens of the country, who form minorities and also it guarantees the protection of their interests-it read.

Article 29

1. Any section of the citizens residing in the territory of India or any part there of 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 receive aid out of state funds on grounds only of religion, race, caste, language or any of them.

A point that has to be kept in mind while looking at Article 29 is that though it provides protection to the interests of minorities, it does not refer specifically to the minorities whose numerical strength is less. It actually refers to any section of the citizens, who may have a distinct language, script or culture, which means that they may belong even to the majority community²⁷ for example-Hindu in Nagaland and Punjab are also guaranteed protection for their linguistic or culture right in these states.

Article 30

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

²⁷ James Massey-Ibid p.83.

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 belief.

It means this article guarantees minorities to establish and administer educational institutions of their choice. These special rights are given to minorities for conserving and preserving their identities. For example, in the Kerala Education Bill 1957, the Supreme Court put emphasis on this-it said,

Art 30 Confers on all minorities whether based on religion or language, the right to establish and administer educational institutions of their choice.²⁸

In an important case (Ahmadabad St. Xavier college vs. State of Gujarat) the Court passed the judgment that favoured granting special rights to the Minorities so as to maintain a stable society, it read.

The idea of giving some special rights to the minorities is not to have a kind of privilege or pampered section of the population, but to give to the minorities a sense of security and a feeling of confidence.... Special rights for minorities were designed not to create inequality. Their real effect was to bring about equality by ensuring the preservation of the minority institutions and by guaranteeing to the minorities autonomy in the matter of the administration of these institutions. The differential treatment for the minorities by giving them special rights is intended to bring about an equilibrium, so that ideal of equality may not be reduced to a mere

²⁸ John Vallamattam, and Mani Jacob (compiled and edited), *Judgments on Minority Rights*, Supreme Court of India, 1951-95, Vol.1. New Delhi-1996.p.76 Quoted by James Massey opp. Cite.p42.

abstract idea, but should become a living reality and result in true, genuine equality, an equality not merely in theory, but in fact.. It is only the minorities who need protection, and article 30, beside some other articles is intended to afford and guarantee that protection,²⁹

There are also special provisions for linguistic minorities in the Indian constitution.

Art-350 A Provides facilities for instruction in the mother tongue of minorities at primary

Art-350B Provision for appointment of a special officer for linguistic minorities.

Except these constitutional provisions, there are some other instruments too in India which deal with the protection of minorities two of these are'

- 1) The National Commission for Minorities Act (NCM)
- 2) National Minorities Development and Finance Corporation (NMDFC)

The National commission for Minorities is the first instrument created by the Union government for their protection. It was introduced in 1978. In very beginning it worked as a department of Home Ministry and later under Ministry of Welfare till 1992.. In 1992 only, it was given full statutory authority when Parliament passed the National Commission for Minorities Act (For history, functions of powers of the commission, see Appendix-4).

²⁹ James Massy opp. Cite. P.43.

National Minorities Development and Finance Corporation came into existence on 30 September 1994 by the recommendation of the National Commission for Minorities for the Welfare of minorities. Its objectives are-

- I. To promote economic and development activities for the benefit of backward sections amongst the minorities, preference being given to occupational groups and women;
- II. To assist, subject to such income and / or economic criteria as may be prescribed by the government of India from time to time, individuals or groups of individuals belonging to the Minorities by way of loans and advances, or economically and financially viable schemes and projects;
- III. To promote self-employment and other ventures for the benefit of minorities;
- IV. To grant loans and advances at such rates of interest as may be determined from time to time in accordance with the guidelines or schemes prescribed by the central government or by the Reserve Bank of India;
- V. To promote loans and advances to the eligible members belonging to the Minorities for pursuing general / professional /technical education or training at graduate and higher levels;
- VI. To assist the State-level organizations dealing with the development of the Minorities by way of providing financial assistance or equity contribution and in obtaining commercial funding or by way of refinancing.

- VII. To work as an apex institution for co-coordinating and monitoring the work of the corporation/Boards/ other bodies set up by the state governments/Union Territory Administrations for or given the responsibility of assisting the Minorities for their economic development; and
- VIII. To help in furthering the government policies and programmes for development of minorities.³⁰

Besides these two instruments, there is also some other programmes for minorities introduced by Government time to time. These are Prime Minister 15 Point Program, Text of National Commission for Minorities (Procedures and Process) Regulations 1997, the Protection of Human Rights Act 1993, NCM guidelines 1986, Government Policy Norms and Principles 1989.

In conclusion, it can be said that in spite of several provisions for minorities for in both national as well as international level, the minorities of India are facing some problems which violate their basic human rights thus all the safeguards for minorities in constitution should be implemented effectively without misusing it and it should also be well maintained, for the better protection of minorities.

³⁰ Minorities India, Newsletter of National Commission for Minorities, Vol I No. 1, spring 1997, 10.8 Quoted by James Massey opp cit p. 29.

CHAPTER – 2

PROBLEM OF MINORITIES IN INDIA



In terms of population, India is the second largest nation in the world. It consists of 28 states and 7 centrally administered territories. India's population is one billion plus according to census 2001 and six major religious groups as– Hindus, Muslims, Christians, Sikhs, Buddhists and Jains. Hindus are in majority consisting 82.1 percent of the total population while other religious communities consist of 17 percent of the total population of India.

As far as the question what constitutes minorities is concerned, it can be said that 'Minorities may be either religious or linguistic. Religious minorities and religious communities are convertible terms in Indian politics.¹ But here only position and problems of religious minorities will be discussed.

Religious Minorities in India

In India, almost all religions exist such as Hindus, Muslims, Christians, Sikh, Buddhists, Jains, Parsees, Bahais and Jews. Their position in India, according to 1991 census² is,

(1) Muslims

Muslims constituted the ratio of one to four before partition. At present, they constitute 12.12% of the total population. Only after Indonesia and Bangladesh, muslims are in the largest number in India. Muslims are found in almost every state



¹ Kamlesh Kumar Wadhwa, "Minority Safeguards in India,(Constitutional Provisions and Their Implementation),,New Delhi: Thomson press (India) Ltd., 1975, p.145.

² Since 2001 Census data is not made available, study is mainly based on data provided in 1991 Census Report.

in India and in some states, they are in majority. In UP 17.33%, Bihar 14.8% Jammu and Kashmir 65.85%³ Assam 28.43%, West Bengal 23.6% Laccadive 94.3%, Minicoy & Amindivi Islands 7.6% of the total population of India.

(2) **Christians**

The Christian are the third religious community, (after Hindus and Muslims) in India. They form only (2.34%) of the total population of India and are found in Southern states. They are in majority in northeastern state of Nagaland and Meghalaya. In Nagaland they constitute 84.74% in Meghalaya 64.58%. Manipur 34.11%, Tamil Nadu 5.69%, Kerala 19.32% and Andhra Pradesh 1.83%.

Sikhs

Sikhs are the other religious community of India. They constitute (1.94%) of the total population of India and are in majority in Punjab, constituting 62.95% of the population of India, the other states where Sikhs are found in considerable number are, Haryana, 5.8%, Rajasthan 1.48%, Delhi 4.84%, J&K 2.24% and in Uttar Pradesh 0.481%.

Anglo Indians

Anglo Indians are known as racial, religious and linguistic minority community. Anglo Indians are those 'whose father or any of whose other male progenitors in the male line is or was of European descent but who is domiciled within the territory of India and is or was born within such territory of parents

³ According to census 1981 as in 1991 census could not be conducted in J&K

habitually resident therein and not established there for temporary purposes only.⁴ They consist of around three million of the total population of India and dwell in the big cities of the country.

As far as other religious groups are concerned, Buddhists constitute (0.76%) of the total population, Jains (0.46%), Parses 76,383, Bahais 5,575, Jews, 5,271 of the total Population of India.

But now question arises, who are religious minorities in India. Constitutionally in terms of Arts 25 (2) Explanation II it would be commitment to accept the meaning of the term 'Hindus' as including " a reference to person professing the Sikhs, Jains or Buddhist religion and the reference to Hindu religious institutions shall be construed accordingly.⁵

In this manner, the term minority would relate only to the Muslims Christian, Parsees, and Anglo-Indians.⁶ But this chapter will deal with the problems of Muslims and Christians only, as other minority communities such as the Parsees, the Anglo Indian, and the Jews are much smaller in terms of population and do not face a broad range of problems as the largest groups.

Problems of Muslims in India

Muslims are the second largest group in India after Hindus. It is well known that India was divided on the basis of two-nation theory that was supported by the Muslim League and after partition of the country in 1947 the Muslims of India came

⁴ D.D. Basu – Introduction to the Constitution of India Prentice – Hall of India, New Delhi 1004, 10.3.374.

⁵ Sunita Gangwal – Minorities In India – A study of Communal Process and Individual Rights, Arihant Publishing House, Jaipur 1995 p. 15.

⁶ Ibid. p. 15

to be known as Indian Muslims, Muslims Indians or Indo-Muslims. Muslims face a number of problems and grievances, but the most important among them are,

- (1) Communal violence Against Them.
- (2) Inadequate representation in various services
- (3) Problems in their personnel Laws

Now these problems are examined herein,

1. Communal Violence against Muslims

The first major problem of the Muslims is communal violence against them. But before analyzing communal violence, it is necessary to discuss, what does communalism means? Communalism is a belief that because a group of people, follows a particular religion they have, as a result, common social, political and economic interest. It is a belief that in India Hindus, Muslims, Christians and Sikh form different and distinct communities which are independently and separately structured or consolidated; that all the followers of a religion share not only a community of religious interest but also common secular interest, that is, common economic, political social and cultural interests, that Indians inevitably perceive such interests through the spectacles of the religions grouping and are bound to possess a sense of identity based on religion i.e. religion has to be become the business of their basic social identity and the determinant of their basic Social relationships, that they possess the inherent tendency to act and function as a separate group or entity of unit in these fields; that they constitute separate organic wholes or homogenous and cohesive communities, especially in the political field, that each such religious 'community has its own separate history; that communal identity and

division have always pervaded Indian Society; through they may have been reinforced in modern times; that the religions 'community has become the basis of the organization of modern politics in India and of the perception of economic, political and cultural issues by the India and of the perception of economic, political and cultural issues by the Indian people; that a 'real Hindu or Muslim can belong only to a partly of the community and cannot differ politically from other Hindus or Muslims, but all Hindus and Muslims must think alike in politics because they are Hindus and Muslims that in fact, each religious community constitutes a homogeneous entity and even a distinct 'society' in itself, that there is and can be no such thing as Indian nation India has been; is , and has to be, a mere, confederation of religious communities.⁷

By communalism we mean the opposition of religious communities to each other. It is an ideology which emphasizes the separate identity of a religious group in relation to other groups and often a tendency to promote its own interest at their expenses⁸

Communal violence poses serious problems for Muslims. Regardless of which side starts the riot (this is often impossible to determine objectively), the Muslims are generally relative losers in terms of lives lost and property destroyed.⁹ This unfortunate communal violence between Hindus and Muslims has a long history and this trend has not reversed till the date, what has grown between them is

⁷ Bipin Chandra, *Communalism in India* (Delhi, Vikas, 1984) p. 34 Quoted by Sunita Gangwal opb. Cite p. 13

⁸ Bipin Chandra: *Communalism in India* (Delhi, Vikas, 1984) p. 182 'Quoted by Sunita Gangwal opp.cite.p13

⁹ D.E. Smith- *India As a Secular State*, Princeton University Press, Princeton, New Jersey, 1963, p. 414.

only hate. The following table shows the incidents of communal violence since India became republic;

Number of Communal Incidents and Persons Killed and Injured Incidents

(Selected years) 1954 Onwards.

Sl. No.	Year	No. Of Incidents	Persons Killed	Persons Injured
1	1954	84	34	512
2	1956	75	24	457
3	1957	82	35	575
4	1958	58	12	316
5	1959	40	7	369
6	1960	42	41	1344
7	1961	26	14	262
8	1962	92	108	593
9	1963	60	43	348
10	1964	61	26	489
11	1965	1070	1919	2053
12	1966	173	34	758
13	1967	144	45	467
14	1968	198	251	180
15	1969	346	133	1309
16	1970	519	673	2702
17	1971	521	298	1607
18	1972	321	103	1263
19	1973	240	69	1056
20	1974	242	72	1318

21	1975	248	87	1123
22	1976	205	33	890
23	1977	169	39	794
24	1978	188	36	1122
25	1979	230	110	1853
26	1980	304	261	2379
27	1981	421	372	2691
28	1982	319	196	2613
29	1983	470	238	3025
30	1984	500	1143	3652
31	1985 to 1988	2400	1600	-
32	1989	-	876	269
33	1992	-	876	269
34	1996 & 1997	1487	275	466
35	1998 & 1999	1449	390	4246
36	2001		13	100
37	2002		800 plus	1000 plus

Source: P.R.Rajgopal: Communal Violence in India, Uppal Publishing House, New Delhi, 1987,p17, Ministry of Home Affairs:URL: <http://mha.nic.in/pr0500htm>.

From this table it appears that in almost every year communal peace was disturbed in a big or small measures. It is a major problem faced by Muslims in India. "When we were not free,communal disturbances were considered to be the handwork of an alien government and it was hoped that communal relations would improve once it was gone. A new generation has grown up since independence,

which has not been exposed to the diverse influence of an alien government and which spent its younger days in the comparatively harmonious period between 1950 and 1960. Yet it is precisely this generation, which is found in the forefront of communal disturbance".¹⁰ The government of India has taken some efforts to curb this evil. For example, the Constitution of National Integration Council suggested amendments in the Indian

Panel Code and proposed ban on communal political parties.¹¹ Besides this, Prime Minister 15 point programme, National Commission for Minorities Act 1992, the Protection of Human Rights Act 1993 etc, are other efforts by government to curb this evil. But 'no safeguard constitutional or legislative is greater and more meaningful for the minorities than the actual protection of the life and property of its people from physical violence. So utility and merit of the safeguards is in the working and implementation and not merely in the writing of it, in the fundamental law of the land. To proclaim the goals and the ideals is one thing; to realize them in practice is, however, quite different and even difficult.'¹²

1. Inadequate representation in several services

The second problem of Muslims is the lack of sufficient representation in various government and semi government services. No doubt, Constitution condemn the discrimination of opportunity on the basis of religion, caste, sex etc, the number

¹⁰ Girish Mathur" "Majority – Minority Relations in India; Secular Democracy Annual 1973, p.45, Quoted by Kamlesh Kumar Wadhwa, Minority Safeguards in India (Constitutional Provisions and their Implementation) Thomson Press, Delhi, 1975, p. 156.

¹¹ Kamlesh Kumar Wadhwa:Minority safeguards In India(constitutional provisions and Their Implementation Thomson Press Delhi 1975 p156

¹² Kamlesh Kumar Wadhwa Ibid. p. 156

of Muslims in various services has been becoming less as compared to Hindus, and other religious communities of India.

According to the National Sample Survey Organization (1987-88), the number of Muslims living below the poverty line is worked out to be more than 35 million out of a total Muslim population of 76 million.¹³ But as the population of Muslims has increased, the figures would have gone up.

The survey further reveals the Hindu Muslim divide in the areas of education particularly in urban areas the incidence of illiteracy among Muslims is more than 50 per cent as compared to 33 percent among Hindus. Another study reveals the following figures: a sample of 73 commercial departments and enterprises of the Public Sector shows (a), only 6 Muslims director out of total 484 (1.2%), (b), (out of 6,465 directors of Public Limited Companies, only 110 are Muslims with only 8 among managing directors; (c), out of 2,421 Private Limited Companies, there are 33 Muslims directors including 4 civil servants; (d), out of 4,913 officials in a sample of 13 Private Limited Companies, 59 are Muslims (1%); (e), in a group of 2,832 industrial establishments only 4 units are owned by Muslims industrialists; (f) out of 6,00,000 small industrial units 14,000 are owned by Muslims; (g) 6 are Muslims out of 416 secretaries including joint and additional (1.2%); (h), out of 1,753 IPS officers; only 50 are Muslims (i); of the total 698 directors in Board of Directors of 21 Public sector banks and financial institutions, only 10 are Muslims.¹⁴

¹³ National Sample Survey organization, 43 Round Survey Report (1987-88) New Delhi, 1990, Quoted by Zahoor Mohamood Khan – Indian Muslim: Prospects and Retrospect, in Journal of Objective Studies, Vol.1 & 2 Jan/ July 2000-1420-214/Institute of Objective Studies New Delhi p. 23.

¹⁴ Tahir Beg, "Economic Development of Indian Muslims: Some Strategic Options, in I.A. Ansari (ed). The Muslim Situation in India (New Delhi 1989) p. 117-122 Quoted by Zahoor Mohamood Khan Ibid p. 36.

Thus inadequate representation of Muslims in various services make a common belief that Muslims are one of the most backward communities of India and they do not figure more than 3-4 percent of in any sector of educational and economic development.¹⁵

3. Problem of Personal Law of Muslims

The third major problem of Muslims is their personal laws. After a lapse of about thirteen years since the adoption of the constitution, in 1963 an attempt was made in parliament to carry out the mandate of Art 44 which set out the directive principle relating to the formation of common civil code for the country. Art 44 of the constitution of India provides. The state shall endeavor to secure for the citizens a Uniform Civil Code throughout the territory of India.¹⁶ Uniform Civil Code (UCC) means that people are governed by a common law, for example, the matters like marriage, guardianship, adoption of children, divorce, succession and inheritance etc. It means equal facility of law to all people. It does not allow to have two different types of laws for two different sections until and unless the other section needs special protection. Paras Diwan explains the significance of UCC that, "it should be clearly understood that the question of our having a uniform civil code has nothing to do with 'Indianization' or national integration or interfering with the religion of one community or the other. It is simply a question of equal facility of laws to all sections or our people. It is a question of all Indian citizens

¹⁵ Zahoor Mohamood Khan – Indian Muslim Prospects and Retrospect, in Journal of Objective Studies, Vol. 12, No. 1 & 2 Jan/July 2000-1420-214 Institute of Objective Studies New Delhi p. 24.

¹⁶ Tahir Mohamood – Common Civil Code, Personal Law and Religious Minorities in Mohd Iman – Minorities and The Law (ed). New India Press New Delhi.

being governed by the same set of laws. Or, put it differently, the question is simply this that all people of India, in all matters –except the matters coming under protective discrimination should be governed by the same set of laws.¹⁷

“Personal Laws of Muslims has been the matter of communal politics of India. Sooner or later the government of India will have to face the problem of legislating a uniform civil code. This is responsibility imposed by the Directive Principles of States Policy (Art 44) of the constitution, and is recognized by Indian present leadership essential to the development of a modern progressive secular state. The tasks of codifying Hindu Personal law has been completed, but as yet the Muslims Shariah has remained untouched by the Parliament. The future decision to tackle this delicate and it is inevitable, will probably create a major area of tension between the government and the Muslim minority.”¹⁸ The view of G.E. Smith came true in 1984 in Shah Bano Case – Shah Bano, after 43 years of married life, was divorced by her husband Mohd Ahmed Khan. Shah Bano had four children from him. Mohd Khan paid Rs. 200 per month, as maintenance for two years to her and then stopped. After this Shah Bano went to seek relief in a local court of law under Sec 125 for allowance of Rs. 500 per month, the magistrate ordered Khan to pay Bano Rs. 25 per month, but he denied and after the appeal of Shah Bano in M.P. High Court, the amount was raised to Rs. 179 per month. Khan, then, appealed in Supreme Court and claimed that he cannot go beyond Shariah and according to Shariah, he had already paid the maintenance. But Supreme Court denied his claim and gave Judgment in favour of Shah Bano.

¹⁷ Paras Diwan: The Uniform civil code: A Protection of Equality of Mohd Imam's: Minorities and the Law (ed) New India Press New Delhi 1972 p. 420.

¹⁸ D.E. Smith, opp. Cite. P. 420

But after the announcement of the decision almost all the Muslim organizations and persons and their parties came together to oppose the decision, viewing as the decision is against their sacrosanct Shariah and after the pressure of these organizations the then government passed a bill in 1986 (under the Muslims Women's Protection Act), that Women could get maintenance only during iddat. As far as this decision is concerned it can be said that it is against the divorced muslim women and closed the doors for muslim women who were seeking relief under Sec 125 of criminal women. Thus, it is quite true that Hindus, Christians, Sikhs, Parsis and other communities are, on the whole, prepared for the enactment of Uniform Civil Code: The Muslim are not¹⁹. But in 2001 and 2002 the courts took interest in the Talaq process among Muslims. In 2001, the Supreme Court has allowed maintenance beyond the iddat and in 2002 in a case Bombay High Court has ruled that talq must be proved in a Court.

As far as Indian political scene is concerned, majority of Muslims oppose the idea of reforms in uniform civil code. In a convention held in 1970s the Muslims Organizations passed a bill, that Parliament had no right to interfere in the Personal Law of Muslims,(which is based on Quran and Sunnat) as it might be violation of their fundamental rights..

Even the former PM of India late Mrs Indira Gandhi once remarked about the personal law of Muslims that the Muslim Personal Law will not be changed and Muslims should have no apprehension on the score.²⁰

¹⁹ D.E. Smith opp. Cite p. 422

²⁰ The Time of India – 21 May 1973, p.4 Quoted by Kamlesh Kumar Wadhwa opp. cite. P.158

But the questions arise, can there be any justification for laying down difficult ages for marriage for different sections of the people living in the same area in the same locality or mohalla? Should idiots, lunatics, and impotent person be permitted to marry if they belong to one community but not if they belong to another community? Should male or female belonging to one community have more than one spouse, unlimited or limited for four, while if belongs to another community can have only one spouse? Should our law permit one to marry his second cousin because he belongs to one community, but not if he belongs to another community can have only one spouse? Should our law permit one to marry his second cousin because he belongs to one community, but not if he belongs to another community? As there any justification for allowing a person belonging to one community to make an adoption and deny the same to another if the belongs to another community? Does it lie in our mouth to say that the guardianship or custody of a child should be differently determined, first because the child belongs to one or the other religion?²¹

At the same time, there is a good number of scholars among Muslims, who support the idea of reforming the Muslim Personal Law (MPL). Asghar Ali Engineer emphasizes that it would be wrong to argue that Muslim Personal Law is immutable as it is divine. There is an inbuilt human element in it. And for, the matter, even divine is not always inevitable as no law can ever escape the restrictions imposed by spatio-temporal frame.²²

²¹ Paras Diwan: *The Uniform Civil Code: A Projection of Equality in Mohd Imama's Minorities and the Law* (ed) New India Press New Delhi – 1972, p. 423

²² Asghar Ali Engineer: *Indian Muslims: A study of Minority Problem In India*, Ajanta Publication, New Delhi, 1985, p. 288.

Maulana Abdul Kalam Azad emphasized the fact that “Koran make distinction between Din and Shari”at; only the former (Din, i.e. the essence of religion) is immutable while the later Shari”at i.e. the legal code, rituals etc) is not.²³

Tahir Mahamood also point out that the best solution to the problem under review seems to be the introduction of a transitory dual system of personal Laws. Existing personal law of the various religious communities may not be altogether scrapped, though each of them, and more particularly the Muslims personal law, must be purged of all unsatisfactory elements, in away ensuring the maximum possible social equality.²⁴

Giving suggestions for reforming the Muslims Personal Law Mohd Imam remarked that “A great deal of Muslim Law in force in India may be reformed [a] by devising procedural or regulatory measures to check or control the exercise of rights and power their under arbitrarily, injuriously or oppressively. (b) by selecting on or the other more just rules of law not only from one or other school of the Sunni jurisprudence but also from the Shia jurisprudence and (c) by Ijfihad, ie.. Reinterpretation of Quarnic texts and Hadith to bring the law more in time with the contemporary social and moral values”.²⁵

There are some Muslim countries also which have thrown the traditional Islamic law out by reforming them. Among these. Turkey, Albania, Jordan, Syria, Lebanon, Palestine, Malaysia and most recently Afghanistan , after the downfall of

²³ Maulana Abudl Kalam Azad, the Rarjuman al-Qurian, edited and rendered into English by Syed Adbul Latif Asia Publishing Hours, 1962, p, 160-61 Quoted by Asghar Ali Engineer Ibid. p. 288.

²⁴ Tahir Mahmoodp; Common Civil code, Personal Laws and Religions Minorities, in Mohd Iman’s Minoritites And the Law (ed.) New Indian Press New Delhi 1972. p. 476.

²⁵ Moh. Iman: Msulim Law Reforms in India and uniform civil code. In Mohd. Imam’s Minorities and The Law (ed.) New India Press, New Delhi 1972 p. 416.

Taliban regime . Even in Pakistan, in 1961, Ayub Khan, the then Military ruler reformed the Muslim Family Law Ordinance. He raised the marriageable age of girls from 14 to 16 and also made the process of divorce difficult.

But in India uniform civil code doesn't apply for Muslims and as far as reforms in their personal law is concerned, this is upto them to determine the nature, scope, and extent. Within 10 years of freedom, in 1955 and 1956, the Hindu Personal Law has already been codified but Muslim Personal Law has remained untouched. The reason may be one or more but one point is clear that 'In India the Muslims are in a minority and any attempt by the government to secularize personal law would violate their freedom of religion and paradoxically, constitute a serious departure from the secular state as they understand it.'²⁶

CHRISTIANS

Christians are third largest religious group of India. It is true that the Indian Christians, are among the religious minorities, but somehow their presence has been wrongly linked up with Europeans particularly with the colonial rule of the British, which, in fact is not true. Well established traditions and historical evidence tell us that Christians have been existing in the state of Kerala right from the first century A.D. Therefore, the Christians can be considered not only one of the oldest Indian religions minorities, but Christianity also as one of the oldest religions.²⁷

²⁶ D.E. Smith – opp. cite. P. 421-22.

²⁷ James Massey, Christianity: An Introduction (Punjabi) Amritsar; 1976 pp. 17-19 Quoted by James Massey – Minorities In A democracy; The Indian Experience, Mahohar Publishers New Delhi 1999, p. 67.

Most of the population of Christians is found in Southern States of India, because the missionary work first started there. The Indian Christians can be divided into two bases.

(1) Division on Theological Differences

(2). Division on the basis of social, cultural and racial origin.

(1) **Theological Differences** As far as theological differences are concerned, Christians, of India can be divided into two sects.

(A) Roman Catholics

(B) Protestant and Orthodox Christians.

The percentage of the Roman Catholics in India stands between 55 to 60% of the total population of Christians and they are governed by the Catholic Bishops Conferences of India (CBCI), It has its headquarters in New Delhi.

The Protestant and Orthodox Christians cover 40% to 45% of the total population of Christian in India and are government by the National Christian Council of Churches in India (NCCI) with their headquarters in Nagpur.

(2) **Division on the basis of Social cultural and racial origin**

There are four divisions of the Indian Christian on the basis social, cultural and racial origin these are:

(A) Anglo-Indian Christians

(B) The Christians of Scheduled Caste Origin (converted from Hindu religion)

- (C) The Christians of Scheduled Tribes Origin (converted from Hindu Region)
- (D) The Christian of Upper Caste Origin. (Constructed from Hindu religion)

Problems of Christians

Like the Muslims, Christians of India do not face much bigger problems but still there are some problems, faced by Christians in India: they read.

- (1) The Christians Personal Law
- (2) Problems of Dalit Christians
- (3) Educational Problems
- (4) Violence against them

(1) The Christian Personals Law

The first problem of Christians is with their personal laws. The personal Law of Christians includes,

- (1) The Indian Christian Marriage Act, 1872
- (2) The Indian Divorce Act, 1869
- (3) The Indian Succession Act, 1925.

All these three acts were enhanced by British government before Indian Independence and because of this, it had relevance for the British. There are also some parts in these Act which have direct relationship with the English law and courts, for example.

- (1) Section 8 and of the Indian Divorce Act 1869, says that if there is something which is not covered by this Act, in that case the Indian Courts shall follow the English Courts.²⁸
- (2) The Christian Marriage Act, 1872 has, at a number of places, references to the Churches of England and Scotland.²⁹

Expect this, the Indian succession Act, 1925, also has a number of weaknesses including the restrictions imposed on a widow's rights to property.³⁰

So, the need of hour is the immediate attention of Indian Christians and government in introducing the amendments in the personal laws of the Christians. The CBCI and NCCI including some other Christian organizations requested to National Commission for Minorities for reforming their personal law, which NCM sent to government of India to take necessary action. Still no change, introduced by the government of India regarding there personal laws . But this personal law of Christians needs to be amended as soon as possible as it affects on the fundamental rights of Christians (Art 14, equality before the law) and also hinders of the management of their religions affairs (Art 26 of the Indian Constitution).

(2) Problems of Dalit Christians

The second problem is linked with the Christian of Scheduled Caste origin. The Dalit Christians, converted form Hindu religion, Constitute around 75

²⁸ P.D.Mathew and P.M Bakshi, *Christian Law of Divorce*, (New Delhi: Indian social Institute, 1995), pp. 3, 4 Quoted by James Massey, *Minorities in a Democracy* (The Indian Experience) (New Delhi: Manohar Publisher, 1999), p.70.

²⁹ P.D. Mathew and P.M. Bakshi, *Christian Marriage Law*, (New Delhi: Indian Social Institute, 1992) pp. 5, 19, Quoted by James Massy ,Ibid ,p. 70.

³⁰ P.D. Mathew and P.M. Bakshi *Christian Law of succession on*. New Delhi: Indian Social Institute, 1992), p.8, Quoted by James Massy Ibid p. 70.

per cent of the total population of Christians. As far as the world scene is concerned, the Christians have the largest population and known as the most forward people. But in India, scene is different as most of the Christians are converted from Hindu lower caste (Dalits). Now question arises, who are scheduled castes in India, the third paragraph of the constitution (Scheduled Castes), order 1950, states the criterion to define the scheduled caste; which read.

Notwithstanding anything contained in paragraphs 2, NO person who professes a religion different from Hindu, shall be demand to be a member of a scheduled caste.³¹

It means, A scheduled caste will be those who are socially economically, educationally backward persons of Hindu religions, thus they can enjoy the status of scheduled caste and the benefits to the same only if they continue to be part of Hindu fold. A Christian they cannot get the benefits of reservation policy of the government.³²

Another problem of Dalit Christians is that they unlike the Scheduled Caste, (Who are protected against violence etc by some Act and Rules passed by the Parliament) do not get protection of life and personal liberty. These rules and Act are not applicable for the converted Christians. These Acts and rules include protection of castes and scheduled tribes (Orientation of Atrocities) Act, 1989³³

All these Acts guarantee protection for Scheduled castes and Scheduled tribes but Dalit Christian are not protected by these Acts, in spite of the fact that

³¹ James Massey, :Minorities in A Democracy : The Indian Experience; Manohar Publishers, New Delhi, 1999, p.72.

³² Ibid. p. 71

³³ Ibid. p. 72

the Dalit Christians are a twice discriminated groups, first along with Dalits in general and secondly on the basis of religion, they are denied their basic fundamental constitutional rights.³⁴ For example, Dalit Christians who could not get any protection when mass killings took place on 17 July 1985, in a village named Karam Chand in Andhra Pradesh and the massacre of 1991 in Tsundira Guntur Districts of the same state.³⁵

(3) Educational Problems of Christians

The other problem faced by the Christian in India is the status of education among them. There is a myth in India that Christians are well educated here, but this not totally true. As the Christians of Northern part of India (Where converted Christian from lower caste of Hindu religion constitute 90% of their total population of Christian in this region) are not well educated. Most of these Christians live in rural areas and because of their Historical background, they are backwards in all the areas of life, particularly educational areas. For example In this regard a number of surveys at the sub regional levels have been conducted in 1981 the survey conducted by the diocese of Chandigarh (Church of North India) showed that among the Christians of Gurdaspur district (where 50 per cent Punjabi Christians have) only 15 per cent of the men and between 2 to 5 percent of the women were literate.³⁶ Another survey was conducted by Christian Institute of Religious studies and Batala and Ditt Memorial Centre, Amritsar and Gurdaspur district, has shown an improvement but according to it, there are still only 31 per cent Christians who are literate as against the Punjabi literacy rate of 57.14 percent

³⁴ Ibid.p.69

³⁵ James Messy: Dalits in India: Religion as a Source of Bondage and Liberation with Special Reference to Christians, New Delhi, 1995, pp. 140-4., Quoted by James Massey Ibid. p. 72.

³⁶ Nazim Margih, Educational Statuses of Christian Dalits of Gurdaspur Area', in Bulletin of the Christian Institute of Religious Studies, Batala, Vol. 23 No.1, January 1994 Quoted by James Massey Ibid. p. 69

and the national literacy rate of 52.11 per cent (Census 19910. Economically this survey has also shown that only 5.36 per cent Christian of this region own some agricultural land while remaining 94.64 per cent are land less laborers.³⁷

4. Problem of Violence Against Christians in India

The fourth major problems of this community is the increasing violence. The reason is the activities of Christian missionary in India. They are blamed of forcibly or through temptation of monetary converting Hindus [generally from lower caste] to Christianity and because of this a number of anti missionary violence took place in India, and to investigate the activities of Christian missionaries in India, the Niyogi committee was appointed by the Madhya Pradesh government in 1954. The Government stated categorically inter alia that representations have been made to government from time to time that Christian missionaries, either forcibly or through fraud and temptations monetary or other gain, covert illiterate aboriginals and other backward people, thereby offending the feelings of non-Christians.³⁸

As far as the violence against Christians in India is concerned, the following figures, given below, will show nation wide violence against them.

	Year	State
(1)	1955	Bihar (attack on Catholic Chruch of Vardhaman Nagar)
(2)	1957	Madhya Pradesh (Attack on Gas Memorial Centre at Raipur)

³⁷ Clearance O.M.C. Millen, 'A survey of the Christian Community in North West India-A Preliminary Report', in Bulletin of the Christian Institute for Religious Studies Batala, Vol 22, No. 1 January 1993, pp 20-8, Quoted by James Massay, Ibid. p. 69-70.

³⁸ Report, of theChristina Messionayr Activties enquiry committee Vol. 1, Government of Mahdya Prades, Nappgour, 1956, Quted by Kamlesh Kumar Wadhwa opp. cite. p. 161 (also see Select bibliography-Primary Sources/offical documents s.nl.20, p. 258,

- (3) 1985 Andhra Pradesh (Violence in Karam Chedu Village)
- (4) 1991 Adhra Pradesh (Violence in Tsumdura (Guntur District))
- (5) 1998 Madhya Pradesh (assault on Christina missionaries in Thabua)
- (6) 1998 Uttar Pradesh (assault on Christian missionaries in Bhagpat)
- (7) 1999 Orissa (Australian missionary Graham stains with two son burnt alive)
- (8) July 2000 Bihar (a Jesuist priest was killed in South Bihar)
- (9) July 2000 Andhra Pradesh (A Gang attacked and Killed a Lutheran Bishop)
- (10) Dec 2000 Manipur (a Catholic preist was killed)
- (11) Dec 2000 Jharkhand (a Christian school in Jharkhand (Ranhci) was decided to close after a series of attacks)
- (12) March 2001 Andhra Pradesh (attack on a Christian Congregation at Chevalla)
- (13) Sept 1997 Bihar (Physical assault on a Christina lady) in Durka
- (14) March 1998 Attack on the preachers of the Pentecostal church in Baroda)
- (15) March 1998 Maharashtra (attack on catholic institution in Lathur)

Thus these are few example of violence against Christians in India. It is quite obvious that since 1998 violence against Christians have back taking place in several parts of India regularly.

After analysis of problems of minorities in India it can be said that all the problems of minority groups are centered around economy and educational backwardness of these communities. For the development and protection of minorities, the National Commission for Minorities and the United Nations have been taking appropriate action.

CHAPTER - 3

ANALYSIS OF UNITED NATIONS AND INDIA'S EFFORTS

The UN Efforts

The International protection of national minorities consort, generally speaking, of the guarantee by international organization of the rights necessary for minorities to maintain their cultural and national identity.¹ The protection of minorities is not explicitly mentioned in the UN charter and did not attract the same level of attention given to other Human Rights. But later, the UN introduced some treaties and Declaration for the protection of minorities; they read.

A Treaties

1. Convention on the prevention and punishment of the crime of Genocide (1951)
 2. Discrimination (Employment and occupation convention) International Labour Organization 1960.
 3. Convention Against Discrimination in Education (UNESCO). 1962
 4. International Covenant On Civil and Political Rights (1966)
 5. Convention on the Elimination of all forms of Discrimination Against women (1981)
-
1. Convention on the Rights of the Child (1989)

¹ Tennent Harrington Baaaglay "The International Protection Of Minorities, in Satish chandra: minorities in national and international Law {ed} deep&deep publications new delhi 1985,p174

7. Convention concerning Indigenous and Tribal Peoples in Independent countries 1991 (International Labour Organization)

B) Declarations And Resolutions

1. Universal Declaration of Human Rights (1948)
2. Declaration on the granting of Independence of colonial countries and peoples (1961) (UN General Assembly)
3. Economic And Social Council Resolution 1967
4. Declaration on Elimination of all forms of Intolerance and of Discrimination based on Religions or Belief (UN General Assembly) 1981.
5. Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992) (General Assembly).
6. Draft Declaration on the Rights of Indigenous Reports 1994.
7. Human Rights committee general comment No. 18 (Art – 27)
8. Human Rights committee general comment No. 23 (Art - 26)
9. Racism, Racial Discrimination, Xenophobia, and All forms of Discrimination (January 2000) Commission or Human Rights)

Before analyzing UN efforts in protecting the rights of religious minorities of India, It is necessary to study the existing mechanisms in the UN system which deal with the question of protection of minorities, they are.

1. Commission on Human Rights

2. Sub-Commission on Prevention of Discrimination and Protection of Minorities (established in 1967)
3. Working group on Minorities (established in 1995)

Before defining the term “Human Rights” the UN established the commission on Human Rights in 1946. It is a functional commission of Economic and Social Council, one of the principle organs of UN. It has currently 53 member states who meet every year in regular session for six weeks in Geneva. The Commission had no power to take any action in regard to any complaints concerning human rights.²

The sub commission on prevention of discrimination and protection of Minorities was established in 1947. It is a subsidiary body of Human Rights Commission. It is composed of 26 experts who are nominated by their respective governments and elected by the commission. Philip Alston observed that it ‘has long stood out because of its relative independence, its flexible agenda and working methods, its preparedness to act as a pressure group. Vis a vis its parent body (the commission) and its ambiguous and antagonistic relationship with that parent³

The working group on minorities was established by the recommendation of sub-commission on prevention of discrimination and protection minorities. Its mandate, the working group on minorities deals

² Report to the Economic and Social council on the first session of the commission 27 January to 10 February, 1947, Chapter V, p. 22 Quoted in URL, [http://www.ipacademy.org/PDF/Reports/minority protection](http://www.ipacademy.org/PDF/Reports/minority%20protection)

³ Philip Aston: Appraising the United Nations Humans Rights Regime, in Philip Alston (ed). The United Nations and Human Rights: A critical Appraisal 1992, p. 1 Quoted in URL-[http://www.ipacademy.org/PDF/Reports/minority protection](http://www.ipacademy.org/PDF/Reports/minority%20protection).

with the practical realization of the 1992 declaration on minorities by general Assembly. It is described as the focal point of the UN in the field of protection of minorities. In 1997, the Working Group recommended that the High Commissioner for Human Rights develop and implement 'procedures for conflict prevention in which members of minorities as well as of majorities would participate in dialogue from the earliest possible moment, and ensure that minorities as well as majorities are included in peacekeeping and post conflict peace building.'⁴

Besides this, the general Assembly established the post of High Commissioner for Human Rights in 1993, which is entrusted with the task, among others of promoting and protecting the rights of persons belonging to minorities and of preventing the continuation of human rights violations throughout the world.⁵ There are some treaty bodies also which deal with the problem of minority rights. These are the committee on Human Rights, the Committee on Economic, Social and Culture Rights, the Committee On the elimination of Racial discrimination and Committee on the Rights of the Child, also deal with the problems of minority rights.

UN Effort in India

The United Nations general Assembly in 1981, introduced Delclaraiton on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (See Appendix-2)

⁴ Report of the working group on Minorities on its Thrid Session E/CN.4/Sub.2/1997/18 (10 July 1997) para – 116 .

⁵ G.A. (General Assembly) Resolution 48/141 (19930, para 4

discrimination based on religion or belief and also the provisions specifically mentioned in the constitution for minorities. He dealt with some other provisions, too as Indian Penal code, The Unlawful Activities (Prevention) Act, 1967. The Religious Institutions (Prevention of Misuse) Act, 1988, the Places of Worship (special provision) Act, 1991 and the Representation of the People Act, 1951.

He studied the situation of religious communities, such as Hindus, Muslims, Christians, Sikhs, Buddhists and Zoroastrian.

As far as Buddhists and Zoroastrian communities are concerned, special Rapporteur conducted several interview with authorities, NGOs and representatives of these communities and concluded, "these communities revealed that there no problem situations, either on the religious level or in society in general. These minorities which moreover, are the smallest, exercise their religion freely posses an adequate number of places of worship and religions publication and refrain form proselytizing among other communities.⁷

On the situation of Hindus, his report revealed that the situations of this community was satisfactory in religious and civil matters which also features broad tolerance. However, there are exceptions in this field, as revealed in case of untouchability and religious extremism. The report also contented the fact that Hindu extremism was present ; though marginal and

⁷ Economic and Social Council Resolution E/C.4/1997/91/Add.1 14 February 1997 Report , submitted by Mr. Abdulfattah Amor, Special Rapporteur in accordance with Commission on Human Rights, Paragraph 21, p. 7 **Ibid**.

political and not religious. He had cited certain cases which could lead to effect the tolerance policy of Hindus towards other communities as was reflected in expulsion of Hindus from Jammu due to anti-Hindu extremism. Apart from these few cases as cited, the situation of Hindu and relationship with other communities was in good health.

He, then studied the situation of Muslims, Christians and Sikhs. As for as the situation of Sikhs is concerned the Special Rapporteur observed that there were two polar opposite views regarding the problem of Sikhs. One set of view as presented by eminent persons and political representatives stated that Sikh minority was subject to religious suppression by the state. For them the state policy got reflected in desecration of their holy places and in extra judicial executions of Sikhs after the assassination of Prime Minister of India by a Sikh bodyguard. The other view expressed that the problematic situation in Punjab was more of political in nature than religious.

The report finds that the conflict situation in Punjab has arisen due to socio economic and external factors and grew further due to the presence of divisive elements within the Sikh community itself. As far as role of state in abetting intolerance is concerned we need to mention the post Operation Blue star case. In the post operation situation security personnel continued to guard the golden temple complex. But it was never intended at discouraging the devotees from offering prayer. It was just meant to nullify the attempt of destabilization by external and extremist forces. It could thus be concluded that, here again politicizing of religion prevented the full integration of Sikh minority to the Indian society and quoting the picturesque phrase "religion has become hostage and is being exploited for political ends".

(A) **Situation of Muslims in India by Special Rapporteur**

In comparison to other Indian states, the religious and lay representatives of Muslim community as well as N.G.Os in J&K stated that they had not observed any action on the part of the authorities that was meant to restrict the religious activities of the minority.

According to Special Rapporteur's observation, the Indian authorities were following the policy of intolerance, religious discrimination against a Muslim population that was seeking union with J&K.

The religious situation was said to be seriously affected by arms conflict in Kashmir. The so-called political conflict in J&K had been seen in conflict with religious manipulation. Including the madarsas the Indian constitution provision provide for relevant educational provision for minorities. Nevertheless Jammu's state authorities drew attention to cases in which the madarsas had been found promoting extremism in the region.

As far as places of worship is concerned Muslims have large number of places of worship. In addition to that there is a specialized body called Waqf board that manages the property of that religious community.

There have been certain problems regarding enlargement of place of worship complex a case has been cited where the devotees offered the sacred Friday prayer in streets due to small size of place of worship, but there is no attention on enlargement of those complexes can be attributed to red tapism, demographic pressure, and traffic congestion.

The Special Rapporteur also showed some concern regarding the destruction of some religious places. in this context it is important to mention the case of Babri

masjid demolition by Hindu extremists. The startling fact being that it had got the silent support of the state machinery. According to some sources, the central security force meant for the security of the structure, were deliberately not used against the lawbreakers. The finding of the report here was that the demolition of the structure was an aberration and that it could not be just viewed as a simple property dispute. It was a highly religious and emotionally charged question. It resulted due to the exploitation of religion by politicians. The Special Rapporteur mentioned that such incidents were likely to happen if religion was used to achieve political ends.

In the case of J&K also there have been some complain by the secular representatives regarding enlargement or restoration of place of worship. Here we need to mention the case of Charar-e-Sharif shrine. This shrine was used by a group of foreign mercenaries as refuge. In a bid by the security personnel to bring them out they were fired upon. Finally while trying to escape those mercenaries set the shrine on fire. Tapping the conversation between the two revealed the connection between the mercenaries and their Pakistani mastermind. Even in that case the authorities immediately took relief and rehabilitation measures, which however was refused by the inhabitants of Charar-e-Sharif shrine.

It could be thus said that the integration of Muslim minorities within the Indian society is largely hampered by the misuse of religion to meet ends that has nothing to do with religion, it also throws light on the weakness within the Muslim community and finally the report suggests that more should be done, specially in the field of education to alleviate the position of Muslims.

Situation of Christians by Special Rapporteur

In the view of religious and civil representatives of Christians there is no official interference in their internal religious matters though concern has been shown regarding the upsurge of Hindu extremism specially in the state of Bihar and Kerala. The Special Rapporteur in its observation found that in some states Christians were affected, but in general they freely indulged in religious practices including proselytizing, even in the state of J&K. The problem in some places arised mainly due to he past act of missionaries, which indulged in conversion in exchange of material benefit.

Further the report also commented on the status of untouchables convert to Christianity. There grievance is that, they could not claim the benefit of government policies designed for their upliftment, if they change their religion from Hinduism to Christianity. In this case the National Human Rights Commission had noted that such claims were of recent origin, and previously those converts themselves had declined the state aid, after getting converted to Christianity. The report found that state was working to alleviate the position of the untouchables converts to Christianity, and significant work could be done in this respect by the parliament.

In the field of religious instruction the minorities are constitutionally entitled to establish and administer their own educational institutions. Such institutions provide both religious and general education. Here the state has to ensure that the contents of the instruction are such, that does not give rise to anti constitutional principles of intolerance and discrimination based on religion.

There has been a few cases of trouble in Christian institutions by the Hindu extremists but in general, they do not have to face much problem, either in the field of religious instruction or production and dissemination of religious publication. In

certain cases related to places of worship, there have been some problem regarding the construction of places of worship, but the report finds it to be more of bureaucratic in nature than religious affecting all communities.

It can thus be summed up that the Christian minority is well integrated in the Indian society. One of its reflection is large numbers of Christian school of high standard where people from all religion come to study. Thus save to petty obstacles as caused by the Hindu extremists and some Muslim related problems the Special Rapporteur felt the situation of Christian minority to be satisfactory.

Recommendations of Special Rapporteur for maintaining tolerance and non-discrimination in India

The special Rapporteur study the legislation in the field of tolerance and non-discrimination based on Religion or belief and its implementation and concluded that 'the situation in India with regard to tolerance and non-discrimination based on religions is . satisfactory. He also considers that the democratic functioning of political institutions notwithstanding objective difficulties and a few setbacks, remains a fundamental element making for tolerance and non-discrimination while the situation is generally favorable, expectations do exist and should be prevented and remedied.⁸

Then the Special Rapporteur put emphasis on Human Rights and conclude that it is impossible to promote human rights in absence of

⁸ E/CN.4/1997/91/Add1, 14 February 1997, Economic and Social Council report, submitted by Mr. Adbulfattah Amor, Special Rapporteur, *ibid.*, para 81, p. 15, *ibid.*

democracy and development and described two way for the promotion of Human Rights.

- (1) Action to consolidate and protect democracy as an expression of human rights in political field, and-
- (2) Action to contain and gradually eradicate extreme poverty and to promote the right to development as an expression of human rights and of solidarity among human beings in the economic, social and cultural field.⁹

He observed that in India economic, social and cultural poverty of most of the people gives place for religious extremism, thus to maintain religious tolerance and communal harmony economic development is necessary including education, campaign against poverty and to eliminate caste system. He also urged to take action to the political level to safeguard democracy and to combat extremism of India to keep alive its concept of Unity in Diversity.

He, further, gives following recommendations to keep religious tolerance and non-discrimination on the ground of religion or belief.¹⁰

- (1) Steps must be taken to increase awareness of the existence and dangers of extremism because, despite of the fact that it is confined to a minority, its influence on the masses through political parties,

⁹ Ibid para, 84, p. 15

¹⁰ E/cn. 4/1997/91/Add.1 14 February 1997, Economic and Social Council report submitted by Mr. Addalattah special Rapporteur para 91, 92,93,95,96,97, p. 17-18, *ibid.*

places of worship, schools and ever seats of powers, could well destroy community and religions harmony in India.

- (2) The Representation of the Peoples Act, 1951, should be scrupulously implemented and that in addition it should be speedily supplemented by a new act debarring political parties from the post election use of religion for political ends.
- (3) Places of worship should be used exclusively for religious, and not political, purposes. As places for prayer and meditation, they should be protected against tension and partisan struggle. The state should therefore ensure that places of worship remain neutral ground and are sheltered from political currents and ideological and partisan controversy... The most logical solution would seem to be to restore these places of worship as they were before the riots occurred – unless the religious communities concerned decide to effect a symbolic exchange as a means of cooling persons and reducing tensions.
- (4) School in particular should be protected against all forms of political and ideological indoctrination.
- (5) Education can play a vital role in preventing intolerance, discrimination, hate and violence (including motivated by extension) by creating and disseminating a culture of tolerance among the masses and the most disadvantaged segments of the population. It can made a decision contribution segments of the population. It can

made a decisive contribution to the assimilation of values based on human rights by the use of school curricula and text books reflecting principles

6. the centre for human Rights should provide advisory services on the organization at the federal and state level of training courses for teaches in preschool, primary or basic and secondary educational establishments to make them aware of the importance of teaching the principles of tolerance and non-discrimination based on religion or belief.

No doubt, the Special Rapporteur gave some recommendation for the solution of the problem of religious minority of India, but the problem is implementation of these recommendations as these recommendations are not legally binded to India .

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Indian Efforts

Role of National Commission for Minorities

It is quite clear that Indian constitution guarantees fundamental rights to all the citizens of India in general and also guarantees special rights for them. But, effective implementation and enforcement of these right have always been doubtful, thus in 1992, government of India introduced the National commission for Minorities Act. (for full text see Appendix – 4).

Function of the Commission

Clause a:1

The commission shall perform all or any of the following functions, namely.

- (a) Evaluate the progress of the development of minorities under the Union and states;
- (b) Monitor the working of the safeguards provided in the constitution and laws enacted by parliament and the state legislature.
- (c) Make recommendations for the effective implementation of safeguards for the protection of the interests of minorities by the Central Government or the state governments;
- (d) Look into specific complaints regarding deprecation of rights and safeguards of the minorities and take up such matters with the appropriate authorities.
- (e) Cause studies to be undertaken into problems arising out of any discrimination against minorities and recommend measures for their removal.
- (f) Conduct studies, research and analysis on the issues relating to socio economic and educational development of minorities;
- (g) Suggest appropriate measures in respect of any minority to be undertaken by the central government.

- (h) Make periodical or special reports to the Central Government on any matter pertaining to minorities and in particular difficulties confronted by them; and
- (i) Any other matter which may be referred to it nay the central government.¹¹

The commission receives several funds of complaints from individual or group, annually regarding the violation of human rights of minorities. The commission faithfully attends to all complains and sometimes even asks for the co-operation from other commission particularly from National Commission for Human rights.¹²

National Commission for Minorities Decision/Recommendations

In its meeting on July 1998, the commission received complaints against the violation of human rights of minorities, in Gujrat and decided to cting under section 9 (10 (d) read with section 9 (4) (e) of the National Commission for minorities Act 1992 (hereinafter called the 'ACT'), the commission had decided to send a fact finding team (herein after called the NCM Team) to Gujrat headed by its member, Dr. James massy, the NCM toured to Gujrat between 10 and 12 August, various parts of the state – persons and groups and the officers of State Government,

¹¹ Minorities India, Newsletter of Minorities, Vol. 1 No.1 Spring 1997, p. 2, Quated by James Massey: Minorities in A Democracy; the Indian experience, Manohar publishers, New Delhi, 1999 p. 85-86.

¹² James Massey – Minorities in A Democracy: The Indian Experience, Manohar publisher New Delhi, 1999 p. 87.

collected and record evidence and examined witness. Along with general communal situation in the state, the following incidents were looked into depth;

- (1) alleged exhuming of a corpse from a Christian cemetery in Kapadganj in old Khera district.
- II. Alleged burning of the Holy Bible in a School in Rajkot city; and
- III. Alleged harassment of the Muslims of village Randhikpur as a reaction to some inter-religions marriage.¹³

Information from NCM Team with major scrutiny of facts along with the information gathered by the commission from authentic sources. Traces the violation of provisions provided for in the constitution pertaining to both educational rights and fundamental duties, involving even section 295-298 of Indian Penal Code 1860, concerning "offences relating to religion". Even the most basic human rights of citizens i.e. the freely choose a life-partner of their choice, ensured by Indian matrimonial laws have also been found encroached.¹⁴

The commission urged the concerned constitutional authority in Gujarat to take effect steps to maintain complete religious harmony in the state, ensuring that the fundamental rights are freely enjoyed for the citizens of state.

¹³ National Commission for Minorities; Complaints regarding alleged atrocities on minorities in Gujrat URL, http://www.altindia.net/gaurat/commission_report.htm.

¹⁴ ibid

In discharge of its obligation under section 9 (1) (e) of the National Commission for minorities Act 1992, the commission made the following statutory recommendations to Gujarat Government.

- (i) By a policy announcement the state government should (a) publicly disapprove the unconstitutional, unlawful and panel incidents of the recent past that have offended religious sensitivities, and (b) affirm its commitment to the protection of the Human Rights, Civil Liberties and Fundamental Freedoms of all citizens in accordance with the Equality and Social Justice clause of the Constitution of India.
- (ii) Proper, effective and time-bound investigations by the highest-level state agencies should be immediate ordered in respect of each of the three incidents referred to in para 2 above. Pending such investigations the police officers and administrative officials of the concerned places should be transferred to avoid possible allegations of undue influence on an impartiality of the investigations.
- (iii) As soon as the investigation referred to above are over all those individuals who may have committed punishable offences – to whichever community or group, they may belong - as also those... of dereliction of their official duties or negligence's, should be given exemplary punishment through the due process of law.
- (iv) A state-level meeting of non-political representatives of all the religious communities should be convened by the state government of discuss and evolve ways and manes to create, promote and

preserve complete communal harmony in the state and to make all citizens of the state, including the majority and the minorities fully awake to the National obligations and responsibilities towards each other.

- (v) The director-General of Police, Gujarat, should be directed to call periodical meetings of all SPs and other police officers to brief them about the civil rights and liberties of the citizens, including the minorities, and to guide them properly for an effective protection of those rights.
- (vi) In order to create and maintain a congenial atmosphere and cordial community relations, deterrent measures should be effectively undertaken by the state government to curb the tirade against particular communities and their religious practices carried on through vituperative pamphlets, leaflets, periodicals and false or exaggerated media reports.
- (vii) The state government should formulate and announce all other possible measures for the protection of the honor, rights and civil liberties of all the minority communities living in the state.
- (vii) Adequate compensation as per established legal and judicial norms should be paid as early as possible for the loss of life, if any, and damage to properties and institutions of a religious nature.
- (ix) The decision to elevate the Gujarat minorities board to a corporation, changed by the present government, should be restored, and the board

be made more powerful and effective for the promotion of socio-economic development of the minorities. (x) On the pattern of the minorities welfare departments since set up by the government of Andhra Pradesh, Assam and West Bengal, the Gujarat government should set up a special department to effectively deal with all matters and problems relating to the minorities.]¹⁵

The commission urged the Gujarat Government to lay the recommendation before the state legislature and to act on the statutory requirements as soon as possible and also expressed its will to provide any co-operation that may be required in the matter by the state government.

But the basic question is that communal harmony has restored in Gujarat or not. Answer is no, as in February 2002 the state faced another communal disturbance for a long one month. It is needed from NCM to do some ground level work but since the commission was established in 1992 and came into force in 1993 only, it is in its initial stage and it is not an autonomous body, its recommendations are not legally binding for the states. Thus there is a need to restructure the NCM to deal with the problem of minorities more effectively.

As far as the development of minorities is concerned, the commission submitted its report on 31st March 2002 to review the working of the

¹⁵ National Commission for minorities : complaints regarding alleged atrocities on minorities in Gujarat, url <http://www.altindia.net/gujarat/commissionerport.html>

constitution for minorities and backward classes. In this report the commission dealt with the problem of Muslims, SCs, STs, and Women.

The Muslim issues dealt with by the commission can be broadly classified into two categories: first, the issues which it decided not to look at, e.g, the education rights of the minorities (Art 30), the right to propagate religion (under Article 46). Secondly, the issues which it did consider and on which it came out with a view or a recommendation, howsoever weak, such as reservation in public employment, particularly in the security forces (Article 15 and 16); representation in the legislatures, population out-off limit for official use of minority languages (Article 347) or of Mother Tongue as medium of instruction at the primary level (Article 350A)¹⁶

By this report the NCM recommend some measures for development of minority communities, particularly the Muslims, the recommendations are,

i. Recommendations – 3 By NCM

To include ‘freedom of the press and other media and freedom to seek, receive and impart information and ideas. With Article 19(10 (1), freedom of expression). At the same time the proposed Article 19(2) gives the state power to make laws to impose restrictions, against deformation or incitement to an offence.

ii. Recommendation -6 By NCM

¹⁶ The report of the National Commission to review the working of the constitution; A critique of the report from a Muslim angle by syed shahabuddin URL, <http://www.milligazette.com/Archievs/15052/002/1505200251.htm>. p.2

Enforceable right to compensation to a person) proposal some addition to Article 21 for the person who has been illegally deprived of his right to life or liberty.

iii. Recommendation - 10

Proposed to introduce a new Article which prohibits detention beyond a maximum of period of six months.

iv. Recommendation - 13

Recasts Article 300-A and proposed that acquisition of property shall be only for a public purpose.

v. Recommendation – 16

Proposes the right to free education to every child upto the age of 14.

vi. Recommendation – 23

For establishment of a National Education Commission to report to the Parliament annually on progress of compulsory education.

vii. Recommendation - 25

Proposes on inter-faith mechanism under the National Human Rights Commission to maintain inter-religious harmony and social solidarity.

viii. Recommendation - 28

Proposes to assure the right to freedom of religion, and respect to right of minorities. It also asks the government to take necessary steps.

ix. Recommendation – 33

Condemns the election campaign on caste or religion basis.

x. Recommendation - 52

Recommends Intra-state delimitation in the Election Commission and supports rotation of reservation.

xi. Recommendation - 177

Proposes a separate fiscal domain for Panchayats and Municipalities.

xii. Recommendation – 213

It includes minorities in the citizen charter. And requests every service providing government agency to prepare the charter, considering minorities.

xiii. Recommendation 239

Recommend for the protection and promotion of the interest of all weaker sections including minorities

In the report, the NCM also support the idea of reservation for backward Muslims under Art. 15(4) and 16(4) necessary and justified for the states to make reservation if it is. This open the doors... to appoint a commission to establish whether the Muslim community and /or any section there of constitutes a backward class and, if it does, to determine the question of reservation in is favour as has already been done in Karnataka and Kerala.¹⁷

Analysis

¹⁷ The report of the National Commission to review the working of constitution *Ibid.* p. 2

In spite of its uniqueness in suggestions, one can say that the report submitted by the NCM is mixed with faults. The NCM report overlooked various aspects of the problem, which can be analyzed as follows:

- (1) the commission recognizes the educational backwardness of Muslims and recommended some program for their upliftment. But it has not cared to examine the real courses of educational backwardness at the school level which matters in terms of curriculum, Syllabi the medium of instruction, the contents of text books, school culture.¹⁸
- (2) The commission, in this report, has made some recommendations for the welfare of the SC, the ST, the Backward classes and other weaker sections but it has ignored the interests to minorities
- (3) The commission observes the need for special recruitment in the policed, paramilitary and armed forces, it does not introduce any systematic change or a quota based on population.
- (4) It keeps silence on the question of introducing the uniform civil code. The Commission saw the problem but decided to said with the prevailing wind and pronounce a sermon to satisfy the assimilationists.¹⁹
- (5) Similarly, Article 30 is under attack form all sides and in practice it is becoming difficult to establish minority educational institutions as

¹⁸ The report of the National Commission to Review the working of the constitution, : 96d

p. 3
¹⁹ Ibid p. 4

they face any obstacles in recognition, affiliation and financial assistance.²⁰ But commission keeps silence on this issue in the report, although it realizes the educational backwardness of the minorities.

The above recommendations emphasized that the life, honor, and dignity of minorities must be protected and the identity of the minorities must be respected and the laws should be implemented effectively for their better protection.

²⁰ Ibid. p. 4

CHAPTER-V

CONCLUSION AND RECOMMENDATIONS

The comparative survey between the machineries of the United Nations and India exhibit that both of them have dealt with the problem of protection of minorities. They, i.e, the UN and India, have rendered adequate political educational, social, economic and other safeguards pertaining to their protection. As it has already been discussed, the UN through its convention, treaties and declaration and India through its constitution and other mechanisms (Such as National Commission for minorities and National Human Rights Commission etc) have operated well for the welfare of minority communities¹.

As far as the role of the United Nations in the field of protection of minorities in India is concerned, the commission on Human Rights for this cause appointed a Special Rapporteur (Mr. Abdulfattah Amor) to check the implementation of the declaration on the elimination of all forms of intolerance based on religion or belief which was adopted in 1981², that has sent positive signals for the protection of minorities in India. The special Rapporteur Visited India in 1996 and studied the implementation of the declaration. For this purpose he traveled extensively in Jammu, Srinagar, Delhi, Bombay, Chandigarh, Lucknow and Ayodhya and met with the concerned government authorities and held conversation with the members of National commission for minorities, National Human Rights

¹ See Chapter I for provisions and 3 for efforts.

² See Chapter 3.

Commission, the Supreme Court and representatives of various religious groups. Moreover he also kept a close eye on the role of legislation in this field including some other provisions i.e. Indian Penal Code, The Unlawful Activities Act 1967, The Religious Institutions Act 1988, Places of worship Act 1991 and the Representation of the People Act 1951.

After the meticulous observation, he eventually concluded that the status of religious communities was satisfactory, but still then they face some grim problems as regards to violence against them, problems of their places of worship and economic, social and political problems of converted Christians from Hindu lower castes. He also laid emphasis on Human Rights of Minorities and also backed for the economic, social and political development of these communities.

It is beyond the shadow of doubt that the UN has come a long way in the protection of minorities but after a careful scrutiny it can be said that in spite of its positive efforts, it has not matched the required and expected standard as the violation of rights of minorities still continues to exist in a horrific reality.

As National Commission for Minorities is a supreme body concerning the protection of minorities in India, To this end it has made series of efforts in Dumka. Andhra Pradesh, Gujarat, Uttar Pradesh, Punjab etc to solve the problems of minorities and has left much to be desired. Moreover the recommendations of these twin instruments suffers from a technical flaw i.e. they are not legally binding, therefore leaving a tremendous gap for the creation of both suitable and favorable instruments which can fill the void inherent in both the bodies.

For the protection of minorities favorable conditions should be created at both national as well as international level. Following points may ensure the progress and protection for minorities, i.e.

1.Educational development of minorities:

i.Better opportunity of primary education should be assured for the children of minorities.

ii.The student from minority communities should be given better opportunity to get higher education,technical education or job oriented courses

iii.Some arrangement should be made for minority communities (as free coaching to compete the competition) so that they could be economically independent.

IV.Poor persons from minority communities should be guaranteed free education.

V.Just like lower castes of Hindu religion minorities should also be given social,political,economic safeguards under chapter 6 of the constitution

2.Economic Development of minorities.

i.Good job opportunity for minority communities

ii.Good facilities for them to establish small industries

iii.Big funds should also be made through any big or small industries so that after any incident,economic assistance could be given to them.

iv. some trusts should be established for their economic welfare. NGOs, which are interested to work for minorities should be appreciated

3. National Commission for Minority should be strengthened more so that it could do its job more effectively. It should be given a constitutional status, so that it could handle the interest of minority community in a better way and analyze the legal and administrative shortcomings regarding the violation of human rights of minorities and to study the political, educational, economic, social status of minorities and each and every year, there should be analysis of status of minorities. If laxity is found, appropriate action should be taken for managing their status in society.

4. there should be some appropriate publication which should carry information about minorities regarding their grievances, government policies and efforts of NGOs in protecting them. It should also carry state wise news regarding minority rights and find out the protection of minorities in these states to take direct action on the states where minority rights are being neglected.

5. Like human rights, minority rights should also be studied and efforts should be made to make the masses aware of minority rights.

6. There should be some more newspapers for minorities in their own language, which should work for making them aware of vacancies advertised in it and give them unbiased news so that they should not feel themselves from majority communities and could get more information of their choice.

APPENDIX-1

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976, in accordance with Article 49, status of ratifications declarations and reservations Preamble

The States Parties to the present Covenant, Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person, Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights, Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant, Agree upon the following articles:

PART I

Article 1 General comment on its implementation

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of

international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

PART II

Article 2 General comment on its implementation

1. Each State Party to the present Covenant undertakes to respect and to

ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein

recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

Article 3 General comment on its implementation

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant. General comment on its implementation

Article 4 General comment on its implementation

1 . In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

2. No derogation from articles 6, 7, 8 (paragraphs I and 2), 11, 15, 16 and 18 may be made under this provision.

3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

General comment on its implementation

Article.5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.
2. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

PART III

Article 6 General comment on its implementation

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.
2. In countries which have not abolished the death penalty, sentence of

death may be imposed only for the most serious crimes in accordance with

the law in force at the time of the commission of the crime and not

contrary to the provisions of the present Covenant and to the Convention

on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.

3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.

4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on

pregnant women.

6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

Article 7 General comment on its implementation

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 8

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.

2. No one shall be held in servitude.

3.

(a) No one shall be required to perform forced or compulsory labour;

(b) Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;

(c) For the purpose of this paragraph the term "forced or compulsory labour" shall not include:

(i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;

(ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;

(iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;

(iv) Any work or service which forms part of normal civil obligations.

Article 9 General comment on its implementation

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

Article 10 General comment on its implementation

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

2.

(a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;

(b) Accused juvenile persons shall be separated from adults and

brought as speedily as possible for adjudication. 3. The penitentiary

system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

Article 11

No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.

Article 12 General comment on its implementation

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
2. Everyone shall be free to leave any country, including his own.
3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.
4. No one shall be arbitrarily deprived of the right to enter his own country.

Article 13

An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the

reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

Article 14 General comment on its implementation

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

- (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
- (c) To be tried without undue delay;
- (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
- (e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
- (f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;
- (g) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows

conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

Article 15

1 . No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.

2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

Article 16

Everyone shall have the right to recognition everywhere as a person before the law.

Article 17 General comment on its implementation

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
2. Everyone has the right to the protection of the law against such interference or attacks.

Article 18 General comment on its implementation

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Article 19 General comment on its implementation

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas

of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

- (a) For respect of the rights or reputations of others;
- (b) For the protection of national security or of public order (ordre public), or of public health or morals.

Article 20 General comment on its implementation

1. Any propaganda for war shall be prohibited by law.
2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

Article 21

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 22

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of

his interests.

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

3. Nothing in this article shall authorize States Parties to the

International Labour Organisation Convention of 1948 concerning Freedom

of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

Article 23 General comment on its implementation

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

2. The right of men and women of marriageable age to marry and to found

a family shall be recognized.

3. No marriage shall be entered into without the free and full consent of the intending spouses.

4. States Parties to the present Covenant shall take appropriate steps

to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

Article 24 General comment on its implementation

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.
2. Every child shall be registered immediately after birth and shall have a name.
3. Every child has the right to acquire a nationality.

Article 25 General comment on its implementation

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
- (c) To have access, on general terms of equality, to public service in his country.

Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 27 General comment on its implementation

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

PART IV

Article 28

1. There shall be established a Human Rights Committee (hereafter referred to in the present Covenant as the Committee). It shall consist of eighteen members and shall carry out the functions hereinafter provided.
2. The Committee shall be composed of nationals of the States Parties to the present Covenant who shall be persons of high moral character and recognized competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having legal experience.
3. The members of the Committee shall be elected and shall serve in

their personal capacity.

Article 29

1 . The members of the Committee shall be elected by secret ballot from a list of persons possessing the qualifications prescribed in article 28 and nominated for the purpose by the States Parties to the present Covenant.

2. Each State Party to the present Covenant may nominate not more than two persons. These persons shall be nationals of the nominating State.

3. A person shall be eligible for renomination.

Article 30

1. The initial election shall be held no later than six months after the date of the entry into force of the present Covenant.

2. At least four months before the date of each election to the Committee, other than an election to fill a vacancy declared in accordance with article 34, the Secretary-General of the United Nations shall address a written invitation to the States Parties to the present Covenant to submit their nominations for membership of the Committee within three months.

3. The Secretary-General of the United Nations shall prepare a list in alphabetical order of all the persons thus nominated, with an indication of the States Parties which have nominated them, and shall submit it to the States Parties to the present Covenant no later than one month before the date of each election.

4. Elections of the members of the Committee shall be held at a meeting

of the States Parties to the present Covenant convened by the Secretary General of the United Nations at the Headquarters of the United Nations. At that meeting, for which two thirds of the States Parties to the present Covenant shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

Article 31

1. The Committee may not include more than one national of the same State.
2. In the election of the Committee, consideration shall be given to equitable geographical distribution of membership and to the representation of the different forms of civilization and of the principal legal systems.

Article 32

1. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these nine members shall be chosen by lot by the Chairman of the meeting referred to in article 30, paragraph 4.
2. Elections at the expiry of office shall be held in accordance with the preceding articles of this part of the present Covenant.

Article 33

1. If, in the unanimous opinion of the other members, a member of the Committee has ceased to carry out his functions for any cause other than absence of a temporary character, the Chairman of the Committee shall notify the Secretary-General of the United Nations, who shall then declare the seat of that member to be vacant.

2. In the event of the death or the resignation of a member of the Committee, the Chairman shall immediately notify the Secretary-General of the United Nations, who shall declare the seat vacant from the date of death or the date on which the resignation takes effect.

Article 34

1. When a vacancy is declared in accordance with article 33 and if the term of office of the member to be replaced does not expire within six months of the declaration of the vacancy, the Secretary-General of the United Nations shall notify each of the States Parties to the present Covenant, which may within two months submit nominations in accordance

with article 29 for the purpose of filling the vacancy.

2. The Secretary-General of the United Nations shall prepare a list in alphabetical order of the persons thus nominated and shall submit it to the States Parties to the present Covenant. The election to fill the vacancy shall then take place in accordance with the relevant provisions of this part of the present Covenant.

3. A member of the Committee elected to fill a vacancy declared in accordance with article 33 shall hold office for the remainder of the term of the member who vacated the seat on the Committee under the

provisions of that article.

Article 35

The members of the Committee shall, with the approval of the General Assembly of the United Nations, receive emoluments from United Nations

resources on such terms and conditions as the General Assembly may decide, having regard to the importance of the Committee's responsibilities.

Article 36

The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Covenant.

Article 37

1. The Secretary-General of the United Nations shall convene the initial meeting of the Committee at the Headquarters of the United Nations.
2. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.
3. The Committee shall normally meet at the Headquarters of the United Nations or at the United Nations Office at Geneva.

Article 38

a Every member of the Committee shall, before taking up his duties, make solemn declaration in open committee that he will perform his functions impartially and conscientiously.

Article 39

1. The Committee shall elect its officers for a term of two years. They may be re-elected.
2. The Committee shall establish its own rules of procedure, but these rules shall provide, inter alia, that:
 - (a) Twelve members shall constitute a quorum;
 - (b) Decisions of the Committee shall be made by a majority vote of the members present.

Article 40

1. The States Parties to the present Covenant undertake to submit reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights:
 - (a) Within one year of the entry into force of the present Covenant for the States Parties concerned;
 - (b) Thereafter whenever the Committee so requests.
2. All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit them to the Committee for consideration. Reports shall indicate the factors and difficulties, if any, affecting the implementation of the present Covenant.
3. The Secretary-General of the United Nations may, after consultation with the Committee, transmit to the specialized agencies concerned copies of such parts of the reports as may fall within their field of competence.
4. The Committee shall study the reports submitted by the States Parties

to the present Covenant. It shall transmit its reports, and such general comments as it may consider appropriate, to the States Parties. The Committee may also transmit to the Economic and Social Council these comments along with the copies of the reports it has received from States Parties to the present Covenant.

5. The States Parties to the present Covenant may submit to the Committee observations on any comments that may be made in accordance with paragraph 4 of this article.

Article 41 General comment on its implementation

1. A State Party to the present Covenant may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Covenant. Communications under this article may be received

and considered only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration.

Communications received under this article shall be dealt with in accordance with the following procedure:

(a) If a State Party to the present Covenant considers that another State Party is not giving effect to the provisions of the present Covenant, it may, by written communication, bring the matter to the

attention of that State Party. Within three months after the receipt of the communication the receiving State shall afford the State which sent the communication an explanation, or any other statement in writing clarifying the matter which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending, or available in the matter;

(b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;

(c) The Committee shall deal with a matter referred to it only after it has ascertained that all available domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged;

(d) The Committee shall hold closed meetings when examining communications under this article;

(e) Subject to the provisions of subparagraph (c), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for human rights and fundamental freedoms as recognized in the present Covenant;

(f) In any matter referred to it, the Committee may call upon the

States Parties concerned, referred to in subparagraph (b), to supply any relevant information;

(g) The States Parties concerned, referred to in subparagraph (b), shall have the right to be represented when the matter is being considered in the Committee and to make submissions orally and/or in writing;

(h) The Committee shall, within twelve months after the date of receipt of notice under subparagraph (b), submit a report:

(i) If a solution within the terms of subparagraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;

(ii) If a solution within the terms of subparagraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report. In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of this article shall come into force when ten States Parties to the present Covenant have made declarations under paragraph I of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the

consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

Article 42

1.

(a) If a matter referred to the Committee in accordance with article 41 is not resolved to the satisfaction of the States Parties concerned, the Committee may, with the prior consent of the States Parties concerned, appoint an ad hoc Conciliation Commission (hereinafter referred to as the Commission). The good offices of the Commission shall be made available to the States Parties concerned with a view to an amicable solution of the matter on the basis of respect for the present Covenant;

(b) The Commission shall consist of five persons acceptable to the States Parties concerned. If the States Parties concerned fail to reach agreement within three months on all or part of the composition of the Commission, the members of the Commission concerning whom no agreement has been reached shall be elected by secret ballot by a two-thirds majority vote of the Committee from among its members.

2. The members of the Commission shall serve in their personal capacity.

They shall not be nationals of the States Parties concerned, or of a

State not Party to the present Covenant, or of a State Party which has not made a declaration under article 41.

3. The Commission shall elect its own Chairman and adopt its own rules of procedure.

4. The meetings of the Commission shall normally be held at the Headquarters of the United Nations or at the United Nations Office at Geneva. However, they may be held at such other convenient places as the Commission may determine in consultation with the Secretary-General of the United Nations and the States Parties concerned.

5. The secretariat provided in accordance with article 36 shall also service the commissions appointed under this article.

6. The information received and collated by the Committee shall be made available to the Commission and the Commission may call upon the States

Parties concerned to supply any other relevant information. 7. When the Commission has fully considered the matter, but in any event not later than twelve months after having been seized of the matter, it shall submit to the Chairman of the Committee a report for communication to the States Parties concerned:

(a) If the Commission is unable to complete its consideration of the matter within twelve months, it shall confine its report to a brief statement of the status of its consideration of the matter;

(b) If an amicable solution to the matter on the basis of respect for

human rights as recognized in the present Covenant is reached, the Commission shall confine its report to a brief statement of the facts and of the solution reached;

(c) If a solution within the terms of subparagraph (b) is not reached, the Commission's report shall embody its findings on all questions of fact relevant to the issues between the States Parties concerned, and its views on the possibilities of an amicable solution of the matter.

This report shall also contain the written submissions and a record of the oral submissions made by the States Parties concerned;

(d) If the Commission's report is submitted under subparagraph (c), the States Parties concerned shall, within three months of the receipt of the report, notify the Chairman of the Committee whether or not they accept the contents of the report of the Commission.

8. The provisions of this article are without prejudice to the responsibilities of the Committee under article 41.

9. The States Parties concerned shall share equally all the expenses of the members of the Commission in accordance with estimates to be provided by the Secretary-General of the United Nations.

10. The Secretary-General of the United Nations shall be empowered to pay the expenses of the members of the Commission, if necessary, before

reimbursement by the States Parties concerned, in accordance with paragraph 9 of this article.

Article 43

The members of the Committee, and of the ad hoc conciliation commissions

which may be appointed under article 42, shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

Article 44

The provisions for the implementation of the present Covenant shall apply without prejudice to the procedures prescribed in the field of human rights by or under the constituent instruments and the conventions of the United Nations and of the specialized agencies and shall not prevent the States Parties to the present Covenant from having recourse to other procedures for settling a dispute in accordance with general or special international agreements in force between them.

Article 45

The Committee shall submit to the General Assembly of the United Nations, through the Economic and Social Council, an annual report on its activities.

PART V

Article 46 :

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

Article 47

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

PART VI

Article 48

1. The present Covenant is open for signature by any State Member of the

United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a Party to the present Covenant.

2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States which have signed this Covenant or acceded to it of the deposit of each instrument of ratification or accession.

Article 49

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of

the thirty-fifth instrument of ratification or instrument of accession.

2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 50

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

Article 51

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General of the United Nations shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes. 3. When amendments come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

Article 52

Irrespective of the notifications made under article 48, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph I of the same article of the following particulars:

- (a) Signatures, ratifications and accessions under article 48;
- (b) The date of the entry into force of the present Covenant under article 49 and the date of the entry into force of any amendments under article 51.

Article 53

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 48.

APPENDIX-2

Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief

Proclaimed by General Assembly resolution 36/55 of 25 November 1981

The General Assembly, Considering that one of the basic principles of the Charter of the United Nations is that of the dignity and equality inherent in all human beings, and that all Member States have pledged themselves to take joint and separate action in co-operation with the Organization to promote and encourage universal respect for and observance of human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion.

Considering that the Universal Declaration of Human Rights and the

International Covenants on Human Rights proclaim the principles of nondiscrimination and equality before the law and the right to freedom of thought, conscience, religion and belief,

Considering that the disregard and infringement of human rights and fundamental freedoms, in particular of the right to freedom of thought, conscience, religion or whatever belief, have brought, directly or indirectly, wars and great suffering to mankind, especially where they serve as a means of

foreign interference in the internal affairs of other States and amount to kindling hatred between peoples and nations,

Considering that religion or belief, for anyone who professes either, is one of the fundamental elements in his conception of life and that freedom of religion or belief should be fully respected and guaranteed,

Considering that it is essential to promote understanding, tolerance and

respect in matters relating to freedom of religion and belief and to ensure that the use of religion or belief for ends inconsistent with the Charter of the United Nations, other relevant instruments of the United Nations and the purposes and principles of the present Declaration is inadmissible,

Convinced that freedom of religion and belief should also contribute to the attainment of the goals of world peace, social justice and friendship among peoples and to the elimination of ideologies or practices of colonialism and racial discrimination,

Noting with satisfaction the adoption of several, and the coming into force of some, conventions, under the aegis of the United Nations and of the specialized agencies, for the elimination of various forms of discrimination,

Concerned by manifestations of intolerance and by the existence of discrimination in matters of religion or belief still in evidence in some areas of the world,

Resolved to adopt all necessary measures for the speedy elimination of such intolerance in all its forms and manifestations and to prevent and combat discrimination on the ground of religion or belief,

Proclaims this Declaration on the Elimination of All Forms of Intolerance and

of Discrimination Based on Religion or Belief:

Article 1

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have a religion or whatever belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in

worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have

a religion or belief of his choice.

3. Freedom to manifest one's religion or belief may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.

Article 2

1. No one shall be subject to discrimination by any State, institution, group of persons, or person on the grounds of religion or other belief.

2. For the purposes of the present Declaration, the expression "intolerance and discrimination based on religion or belief" means any distinction, exclusion, restriction or preference based on religion or belief and having as its purpose or as its effect nullification or impairment of the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis.

Article 3

Discrimination between human being on the grounds of religion or belief constitutes an affront to human dignity and a disavowal of the principles of the Charter of the United Nations, and shall be condemned as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and enunciated in detail in the International Covenants on Human Rights, and as an obstacle to friendly and peaceful

relations between nations.

Article 4

1. All States shall take effective measures to prevent and eliminate discrimination on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, economic, political, social and cultural life.
2. All States shall make all efforts to enact or rescind legislation where necessary to prohibit any such discrimination, and to take all appropriate measures to combat intolerance on the grounds of religion or other beliefs in this matter.

Article 5

1. The parents or, as the case may be, the legal guardians of the child have the right to organize the life within the family in accordance with their religion or belief and bearing in mind the moral education in which they believe the child should be brought up.
2. Every child shall enjoy the right to have access to education in the matter of religion or belief in accordance with the wishes of his parents or, as the case may be, legal guardians, and shall not be compelled to receive teaching on religion or belief against the wishes of his parents or legal guardians, the best interests of the child being the guiding principle.
3. The child shall be protected from any form of discrimination on the ground of religion or belief. He shall be brought up in a spirit of understanding, tolerance, friendship among peoples, peace and universal brotherhood, respect

for freedom of religion or belief of others, and in full consciousness that his energy and talents should be devoted to the service of his fellow men.

4. In the case of a child who is not under the care either of his parents or of legal guardians, due account shall be taken of their expressed wishes or of any other proof of their wishes in the matter of religion or belief, the best interests of the child being the guiding principle. 5. Practices of a religion or belief in which a child is brought up must not be injurious to his physical or mental health or to his full development, taking into account article 1, paragraph 3, of the present Declaration.

Article 6

In accordance with article I of the present Declaration, and subject to the provisions of article 1, paragraph 3, the right to freedom of thought, conscience, religion or belief shall include, inter alia, the following freedoms:

- (a) To worship or assemble in connection with a religion or belief, and to establish and maintain places for these purposes;
- (b) To establish and maintain appropriate charitable or humanitarian institutions;
- (c) To make, acquire and use to an adequate extent the necessary articles and materials related to the rites or customs of a religion or belief;
- (d) To write, issue and disseminate relevant publications in these areas;
- (e) To teach a religion or belief in places suitable for these purposes;
- (f) To solicit and receive voluntary financial and other contributions from individuals and institutions;

- (g) To train, appoint, elect or designate by succession appropriate leaders called for by the requirements and standards of any religion or belief;
- (h) To observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of one's religion or belief;
- (i) To establish and maintain communications with individuals and communities in matters of religion and belief at the national and international levels.

Article 7

The rights and freedoms set forth in the present Declaration shall be accorded

in national legislation in such a manner that everyone shall be able to avail himself of such rights and freedoms in practice.

Article 8

Nothing in the present Declaration shall be construed as restricting or derogating from any right defined in the Universal Declaration of Human Rights

and the International Covenants on Human Rights.

APPENDIX-3

Declaration on the Rights of Persons Belonging to National or Ethnic,
Religious and Linguistic Minorities

Adopted by General Assembly resolution 47/135 of 18 December 1992

The General Assembly,

Reaffirming that one of the basic aims of the United Nations, as proclaimed
in

the Charter, is to promote and encourage respect for human rights and for
fundamental freedoms for all, without distinction as to race, sex, language or
religion,

Reaffirming faith in fundamental human rights, in the dignity and worth of
the

human person, in the equal rights of men and women and of nations large
and

small,

Desiring to promote the realization of the principles contained in the
Charter, the Universal Declaration of Human Rights, the Convention on the
Prevention and Punishment of the Crime of Genocide, the International
Convention on the Elimination of All Forms of Racial Discrimination, the
International Covenant on Civil and Political Rights, the International
Covenant on Economic, Social and Cultural Rights, the Declaration on the
Elimination of All Forms of Intolerance and of Discrimination Based on
Religion or Belief, and the Convention on the Rights of the Child, as well as
other relevant international instruments that have been adopted at the
universal or regional level and those concluded between individual States
Members of the United Nations,

Inspired by the provisions of article 27 of the International Covenant on Civil and Political Rights concerning the rights of persons belonging to ethnic, religious and linguistic minorities,

Considering that the promotion and protection of the rights of persons belonging to national or ethnic, religious and linguistic minorities contribute to the political and social stability of States in which they live,

Emphasizing that the constant promotion and realization of the rights of persons belonging to national or ethnic, religious and linguistic minorities, as an integral part of the development of society as a whole and within a democratic framework based on the rule of law, would contribute to the strengthening of friendship and cooperation among peoples and States,

Considering that the United Nations has an important role to play regarding the protection of minorities,

Bearing in mind the work done so far within the United Nations system, in particular by the Commission on Human Rights, the Subcommission on Prevention

of Discrimination and Protection of Minorities and the bodies established pursuant to the International Covenants on Human Rights and other relevant

international human rights instruments in promoting and protecting the rights

of persons belonging to national or ethnic, religious and linguistic minorities,

Taking into account the important work which is done by intergovernmental and

non-governmental organizations in protecting minorities and in promoting and

protecting the rights of persons belonging to national or ethnic, religious and linguistic minorities,

Recognizing the need to ensure even more effective implementation of international human rights instruments with regard to the rights of persons belonging to national or ethnic, religious and linguistic minorities,

Proclaims this Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities:

Article 1

1. States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity.

2. States shall adopt appropriate legislative and other measures to achieve those ends.

Article 2

1. Persons belonging to national or ethnic, religious and linguistic minorities (hereinafter referred to as persons belonging to minorities) have the right to enjoy their own culture, to profess and practise their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination.

2. Persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic and public life.

3. Persons belonging to minorities have the right to participate effectively

in decisions on the national and, where appropriate, regional level concerning

the minority to which they belong or the regions in which they live, in a manner not incompatible with national legislation.

4. Persons belonging to minorities have the right to establish and maintain their own associations.

5. Persons belonging to minorities have the right to establish and maintain, without any discrimination, free and peaceful contacts with other members of

their group and with persons belonging to other minorities, as well as contacts across frontiers with citizens of other States to whom they are related by national or ethnic, religious or linguistic ties.

Article 3

1. Persons belonging to minorities may exercise their rights, including those set forth in the present Declaration, individually as well as in community with other members of their group, without any discrimination.

2. No disadvantage shall result for any person belonging to a minority as the consequence of the exercise or non-exercise of the rights set forth in the present Declaration.

Article 4

1. States shall take measures where required to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law.

2. States shall take measures to create favourable conditions to enable

persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs, except where specific practices are in violation of national law and contrary to international standards.

3. States should take appropriate measures so that, wherever possible, persons

belonging to minorities may have adequate opportunities to learn their mother

tongue or to have instruction in their mother tongue.

4. States should, where appropriate, take measures in the field of education, in order to encourage knowledge of the history, traditions, language and culture of the minorities existing within their territory. Persons belonging to minorities should have adequate opportunities to gain knowledge of the society as a whole.

5. States should consider appropriate measures so that persons belonging to minorities may participate fully in the economic progress and development in their country.

Article 5

1. National policies and programmes shall be planned and implemented with due

regard for the legitimate interests of persons belonging to minorities.

2. Programmes of cooperation and assistance among States should be planned and

implemented with due regard for the legitimate interests of persons belonging

to minorities.

Article 6

States should cooperate on questions relating to persons belonging to minorities, inter alia, exchanging information and experiences, in order to promote mutual understanding and confidence.

Article 7

States should cooperate in order to promote respect for the rights set forth in the present Declaration.

Article 8

1. Nothing in the present Declaration shall prevent the fulfilment of international obligations of States in relation to persons belonging to minorities. In particular, States shall fulfil in good faith the obligations and commitments they have assumed under international treaties and agreements

to which they are parties.

2. The exercise of the rights set forth in the present Declaration shall not prejudice the enjoyment by all persons of universally recognized human rights

and fundamental freedoms.

3. Measures taken by States to ensure the effective enjoyment of the rights set forth in the present Declaration shall not prima facie be considered contrary to the principle of equality contained in the Universal Declaration of Human Rights.

4. Nothing in the present Declaration may be construed as permitting any activity contrary to the purposes and principles of the United Nations, including sovereign equality, territorial integrity and political independence

of States.

Article 9

The specialized agencies and other organizations of the United Nations system

shall contribute to the full realization of the rights and principles set forth in the present Declaration, within their respective fields of competence.

APPENDIX- 4

AS PASSED BY LOK SABHA

ON 12TH MAY, 1992

Bill No. 88-C of 1992

THE NATIONAL COMMISSION FOR MINORITIES BILL, 1992

A

BILL

to constitute a National Commission for Minorities and to provide for matters connected therewith or incidental thereto.

Be it enacted by Parliament in the Forty-third Year of the Republic of India as follows:--

CHAPTER I

PRELIMINARY

Short title, extent and commencement.

1. (1) This Act may be called the National Commission for Minorities Act, 1992.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Definitions.

(2). In this Act, unless the context otherwise requires,--

(a) "Commission" means the National Commission for Minorities

constituted under section 3;

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(b) "Member" means a Member of the Commission;

(c) "minority", for the purposes of this Act, means a community notified as such by the Central Government ;

(d) "prescribed" by rules made under this Act.

CHAPTER II

THE NATIONAL COMMISSION FOR MINORITIES

Constitution;; of the National Commissions for Minorities.

3. (1) The Central Government shall constitute a body to be known as the National Commission for Minorities to exercise the powers conferred on, and to perform the functions assigned to, it under this Act.

(2) The Commission shall consists of a Chairperson and sis Members to be nominated by the Central Government from amongst persons of eminence, ability and integrity:

Provided that five Members including the Chairperson shall be from amongst the minority communities.

Term of office and conditions of service of Chair-person and Members.

4. (1) The Chairperson and every Member shall hold office for a term of three years form the date he assumes office.

(2) The Chairperson or a Member may, by writing under his hand

addressed to the, Central Government, resign from the office of Chairperson or, as the case may be, of the Member at any time.

(3) The Central Government shall remove a person from the office of Chairperson or a Member referred to in sub-section (2) if that person-

(a) becomes an undischarged insolvent;

(b) is convicted and sentenced to imprisonment for an offence which, in the opinion of the Central Government, involves moral turpitude;

(c) becomes of unsound mind and stand so declared by a competent court;

(d) refuses to act or becomes incapable of acting;

(e) is, without obtaining leave of absence from the Commission, absent from three consecutive meetings of the Commissions; or

(f) has, in the opinion of the Central Government, so abused the position of Chairperson or Member as to render that person's continuance in office detrimental to the interests of minorities or the public interest:

provided that no person shall be removed under this clause until that person has been given a reasonable opportunity of being heard in the matter.

(4) A vacancy caused under sub-section (2) or otherwise shall be filled by fresh nomination.

(5) The salaries and allowances payable to, and the other terms

and conditions of service of, the Chairperson and Members shall be such as may be prescribed.

Officers and other employees of the Commission.

(5). (1) The Central Government shall provide the Commission with a Secretary and such other officers and employees as may be necessary for the efficient performance of the functions of the Commission under this Act.

(2) The salaries and allowances payable to, and the other terms and conditions of service of, the officers and other employees appointed for the purpose of the Commission shall be such as may be prescribed.

Salaries and allowances to be paid out of grants.

6. The salaries and allowances payable to the Chairperson and Members and the administrative expenses, including salaries, allowances and pensions payable to the officers and other employees referred to in section 5, shall be paid out of the grants referred to in sub-section (1) of section 10.

Vacancies, etc., not to invalidate proceedings of the Commission.

7. No act or proceeding of the Commission shall be questioned or shall be invalid merely on the ground of the existence of any vacancy or defect in the constitution of the Commission.

Procedure to be regulated by the Commission.

8. (1) The Commission shall meet as and when necessary at such time and place as the Chairperson may think fit.

- (2) The Commission shall regulate its own procedure.
- (3) All orders and decisions of the Commission shall be authenticated by the Secretary or any other officer of the Commission duly authorised by the Secretary in this behalf.

CHAPTER III

FUNCTIONS OF THE COMMISSION

Functions of the Commission.

9. (1) The Commission shall perform all or any of the following functions, namely:--

(a) evaluate the progress of the development of minorities under the Union and States;

(b) monitor the working of the safeguards provided in the Constitution and in laws enacted by Parliament and the State Legislature;

(c) make recommendations for the effective implementation of safeguards for the protection of the interests of minorities by the Central Government or the State Government;

(d) look into specific complaints regarding deprivation of rights and safeguards or the minorities and take up such matters with the appropriate authorities;

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(e) cause studies to be undertaken into problems arising out of any discrimination against minorities and recommend measures for their

removal;

(f) conduct studies, research and analysis on the issues relating to socio-economic and educational development of minorities;

(g) suggest appropriate measures in respect of any minority to be undertaken by the Central Government or the State Governments;

(h) make periodical or special reports to the Central Government on any matter pertaining to minorities and in particular difficulties confronted by them; and

(i) any other matter which may be referred to it by the Central Government.

(2) The Central Government shall cause the recommendations referred to in clause (c) of sub-section (1) to be laid before each House of Parliament along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the Union and the reasons for the non-acceptance, if any, of any of such recommendations.

(3) Where any recommendation referred to in clause (c) of sub-section (1) or any part thereof with which any State Government is concerned, the Commission shall forward a copy of such recommendation or part to such State Government who shall cause it to be laid before the Legislature of the State along with a memorandum explaining the action taken or proposed to be taken on the recommendation relating to the State and the reasons for the non-acceptance, if any, of any of such recommendation or part .

4. The Commission shall, while performing any of the functions mentioned in sub-clauses (a), (b) and (d) of sub-section (1), have all the powers of a civil court trying a suit and in particular, in respect of the following matters, namely:-

(a) summoning and enforcing the attendance of any person from any part of India and examining him on oath;

(b) requiring the discovery and production of any document;

(c) receiving evidence on affidavits

(d) requisitioning any public record or copy thereof from any court or office

(e) issuing commissions for the examination of witness and documents; and

(f) Any other matter which may be prescribed.

CHAPTER IV

FINANCE, ACCOUNTS AND AUDIT

Grants by the Central Government.

(10) (1) The Central Government shall, after due appropriation made by Parliament by law in this behalf, pay to the Commission by way of grants such sums of money as the Central Government may think fit for being utilised for the purposes of this Act.

(2) The Commission may spend such sums as it thinks fit for performing the functions under this Act, and such sums shall be treated as expenditure payable out of the grants referred to in sub-section

(1).

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Accounts and audit

11 (1) the Commission shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of the Commission shall be audited by the Comptroller and Auditor-General at such intervals as may be specified by him any expenditure incurred in connection with such audit shall be payable by the Commission to the Comptroller and Auditor-General.

(3) The Comptroller and Auditor-General and person appointed by him in connection with the audit of the accounts of the Commission under this Act shall have the same rights and privileges and the authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Commission.

Annual report.

12. The commission shall prepare, in such form and at such time, for each financial year, as may be prescribed, its annual report, giving a full account of its activities during the previous financial

year and forward a copy thereof to the Central Government.

Annual report and audit report to be laid before Parliament.

13. The Central Government shall cause the annual report together with a memorandum of action taken on the recommendations contained therein, in so far as they relate to the Central Government, and the reasons for the non-acceptance, if any, of any of such recommendations and the audit report to be laid as soon as may be after the reports are received, before each House of Parliament .

CHAPTER V

MISCELLANEOUS

Chairperson, Members and staff of the Commission to be public servants.

14. The Chairperson, Members and employees of the Commission shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860.).

Power to make rules.

15. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generally of the foregoing powers, such rules may provide for all or any of the following matters, namely:--

(a) salaries and allowance payable to, and the other terms and

conditions of service of, the Chairperson and Members under sub-section (5) of section 4 and of officers and other employees under sub-section (2) of section 5;

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(b) any other matter under clause (f) of sub-section (4) of section 9;

(c) the form in which the annual statement of accounts shall be maintained under sub-section (1) of section 11;

(d) the form in, and the time at, which the annual report shall be prepared under section 12;

(e) any other matter which is required to be, or may be, prescribed.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both House agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Power to remove difficulties.

16.(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removing the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the date of commencement, of this Act.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

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