

**A STUDY OF CONSTITUTIONAL
SAFEGUARDS TO MINORITIES
IN INDIA**

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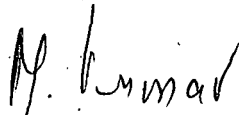
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C E R T I F I C A T E

I have the pleasure to certify that MISS RASHI PRASAD, an M.A. student of the Department of Political Science, University of Delhi, has pursued her research work and prepared the present dissertation entitled: "A STUDY OF CONSTITUTIONAL SAFEGUARDS TO MINORITIES IN INDIA" under my supervision and guidance. The present dissertation is the result of her own research and to the best of my knowledge, no part of it has earlier comprised any other monograph, dissertation or book. This is being submitted to the University of Delhi for the degree of Master of Arts in Political Science in partial fulfilment of the requirements for the said degree.



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P R E F A C E

The problem of minorities is a universal phenomenon. In any society where there exist non-dominant groups divided from the majority of the population by certain subjective or objective factors of distinction, a "minority" problem comes into being.

Although the occurrence of minorities is a world wide phenomenon but the nature of the problem differs. In a democratic set-up minorities should not be suppressed.

Indian's till today are alienated from one another on various grounds - race, caste, descent, religion, culture, language and script. The 'majority-minority syndrome' as a 'legacy of the Raj' still continues to distort our social and political life. The Shah Bano case and controversy over Ram-Janm Bhumi issue have focussed attention on minority rights.

In a democratic set-up minorities are to be given due expression of their freedom of action without at the same time disturbing the fabric of national unity. Unity in diversity, has been attempted by our Constitution, but the attempt has not been very successful.

The present study is aimed at understanding in full implication of the Constitutional protection to minorities.

Besides, Article 29 and 30, certain other provisions which have a direct or indirect bearing upon minority safeguards have been discussed. The institutional protection of Minority Commission and Commission for Linguistic minorities needs special mention as the adoptive character of the Constitution is reflected by the formation of these bodies.

The present dissertation is an attempt to analyse the historical roots of the problem, its constitutional dimension and their bearing on the future.

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CHAPTER - I

DETERMINATION OF A MINORITY

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DETERMINATION OF A MINORITY

The issue of safeguards to minorities or its ^o corollary^a rights to minorities has increasingly come into focus in the context of both national and international affairs. This is a welcome development in as much as concern for the dignity interest and right of human groups that find themselves in a minority on the basis of race language and religion, reflects an advance in human consciousness without which civilization cannot march ahead. (1)

The existence of minority community is a problem before almost all the nations. Since the rise of democracy in the late eighteenth century the problem of minorities has become a serious political question and has played a great role in national and international affairs. In international plane, the concept of minority and the problem of minorities is an offshoot of the rise of nation state in eighteenth and nineteenth centuries. Old states came to have new frontiers and some new states emerged with one predominant nation groups and one or more smaller groups having different ^a ethnicity, language and religion than that of national group. They began to be described as minorities. Wide acceptance of the concept of human rights as distinct from national rights, gave a new importance to minorities and minority

rights. Some minority groups with distinct pockets of influence began to assert their rights even aggressively, threatening the peace, unity and security of different nations. The League of Nations and thereafter the U.N.O., was therefore forced to take notice of the minority problems and lay down guidances for dealing with it.

9 | Professor Humayun Kabir has very aptly stated "groups of people who were united by certain common features and felt themselves as one common unit. ^f That, I take it, is the essence of a minority; that a group, on some basis or other has sense of akinness, a sense of continuity or unity, and further that this sense of community or unity distinguishes it from the majority of the inhabitants of the area where this minority functions. Unless these two elements are there, there would be no consciousness of minorities as such. Problem of minorities as such is a problem of the modern age, essentially a problem of democracy." (2)

The term "minority" is very intricate and complex and its precise definition is very difficult. Political Scientists and Sociologists have presented their own views. Grammatically speaking the term 'minority' is a compound of the latin word 'minor' and the suffix 'ity', meaning inter'alia, "the smaller in number of the two aggregates that constitute a whole. The Treaty of Versailles and the League of Nations never gave an exact definition of minority. The

term had its recognition first time at the Minority Treaty and Declaration made under the auspices of the League of Nations after World War I.

Encyclopaedia Britannica defines minorities as "groups held together by ties of common descent, language or religious faith and feeling themselves different in these respects from the majority of the inhabitants of a given political entity." (3) However, the above definition is only subjective in character and does not include the objective factors which are more evident and relevant. (4) Henry K. Junckerstorff has defined the term in a purely statistical sense without referring to factors serving as the basis for distinguishing a minority. Thus, while considering 'minority' a numerically smaller group as against the majority in a defined area, the thrust is more on number than on common characteristics. (5) Max H. Boehm remarked that the term signifies a group with an "individual national and cultural character living within a state which is dominated by another nationality." (6) The report of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities furnishes the following definition. "The term minority includes only those non-dominant groups in a population which possess and wish to preserve stable ethnic, religious or linguistic

traditions or characteristics markedly different from those of the rest of the population. (7)

The above definition includes the religious, linguistic or cultural minorities who are minorities by will but it fails to include within its purview the minorities based on race, caste etc. For example, Scheduled Caste and Scheduled Tribe in India who wish to be assimilated with the majority.

There are some sociologists who define minority in terms of relationship between the dominant group and the minority. To them, it is much more important to understand the nature and genesis of the relationship between dominant group and the minority than it is known the marks by the possession of which people are identified as members of either. Louis Wirth regards minority as a group which is subjected to discrimination and unequal treatment and which therefore regards itself as an object of collective discrimination. The above definition thus places emphasis upon the numerical size and the differential treatment which is the result of some peculiar relationship between the dominant and the non-dominant group, and that the former develops a consciousness of its inferior status. In another, and quite different category come those sociologist who

refuse to accept any purely numerical definition and instead give importance only to the factors of discrimination and inferior treatment. They regard minority only as a name suitable to designate individual corresponding to certain criteria without attaching any importance to its numerical size. Arnold M. Rose in Encyclopaedia of Social Science X 365 (1930) define minority as a "group of people differentiated from others in the same society by race, nationality, religion or language - who both think of themselves as a differential group and are thought by others as a differentiated group with negative connotation. (8) The important elements in this definition according to him are not the relative number in and out of the group but a set of attitudes - those of group identification from within the group and those of prejudice from without - and a set of behaviour - those of self-segregation from within the group and those of discrimination and exclusion from without. Relative numbers in and out of the group are not definationaly important and like everything else that is social, minorities must be defined as minority groups, which entails a set of attitude and behaviours.

In this sense 'minority' and 'majority' become primarily political and not merely statistical concepts.

Thus the definitions which lay emphasis upon certain subjective factors such as 'feeling' or 'consciousness' provide a test which is too vague and uncertain and more psychological in nature than real. Every situation may not necessarily involve the assumption that a group in order to deserve the title of 'minority' must be distinguishable from the majority by the presence of a 'feeling' or 'consciousness' of its being different from the majority. A group distinguishable from others by the possession of certain objective characteristic such as language may not have a feeling or consciousness of its distinct status and may yet be counted as a minority. Moreover ascertainment of any subjective factor would itself beg to existence of some objective characteristic which serves as the basis of distinction and separation, and may in turn, have served as the source of 'feeling' or 'consciousness'. Similarly the writers who cite certain objective characteristic commonly possessed by the members constituting minority as the exclusive foundations of minority status fail to recognise that objective factors alone may not always be the determining mark of minority. For a group not conscious of its separate group identity, may soon be assimilated with the majority and thus may not be entitled to be regarded as a

minority. Human Rights Commission, in its definition fails to include Negroes as they are minorities by force and not will.

The idea of according inferior treatment to minorities goes against the spirit of democracy whose hallmark is equality. The Universal Declaration of Human Rights asserts: "All are equal before the law and are entitled without any discrimination to equal protection of the law."(9)

Minorities in India:

The difficulty of giving a precise definition of a 'minority' was also felt by the members of the Constituent Assembly of India. The Constitution nowhere defines the term 'minority', nor does it lay down sufficient indicia to the test for determination of minorities. Confronted perhaps with the fact that the concept of minority, like its problem, was intricate the framers made no efforts to bring it within the confines of formulation. Even in the face of doubts being expressed over the advisability of leaving vague justiciable right to undefined minorities the members of the Constituent Assembly made no attempt to define the term. (10) Commenting on the use of term "minorities" in the provision Sardar Vallabhbhai Patel, pointed out that the term

had not been defined anywhere in the Constitution and that the existing position was so vague that even the declaration of a particular language as the national language could be said to prejudice the interest of the minorities whose mother tongue happened to be different.

(11) A comprehensive definition of "minorities" was difficult to frame. They might be based on religion community or language. Thus while Article 23 of Draft Constitution,, corresponding to present Article 29 and 30 was being debated no definition of the term minority was attempted. It was presumably left to the wisdom of courts to supply the omission.

The initial courtroom attempt was made in Kerala Education Bill where Supreme Court through S.R.Das Chief Justice suggested the technique of arithmetical tabulation and held that a minority community means a community which is numerically less than 50 per cent.(12) However, the Court was faced with the difficulty of specifying the geographical unit with reference to which the population of a minority was to be calculated and weighted against majority. The Government of Kerala contended that the minority must numerically be a minority in the particular region in which educational institution was situated in order to claim the fundamental rights of minorities. The Court finally declared 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. It follows, therefore that if the question arises in connection with an Act of the Union Parliament, the term "minority" must be determined by reference to the entire population of the Republic.

The term "minority" is a relative term in India. A particular minority community may be a majority in a particular place but in a minority with reference to the total population. Moreover, determination of linguistic minority is a difficult task because persons of all religion at a particular region may constitute a linguistic minority for total population. Hindus may be placed in minority groups on the basis of different modes of worship, adoption of different and diverse rituals and speaking of different dialects. In India, it is primarily a 'political' and not merely numerical term.

Minorities can be based on linguistics religious cultural or racial basis. In India we have all these types of minorities, for, we are, as described by Tagore, God's laboratory for the world. We have all the different ethnic groups, racial types, languages, a different pattern of cultural development in different areas. (13) There are two specific articles, Articles 29 and 30, that exclusively deal with the rights of minorities. Article 29 states that "Any

section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own, shall have the right to conserve the same" and the second acknowledges the right of minorities 'based on religion or language, to establish and administer educational institutions of their choice." So, according to the above cited articles, the criteria can be language religion or culture. There is a close affinity between Article 29 and 30. A minority community can best conserve its language, script or culture through educational institutions. Thus in the Indian Constitution, there are three different categories of minorities based on language, religion and culture.

The term 'culture' is very difficult to define. Culture as commonly understood refers to the material, social, religious and artistic achievements of human groups, including traditions, customs and behaviour pattern, all of which are unified by common beliefs and values. Values provide the essential part of a culture and give it its distinctive quality and tone. (14) India has assimilated cultural element from different sources. The concept of an All-India culture is controversial. The Hindu communalists view Indian culture as Hindu culture while the minorities prefer to refer India as consisting of composite culture. Religion has had a great influence on culture. So to be

more precise, Indian Constitution recognizes only two types of minorities, based on language and religion and also those based on both in combination. (15) An eminent sociologist, Dr. G.S.Ghurye, also confirms this view. "For the Constitution of India, minorities are non-existent and they being based only on language or religion and by implication of both in combination." (16)

The tribal community of India form an isolated group and are a cultural and linguistic minority. Some tribals lack a distinct script, and thereby form a linguistic minority.

Linguistic Minorities:

Language is an important means of communication. The increase in political and economic participation during the post-independence era has witnessed an increase in political and economic participation. There has been an awakening about one's own culture and language. This has led to problems as within a political community, emotionally as a rallying point of group consciousness, language serves as a very frequent badge or symbol.

The subcontinent of India has always known a number of languages and dialects as the figures in Table I reflects. The principal languages used in various parts of the country

have been classified into two broad categories - the Sanskrit based language as Hindi, Bengali, Gujarati and Marathi and Dravidian languages of Tamil, Telugu, Kannada and Malayalam. An important feature of contemporary Indian linguistic scene is that a linguistic group does not necessarily correspond to a religious group. For example in Bengal, Bengali is the language of Hindus, the Muslim, and Christians alike. The Constitution of India recognizes 18 Indian languages including Manipuri, Konkani and Nepali which were recently given recognition in August 1992. The linguistic reorganization of States in 1956 tried to solve the linguistic problem but it was not very successful in its attempt as there have been subsequent divisions in Bombay and Punjab. The issue of linguistic minority is a sensitive issue and administrators have to solve this problem without prejudice to the numerous regional language each of which has a substantial contribution to make.

Religious Minorities:

Religious minorities have played a very important role in Indian politics. Religion was the basis on which India was divided and Pakistan emerged. A pioneer scholar on the problem of minorities in India, Dr. D.N.Sen is also of the view that in no other matter are they so sensitive as in regard to question relating to their faith. (16) The

constitutional acceptance of minority status to organised religious communities has driven a wedge into Indian politics. In recent years, the whole concept of providing group rights is being questioned and majority communalism is gathering force.

In India Hinduism is the religion of the majority and Muslims, Christian, Sikhs, Parsees are major religious minorities. Their percentage in population is given in Table II. According to 1981 census the religious minority communities constitute 16.46% of the population of India excluding Assam. The position is

Muslims	11.35%
Christians	2.43%
Sikhs	1.96%
Buddhists	0.71%
Parsees	0.01%

Despite the safeguards provided in the Constitution a feeling of distrust persist among the religious communities. The fear of majority lingers on. In the opinion of J.A.Lapence: "The claims of religious minorities may be grouped under three categories: freedom of conscience, freedom of worship, and the absence of religious discrimination. (17)

Backward Classes:

Backward classes are an important segment of the Indian society. The term "Backward classes" is a comprehensive term and consists of three broad divisions each having its own distinctive background and particular problems. These divisions are Scheduled Castes, the Scheduled Tribes and other Backward Classes. The issue whether these depressed sections are to be treated as a 'minority' or not, was widely discussed in the Constituent Assembly and to this day, scholars are divided on the issue. As Dr. Wadhwa remarked "it is a proposition with a big question mark."⁽¹⁸⁾

The British rulers in pursuance of their 'divide and rule' policy in the First Round Table Conference held in London in 1930 gave them recognition, by awarding separate representation along with other minorities in India. Mahatma Gandhi in 1932 undertook a fast unto death ~~unto~~ ~~death~~ against the Communal Award of 1932 under which these classes were granted separate electorate by the English Government. However, Dr. Ambedkar has categorically contended that the backward classes are a minority. He says "The Scheduled Castes are really a religious minority. The Hindu religion by its dogma of untouchability has separated the scheduled castes from the main body of the Hindus in a manner which makes the separation far more real and far wider than the separation which exists either

between Hindus and Muslims, or Hindus and Sikhs or Hindus and Christians. (19)

S.Nagappa and Muniswami Pillai in the Constituent Assembly pleaded the case of scheduled castes for their recognition as minorities. S.Nagappa called them a "political minority" (20) whereas Muniswami Pillai argued "The untouchables who form one-sixth of the population of this sub-continent are a minority community because their social, political and educational advancement is in a very low state. (21)

K.M. Munshi and Seth Govind Das did not agree in the Constituent Assembly that backward classes are a minority. K.M.Munshi remarked, "The Harijans generally known as the Scheduled Castes are neither a racial minority nor a linguistic minority... The Harijans are part and parcel of the Hindu community. (22) Seth Govind Das observed "So far as minorities are concerned there are many minorities which in fact cannot be called as such. For instance take the case of Harijans they are in fact Hindus; they are not a minority like the Muslims or the Christians." (23)

So the classification of Backward classes as 'minorities' depends on one's particular perspective. Dr. Arun Kumar has remarked "the controversy leads us to conclude the backward classes are unlike religious or


linguistic minorities for the reasons that the character of religious and linguistic minority does not change whereas the backward classes are not to remain in perpetuity. The minorities want to maintain their separate identity whereas the backward classes have been kept out of the majority by force." (24) The problems of minorities and the backward classes differ much in nature and scope. Dr. K.K.Wadhwa, while agreeing to the above statement however, has argued that the Backward classes in India are a minority. He defined the ~~term~~ 'minority' as "Any Section of the citizens being small in number in a definite area in respect of religion, language or any other ground, seeking equal or preferential treatment either to maintain its identity or to be assimilated with the majority, is a minority." (25)

Minority is a reference to quantity whereas backward class is a reference to quality. Backward classes are a depressed segment of Hindu community and their struggle for special treatment and concession^{are} in order to come on par with other privileged classes. Separate provisions have been provided for the Backward classes in the Indian Constitution. The guarantee of equality guaranteed by Article 14 coupled with the other specific articles guarantees a ~~forward~~^{favoured} treatment. The term 'minority' has been used in the Constitution only under Article 29 and 30. They explicitly guarantee the protection of linguistic and religious minorities.

The present dissertation is based on a study of 'Linguistic' and "Religious' minorities which are specifically recognised and named as such in Clause (1) of Article 30 of the Constitution.

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C H A P T E R . - I I

HISTORICAL BACKGROUND (ROLE OF BRITISH GOVERNMENT)

CHAPTER - II

HISTORICAL BACKGROUND (ROLE OF BRITISH GOVERNMENT)

Pluralism in one political community exists throughout the world of our day. Thus, most countries have within their boundaries religious and linguistic minorities which have to be accommodated within the scheme of things, political, social and economic.

India has had minorities within her territories for many centuries. It is a confederation of minorities where the Hindus, Buddhists, Jains, Muslims, Christians, Sikhs and Parsees have been there throughout history. The concept of linguistic minority is a fairly recent phenomenon when compared to religious minorities. India is a land of linguistic minority groups. No language group has absolute majority in this country. The growth of language, group consciousness, intergroup relations owes its genesis to the British period. Both the religious and linguistic minorities provide a pluralistic orientation to the policies of the country.

However ^{pl} pluralism has never presented the spectacle of religious or racial warfare that has marked the history of Europe. Whenever religious differences are present, the

different religious groups tend to develop minority-dominant relationships and India is no exception.(1) The Indian religious map is a mosaic because of the influx of population professing divergent faiths who came to India and were absorbed in the mainstream in the course of generations. During the medieval period the Jains and the Buddhists formed a minority group in the context of their religious beliefs. The Buddhist minority was almost completely wiped out of India though Buddhism survived and developed outside the country. In later years the Muslim minority was a ruling minority and that too a microscopic one; hence the problem of minority in the real sense of the term was not there. Significantly, when we compare the India of thirteenth century with the India of seventeenth century, a change in Muslim attitude is seen. Muslims who entered India as conquerors were ultimately conquered by the creed and culture of the conquered people. Though they retained the basic principals of their religion and culture, the Muslims did mingle and merge with the rest of the population. They contributed to make the culture of India richer in many ways, which gave rise to composite Indian culture. The two different but forceful currents - Islamic and Hindu gave birth to a synthetic society and culture which may be termed as Indian. There was an absence of communal and racial feelings.

Zoorastians or Parsees came as persecuted groups and have since then flourished. Muslims and Christian have had a far greater impact because of their affiliation with political power. In the words of D.E.Smith "Like the Muslims the Christians in India bear a stigma imprinted by history. It is the foreign origin of both Islam and Christianity, their past associations with foreign rulers and their present international ties which lead some Hindus to doubt the "Indianness" of those who profess these faiths."

(2) The Christians are mostly located in South India where missionary work first started.

The Sikhs form a part of the Hindus and desire respect from their religious and political history. The Sikh religion was a reaction to the atrocities of the Muslim rulers.

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The advent of Europeans into India and emergence of British as sovereign power in the country opened a new chapter. It marked the beginning of a modern age and a new era in social political, administrative, cultural and educational fields. A handful of Britisher ruled the country and in order to rule effectively they created class caste and racial consciouenss in India. It were they who gave currency to the words like majority and minority and their problems. The main communities in India being Hindus



Sikhs and Muslims, the aim of British rulers was to divide them. This shift from minority consciousness to minority communalism was the attribution of British rule in India. Knowing well that divisions always weaken a nation and render it easier to hold in subjection Britishers sowed the seeds of hatred fear and distrust in the depth of the hearts of the people of India. Religion was used politically to split through separate electorate, juristically through separate family laws and culturally by fomenting caste quarrels and linguistic disorders. Dr. K.K.Wadhwa has stated (3)... "as a result of the British policy in India vis-a-vis the minorities the latter became community conscious. And it would not be an exaggeration to comment that the very term 'minorities' in India was invented by the British rulers themselves."

'Divide and Rule' has been the maxim followed by all conquerer and rulers of foreign people, from those of ancient Babylonia Assyria, Persia and Egypt down to Napoleon in Europe. The British imperialists were no exception. They realized that in order to strengthen their position and maintain economic interests it is inevitable for them to form an alliance with those section of the people which could never form a majority and so threaten British rule in India. Hindus could develop nationalist feelings and

challenge the imper^{ia}listic rule. So British administration began to cultivate the strongest single minority viz. the Muslims. Syed S. Pirzada has stated "Clive to Canning, Curzon to Cripps, Minto to Mountbatten, Simla Deputation to Simla Conference, Partition of Bengal to Partition of India Fourteen points to Fourteenth August are the headlines of the march of events from Plassey to Pakistan." (4)

The policy of balance and counterpoise was deliberately furthered in the Indian army. Before 1857 the Indian Army had cosmopolitan character i.e. in it Hindus, Muslims, Sikhs etc. all were mixed up. Its common efforts in the great revolt of 1857 opened the eyes of the British rulers and thus there was the need to break up this solidarity. Policy of balance and counterpoise was deliberately furthered in the Indian army. Various groups were so arranged so as to prevent any sentiment of national unity growing up amongst them and tribal and communal loyalties were encouraged. "Centralization was, therefore coupled with policies working to a definite end; the preventing of a popular will of a United Indian gravitating towards an alternative centre of authority that would seek to replace the existing government." (5)

Another grave menace for the British rule was the growth of nationalism ushered in by the British rule. English education which had spread first among the Hindus,

brought with it the ideas of freedom and democracy. To counteract this developing nationalism, a rift in the society was necessary. The responsibility to achieve the object was given to Professor Theodore Beck. He was appointed the Principal of Anglo-Oriental College of Muslims at Aligarh. Professor Beck was successful in not only creating a gulf between the Hindus and Muslims but also widening it upto such an extent that it could not be bridged till today." (6) Summarising, Professor R. Coupland opined (with reference to the the appointment of Professor Beck) "It marked the turning of the tide, the end of the decline and the beginning of the recovery." (7) The work of Professor Beck was estimated by a British ruler Sir John Strachey, as that of an Englishman engaged in empire-building activities in a far-off land. (8) Professor Beck declared that the Anglo-Muslim unity was a feasible proposition, Hindu-Muslim unity was impossible. (9)

Partition of Bengal was another instance of creating a gulf between the two communities. The ferment created by the lives and activities of men like Raja Ram Mohan Roy and Ram Krishna Paramhansa marks the dawn of national awakening in Bengal. In 1904 Lord Curzon decided to partition Bengal into Eastern and Western zones having Muslim and Hindu majority population respectively. He held the view that India could only be subjugated on the basis of racial animosity... "that was the reason for the Partition of

Bengal... to set up in Dacca a rival Mohamedan centre to the Hindu Centre of Calcutta." (10) Apparently the move was for administrative convenience but in reality it was a clever move to drive a wedge between the two communities. Ashok Mehta and Achyuta Patwardhan remark "If a Muslim Province was to be created, why was it not created in the Punjab and North-West, why vivisect a Province united by ties of history, language, custom and traditions."

A manifestation of the minority consciousness was the formation of Muslim League in 1906. It was a landmark event in the political evolution of the Indian Muslims. The same year a deputation, headed by H.H. the Aga Khan called upon the Viceroy in 1906 demanding separate electorate. (12) Thereafter the Government of India provided separate representation for Muslim in elected bodies including legislative bodies. In legislative bodies Muslims were granted 25% seats of the total strength of elected members. Parties for election were described as Muslims and Non-Muslims. The word Hindu was not used in any legislation. In respect of Municipal boards and district boards, even where Muslim population was half percent of total population, ten percent seats were reserved for them. The British government maintained that it did not grant any privilege on the grounds of minority status but on ground of being faithful supporter of British administration.(13)

X

India owes the inception of communal system seemingly to Lord Minto (Viceroy from 1905 - 1910) or perhaps to Lord Minto and Morley together in connection with the so-called Morley-Minto reforms of 1909. According to Sir Surendra Nath Banerjee, "India owes to lord Minto the system of communal representation for the legislative councils, from the meshes of which it will take her many long years to emerge...."(14)

The Morley-Minto Reforms of 1909 introduced the system of separate electorates and representation for the Indian Muslims. The British government introduced the communal principle in the constitutional machinery of the Indian state. The principle was, in subsequent period, extended and applied in the case of such communities as Sikhs, the depressed classes and other minority groups in the country. Lord Minto declared that the people of India ought to be represented in their municipalities, their legislative assemblies, not according to their number but according to their beliefs and traditions. As a result during the British rule, within the framework of Indian nationalist movement, there developed a political consciousness among minorities like Muslims, Depressed classes and Sikhs. K.B.Krishna remarks: "The British created artificially several classes. The moment these classes came into existence, the struggle between them began. The British

gave an impetus and a legal acceleration to these struggles... Both Minto and Morley openly used this idea of counterpoise in their letters and circulars." (15)

The main theoretical idea of this policy is "the principle of communities classes and interests. It is solely concerned with the balance of interests, classes and certain religious adherents as each interest and class clamoured for power. The real object of communal electorates was to set up a Muslim professional as a counterpoise against the Hindu professional class after creating landed, merchant, and commercial limited electorates which returned their respective classes. Herein lies the theory of the origin of communal representation. (16)

In the Government of India Act, 1919 not only the seats in legislature were reserved for Muslims but a new policy of winning over Scheduled Castes and to divide Hindus was evolved. In 1909 the electorate was split into four communal divisions, in 1919 it was fragmented into 10 parts and in 1935 the number was raised to 17. Under the Government of India Act 1935, seats in legislature were not only reserved for the Muslims but also for Anglo Indians, Europeans, Indian Christian, representatives of trade and commerce and representatives of labour. All these reservations were not done in the interest of any 'minority' but to secure help and support for British rule in India.

The British also tried to create a gulf between Brahmins and non-Brahmins, between touchables and untouchables, Hindus and Muslims, Sikhs and Muslims. They tried to drive a wedge between Keshdari Sikhs and a general body of the Hindus in a planned and systematic way. They tried to forge Anglo-Sikh alliance in Punjab on the lines of Anglo-Muslim alliance. But because of close ties of blood, culture and religion between Keshdari Sikhs and Hindus, this task was not easy. So, they had to move slowly and cautiously. The first step was separate enumeration of Keshdari Sikhs in census of 1911, and second was the extension of separate electorate to Sikhs in Government of India Act 1919. The Government accepted the Keshdari Sikhs as third party besides Hindus and Muslims for any political and constitutional settlement. As a result of communal electorates the minorities became unduly and unhealthily communally conscious and a tendency to emphasize differences and demand undemocratic special privileges at the expense of other communities grew, and, with time, went on increasing. This ultimately led to Balkanization of India and a weakening of the resistance of people to British power. Their policy in India was the amalgam of coercion, counterpoise, concession and strengthening of paramountcy. According to Radhakrishnan "separate electorates intensified communal consciousness and created such an atmosphere of mistrust and hostility as to arouse demand for Pakistan. (17)

Thus, there is enough evidence to conclude that the minority problem, as it confronts us today is largely a creation of the British rule. Our nationalist leaders were aware of this problem and put forth a number of proposals to solve this problem. The Nehru Report and Sapru Report are prominent work done by eminent nationalist leaders. Nehru Report was formulated by a committee headed by Motilal Nehru, in the year 1928. In this committee, full and adequate representation was given to all religious communities and groups of India. It recommended a list of fundamental rights along with safeguards for minorities, which included the right to freedom of conscience and free profession and practice of religion, elementary education for members of minorities, reservations for seats for Muslims where they were in minority and for non-Muslims in NWFP. Karachi Resolution adopted by Congress in 1931 was another major step in the development of constitutional right for Indian people. The Sapru Report was submitted by a committee headed by Sir Tej Bahadur Sapru in 1944. The voluminous report was published in 1945, with a very comprehensive as well as objective account of the problem of minorities in India. It condemned the idea of partition of country into two or more sovereign states. The report incorporated a number of fundamental rights including liberties of the individual, equality of rights of

citizenship of all nationals irrespective of birth, religion, colour, caste or creed; full religious toleration, including non-interference in religious beliefs practices and institutions; protection to language and culture of all communities. The most important safeguard given to the minorities in a democracy is considered in the scheme of representation. Ten percent of total seats were to be allotted to some special interests and the rest to be distributed among Hindus, Scheduled Castes, Muslims, Sikhs, Indian Christians, Anglo Indians, and other communities. The Committee also made a recommendation, a definite improvement upon any earlier recommendations, for a composite executive at the Centre representing Hindus, Scheduled Castes, Muslims, Sikhs, Indian Christians and Anglo-Indians, their representation being as far as possible, a reflection of their strength in legislature. The committee also recommended for Muslim representation in the Central legislative from British India to be at par with the representation given to Hindus, provided the Muslims agreed to the substitution throughout of joint electorates with reservation of seats for separate communal electorates.

Minority Problem and Evolution of Constituent Assembly:

In the last decade before Independence the communal question was inseparably linked to the proposals for the creation of a constitution making body which in turn

depended upon a decision on the question^o whether India was going to be sole successor of the British government or demand for Pakistan was to be conceded. During this decade, as the prospects of withdrawal^a from Indian scene grew, the differences between Congress and League became more pronounced and uncompromising and problem of minorities assumed formidable proportions. (18) The Congress took its stand on independence, almost immediate and unconditional, the League on self-determination. World War II made the Government bent a little towards the nationalist demands. The August offer of 1940 declared that the framing of new constitution would be the responsibility of Indians themselves and that the body framing the constitution would be represented by different communities of India. This was rejected by both Congress and the Muslim League for various reasons. The Cripps proposal of March 1942 which granted the right of secession^x to provinces and Indian states, was another step to protect the interests of religious and racial minorities. The Congress rejected it as it encouraged partition politics. The Working Committee of the Indian National Congress in a resolution stated: "The acceptance before hand of novel principle of non-accession for a province is also a severe blow to the conception of Indian unity." (19) Muslim League rejected it on the ground that it failed to incorporate a provision for separate Constituent Assembly.

After the failure of Cripps proposals, the Cabinet Mission which came to India in the spring of 1946 issued a statement known as the Statement of May 16, which contained its recommendation on three matters - the demand for partition, the basic form of the constitution, and the machinery for constitution making. It suggested that there should be an advisory committee to discuss the rights of minorities. It provided for the inclusion of a Bill of rights, as a partial answer to the question of minority rights. The Constituent Assembly was made responsible for the framing of the constitution, however, its acceptance by the government would be conditional on adequate protection to the minorities.

Thus, the minority issue was one which delayed independence for a couple of years. The reasons for the origin of the problems are wide and many and the ^{Imperialistic} ~~Jingoistic~~ government was responsible for it. However many historians differ on this issue and ~~opines~~ ^{opine} that the British could not have divided and ruled India unless the ruled were ready to be divided (20).

The minority problem was a major thorn in the Constituent Assembly. After much deliberation which are discussed in the next chapter minority cultural rights were accepted and guaranteed by the Constitution.

Linguistic Minorities:

The issue of linguistic minority does not have a long and chequered history when compared to religious minorities.

The question of linguistic minority arises when the language of the majority is used in administration, education and adjudication. During the British rule it arose when by the Act no. XXIX of 1837 the Governor General in Council empowered the Provincial Government to substitute the vernacular language of the country for the Persian in legal proceedings and in proceeding relating to revenue. (21) This step was appreciated by majority community but resented by minority community. Another dimension of the problem was that the states were heterogeneous. The 1891 Census of India revealed that the administrative boundary of the Provinces in most cases did not correspond to the linguistic area of India. The Provinces were organised on exigencies of the situation satisfying to military political or administrative needs. As a result each province contained a number of provinces. The demand for homogeneity of language has been prime force in reshaping the political map of India. The Partition of Bengal was vehemently opposed on this ground. In 1911, the British Government bowed to the determined movement of the Bengalees and declared the annulment of partition. On the same ground, the Assamese opposed the annexation of Chittagong Division with Assam. (22) In Bihar, a newspaper named Muregh-i-Suliman raised the slogan "Bihar for Bihars" (23) The Pioneer categorically stated "Bihar has always been Bihar and Bengal Bengal" (24)

FOOTNOTES:

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CHAPTER - III

CONSTITUENT ASSEMBLY AND THE MINORITY PROBLEM

C H A P T E R - III

CONSTITUENT ASSEMBLY AND THE MINORITY PROBLEM

The Constituent Assembly of India was convened on December 9 1946 on the recommendation of the British Cabinet Mission.

The Cabinet Mission was directly influenced by the Coupland Plan and, on the basis of the recommendations of the latter the Cabinet Mission concluded that the whole constitutional problem of India boiled down to the communal question. (1) Reginald Coupland had come to India in 1941 and had given some proposals on the Constitution of India. He emphasized the inadequacy of "numerical democracy" as the Muslims were against it. (2) His chief emphasis was on the rule of consensus in Constitution-making. A small constituent assembly, where all communal questions could be directly sorted out, was more desirable.

The Cabinet Mission felt the need for an Indo-British treaty as was anticipated by Cripps Mission Plan. The treaty would protect the "racial and religious minorities of India". The Cabinet Mission also felt the need for a treaty "to provide for certain matters arising out of the transfer of power." (3) The British Government's view was that it would deal with minority right.

The Cabinet Mission was against direct elections for the formation of a Constituent Assembly. It recommended the election of a Constituent Assembly by the provincial legislative Assembly which had themselves been elected under the Government of India Act of 1935. The problem caused by the heterogeneous nature of the Indian society was reflected while constituting the Assembly. The Cabinet Mission had set in detail the composition of the Assembly to make it as broad based as possible. It took an important decision when, for these purposes, it recognized only three communities in India - 'General', Muslims and Sikhs, the 'General' community including all those who were not Muslims or Sikhs. Parsees, Anglo-Indians Indian Christians, members of Scheduled Caste and Scheduled Tribe and even women were accommodated in the General category. The majority principle in voting would adversely affect the representation of the smaller communities as they would lose the weightage they have in provincial legislature. Therefore, in paragraph 20 of the Plan, there was the provision for the appointment of an Advisory Committee of the Constituent Assembly on the "rights of citizens, minorities and tribal and excluded areas", containing "full representation of the interests affected", in order "to report to the Union Constituent Assembly upon the list of fundamental rights the clauses for the protection of

minorities and a scheme for the administration of tribal and excluded areas and to advise whether these rights should be incorporated in the Provincial group or Union Constitution." (14).

Throughout the period for which the Assembly met, the problem of safeguards for minorities remained an important and controversial issue and continued to engage the attention of the members till the Assembly had completed the draft of the entire Constitution in November 1949. A number of meetings were held at various levels, i.e. from the assembly of the general house to a number of sub-committee proceedings.

As far as the minority question was concerned the convening of the Assembly had brought the Congress in a very delicate position. It had to secure the consensus of the minorities while still satisfying the majority. National Unity was its basic premise. To secure agreement of the minority if it bent over much towards conceding minority interest the consciousness of separate identity would be encouraged and, on the other hand, it could not afford to be called callous on the issue of minorities. Moreover, to remain unconceding would be giving credence to the Muslim League criticism of Congress being a 'Hindu' Party. The British rulers had always claimed that they had special duties towards minorities. "The Congress was thus on trial,

and had of necessity to demonstrate its good intentions." (5) The Cabinet Mission Plan had suggested a Constituent Assembly of 389 members for undivided India. 296 members were to be elected from the Provinces and 93 from the Indian States. The division of 296 seats among the representatives of British India (Provinces) of the various communities and interests were as follows: (6)

Hindus	163;	Muslims	80;
Anglo Indian	3;	Indian Christians	6;
Parsees	3;	Sikhs	4;
Scheduled Caste	3;	Backward tribes	6

The above break-up clearly reflects the wide spectrum of representation. Every community in India, big or small, was given representation.

But the above proposal did not find favour from all quarters. The Muslim League objected to the dominance of Congress in the House and contended that "it would rest entirely with the majority to take such decision as they may think proper or suit them." (7) Sikhs were also not totally agreeable to this. A resolution of the Sikh Panthic Conference was passed on 10 June 1946, it declared:

"The Cabinet Mission's proposals were wholly unacceptable to Sikhs." (8) The Congress appealed to the

Sikhs to reconsider their decision and assured them of "support in removing their legitimate grievances and in securing adequate safeguards for the protection of their just interests in Punjab." (9) The Sikhs later on decided to join the Constituent Assembly. The attitude of the British Government was also not encouraging. On the one hand they pleaded: "We cannot allow a minority to place a veto on the advance of the majority." On the other hand, when the Muslim League decided to boycott the proceedings of Constituent Assembly, the British Government declared "Should the Constitution come to be framed by a Constituent Assembly in which a large section of Indian population had not been represented, His Majesty's Government could not, of course, contemplate ... forcing such a Constitution upon any unwilling parts of the country." (10) In a way the Government maintained a hostile attitude.

In spite of the above cited problems, the first meeting of Constituent Assembly took place on 9 December, 1946, as planned. The Muslim League boycotted it. Almost all the other minorities irrespective of the members' political affiliation joined it. After the acceptance of the Partition Plan of 3rd June 1947, the structure of the Constituent Assembly was reorganised. The total strength of the House was reduced to 324, of which 235 members represented the Provinces and 89 the Indian State. Whatever might have been the total strength of the Constituent Assembly at any stage

it nevertheless represented a cross-section of the population of the country. Members of the minority community were vocal and active members for example, Dr. H.C. Mookherjee, a Christian representative was the Chairman of the Sub-Committee on Minorities and the Vice-President of Constituent Assembly.

In the first two sessions held between 9th December 1946 and 25 January 1947, two very important resolutions were adopted in the Assembly. One was a resolution regarding Aims and Objectives of the Constituent Assembly and the other regarding formation of the Advisory Committee on Fundamental Rights, Minorities etc. The philosophy behind providing safeguards to various minorities can be traced back to the Objectives Resolution. It set the tone of the future constitution. In the language of Pandit Nehru "it is a Resolution and yet it is something much more than a resolution. It is a Declaration. It is a firm resolve. It is a pledge and an undertaking and it is for all of us I hope, a dedication." (11) The clauses relevant to minorities were: (12)

(a) Wherein shall be guaranteed and secured to all the people of India justic, social, economic and political, equality of status of opportunity, and before the law; freedom of thought, expression, belief, faith, worship, vocation, association and action, subjectto law and public morality; and

(b) Wherein adequate safeguards shall be provided for minorities, backward and tribal areas, and depressed and other backward classes.

The resolution was widely acclaimed by all including the members of the Minority Community. Representative of the Sikh Community, S.Ujjal Singh, welcomed the resolution as an assurance to backwards and minorities that their interests would be safeguarded. (13)

The spirit of objective resolution was visible in the resolution for the setting up of an Advisory Committee on Fundamental Rights and Minorities. Moving the resolution in the Assembly on January 29 1947, Govind Ballabh Pant laid particular emphasis on the importance of the question of minorities "... The question of minorities everywhere looms large in constitutional discussions. Many a constitution has foundered on this rock. A satisfactory solution of questions pertaining to minorities will ensure the health, vitality and strength of free state of India that will come into existence as a result of our discussions here ... Unless the minorities are fully satisfied, we cannot make any progress, we cannot even maintain peace in an undisturbed manner." (14)

Constitution-making is a very complex affair. The framers of the Indian Constitution, like legislative bodies

all over the world, made use of the committee system in order to save time and promote legislative efficiency. A number of constitutional committees were set up to deal with different problems facing the Constituent Assembly. While constituting the Advisory Committee which was to be the principal instrument for securing the just consideration of the minorities problem in terms of Cabinet Mission Statement of May 16, 1946, the Congress Party took care to ensure that the Committee represented all communities and major classes. There was no representative of the Muslim League on the Committee as the League had from the very beginning boycotted the Assembly. But care was taken to facilitate its effective participation if it decided to do so at any stage of proceedings.

Scope of Advisory Committee being multifarious - five sub-committees were set up - two of them being the sub-committee on minorities and the sub-committee on Fundamental Rights. It was in these two sub-committees that the problem of safeguards for minorities was gradually settled. The Minority Rights Sub-committee was set up on 27 February 1947 by the Advisory Committee. The task of the Sub-committee was going to be difficult. In its preliminary meeting, Rajagopalachari deprecated the general desire to take up the question of "political" minorities. He was in favour of concentrating on "the minority rights so called." While G.B.Pant and several minority leaders wanted discussion on both. (15) The Chairman of the Sub-committee was Dr.

H.C.Mookherjee, a Christian leader. The Sub-Committee on Minorities at its first sitting adopted a questionnaire, suggested by K.M.Munshi, in order to know the views of the members concerning the nature and scope of safeguards of minorities. The questionnaire was as follows: (16)

- (1) What should be the nature and scope of the safeguards for a minority in the new Constitution?
- (2) What should be the political safeguards of a minority:
 - (a) in the centre; (b) in the provinces?
- (3) What should be the economic safeguards of a minority:
 - (a) in the centre; (b) in the provinces?
- (4) What should be the religious, educational and cultural safeguards for a minority?
- (5) What machinery should be set up to ensure that the safeguards are effective?
- (6) How is it proposed that the safeguards should be eliminated, in what time and under what circumstances?

Besides replies to this questionnaire, the Sub-Committee received certain notes and memoranda from the representatives of minority communities and organisations. Dr. B.R. Ambedkar submitted an exhaustive note, which, besides dealing with political and social safeguards for minorities, argued that the Scheduled Caste group is a minority. (17) The Sikh Community's case was put forward by

Ujjal Singh and Harnam Singh, two members of the Minorities Sub-Committee. It suggested precise political safeguards for the community. Another important demand was for reservations and educational facilities for Mazahbis, Ramdasia and Kabir Panthis. (18) Frank Anthony and S.H. Prater submitted their separate memoranda on behalf of Anglo-Indians in which they claimed special treatment for the community. S.H. Prater pleaded for political safeguards for his community. No specific communal safeguards were asked on behalf of Indian Christians and Parsees. Rajkumari Amrit Kaur a Christian Congressite presented the national point of view. She said "privileges and safeguards really weaken those that demand them. They are a definite bar to unity, without which there can be no peace as also to efficiency without which the standards of good governance are lowered." (19) Parsee community, also, did not claim any special privileges. No memorandum was presented on behalf of the Muslim League as it was not participating in the proceedings of the community.

The sub-committee had prolonged discussions on various points before them and the safeguards revolved around following issues: (i) Religious Freedom; (ii) Cultural and Educational Rights; (iii) Political minorities and Statutory reservation. The replies received to the questionnaire raised the following issues:

- (1) representation in Legislatures; joint versus separate electorates and weightage;
- (2) reservation of seats in the Cabinet;
- (3) reservation in services;
- (4) administrative machinery to ensure minority right (partly covered by making certain fundamental rights justiciable. (20)

The Sub-committee on Minorities had a cosmopolitan character, so an ^{an} unanimous decision was difficult. Moreover, the committee could not make a detailed report due to shortage of time and its report submitted before the Advisory Committee on July 27, 1947 contained merely a brief summary of the conclusions reached by it. The report contained the following decisions:

- (1) The demand for separate electorates and weightage should be rejected and the principle of joint electorates with seats reserved for minorities on a population basis should be accepted.
- (2) The demand for reservation of seats in the Cabinet should be rejected.
- (3) The demand for reservation of posts in the public services on a population should be accepted.

- (4) Special Officers should be appointed to look after the safeguards and interests of minorities. (21)

Advisory Committee Stage:

When the report of the Sub-committee came up for consideration before the Advisory Committee for its consideration in July 1947, the Committee endorsed almost all the conclusions reached by the sub-committee except with regard to Anglo-Indians for which it appointed a sub-committee to report on the position of the community in certain services and the existing educational facilities for them. The clause that there should be no separate electorate for elections to legislature was accepted as it led to widening of communal differences. There would be reservations in Central and Provincial legislatures for certain specified minorities but they could contest general seats also. No recommendation was made for any specific reservation for Anglo-Indians as the members were ultimately persuaded to withdraw claims for any statutory reservation on the understanding that the President and Governors would have power to nominate their representatives if Anglo-Indian failed to secure proper representation at the general elections. The committee postponed consideration of safeguards for Sikh community. There was no statutory provision for reservation in the Cabinet. The Advisory

Committee also recommended for the appointment of a special Minority Officer at the Centre and in the Units charged with the duty to ensure implementation of safeguards of minorities.

The Assembly Stage:

The report of the Advisory Committee was considered by the Constituent Assembly on August 27 and 28, 1947. The Report of Minority Rights was discussed in the Constituent Assembly, and though the main recommendations were adopted without any modifications and alterations, a lively discussion took place. Introducing the report on minority rights, Vallabhbhai Patel described the report as "the result of a general consensus of opinion between the minorities themselves and the majority." (22) Discussion centred around joint or separate electorates. Members of the Muslim League pleaded for separate electorate to safeguard the interests of minority community. B.Pocker and Khaliqzaman were prominent among them. But there were organisations among the Muslim community, like, The Shia Political Conference, which supported joint electorates. Govind Ballabh Pant and Sardar Patel also vehemently criticized the proposal. The amendment was rejected by the Assembly.

Special claims of the Anglo-Indian community were dealt by a sub-committee. Their report consisted of a study of the position of Anglo-Indians in certain services and the grant of special educational facilities for them. The recommendations were welcomed by the members of the community.

These decisions of the Constituent Assembly were incorporated in the Draft Constitution prepared by Constitutional Advisor. The provisions were considered by the Drafting Committee on February 5 and 6 1948. The various provisions were formulated into the articles and were placed in Part XIV under the title "Special Provision relating to Minorities." (23) This part of the Draft Constitution was based on the decisions of the Constituent Assembly and the recommendations of the two sub-committee on tribal people.

The problem of the minorities engaged considerable attention of the Drafting Committee because of its complicated character and bitter legacy. While introducing the Draft Constitution to the Assembly, Ambedkar referring to the articles on safeguards for minorities remarked: ".....I have no doubt that the Constituent Assembly has done wisely in providing such safeguards for minorities as it has done. In this country both the minorities and the majorities have followed a wrong path. It is wrong for the

majority to deny the existence of minorities. It is equally wrong for the minorities to perpetuate themselves." (24)

The Draft Constitution is divided into 18 parts and Part 14 that runs from Articles 292 to 301 is exclusively devoted to the special provisions relating to minorities. Part III of the Draft Constitution dealt with Fundamental Rights which by its very implications protected the minorities. Major steps were as follows:

(1) Articles 292 to 294 of the Constitution provide reservation of seats for minorities in the House of People and the Legislative Assemblies the State. Reservation was provided for Muslims Indian Christians Anglo-Indians, Scheduled Castes and Scheduled Tribes.

(2) Claims of all minority communities would be taken into consideration consistent of the administration, in the making of appointment to services and posts in connection with the affairs of the Union or of States (viz. railways customs, postal and telegraph services). They would also get some special constitutional grants (Article 296).

(3) For the first two years the Anglo-Indians would enjoy all old privileges about appointment in certain services (Article 297). In educational field, they would continue to get certain special grants

(4) Special officers on minority affairs would be appointed by the Central Government (Article 299).

The position of East Punjab and West Bengal was uncertain on account of large scale shifting of population following partition. The Draft Constitution did not incorporate any provision with regard to these provinces. The question of Sikhs was unsolved. A sub-committee constituted for this purpose recommended reservation of seats as for other minorities.

The cause of separate electorates and statutory reservations in the executive was lost with the announcement of 3rd June plan. There was actually a revulsion against it after the murder of Gandhiji. (25) When the scheme of partition was executed, the general nature of the Constituent Assembly and its various committees changed considerably. The division of Punjab and Bengal to carve out a new State of Pakistan, and the consequent migration of people, disturbed the proportion of various communities. There was a considerable effect on the nature of minority problem. A number of important decisions were redrawn.

The report of Advisory Committee on Minorities Fundamental Rights etc. came up for reconsideration on 30 December 1948. The members recommended that in a country already partitioned on communal basis, there was no need for reservation of religious minority. Reservation of seats would lead to separatism which would be contrary to concept

of welfare secular state. The resolution for the abolition of all reservation for minorities other than Scheduled Caste found whole-hearted support from an "overwhelming majority" of members of Advisory Committee.(26) The above statement in the report can be called exaggerated if not erroneous. Actually, one member out of four Muslim members of the Advisory Committee present in the same meeting supported it. Another Muslim (Jafar Imam a Leaguer) opposed it, the two congress Muslim members Abul Kalam Azad and Hafizur Rahman were silent. Jajamul Husain was absent. There is no "proof" that the majority of the Muslim members of the House were in favour of resolution.(27)

The Advisory Committee passed the resolution with one dissenting, in the following term: "That the system of reservation for minorities other than Scheduled Castes in legislatures be abolished." By an amendment, the system of reservation was limited to a period of 10 years. Certain minor changes were made in respect of Anglo-Indians. The motion as amended, was adopted by Constituent Assembly on 26th of May 1949. With the adoption of this amendment by the founding fathers of the Indian Constitution, the very distinctive feature of the problem of Indian minorities got revolutionised. It no longer remained a political problem but became a cultural and social one. Jawaharlal Nehru was so much moved by the new change that he described the proposal as a "historic turn in our destiny."

On 14 October 1949, when Article 296 (reservation of services for minorities) was being discussed, Ambedkar moved an amendment seeking the abolition of reservation in services except for Scheduled Castes and tribes (who were backward people). The Muslim and the Sikh members strongly objected to the alteration of an already decided policy. The Sikhs directly blamed the Congress for breaking promises. However, the amendments were adopted by the Assembly. So, ultimately there were no political rights for religious minorities. This radical change was due to the immediate impact of partition of country on communal lines.

Ralph H. Retzlaff write: "(1) Had the initial timetable which called for the completion of the drafting of the Constitution by the fall of 1947 been adhered to and (2) had the minorities, especially the Muslims, adopted a conciliatory attitude, it is clear that the Constitution would have included political safeguards of the minorities.(28)

Religious rights became a central point of minority rights. Minorities were assured that their group rights would be protected. On 26 March 1947, the Sub-committee on Fundamental Rights adopted a modified version of Munshi's draft article. The draft read as follows: "All persons are equally entitled to freedom of conscience and the right

freely to profess and practise religion in a manner compatible with public order, morality or health. The right to profess and practise religion shall not include economic financial or political activities associated with religious worship." The Sub-committee adopted Ayyar's clause about communities being free to set up their religious institutions. Two women members Amrit Kaur and Hansa Mehta were however, opposed to this form of religious right which would block the reforms like devdasi and child marriage. So the right to "practice" religion was removed. (29) Other issue which generated heated debates were right of propagation. The Christian members were particularly concerned about it while the Hindu alleged undue influences in propagation. But this right was incorporated in the Draft Constitution.

Munshi's draft about conversion involved some controversy. But eventually the article was dropped. The House readily accepted Munshi's amendment that, notwithstanding, religious freedom, the state would be able to legislate for the purpose of "throwing open Hindu religious institutions of a public character to any class or section of Hindus." (30) The question of religious instructions in educational institutions underwent several drafting operations. The Advisory Committee and an adhoc committee studied the proposal which was that religious

instruction would not be permitted in any institutions receiving state aid. Later on, in the draft Constitution, the ~~the~~ above restriction was applied to schools "wholly maintained by State funds and it was made optional in an institution receiving aid.

Cultural and Educational rights were sought to be protected as justiciable rights to assure the minorities that their special interests would be safe under the new Constitution. A guarantee of protection of these interests first found a place in the draft prepared by K.M.Munshi as well as those prepared by K.J.Shah and Harnam Singh, all of which were submitted to sub-committee on fundamental rights. These provisions were to be included as fundamental rights but ^{as they were} related to protection of minorities the sub-committee on minorities was thought to be a suitable forum for its discussion. Their report was submitted on April 1947, to the minorities sub-committee. Mahavir Tyagi opposed any commitment towards minorities until the question of partition was settled and attitudes of the other state towards its minorities was settled. However, Ambedkar deprecated this idea and stated that rights of minorities should be absolute and not relative. Sub-clause 2 of the clause 18 which related to freedom of admission of all communities in "State educational institution" and banning of compulsory religious instructions was referred back to

Advisory Committee. (31) Clause came back in same form and was passed on 30 August, 1947. It formed Article 23 in Draft Constitution with an added clause that no citizen would be denied admission into a state aided institution on grounds only of religion, race, caste, language.

The other issues which were discussed at length were prohibition not only of intoxicants but also of tobacco. Ambedkar accepted the first and not the second. Prohibition of cow slaughter was a sensitive issue and Muslims considered it as an overriding of their religious sentiments. But finally it was passed.

One major issue on which Muslim leaders were adamant was the protection of Muslim Personal Law. Masani, Mehta and Kaur in the Fundamental Rights Sub-committee demanded the guarantee of uniform social code within 10 years. (32) The Minority Rights Sub-committee wanted it to be voluntarily accepted to the minorities. Munshi, A.K. Ayyar and Ambedkar while discussing it in the Draft Constitution made a fervent advocacy of a uniform civil code. (33) The amendments were negated. The development of Uniform Civil Code was accepted as a Directive Principle of State Policy. Cultural and Educational rights which finally took shape in the Draft Committee or the amended form of its Article 23 is as follows. (34) It was divided into two separate articles. Article 29 and 30.

29(1): Any section of citizens residing in the territory of India or any part thereof having a distinct language script or culture of its own shall have the right to conserve the same.

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

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

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

The partition and its aftermath and the fragmentation of Muslim and Sikh political force were events of importance as the Constituent Assembly gradually assumed the role of a benevolent despot rather than to continue to be governed by its previous role of arbiter of demands. When the Constituent Assembly of India set out on its labour, therefore, history had already done much of spade work for it. Constitution was conceived not only as a mechanism for governing the country but as a potent instrument of social change and a

code of rights was invariably to be among the core feature of the Constitution. However it was no mean achievement for a fragmented and strife-torn India to make the protective provision a part of Constitution. It was a great achievement in constitutionalism. As one commentator has said "Great wisdom lies behind the constitutional guarantee for ethnic religious and linguistic minorities that are scattered throughout the length and breadth of the country. These guarantees are indispensable links that forge national unity and solidarity. Without these guarantees, it would be difficult if not impossible to create among the minorities a sense of identification with the political system and belonging to national community."(34)

Linguistic Minorities:

Although the Constitution of India "specifically recognizes religious minorities linguistic minorities, cultural minorities, minorities possessing special scripts of their own, untouchables, socially and educationally backward classes, Scheduled Caste and Scheduled Tribes, the Sub-Committee on Minority of the Advisory Committee appointed by the Constituent Assembly on January 24, 1947 did not refer to linguistic minorities. (35)

Minorities based only on religion, caste and tribalism were considered in Advisory Committee and not minorities

based on language. The same is revealed in the report of the Advisory Committee submitted on August 8, 1947. (36) In the Constituent Assembly, a member, Damodar Swarup Seth, while strongly arguing against the recognition of religious minorities, moved an amendment stating that "only minorities based on language should be recognized." (37) The majority members in the Assembly considered it proper to give recognition to the broad spectrum of minorities in the context of diversity of India. The problem of linguistic minorities came to the focus only when the question of redistribution of provinces on the basis of language came to the forefront. While examining the feasibility of reconstituting the provinces on linguistic consideration, the Dar Commission in 1948 apprehended that such reorganization would "immediately bring into existence a new kind of minority problem which did not exist before." (38) Here he referred to the problem of linguistic minority.

Redistribution of States primarily on the consideration of language might have reduced the number of linguistic minorities but it could not completely do away with the minorities. The observation of the States Reorganization Commission in this respect is noteworthy. It reads, "The scheme of redistribution of State territories which we have recommended will result in many cases in

bringing together people speaking a common language. To that extent, it will reduce the number of linguistic minorities. It is however, quite evident that even if the linguistic principles were applied very rigidly the problem of linguistic minorities will not be eliminated altogether.

(39) The linguistic area in India are not sharply divided, and no area could be carved where the people from different linguistic zone ^{correspond} to the industrial centres and urban centres. There are a large number of bilingual belts between different linguistic zones.

So, the question of linguistic minorities did not figure in the Constituent Assembly as prominently as religious minority.

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CHAPTER - IV

CONSTITUTIONAL PROVISIONS

C H A P T E R - I V

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CONSTITUTIONAL PROVISIONS

A Constitution can be termed as the fundamental law of the land. The Indian Constitution conforms to the view expressed by Viscount Bolingbroke viz. constitution is "that assemblage of laws, institutions and customs derived from certain fixed principles of reason ... that compose the general system according to which the community hath agreed to be governed." (1) This definition posits the supremacy of Natural Law Philosophy and it makes the Constitution dependent on fixed principles of reason and vests in the community the right to be governed by agreed laws. The two principles enunciated are the fundamental groundwork for a system of rights which constitute a distinctive feature of all modern Constitution and Indian Constitution is no exception.

For the leaders standing on the threshold of freedom, the compulsions of the Indian setting thus more or less determined the shape of the country's future polity. The Constitution was to be conceived not only as a mechanism for governing the country but as a potent instrument for social change and a code of rights was inevitably to be among the core feature of the Constitution. (2) Founding fathers aimed at creating a democratic society which would be based on

healthy competition among the various groups. The Objective Resolution was the basic document on which the Preamble of the Constitution is based. The use of term 'Fraternity' in the Preamble signifies a solemn promise to the nation. The framers of the Constitution tried to do their very best to safeguard the interests of various minority groups whether based on religion or language, cultural or socio-economic reasons. Rights are sought to be presented through fundamental rights.

The Fundamental Rights apply generally to all citizens, as well as to minorities in particular and offer valuable safeguards to minorities. The Constitutional provisions concerning elections, such as adult suffrage also strengthen the position of minorities and give them full political rights.

The whole scheme of fundamental rights in the context of minorities is based on a dialogue between individual and group rights. The Indian Constitution has attempted to strike a balance between the two claimants. All the modern Constitutions guarantee some fundamental rights which by a liberal interpretation can be termed as respect for human dignity. French Revolution with its slogan of 'liberty, equality and fraternity' has been echoed in our Preamble. The high object of equality, the keynote of democratic

institutions and a positive guarantee to the minorities, were aimed to be realised through the following articles of the Constitution:

Article 14: Equality before law

Article 15: Prohibition of discrimination

Article 16: Equality of opportunity in matters of public employment

Article 29(2): Equality of Educational opportunity

Article 325 and 326: Universal Adult Suffrage

Article 44: Uniform Civil Code

Equality before law:

Article 14 says: "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India". Prime facie, the expression 'equality before the law' and 'equal protection of the laws' may seem to be identical but in fact they mean different things.(3) The phrase 'equality before the law' is a necessary corollary to the English doctrine of 'Rule of law'. It means that no man is above the law of the land and that every person whatever be his rank or status, is subject to the ordinary law and amenable to the jurisdiction of the ordinary tribunals. Ivor Jennings an undisputed authority on the Indian Constitution has remarked "Equality before the law means that among equals to law should be equal and

should be equally administered, that like should be treated alike." (4) In short it means justice.

Equal protection of the laws, ~~on the other hand, would mean that among equals the law should be equal and equally administered that like should be treated alike...~~ It means the right to equal treatment in similar circumstances both in the privileges conferred and the liabilities imposed by the laws. The Legislature, however, is entitled to make different treatment if circumstances demand so. The Indian Judiciary has provided many statements to demarcate the limits of the law and to distinguish between the two phrases. In the case of U.P., Deoman, Subba Rao (5), Judge of the Supreme Court observed: "Equality before law is a negative concept equal protection of law is a positive one." (5) When compared with other Constitution of the world with regard to provision for equality, the Indian Constitution fares better, because no other constitution has both the phrases together. Constitution of Japan, Switzerland and China - all content themselves with the phrase to the effect of "equal before the law". (6)

Article 14 provides sufficient protection against any form of unfair treatment at the hands of the state. It protects both the minority and the majority equally.

Article 15:

This article runs as under:P

"(1) The State shall not discriminate against any citizen on

grounds only of religion, race, caste, sex, place of birth or any of them.

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

(a) access to shops, public restaurants, hotels and places of public entertainment; or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of general public.

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

(4) Nothing in this article or in clause (2) of article 29 shall prevent the state from making any special ^{Provision} for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes."

The scope of the above Article is very wide. While the prohibition in clause (1) is levelled against the State action, the prohibition in clause (2) is levelled against individuals as well. (7) The Article in clause (1) clearly states that there would be no discrimination and this forms the core of the Article. The Supreme Court interpretations

have upheld the meaning of the article as enshrined which amounts to that merely religion caste etc. cannot be a basis for discrimination. If a person is sought to be discriminated simply because he belongs to a particular community or race, he can get the state action annulled through a court. While racial discrimination still persists as a ~~non~~^{ma} malignant growth upon western society it speaks volumes to Indian achievement that a possible victim of racial discrimination, in India, can obtain justice from the court.

The prohibition against discrimination however, would not prevent the state from (a) making special provision for women and children; (b) making special provision for the advancement of any socially and educationally backward classes of citizens or for Scheduled Castes and Scheduled Tribes. The use of the word 'only' has special significance as expressed by D.D.Basu: "The significance of the word 'only' is that other quantifications being equal, the race religion etc. of a citizen shall not be a ground for preference or disability. If there is any other ground or considerations for the differential treatment besides those prohibited by article, the discrimination will not be unconstitutional. (8)

So Article 16 stands for protection of minorities as it prohibits discrimination. No doubt, it has a negative

character for the protection of minorities yet it is a test for democracy and equity.

Article 16:

As a corollary to the above Article 15, the Constitution guarantees equality of opportunity in matters of public employment. Article 16 says that -

(1) There shall be equality of opportunity for all citizens in matters relating to employment to any office under the state.

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth or any of them, be ineligible for any office under the state.

This right is safeguarded not only against communal discrimination, but also against local discrimination or even against discrimination against the weaker section. The only exceptions to the above rule of equality are -

(a) Residence within the state may be laid down by Parliament as a condition for particular classes of employment or appointment under any state or other local authority (article 16(3))

(b) The state may reserve any post or appointment in favour of any backward class of citizens who, in the opinion of the

state are not adequately represented in the services under the state (article 16(4))

(c) Offices connected with a religious or denominated institution may be reserved for members professing the particular religion or belonging to the particular denomination to which the institution relates (Article 16(5))

So, in regard to public employment the guarantee is stated both positively and negatively. If one examines the similar provisions of some of the constitution of the world, one finds that hardly any other constitution has gone into such details in regard to the question of equality in public services. For example, the constitution of United States of America under Article 6 affirms: "No religious test shall ever be required as a qualification to any office or public trust under the United States. (9) Article 170 of the Constitution of the Netherland stipul^tas: "The adherents of the various religious denominations shall all enjoy the same civil and political rights and shall have an equal right to hold dignities, offices and employment." (10) So, it is clear that the phraseology used in the Indian Constitution to connote non-discrimination in matters of public employment is extensive and much wider in scope. The provisions are more specific and clear, distinct and definite, and also, thereby the idea of universality of Indian citizenship is postulated.

Article 336, which permits special provision for Anglo-Indian Community in certain services is another limitation upon the scope of this article. This was necessary as the community had been enjoying special concessions in the days of British Raj so it would be unjust to withdraw the concessions suddenly.

So, the special considerations, notwithstanding, the minority and the majority are placed on the same footing and in the eyes of the law both are equal.

Universal Adult Suffrage:

The adoption of Universal adult suffrage (Article 326) without any qualification either of sex, property taxation or the like is a 'bold' experiment in India, having regard to the vast extent of the country and its population with an overwhelming illiteracy. It was credible for the framers of the Constitution that they could abolish communal representation with the consensus of the minority communities. Thus, under the Article 320 of the Constitution, it is clearly stated, "The elections to the House of the People and to the Legislative Assembly of every state shall be on the basis of adult suffrage; that is to say, every person, who is a citizen of India and who is not less than twenty-one years of age ... shall be entitled to

be registered as a voter." The abolition of communal electorate meant that after independence, the citizens of the India could vote as individuals and not as Muslims and Hindus. Elections are contested on the basis of a single electoral roll of every territorial constituency. Reducing of voting age to eighteen years has further democratised India.

The comment of Sir Ivor Jennings seems to be unfair when he opined, with reference to communal electorate "Indeed the most complete disregard of minority claims is one of the most remarkable features of Indian federalism. The existing competing claims on religious and ethnic grounds was one of the reasons given for the refusal of Indian independence before 1940. By reaction, the Congress politicians, who were above all nationalists tended to minimize the importance of minority interests and emotions." (11) But the provisions of the Constitution make it quite clear that the interests of the minority community has not suffered because of abolition of separate electorates on communal basis. Universal suffrage has provided for complete equality amongst all electors, irrespective of religion, race and caste. In the opinion of J.A.Laponce: "Any limitation of the franchise usually works to the detriment of minorities ... (and)... universal suffrage is protective of minorities." (12) In a democracy, it is the individual who constitutes the unit rather than castes or communal group.

Religious Freedom:

The provisions guaranteeing religious freedom to every individual cannot, strictly speaking be said to be specific safeguards in favour of minorities yet they do protect the religious minorities if we contrast the provisions of the successive Islamic Constitutions of Pakistan. Indian Constitution does not contain any provision for the furtherance of any particular religion as may raise legitimate apprehensions in the minds of those who do not belong to that religion. Article 25 unequivocally assures 'Freedom of conscience and free profession practice and propagation of religion.' Article 26 conferred the right to freedom of religion to a community whereby freedom is guaranteed in management of religious affairs. The article reads: "Subject to public order, morality and health, every religion denomination or any section thereof shall have the right - (a) to establish and maintain institutions for religious and charitable purposes; (b) to manage its own affairs in matters of religion; (c) to own and acquire movable and immovable property; and (d) to administer such property in accordance with law." So each religious community enjoys complete autonomy in the matter of deciding their rites and ritual.

The 'secular' nature of our constitution has been highlighted by inserting this word in the Preamble by the

42nd Amendment Act 1926. The 'Secular' content of the Indian state should be dealt with caution as the term has become politicized. The 'secular' nature as asserted by some quarters is appeasement of minority. The recent years have witnessed much maligning of the term and the whole concept is in throes of a debate.

The freedom of religion is not absolute and the state can regulate any economic, financial, political or other secular activity which may be associated with religious practice (Article 20(e)(a)). The Clause (b) reads-state can provide for "social welfare and reform or throw open Hindu religious institutions of a public character to all classes and sections of Hindus."

So the State can interfere in matters of religion if social welfare demands it. But, as the working of the Constitution shows, the state has been hesitant in interfering in matters of faith.

The relationship between the State and the Religion is further elaborated by Article 27 - "No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion." The State can give aid to the promotion of religion with only one reservation, that this aid should be non-discriminatory.

No one shall be compelled to pay any taxes for this purpose. The stress lies on equality of treatment. Article 28 deals with the issue of religious instructions in educational institutions. Imparting of religious education is a form of propagation which has earlier been guaranteed by Article 25. The article is as follows:

(1) No religious institution shall be provided in any educational institution wholly maintained out of state funds;

(2) Nothing in Clause (1) shall apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such a situation.

(3) No person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious or to attend any religious worship that may be conducted in such institutions or in any premises attached thereto unless such person or if such person is a minor, his guardian has given his consent thereto."

Religious instructions can be imparted in educational institutions which are administered by the state but have been established under any endowment or trust. The state

functions as a trustee. The Banaras Hindu University and Aligarh Muslim University are covered by this provision and come under Clause 2 of Article 28 Clause 3 of the Article 28 which enables any community that wanted to give religious education to its children to establish educational institution for the purpose, and also to seek financial aid from the state. These schools are called denominational schools.

The above article had to face much criticism from some members of the Constituent Assembly as what is banned under Clause 1 of this article is neutralised under Clause 1 of this article 3 to a large extent. K.T.Shah remarked: "I think it would be inconsistent with the basic principle of this constitution to permit religious institutions on the excuse that part of the expenditure is met by other than state funds." (13) But it would be inappropriate to blame the framers of the Constitutions as they had to cater to the multiplicity of religion in the Indian society.

The above Articles 15, 16, 25, 26, 27, 28 are the general claim to civil rights which are guaranteed to both the majority and the minority community. The cultural and linguistic minorities wanted to maintain their distinctiveness so they were minorities by will. Certain provisions were felt necessary to assure the minorities that

no deliberate attempt was being made to assimilate them at the cost of their exclusive culture. Article 29 and 30 of the Constitution of India provide protection exclusively to cultural and educational rights of the minorities. They are grouped under the Sub-head "Cultural and Educational Rights". The text and the marginal notes of both the articles show that their purpose is to confer those fundamental rights on sections of the communities called minority communities. The two articles are intended to conserve the special position of linguistic, religious and cultural minorities.

Article 29 - Protection of interests of minorities - (1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language script or culture of its own shall have the right to conserve the same.

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

The two clauses of Article 29 of the Constitution guarantee two different rights to two different sections of the citizens. The protection of Clause (1) of Article 29 has been guaranteed to "any section of the citizens" as

different from an "individual". Great stress is laid on the word conserve. Every minority would like to jealously retain and protect its particular features, so the right of conservation is of primary importance for the health and growth of every minority. The Judiciary in India has interpreted this article very liberally.

H.R.Khann, J., in the Ahmedabad St.Xavier College Society pointed out that, "Although the marginal note of Article 29 mentions protection of minority rights the rights actually conferred by that article are not restricted merely to minorities ... In order to invoke the benefit of this clause, all that is essential is that a section of the citizens residing in the territory of India or any part thereof should have a distinct language script or culture of its own ... irrespective of the fact whether they are members of the majority community or minority community."

(14) In state of Madras V.Champakam Dorairgan (15) though the petitioner relied upon Article 15(1) and 29(2) of the Constitution, but the landmark decision was based on right guaranteed by Article 29(2) of the Constitution. In state of Bombay V.Bombay Education Society and others (16) the scope of Article 15(1) vis-a-vis Article 29(2) was thoroughly discussed. The Judges of the Supreme Court did not agree with the contention of the state that as the majority is amply protected by Article 15 of the

Constitution hence they do not need the protection of Article 29(2) of the Constitution. S.R.Das, J., pointed out that, "The language of Article 29(2) is wide and unqualified and may well cover all citizens whether they belong to the majority or minority groups Article 15 protects all citizens against discrimination generally but Article 29(2) is a protection granted against a particular species of wrong namely denial of admission into educational institutions of the specified kind." (17)

Article 30:

Since the right to conserve the language and culture includes the right to develop the same, one important method of conservation of a language script or culture is through educational institutions. Linguistic minorities attach great importance to the freedom of education. Article 30 of the Constitution of India states: (1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice. (2) The state shall not in granting aid to educational institutions, discriminate against any educational institutions on the ground that it is under the management of a minority whether based on religion or language." So an educational institutions belonging to a minority is entitled to ask for aid from the state.

Article 29(1) and 30(1) create two separate rights though it is possible that the rights might meet in a given case. The views expressed by Mathew J., in the Ahmedabad St Xavier College Society and others V.State of Gujarat are very relevant. After pointing out the differences between the two. Article he said "It might be that in a given case the two articles might overlap. When a linguistic minority establishes an educational institution to conserve its language the linguistic minority can invoke the protection of both the Articles." (18)the counts have always dealt with minority cases with an even hand. A key verdict regarding the minority colleges was given in December 1991 by Supreme Court in St.Stephens College vs University of Delhi and St.Stephens vs. Rahrur Kapoor. The Court ruled in December 1991, that in no case shall these institutions fill more than half seats with candidates of their own community. (19) The minorities claims that this judgement is in violation of Article 30(1) of the Constiuttion which give the minority institutions the might to establish and administer educational institutions of their choice.(20)

So, the importance of the two provisions cannot be exaggerated. Both Article 29 and 30 are complementary to each other.

Special Concessions for Anglo-Indians:

Anglo-Indians constitute a religious racial as well as linguistic minority. The community had for long been

enjoying special privileges of various kinds including economic and cultural, because of its affinity with the rulers. So, the Indian Constitution incorporated a number of special features for them. Article 331 provides for nomination of one member to Lok Sabha. Article 333 provides for representation in the States. The above provision was necessary for the Anglo-Indian as they are numerically a small community and are spread all over India. So, it was difficult for them to get seats in General Elections.

Article 336 and 337 had provided for reservation in certain services and special Educational facilities respectively. These two have ceased to exist since 1960 because the period of 10 years has not been extended. In spite of the temporary nature of these safeguards, the provision show the concern of the Constitution framers towards the minority community.

Rights of Linguistic Minorities:

Language is the main instrument of inter-communication for man in a civilised society. Next to religion, it is one single factor that has contributed to group consciousness. As Prof. Humayun Kabir remarked: "Language groups are there, and it is no use trying to deny them. They will be there. Any attempt to suppress a language will, in fact, create a violent revulsion and may be a cause for fissiparous

tendencies." (21) The framers of the Constitution were aware of the importance of language issue and its potency to whip up passion so they made adequate safeguards for protection of linguistic minorities. Part XII of the Indian Constitution contains the provisions relating to language. Apart from Constitutional Provisions in Article 29, 30, 347 and 350 of the Constitution, the bulk of safeguards for linguistic minorities were formulated during 1956-71, i.e. the period immediately following the reorganisation of States on linguistic bases. As pointed out by the twenty seventh Report of the Commissioner of Linguistic Minorities there are two basic principles in which the State Reorganisation Commission based its recommendations of safeguards to linguistic minorities. (22)

(1) While minorities are entitled to reasonable safeguards to protect their educational, cultural and other interests it has to be borne in mind that such safeguards should not operate as to perpetuate separatism or to impede the process of national assimilation.

(2) The system of guarantees to minorities should not be such as to lend itself to misuse by parties interested in promoting a sense of disloyalty to state.

The relevant articles are as given below:

Article 347:

This article provides guarantee to the use of minority languages in the administration. The article reads as under

"On a demand being made in that behalf the President may if he is satisfied that a substantial proportion of the population of a state desire the use of any language spoken by them to be recognised by that state, direct that such language shall also be officially recognised throughout that state or any part thereof for such purpose as he may specify.

The use of the phrase "any language spoken by them" makes the scope of this article very wide and every linguistic minority can claim its benefits. Article 29, 30, 347 and 350 have a direct bearing on safeguards for linguistic minorities. This power in the hands of the centre will help to curb any tendency towards linguistic fanaticism and the domination of a majority over linguistic minorities in different states. The right of official recognition is necessary in a modern welfare state as the impact of administration is felt in all areas of our life. The Eighth Schedule of India recognizes 18 languages. The long standing demand of Manipuri, Nepali and Konkani languages to be included in the Eighth Schedule was conceded on August 20 1992. The 72nd Amendment Bill 1992 thus met the aspirations of these states. Thus the centre is not very rigid in giving recognition as this brings in emotional satisfaction. A national daily expressed it in these words "The recognition of Manipuri will go a long way in

integrating the tiny north-eastern state into the Indian mainstream." (23)

Article 350:

"Every person shall be entitled to submit a representation for the redress of any grievance to any officer or authority of the Union or a state in any of the languages used in the Union or the state; as the case may be." Thus, a person should not necessarily be familiar with the official language of the Union or the state for voicing his grievance before administrative hierarchy. First Commissioner for Linguistic Minorities stated in his report "In the provisions relating to safeguards for linguistic minorities no mention is made of the Eighth Schedule and there is no reason to believe that the safeguards apply only to fourteen linguistic minorities." (24)

Article 350-A and 350-B:

Language institution is necessary for the growth of language. But the framers of constitution of India failed to incorporate any such safeguard in the Constitution. This was a drawback which was sought to be remedied by constitutional amendment. The states reorganisation commission examined this problem in detail. In ^t its first

report it suggested a number of amendment. Article 350-A and 350-B were introduced by Seventh Amendment Act 1956.

Article 350-A says: "It shall be the endeavour of every State and of every local authority within the state to provide adequate facilities for instruction in the mother-tongue at the primary stage of education to children belonging to linguistic minority groups; and the President may issue such directions to any state as he considers necessary or proper for securing the provision of such facilities." Though, the scope of this article is limited to primary stage of education even though it is very important in a country where "free and compulsory primary education" is still a cherished dream. The article no doubt empowers the President to issue such directions to any state as he considers necessary or proper for securing the provision of such facilities; but it does not give him powers to define or lay down a limit to the terms like 'adequate facilities'. Both the terms are ambiguous and subjective in character. Discretion can be used in interpretation.

Article 120:

This article concerns itself with the right to be understood. This article provides that "business in Parliament shall be transacted in Hindi or in English: provided that the Chairman of the Council of State or speaker of the House of the People, or person acting as such as the case may be, may permit any member who cannot

adequately express himself in Hindi or in English to address the House in his mother-tongue. The corresponding provision for the state legislatures are provided in Article 210. The Constitution is based on the principle of equality. But however no guidelines have been prescribed with ^{reference} ~~response~~ to linguistic standard, as a qualification for candidature Provision has been made so that member can express their views in their own language.

Recruitment to services is another area where the linguistic minorities need special attention. State services prescribe their own languages for entry into competitive services. So the state services become a virtual monopoly of the dominant language group and the minorities are kept out of some services. The State Reorganisation Commission considered the issue and suggested that in State services apart from the main language of the state the candidate should have the option to elect as the medium of examination Union language English, Hindi or the language of a minority constituting about 15 to 20 per cent or more of the population of state. A test of proficiency in the state language is held after selection. (25)

Dr. Krishna Kodesia remarked: "on the constitutional side there is nothing wanting for safeguarding the legal and reasonable rights of any linguistic minority.(26) Prof. Alic Jacob also speaks in the same tone on the adequacy of

these provisions. "The safeguards are reasonable and sound."
(27)

The Constitution of India stands apart from other constitution in its provision for safeguarding of linguistic minorities. Switzerland gives her linguistic minorities model treatment but she does not do so through her constitution. So, the Indian Constitution has taken adequate steps to safeguard the interest of linguistic minorities.

The three-language formula was a positive step to dissolve the linguistic barriers in the society. However, it has been facing rough weather. It was adopted in Chief Minister Conference of August 1961. It was recommended that compulsory teaching of three languages should be followed at secondary stage. But all states have not been receptive to the proposal of three-language formula. Certain difficulties in the implementation of simplified three language Formula was pointed out in the report of the Education Commission 1964-66 (Kothari Commission) and it proposed a modified three language formula.

Subsequently, the resolution on Language 1968, which has been incorporated in the National Policy on Education 1968, Parliament proposed the following formula. "This House resolves that arrangement should be made in accordance with that formula for the study of a modern Indian language

preferably, one of the southern languages, apart from Hindi and English, in Hindi-speaking areas and of Hindi along with the regional languages and English in the non-Hindi speaking areas." (28) This continues to be the basis of the policies of Government for the study of languages at the secondary state of education.

The twenty-seventh Report of the Commissioner for Linguistic Minorities has stated that although there is no uniformity in the implementation of Three language Formula, but still it is ideally suited for preserving and promoting the sense of unity among the people without in any way impairing their love for their own mother tongue. The simplified three language formula provided that provision should be made for the study of a modern Indian language, preferably, one of southern language apart from Hindi and English in Hindi speaking area and of Hindi along with regional language and English in Non-Hindi Areas.

The 27th Report deals with the problem of tribal linguistic groups. Problem of lack of script and constraints of inadequate text books need to be handled at national level. (29).

Thus, it is very necessary that although the identity of linguistic minority in the form of their language, script and culture is conserved, their assimilation into the national mainstream is not thwarted in any way.

After forty-three years of working of Constitution, the minority safeguards have not yet achieved the goal of making the Indian Society an integrated whole without hurting the minority sentiments. Communalism has gained in proportion and the majority-vs-minority has become an inseparable reality of Indian politics. The constitutional provisions have not resulted in the unity which our Constitution makers had envisaged.

The Indian Constitution is substantially secular one. Freedom of religion has been given to all and the right to profess practise and propogate religion has been made a fundamental right. The term 'secular' was not mentioned in the Constitution, but in spirit it was designed to be so. K.M.Munshi remarked in this context, "In the present set-up that we are now creating under this Constitution, there is a secular state." (30) The forty-second Amendment Act 1976 introduced the term in the Preamble of the Constitution. But the recent decades have witnessed a mushrooming of communal parties and the vexed question of majority communalism.

The ambit of the freedom of religion guaranteed by Article 25-26 has been widened by the judicial interpretation that what is guaranteed by Article 25 and 26 is the right of individual to practice and propogate not only matters of faith or belief but also all those rituals

and observances which are regarded as integral parts of a religion by the followers of its doctrine. (31)

Though there was general agreement in the Constituent Assembly on the freedom of conscience and on the clause 'to profess and practise' yet there was some opposition to the inclusion of the word 'propagate'. The Hindu members in the Assembly were against the right of propagation but many prominent members as Pandit Laxmi Kanta Maitra, L. Krishnaswami, Bharathi, and T.T. Krishnamachari argued for the right of propagation. (32)

In Article 25, Clause (2), sub-clause (b) empowers the state to provide for social welfare and reform or throwing open of Hindu religion institutions of a public character, to all classes and sections of Hindus. In this clause, the term "Hindu" includes the Sikhs, Jains and Buddhist religion and the reference to Hindu religious institutions shall be construed accordingly. Ainslie T. Embree points out that when Sikh political autonomy became an issue in the 1980s, this reference became in the eyes of many Sikhs a reflection ^{of} ~~on~~ the denial of their rights. (33) The issue of denial of Sikh identity has become a major focus of debate. In such a situation, grievances that may be economic or political in origin, are perceived as a bias against the Sikh religious identity, the very core of their being. When

government uses its power, as it did in 1984, ^{in the} operation by the army on Golden Temple, the Sikhs holiest shrine its actions are seen as an action by the Hindus and not governmental machinery. (34)

The controversy over Uniform Civil Code made the Framers of Constitution place this clause as an ideal in Directive Principles of State Policy. The Constitution does not lay down any prohibition against Uniform Civil Code. Article 25, Clause (2), sub-clause (a) vests in the state the power to regulate, restrict any economic, financial, political or other secular activity which may be associated with religious practice. The conservative Muslim view is that right to personal freedom of a women is subordinated to her rights in Shariat law but the Constitution, strictly speaking, does not support this view. Shah Bano controversy was over the right of an aged divorcee to a minimal maintenance. Ainslie T. Embree rightly remarks "Reduced to its essentials the issue was the great unfinished question of Indian political life - in a democratic system, what special concessions are to be legally granted to minorities, whether ethnic, linguistic or religious." (35)

Religious freedom, in the language of Indian Constitution, means the right to practise and propogate one's faith without hinderance from the state,

but increasingly this has been interpreted to mean that the government should, in effect support through law the customs that a community claims as basic to its internal life. (36)

The question of majority-minority rights (minority including the religious and language) can be discussed from the perspective of individual vs. group rights. Nathan Glazer has dealt with the issue in the context of American Civil Right Act of 1964. He makes an interesting proposition "why is it that the denial of individual rights on the basis of some group characteristics - race, religion, national, origin are nevertheless treated, in law, at least in American law, as a problem of protecting the rights of an individual." (37) Vernom Van Dyke has pointed out that in the most celebrated essay of John Rawls - 'A theory of Justice' - also ignores the problem of justice for groups. Religion is mentioned at a number of points but almost always with the individual believer in mind rather than collective body of the faithful. (38) It is an intriguing problem and undoubtedly the answer is that language and theory of protection of human rights developed in England in the 17th century, when the issue was one of deprivation because of conscience, because of individual decision and action rather than of deprivation because of race, colour or

national origin. (39) Rawls speaks of religion as individual belief in mind rather than the collective body of the faithful.

Aloo J. Dastur an ex-member of Minority Commission, has argued "where human rights and dignity is concerned there can be no compromise. Rights cannot be, and should not be, group rights. ^{If we accept group rights} we have to acquiesce in accepted obnoxious group cultural patterns e.g. Hindu caste system untouchability, social ostracism of the widow, childmarriage, the position of Muslim women." (40) Lionel Fernandes however states that without safeguarding for minorities, it would be difficult, if not impossible, to create among the minorities a sense of identification with the political systems and belonging to the national community. (40) In a heterogeneous society like ours where the so-called majority is a legal fiction, rather than a sociological fact it makes eminent practical sense to extend constitutional protection to ethnic linguistic and religious minorities.

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C H A P T E R - V

INSTITUTIONAL ARRANGEMENT FOR PROTECTION OF MINORITIES,
MINORITIES COMMISSION AND COMMISSIONER FOR LINGUISTIC
MINORITIES¹⁾ (SPECIAL OFFICER FOR LINGUISTIC MINORITIES)

CHAPTER - V

INSTITUTIONAL ARRANGEMENT FOR PROTECTION OF MINORITIES. "MINORITIES COMMISSION" AND "COMMISSIONER FOR LINGUISTIC MINORITIES" (SPECIAL OFFICER FOR LINGUISTIC MINORITIES)

The Constitution of India has provided adequate political, social cultural, economic and other safeguards for the minorities based on religion or language, to suit their legitimate needs, their legitimate desires and to satisfy their respective aspirations. It accords not only mere protection to minorities but also provides a more elaborate content on the subject matter than it is found in most of democratic countries. Adequate safeguards notwithstanding, there persisted a feeling of discrimination among the minorities. There was a need for some institutional arrangement for an effective and proper implementation of the safeguards. Accordingly, in the 28th year of the Republic, the Government of India resolved to set up a Minorities Commission for the purpose under Art.350(13) of the Constitution.

The proposal of a Minority Commission was discussed in great depth by Shri Taj Bahadur Sapru in constitutional proposals of the Sapru Committee Report. Recommendation number 18 (1) of the Committee provides for the establishment at the centre and in each of the Provinces of

an Independent Minority Commission, which shall be composed of the representatives of each of the communities (not necessarily, a member of that community) represented in the legislatures. The Sapru Committee dealt in detail with the qualifications and tenure of the members. The function of the Minority Commission was to keep a constant watch over the interests of the Minority Communities in the area. If there is any legitimate grievance which a community is suffering from or if there is any harm or injury inflicted on it by an act of legislature or proceedings of the Executive, it will be brought to the notice of the Commission. The Sapru Report anticipated conflict between the Government and the Commission. However, the latter would not get a supervisory or a parallel jurisdiction over the government. The Sapru Report specified that the Commission can draw the attention of the Government to any legitimate grievance of any community; discuss the matter with the government and try to get the grievance redressed, but the responsibility for any action of the government must be taken by the government alone and cannot be shared by any other body. The Commission would also review periodically, the policy pursued in legislation or administration by the legislature or the Executive in regard to the implementation of non-justiciable fundamental rights assured by the Constitution to the Minority Communities and

to submit a report to the Prime Minister of the day. The recommendations should be laid before the Cabinet and the Prime Minister should bring it to the notice of the legislature. The ultimate responsibility is of the legislature which would include the representatives of various communities. So, according to the scheme prepared by the constitutional proposals of the Sapru Committee there should not be any conflict or friction if proper relations are established between government, minority commission and legislature. The primary function of the Minority Commission is to inform, after inquiry, the Government about grievances of the Minority community. The recommendations ought to help the government and not obstruct its work. The Report specifically stated that the Minority Commission should be a part of the Constitution.

The recommendations about Minority Commission constituted ^{tu} a new feature of the proposed constitution, not easily to be found in the constitution of many civilized countries for instance in America with reference to the coloured population of that country. A minority commission proposal was also made in the constituent Assembly. The Minority Rights Sub-committee Questionnaire (drafted by K.M. Munshi) had specifically asked as question number five - "What machinery should be set up to ensure that the safeguards are effective." (2) Several member - P.K.Salve

Jagjivan Ram and Jairamdas Daulatram, suggested the setting up of a Minorities Commission, very much on lines of the Sapru Committee Report. Memorandum by Representatives of the Jain Community, Working Committee of the All-India Adi-Hindu and Depressed Classes Association, also pleaded for the establishment of a Minority Commission. Finally, the issue was dropped and a Supreme Court was considered adequate to deal with Minority grievances.

The Janata Party in its election manifesto (1977) promised the setting up of a Minority Commission. Therefore, when it came to power the Commission was set up by Government of India Resolution No.III - 16012 NID(D) Ministry of Home Affairs New Delhi, dated 12th January 1978. The Commission was entrusted with the following functions:

- (1) To evaluate the working of the various safeguards provided in the Constitution for the protection of minorities and laws passed by the Union and State Governments;
- (2) To make recommendations with a view to ensuring effective implementation and enforcement of all the safeguards and laws;
- (3) To undertake a review of the implementation of the policies pursued by the Union and State Government with respect to minorities;

- (4) To look into specific complaints regarding deprivation of rights and safeguards of the minorities;
- (5) To conduct studies, research and analyses on the question of avoidance of discrimination against minorities;
- (6) To serve as a national clearing house for information in respect of the conditions of the minorities;
- (7) To make periodical reports of prescribed intervals to the Government. (3)

As the term of reference of the Commission, show, the Commission is meant to function as an independent body to assess the performance of the Central and State Governments. As stated in the Ninth Report (4) of the Commission, it is not in competition with, or an adversary to the Government departments. It can provide assistance in the solution of different problems which require cooperation between all organs of the state. As M.H.Beg (5), ex-Chairman of the Minority Commission pointed out that the Commission is not, strictly speaking, a part of the Government of India or an ordinary "organ of the state". The theory on which such commissions are required to function in the modern context was stated in the Commission's fourth Annual Report as follows:

Modern Government has become extremely complex. In

every sphere of it, it has to be carried on with the aid of experts. The advice of experts has, however, to be given in such a way as to make it comprehensible and acceptable to the representatives of the people under a democratic form of Government. The setting up of such a Commission is, undoubtedly, a device intended to facilitate the operations of Democratic government so as to enable it to meet the needs of a complex mutli-religious and multi-cultural society in a modern world.

The Commission has completed ~~five~~ fifteen years in 1993. In this short period, it has submitted twelve Annual reports to the Government of India out of which only four reports have been laid before the Parliament. As K.K.Wadhwa remarks, "it is rather paradoxical that the Commission has been prompt in preparing the reports whereas the Government has been dillydallying." (6)

Till 1992, there had been ambiguity about its status. The Commission was created through the resolution of the Government of India. For more than a decade it had a non-statutory status which belittled its importance. There was a lack of actual power. The Commission had no power to summon witnessess. The Desai Government in 1978 tried to grant it a constitutional status. A bill for the purpose was introduced in the Parliament in 1978. With a view to

add Article 338A to the Constitution, a constitutional amendment was brought for the purpose. It was placed on the agenda of the Lok Sabha in May 1979 but this item fell through as it could not attract the prescribed quorum in the House. The Commission in its annual reports had always urged the Government to take necessary steps for giving constitutional status to the Commission to enable it to be more effective. A.V. Asif - Senior Subeditor of Radiance views Weekly - "Minorities Commission failed to fulfil the expectations of minorities and proved to be mere showpieces. Unlike the U.K. where only 2% of minorities live the minority Commission in India with 16.46% of minorities. The issue was never taken ^{UP} by seriously. In June 1991, Prime Minister P..Narasimha Rao in his first address to the nation, while speaking on various problems being faced by the cuntry specifically mentioned that "we are committed to protect the constitutional and legal rights and legitimate interests of the religious, linguistic and ethnic minorities. We shall set up Special Courts to try communal offences. The Minorities Commission will be provided statutory status with a view to enhancing its effectiveness." (8) Following this on 17th May 1992 an Act of Parliament conferring statutory status to the Commission received assent by the President. The functions prescribed were same as before. However, in clause 4 of the

x does not have a statutory status."

notification, it was mentioned that the Commission while performing the functions, has all the powers of the 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 witnesses and documents; and
- (f) Any other matter which may be prescribed.

However the law has not ^{yet to} ~~ent~~ come into force. But this legislature act has removed a major lacuna.

It has been pointed out by some critics that the term "minority" being a relative term the minority Commission functions in a very ambiguous way. K.K.Wadhwa points out (9) that there are quite a number of people having double status of being in majority at one and the same time in minority in different areas. In the case of Muslims, they are the biggest minority at the national level but in one state i.e. Jammu and Kashmir and one Union Territory i.e. Lakshadweep the community is in sizeable majority. The population of

Muslims as per 1981 census in Jammu and Kashmir is 64.19% and in Lakshadweep 94.84%. The Hindus are in a minority in six states - Punjab, Jammu and Kashmir, Meghalaya, Nagaland, Mizoram and Arunachal Pradesh and one Union Territory Lakshadweep. "But at the time of the composition and recomposition of the Commission, this point has never been taken care of the interests of Hindu community in 6 out of 25 ^{states} ~~seats~~ and one out of 7 Union Territories have remained unrepresented in Minorities Commission" (10)

However, there are Minorities Commission in the state which ~~also~~ are doing commendable work. The Minorities Commission has been treating Muslims, Christians, Sikhs, Buddhists and Zoroastrians as minorities at the national level. Linguistic minority are those communities which have a separate spoken language but not necessarily a separate script and must constitute numerically smaller sections of the people in a state. The linguistic minorities are interviewed statewise and so state minorities commission deal with it.

There is yet another shortcoming about the jurisdiction of the Minorities Commission. Jammu and Kashmir is an integral part of India. It is the 15th state in the First Schedule of the Indian Constitution. Article 370 grants the state some special status. Sikhs, Christians and Hindus are in a minority but the jurisdiction of the Commission does not extend to the state. The Commission in its Third Report (11) has made a plea to both the Central

and State ^{governments} ~~wants~~ for having uniform jurisdiction over the entire Union, including Jammu and Kashmir. This is a delicate issue and needs to be examined in depth.

It is sometimes argued that the Constitution with its safeguards for minorities in Part III, and a Supreme Court are enough protection for both the minority and majority. The judiciary has acted as a very efficient guardian of the Fundamental Rights. Therefore, there is no need for the creation of an additional channel. K.K.Wadhwa remarks "Perhaps, it has been more as a political necessity than a legal one in the country." (12)

The Minorities Commission has been facing a rough weather. Its very existence has been politicised. The Bhartiya Janata Party has been repeatedly calling for the replacement of the Minority Commission by a Human Rights Commission. Their argument is that such special officers contribute to the growing hiatus between the majority and the minority. The Commission addresses itself exclusively to the problems of minorities and there is an in-built tendency in this institution to secure certain advantages for the minorities on the strength of their being such. Dr. L.M.Singhvi (13) a distinguished jurist and senior Lawyer of Supreme Court of India points out that "a minority right is a human right. It has got to be preserved but only as a question of the protection of human rights." Shri

L.K.Adwani (14) a senior party leader and a member of Parliament has cited the suggestion made to the National Integration Council by Justice M.H.Beg ex-Chairman of Minorities Commission that "naming Commissions as being meant for minority communities etc. is by itself misleading and encourages divisiveness "Justice Beg further adds that "If separate electorates were politically disastrous and joint electorates preferable, is the suggestion of a common means of meeting all complaints of discrimination, similarly not a better method of emphasizing the common interests of all in the removal of discrimination or denial of human rights." (15)

A Human Rights Commission would have a broad national purpose, covering the problems not only concerning minorities - religious or linguistic, but would concern itself with the violation of any right - fundamental, legal, or otherwise in case of any citizen irrespective of the fact whether he belongs to majority or minority. The text of minority rights in the Indian Constitution is inconsonant with the spirit of Human Rights. So a Human Rights Commission should replace the Minority Commission as the latter is more of a political expediency. The votaries of a Minorities Commission however ask for strengthening of its powers. The present status is more of a pathological laboratory than a genuine help for the Minorities. Despite the safeguards

provided in the Constitution, a feeling of discrimination does exist among the minorities. Dr.(Miss) Aloo J.Dastier was critical of Minorities Commission by calling it a "sort of grievance cell merely to make noise and thereby help keep their identity maintained in its separateness." (16) The Commission in its fourth Report had also called up for the setting up of a Human Rights Commission. The argument was that an umbrella organization would promote social cohesion. The minorities Commission, as a body exclusively responsible for Minorities accused itself of furthering divisions by its very existence.

Another malady of the Commission is that it initially was a divided house. In its infancy it was caught in an unseemly clash of personalities between its first Chairman, Minoor Masani and the then Prime Minister Morarji Desai. Masani had to leave in disgust and his successor M.R.Ansari found himself on a wayward course. Ansari could not establish a rapport with Government. So, it failed to give a corporate view and there was lack of credibility.

The Commission involves itself on details of narrow issues. It is bogged down in problems of each and every minority without bothering how they can be integrated. To add to these shortcomings, there is lack of rapport with allied organisations as Commission for Scheduled Caste and

tribes, Commission for Backward classes and officer for Linguistic Minorities.

The terms of reference of the Commission are too vast and its sources and powers too little. A.U.Asif (17) senior subeditor of Radiance Views Weekly points out that in United Kingdom, the Minorities Commission has got all the powers for the protection of Minorities. It can recommend a candidate to the public and private sector which is bound to abide by its instructions. Their annual budget ~~to~~ twelve million pounds while our annual budget is only twenty nine lakhs. Economic development seems distant, educational advancement an illusion, and alienation a constant fear. It is this group which deserves our special attention." 17

The Minorities Commission in the States are also not serious about its recommendation. There are only five states with Minorities Commission - Bihar, Uttar Pradesh, Andhra Pradesh, Tamil Nadu and Gujarat.

Another yardstick for gauging the utility of Minorities Commission is an examination of its reports. The Commission has submitted twelve reports and only four were tabled on the Parliament. It is to the credit of the Commission that it has submitted several^a exhaustive, comprehensive educative and useful recommendations. In its first report, it had dealt with the Aligarh Muslim

University Amendment Bill 1978 and communal riots in Aligarh and Jamshedpur. Riots completely erode the confidence of Minorities in ability and capability of authorities for enforcing law and order. In its third annual report commission pointed out that the tendency among members of individual minority to live in geographical circumscribed pockets had led to excessive congestion deplorable and pathetic living conditions in these pockets. It strongly advocated for better living condition of minorities. But the Commission has touched only on fringes of problem - Isolationism is not a mere social or economic phenomenon. Unless all barriers that keep minorities away from mainstream of national life are demolished national integration cannot be achieved. In all its report it has recommended more educational facilities for minorities. The problem of communal riots has been dealt in each and every report and suitable recommendations have been given. In 1988, the Commission published a "compilation by Minorities Commission of India on Problems of Minorities." The report gives a detail report of educational facilities and the shortcomings in it. Since 1988, the Minorities Commission has started a "minorities commission News Quarterly" to disseminate information about its activities. The XII Annual Report for the period April 1 1989, to March 31, 1990 was presented by Sri S.M.H. Burney, Chairman of the Commission, to Sitaram Kesari Welfare Minister, on July 11, 1991. The

Report has examined the problems of minorities with special reference to communal situation and national integration.

The Minorities Commission is a monitoring, reinforcing and supplemental agency. Ideally it should be both a preemptive and fire-fighting body. Preemptive, because by attending to Minorities grievances and facilitating their redressal, it can help to prevent the accumulation of frustration and fire-fighting because when dissipated tendencies come to fore the Commission can play a pacifying role.

There is a need to switch from present political approach to scientific approach. Root cause of Minority dissatisfaction are much too complex to be dealt with exclusively by a Commission. Whatever its status and authority - social, economic and cultural factors are simultaneously at work and their interaction create strife in society. Progressive legislative and executive action can best guarantee both security of minorities and their absorption into mainstream. Intolerance by majority is to be combated as much as ghettoism of minorities. Greater literacy, skill based education, special funds for training disadvantaged groups - would be socially less divisive.

Role of Minority Commission in such a situation would be to monitor the execution of these measures by receiving

feed-back from minority beneficiaries passing it to those in authority and cooperating with them to devise correctiveness. It is a modest but effective role.

Special Officer for Linguistic Minorities:

In 1956, when the problem of the linguistic minorities came to limelight as sequel to the reorganisation of states mainly on the basis of language, the Constitution was amended to provide for the appointment of a Commissioner for Linguistic Minorities at the Centre. On the basis of recommendation of State Reorganisation Commission, the Constitutional Amendment At 1956 was passed which inserted Article 350-B in the Constitution. The provisions of this Article says: "(1) There shall be a Special Officer for Linguistic Minorities to be appointed by the President; (2) It shall be the duty of the Special Officer to investigate all matters relating to the safeguards provided for linguistic minorities under this Constitution and report to the President upon those matters at such intervals as the President may direct and the President shall cause all such reports to be laid before each House of Parliament and sent to the governments of States concerned.

The Commissioner for linguistic Minority took charge on 30 July 1957. Twenty-nine reports have been prepared so far.

The main office is situated in Allahabad but subsequently branches have been set up in Calcutta, Balgaun and Madras.

Twenty-nine reports have been submitted so far. The reports make a study of the linguistic issues by dividing India into five zones. State-wise detailed analysis is made of the implementation of the various safeguards for minorities.

Provision for Primary education in mother tongue is the pivot around which the various safeguards revolve. In the twenty Seventh Report it has been pointed out that education of a child belonging to a tribal linguistic group has been neglected. (18) The Report also points out that there is a lack of agreed script for Santhali Speakers which makes their education difficult. Santhals reside mostly in Bihar Orissa, West Bengal and Assam. They continue to face the difficulty of receiving education through their mother tongue. The adoption of 'ol-chike' script by West Bengal was a wise step. (19) The Report has recommended that Devnagri may be adopted for those languages which have no script.

The Commission for Linguistic Minorities has done commendable work. It has been rightly pointed out "despite conserving the separate identity of linguistic minorities, all of us must work for accelerating the process of natural assimilation." (20)

FOOTNOTES:

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4. Ibid., p.4
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12. n.6, p.57
13. Ibid., p.13.
14. Ibid., p.16.
15. Ibid., pp. 16-17
17. n:7, p.34.
18. ~~26~~ Report of the Commissioner for Linguistic Minorities,
Government of India Publication, New Delhi 1988, p.243.
19. Ibid.
20. Ibid. p.8.

CONCLUSION

C O N C L U S I O N

A critical examination of the Constitutional Provisions guaranteed to the minorities in India prove beyond doubt that the framers of the Constitution of India have dealt with the problem in its historical perspective thoroughly. The Constitution of India has provided ample political, social, economic and other safeguards to minorities, to suit their specific needs to fulfil their legitimate desires, and to satisfy their respective aspirations.

In the Constitution two opposing trends, one of 'Equality' and the other of 'Special treatment' have been put in operation. Thus, Articles 15, 16 and 29 enjoin that the state shall not discriminate against any citizen on grounds of religion, race, caste, sex, place of birth or any of them. Similarly, Articles 28 to 29 guarantee non-discrimination in the exercise of the right to the freedom of religion. But there are special provisions for Anglo-Indian religious and linguistic minorities.

The Indian Constitution has dealt with the Minority rights in the constitution itself and has not left it to the wisdom and will of future parliaments. The safeguards provided to the minorities by the Constitution of India are of two categories: first transitional and temporary; and second, fundamental and permanent. The provisions that are

guaranteed for a specified period and for specified minorities e.g. provisions for Anglo-Indians, are instances of first category, and those which are placed in Chapter III of Constitution of India i.e. fundamental rights are examples of second category. The special provisions are conceived in the spirit of Indian traditions and past commitment in order to provide a lasting solution to this highly complicated problem.

The minority problem has been the bane of Indian political life. It has influenced and coloured the political life of the country both before and after independence. The feeling of frustration and of being left out from the mainstream of national life persists among the minorities.

In the context of present day India the question of satisfying the aspirations of minorities is of crucial importance. It is the criterion of success or failure of democratic experiment in this country.

The deliberations of Chapter I, reveals that minority has remained an ambiguous term which defies parameters of definition. The determination of minority on the basis of less than fifty percent of population, is not satisfactory. In India there are quite a sizeable number of people both on the basis of religion and language having double status of

being in majority at one and at the same time minority in different context. So, the expression minority is relative term and its meaning should depend upon the territorial limits of its operation and the objective of a particular legislation. The problem of defining the term was attempted in Constituent Assembly but eventually it was left to future parliament.

There have been a number of divisive forces in India, religion being a major one. The assimilative process of Indian history tried to amalgamate^{ma} these forces but religious division thrived due to its use as a political mechanism. During Muslim rule in India, a feeling of estrangement did exist but it reached its zenith during the British rule. Britishers saw the problem of plural society in India as essentially a problem of identification of religious groups and their mutual conciliation and used such schism to perpetuate their rule. Religious conflicts^c in India, ultimately led to partition of country, leaving behind a legacy of communal hatred and unsolved political problem.

The framers of our constitution - were quite alive to the complex character of the problem of minorities and believed that enlightened and healthy national consciousness would grow speedily, once the ideas of liberty, equality, justice and fraternity take root in the sub-continent. A

number of constitutional measures were incorporated to usher in harmonious relations ^{among} ~~between~~ the different groups. Notwithstanding these guarantees, an objective appraisal of the post-Constitution period, reveals ~~the~~ failure to resolve the socio-religious contradiction. A liberal, generous and sympathetic approach is reflected in the Constitution in the matter of educational rights. But the spirit of ^{the} rights, however liberally construed, ^{has} ~~can~~ not been allowed to dominate over other Fundamental rights and Directive Principles of State Policy and the spirit and content of the constitutional rights of minorities. The guarantee to linguistic minority, has been dealt with separately and is quite comprehensive. These derive their authority from ~~two~~ sources - (i) Constitution; (ii) schemes ~~agreed to~~ at all India level from time to time. Article 29 and 30 contain the spirit of rights to minorities. ~~to minorities~~. As pointed out earlier ~~to minorities~~, group rights and individual rights need to be balanced.

The Minorities Commission and Commission for Linguistic Minorities were not included in the original constitution. But the constituting of these two bodies by constitutional amendment (Minorities Commission is yet to get a Constitutional status but an executive order has been passed to that effect) reveal that the Indian Constitution is alive to the needs of Minorities. These two bodies have done commendable work and today, when the need is integration of minorities in the mainstream they can play a

much larger role. G.M. Banatwala an eminent leader of Indian Union Muslim League remarked that "live and let live" is a golden attitude but the Indian Constitution adopts the still sublimer attitude of "live and help live" (1)

The Constitution recognizes the basic plurality of Indian society and seeks to achieve unity without stifling diversity. Indians, in fact, should have pride in the safeguards displayed in the Constitution.

1. Banatwala G.M. "Minorities and the Constitution; Radiance View Weekly, Delhi 5-11 April 1992, Volume X No.24, p.63.

Table: Census Figures of Various Religious
 III Communities (In percentage)

Community	1951	1961	1971	1981
Hindus	84.98	83.50	82.72	82.64
Muslims	9.91	10.70	11.21	11.35
Christians	2.36	2.44	2.60	2.43
Sikhs	1.74	1.79	1.89	1.96

N.B.: ~~The above figures are taken from Census of India~~

N-B. Table compiled from Census Report of India -
 1951, 1961, 1971, 1981.

TABLE I - LINGUISTIC DISTRIBUTION IN INDIA

6

Zone	States	Population (in lakhs)	Main Language (in %age)	Other Language (distribution in %age (Less than 1% not mentioned)
CENTRAL ZONE	Madhya Pradesh	521.79	Hindi - 84.3	Bhili/Bhilodi-3.07; Gondi-2.57, Marathi-2.28; Urdu-2.18; Oriya-1.12
	Uttar Pradesh	1108.62	Hindi - 89.68	Urdu - 9.74
EASTERN ZONE	Bihar	699.15	Hindi - 80.17	Urdu-9.99; Bengali-3.01; Santhali-3.01
	Orissa	263.70	Oriya - 82.23	Telugu-2.31; Hindi-2.28; Santhali-1.99 Kui-1.92; Bengali-1.45; Urdu-1.42
	Sikkim	3.16	Gorkhali/ Nepali-61.07	Lepcha-6.96; Limbu-5.69; Hindi-4.85; Sherpa-3.39
	West Bengal	545.80	Bengali - 86.34	Hindi-5.94; Santhali-2.88; Urdu-2.21; Gorkhali/Nepali-1.30
NORTHERN ZONE	Haryana	129.23	Hindi - 88.77	Punjabi-9.21; Urdu-1.77
	Himachal Pradesh	42.80	Hindi - 88.95	Punjabi-5.83; Kimauri-5.83
	Jammu & Kashmir	59.87	Kashmiri - 52.73	Dogri-23.28; Hindi-17.03; Punjabi-2.73 Ladakhi-1.20
	Punjab	167.88	Punjabi - 84.88	Hindi-14.60

contd...

	Rajasthan	342.67	Hindi-89.89	Bhili/Bhilodo-4.62; Urdu-2.13; Punjabi-2.12
	Chandi garh	4.51	Hindi-55.11	Punjabi-41.18
	Delhi	62.21	Hindi-76.29	Punjabi-13.17; Urdu-5.88; Bengali-1.05
NORTH-EAST ZONE	Assam	199.0	Assamese-60.8	Bengali-19.0; Hindi-5.4; Bodo-2.9; Nepali-2.4; Miri-1.2; Oriya-1.2
	Manipur	14.21	Manipuri/ Meithei-61.85	Tangkhul-5.48; Thado-4.06; Mao-3.76 Kabui-3.53; Gorkhali/Nepali-2.60; Kuki-2.60; Paite-2.18; Hmar-2.05; Bengali-1.32
	Meghalaya	13.36	Khasi-47.13	Garos-29.87; Bengali-9.01; Gorkhali/ Nepali-4.58; Hindi-2.24; Assamese-1.7 Rabha-1.03
	Nagaland	7.75	Ao-13.43	Sema-12.10; Konyak-10.74; Angami-10.10 Lotha-7.46; Sangtam-3.71; Bengali-3.5 Yimchungre-3.53; Hindi-3.25; Gorkhali, Nepali-3.21; Phom-3.13; Chang-2.97
	Tripura	20.53	Bengali-69.59	Tripuri-22.89; Hindi-1.26

contd....

	Arunachal Pradesh	6.32	Nissi/ Dalla-22.13	Adi-18.91; Bengali-7.56; Gorkhali/ Nepali-7.20; Morpa-5.25; Wancho-5.09; Nocte-4.36; Hindi-4.00; Mishmi-3.76
	Mizoram	4.94	Lushai/ Mizo-74.86	Bengali-8.29; Tripuri-4.08; Lakher-3.11
SOUTHERN ZONE	Andhra Pradesh	535.5	Telugu-85.13	Urdu-7.84; Hindi-2.60
	Karnataka	371.34	Malayalam-95.99	Tamil-3.76; Telugu-4.02
	Kerala	254.53	Tamil-85.35	Telugu-8.30; Kannada-2.39
	Tamil Nadu	484.1	Tamil-85.35	Telugu-8.30; Kannada-2.39
	Pondichery	6.04	Tamil-89.18	Malyalam-5.15; Telugu-4.02
WEST ZONE	Gujrat	340.85	Gujrati-90.73	Sindi-2.14; Hindi-2.13
	Maharashtra	627.84	Marathi-73.62	Urdu-6.94; Hindi-6.66; Gujarati-2.71
	Dadra & Nagar Haveli	1.04	Bhili/Bhilodo-67.45	Gujarati-23.84; Marathi-4.35
	Andaman & Nicobar Island	1.89	Bengali-24.68	Hindi-18.14; Tamil-14.81; Nicobere-11.35; Malyalam-10.43; Telugu-9.86; Kurukh/Oraon-3.05
	Lakshwadeep	40.35	Malyalam-84.51	

Source: Twenty-Seventh Report of Commissioner for Linguistic Minorities (based on 1981 census)

1. Less than 1% not included

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