CHAPTER IV

THE CONSTITUTIONAL FACE OF MINORITY - THE FORMULATION OF MINORITY RIGHTS
Like other major social categories such as backward classes, the meaning of the term minority remained ambiguous at the time of the formulation of the Indian Constitution. It was used in the sense of referring to religious minorities, sometimes it was used to denote linguistic minorities, sometimes but rarely, it meant ethnic minorities as found in the excluded areas. Quite often it encompassed all the three groups above as well as other autonomous political groups such as scheduled castes. Politically sometimes it was used to refer to non-Congress sections. Therefore it was an umbrella term bringing within its fold a large number of desperate groups.

There were however certain issues which complicated the picture. Some of these minorities defended themselves and argued for their continued existence in spite of the opposition of the Congress. This was for instance the case of untouchables led by Dr. Ambedkar. There were certain minorities like the Sikhs who had come to increased

1. For the different connotations with which the term Backward Classes was used, see, Marc Galanter, Competing Equalities, Low and Backward Classes in India, Delhi, O.U.P., 1984.

2. Dr. Ambedkar's views regarding the relationship between the Scheduled Castes and other minorities can be found in a monograph entitled "State and Minorities" presented before the Constituent Assembly in April 1947.

    Also see, Nevil Maxwell, India and Nagas, Third World Unity, London Minority Rights Group, Report No 17.

    B.P. Singh, Politics of North East India, Delhi, O.U.P. 1982.
political prominence with the developments following the Cabinet Mission Plan. Further there were certain minorities like the Parsis who were reluctant to advance their claims as such. The ethnic and cultural minorities, in spite of the rare leadership sometimes available as that of Jainal Singh in the Jharkhand movement were not sufficiently articulate to seize any major initiative. Some of them who could do it such as A.Z.Phizo were already confabulating to carve out an independent identity for the Naqas. The Congress by accepting the demand of linguistic states had taken the steam out of the linguistic issue. In the given conjuncture the notion of the minority that came to the forefront was that of Muslim with all the urgency and ferociousness that was possible. In the early days of the Constituent Assembly the issue of partition hanged over it like a Democleus sword. Major communal riots flared up in different parts of the country on the eve of the independence especially in Bengal and Punjab. After the issue of partition was settled the refugees communal riots and the fragile unity of the country became the central issues in India. Increasingly the term minority was used mainly in its religious connotation and its point of reference for a large number of the members of the Constituent Assembly was the Muslims.

1. Asoso Yonuo, The Rising Nagas, Delhi, Manas, 1984
Although the context constraining the mental horizons of the members was understandable the notion of the minority was losing several determinations hitherto present in its loose and ambiguous usage. However such ambiguities were rarely reformulated in terms of precise alternative meaning. Therefore sometimes this term was applied much more in the inclusive sense of referring to the cultural minorities as well, while most of the time it connoted religious and linguistic minorities.

Subsequently therefore when ethnic based subnationalisms emerged as in the North East, the conceptual apparatus required to understand this process was missing. In the linguistic agitations that followed the enactment of the Constitution, minority and minority rights were rarely deployed either to understand or to streamline such agitations.

The scheduled castes and scheduled tribes increasingly acquired an identity outside the framework of the minority as social groups requiring affirmative action primarily at the economic plane rather than as minorities needing to preserve their specific identities.

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It is not that all the members of the Constituent Assembly forgot the different nuances the term minority evoked. We have already referred to Dr. Ambedkar's views in this regard. Sardar Patel who chaired the Advisory Committee on fundamental rights and minorities took overboard a wider definition of minorities. However, despite of it, the articulated and debated concerns revolved around a narrow conception of this social category. The influence that Patel and Ambedkar wielded in formulating the Constitution left the issue of minorities to be cropped up in connection with several articles of the Constitution. But the focal issues are primarily dealt in two articles i.e., articles 29 and 30 of the Constitution. It is these two articles which decisively define the rights and privileges of the minorities. To discuss these two articles, we will turn our attention now.

It is needless to state here that when we discuss the rights of the minorities we can do so only on the presupposition that certain rights are applicable to one and all irrespective of the position and station in life. The fundamental rights therefore constitute the primary background around which specific minority rights can be discussed and not the other way about. We however desist from getting into that scope as our concern is on the specific rights of the minorities and the way they are appropriated.
Articles 29 and 30 of the Indian Constitution provide special safeguards for protecting the interests of the linguistic and religious minorities in this country. These articles are the quintessence of a well thought out plan as in response to the minority issue in India. Elaborate discussions have taken place at different stages and political leaders both from the majority and minority communities have contributed their might in finalising these two articles. The Constituent Assembly was in fact almost a ratifying agency of what was drafted by the Advisory Committee on minority rights.

The draft was finalised after wide ranging discussions

1. These are the two articles which solely talk about minority rights. There are other articles and important clauses such as the right to propagate religion (Article 25) which have a direct and sometimes critical bearing on the religious minorities in India. But unlike the popular perception these rights are not exclusive to minorities but pertain to one and all.

2. A major change the Constituent Assembly effected in the recommendations of the Advisory Committee on minority rights is regarding separate electorate and reservation for minorities. Originally Sardar Patel was willing to concede separate electorate if it could avoid partitioning the country. But he changed his mind consequent to the partition (his reply in the Constituent Assembly on 28 Aug. 1947). He argued that the provision of separate electorate would further divide the country. Nevertheless most of the Muslim representatives went on demanding the same. In the report submitted by the committee on minority rights (see Appendix) there was a well considered proposal for reservation of seats in the federal and provincial legislatures for the minorities. Subsequently this proposal was also reversed.
with varied interest groups. The report of the Advisory Committee on minority rights reflected almost a consensus both among the minority groups and also between majority and minorities. Definitely there were claims which sometimes appeared too demanding. On the other side there was almost an absolute unwillingness to concede any safeguard for any minority group. These demands were carefully examined and scrutinised through a constant dialogue between the minority and majority representatives. The majority reconciled themselves to granting certain safeguards to the minorities and the latter in turn expressed their readiness to be satisfied with the minimum. The confabulations that had taken place behind the Constituent Assembly clearly revealed that the total outcome in the form of articles 29 and 30 is neither simply what various minority groups demanded nor what the majority benevolently and gratuitously conceded.

THE COMMUNAL COMPOSITION OF THE ASSEMBLY

Perhaps one of the most striking aspects of the Constituent Assembly is its communal composition. Neither the British Government nor the Indian nationalist leaders gave a serious thought to elect a Constituent Assembly based
on universal adult franchise.

The institutionalised framework by the India Act 1935 which was still in place, was the representation of various interests including religious communities. The composition of the Constituent Assembly was based on the same, with its representation allotted on the basis of religious groupings. Even the Cabinet Mission Plan classified the representative into General, Muslim and Sikh groups. Though the Muslim

1. Though the Congress had been demanding a Constituent Assembly created by adult suffrage, it accepted the proposal given by the Cabinet Mission Plan which provided that provincial legislatures elect the Assembly. The members of the legislatures were grouped into three communal categories i.e Muslim, Sikh and General which included Hindus and all other communities. On the basis of population of each community, these groups of provincial legislators were asked to elect the representatives to the Assembly. Moreover the surcharged atmosphere of 1946 was not conducive for a general election.

2. The table of representation in the Constituent Assembly as proposed by the Cabinet Mission.

<p>| SECTION 'A' |
|------------------|--------|--------|--------|</p>
<table>
<thead>
<tr>
<th>Province</th>
<th>General</th>
<th>Muslim</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Madras</td>
<td>45</td>
<td>4</td>
<td>49</td>
</tr>
<tr>
<td>Bombay</td>
<td>19</td>
<td>2</td>
<td>21</td>
</tr>
<tr>
<td>United Provinces</td>
<td>47</td>
<td>8</td>
<td>55</td>
</tr>
<tr>
<td>Bihar</td>
<td>31</td>
<td>5</td>
<td>36</td>
</tr>
<tr>
<td>Central provinces</td>
<td>16</td>
<td>1</td>
<td>17</td>
</tr>
<tr>
<td>Orissa</td>
<td>9</td>
<td>-</td>
<td>9</td>
</tr>
<tr>
<td>167</td>
<td>20</td>
<td>187</td>
<td></td>
</tr>
</tbody>
</table>

<p>| SECTION 'B' |
|------------------|--------|--------|--------|</p>
<table>
<thead>
<tr>
<th>Provinces</th>
<th>General</th>
<th>Muslim</th>
<th>Sikh</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>115</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
League stigmatised the general category as Hindus, for all practical purposes, this category in fact included all the minorities even Muslims. The Indian National Congress and its leaders took care to accommodate even the microscopic minorities.

The Cabinet Mission statement on May 16, 1946 set out in detail the method and procedure of the composition of the Constituent Assembly. Three main divisions as General, Muslims and Sikhs were recognised. The General category included all other than Muslims and Sikhs. The Cabinet Mission Plan guaranteed the reservation only for Muslims and Sikhs. It was silent about other minorities. It was left ....Continued...

<table>
<thead>
<tr>
<th>Province</th>
<th>General</th>
<th>Muslim</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Punjab</td>
<td>8</td>
<td>16</td>
<td>28</td>
</tr>
<tr>
<td>N.W.F.P.</td>
<td>-</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>Sind</td>
<td>1</td>
<td>3</td>
<td>4</td>
</tr>
<tr>
<td></td>
<td>9</td>
<td>22</td>
<td>35</td>
</tr>
</tbody>
</table>

SECTION 'C'

<table>
<thead>
<tr>
<th>Province</th>
<th>General</th>
<th>Muslim</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bengal</td>
<td>27</td>
<td>33</td>
<td>60</td>
</tr>
<tr>
<td>Assam</td>
<td>7</td>
<td>3</td>
<td>10</td>
</tr>
<tr>
<td></td>
<td>34</td>
<td>36</td>
<td>70</td>
</tr>
<tr>
<td>Total for British India</td>
<td>292</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Maximum for Indian States</td>
<td>93</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

to the Congress to accommodate among others, Parsis, Indian Christians, Scheduled Castes and Anglo Indians. As per a standard assessment "as a result of the Congress policy the minority communities were fully represented in the Constituent Assembly usually by members of their own choosing. The Indian Christians had seven representatives in the Assembly, the Anglo Indians three, the Parsis three and so on. After partition when the composition of the Assembly except for the representation of the princely states had become settled the minorities had 88 seats".

However a communal categorisation of the members of the Assembly is the most conspicuous fact that can be noted. Even the Nationalist leaders of the Indian National Congress were looked upon and were classified in terms of their


2. Communitywise classification of the members of the Constituent Assembly elected from the Provinces was as follows:

<table>
<thead>
<tr>
<th>Community</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hindus</td>
<td>163</td>
</tr>
<tr>
<td>Scheduled Castes</td>
<td>31</td>
</tr>
<tr>
<td>Muslims</td>
<td>80</td>
</tr>
<tr>
<td>Anglo Indians</td>
<td>3</td>
</tr>
<tr>
<td>Parsis</td>
<td>3</td>
</tr>
<tr>
<td>Christians</td>
<td>6</td>
</tr>
<tr>
<td>Scheduled Tribes</td>
<td>6</td>
</tr>
<tr>
<td>Sikhs (vacant)</td>
<td>4</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>296</strong></td>
</tr>
</tbody>
</table>

Source: A Appadurai, *Documents on Indian Constitution.* p.580
religious affinities. Hence it is not very uncharitable to remark that the Indian Constituent Assembly was subject to the interpretation that it represented various religious denominations and not exactly the Indian nation in the abstract.

There was widespread eagerness to give representation to all religious groups as if it was a sine qua non for the making of a constitution. Accommodation was sought with interests and perspectives not hitherto shared by the Congress, not atleast by its mainstream. The entire outlook both from the majority as well as from such representatives was that they represented their communities and they had to invariably speak on behalf of their communities. Whatever they uttered on the floor of the Assembly was taken as the genuine reflection of the unanimous will of these minorities. This phenomenon, one has to admit, vitiated to a great extent the entire

1. Eventhough the Indian National Congress has taken special interest to nominate members from various minority communities and even instructed the Pradesh Congress Committees to nominate such members, the Constituent Assembly was somehow branded as a Hindu dominated body especially by British politicians such as Winston Churchill and Viscount Simon.

2. On December 9, 1946 when the first meeting of the Constituent Assembly was held, 210 out of 296 members attended the session. Out of them 155 were Hindus, 30 Scheduled Castes representatives, 5 Sikhs, 5 Indian Christians, 6 Backward Tribe representatives, 3 Anolo Indians, 3 Parsis and 4 Muslims. C.A.D. Vol.II.p.267.
proceedings and gave it a communal and religious perspective.

THE SUBCOMMITTEE ON MINORITIES:

The Constituent Assembly appointed an advisory Committee on fundamental rights and minorities on 27 February 1947. This advisory committee formed a subcommittee in order to specially look into the minority rights.

Dr. H.C. Mookerjee was the Chairman of this committee.

1. One naturally wonders how in spite of this not so laudable background, the makers of the Constitution could courageously go for a near perfect secular socio political set up. This is one thing every Indian has to be rightly proud of.

2. (1) Members of the Sub-Committee on minorities were

1) Dr. H.C. Mookerjee 13) Bakshi Tek Chand.
2) R.K. Sidhwa 14) Dr. B.R. Ambedkar
3) Dr. S.P. Mookerjee 15) S.H. Thakur
4) F.R. Antony 16) P.K. Salve
5) Homi - Mody 17) M.V.H. Collins
6) K.M. Munshi 18) Jairandas Daulatram
7) M. Khandekar 19) Rup Nath Brahma
8) Rajkumari Amrit kaur 20) The Hon'ble govindaBallabh Pant
9) Dr. Alban D'Souza 21) The Hon'ble C. Rajgopalachari
10) P.R. Thakur 22) The Hon'ble Jaqivan ram
11) Sardar Harnam Singh 23) The Hon'ble Maulana Abdul Kalam Azad
12) Sardar Ujjal Singh 24) Sardar Jogendra Singh

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It had its preliminary discussions on 27 and 28th February 1947 and decided to circulate to its members a questionnaire drafted by K.M. Munshi. This questionnaire helped to know the opinion of the members on specific issues. Certain minority communities and organisations also submitted a few memoranda to the subcommittee.

A glimpse at the important queries raised in their questionnaire gives us a clue to what was considered as important issues at the early stages of deliberation itself. They were,

1) What should be the nature and scope of safeguards for a minority in the new constitution?

2) What should be the political safeguards for a minority (a) in the centre (b) in the provinces

3) What should be economic safeguards for 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?

1. Memoranda were submitted on behalf of Anglo Indian, the Jain community, All India Adi Hindu Depressed classes Association, and also on behalf of the Jam Swetambar Conference.
The members of the sub committee replied to the questionnaire and expressed their views on these issues as if they represented specific communities. Master Tara Singh, Ujjal Singh and Harnam Singh on behalf of Sikhs. Frank Antony and S.H. Prater on behalf of Anglo Indians. Homi Modi and R. K. Sidhwa on behalf of Parsis, H.J. Khandekar, Jagjivan Ram and Dr. B.R. Ambedkar on behalf of Scheduled Castes and R.N. Brahma as behalf of plains Tribal people of Assam responded to the questionnaire.

Dr. B. R. Ambedkar submitted an exhaustive note with special emphasis on social and political safeguards for the Scheduled Castes and Tribes. He strongly pleaded for reservation of seats in the legislatures for Scheduled Castes on the basis of population. He demanded reservation in civil services also. He had his suggestions for the abolition of the social customs that are prejudicial to the weaker sections in the society.

Frank Anthony and S.M. Parter submitted their memoranda on behalf of Anglo-Indians. Their main thrust was to continue the privileges their community had been enjoying till then. Hitherto they had special consideration in the

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1. See - Ambedkar "State and Minority".
Telegraph. The Anglo Indian Schools were getting special assistance from the government. Frank Anthony was very keen on the continuation of these privileges. They demanded representation in the legislatures also. Almost all these were granted and the Anglo Indians could likely secure a very preferential treatment from the Constituent Assembly.

The Sikhs were in a way a dissatisfied lot. They were the fourth largest religious community in India. They too demanded reservation of seats in the legislatures. Their other demands included representation in the central cabinet, predominance for Punjabi language in Punjab and special privileges for the backward communities among the Sikhs.

The approach of the Parsee community was very liberal and they responded to the situation in a very nationalist point of view. They did not put any specific demands, might be because they were aware that their community enjoyed a very privileged position in the society. Though they were a minority in a numerical sense, politically economically and socially they were far advanced than most.

1. Frank Anthony — ibid p. 346
2. Ujjal Singh and Harnam Singh — ibid — 364
3. Homi Modi - ibid p. 323
of their countrymen.

The Christians too did not put any specific demands. They had shown an inherent faith in the magnanimity of the Hindu majority and the Christians never suspected that they would be illtreated by their Hindu brethren. Another interesting dimension was the absence of coordination among the various groups of the Christian community in India. There were Dr. Alban D’Souza, Dr. M.C. Mookerjee and Amrit Kaur as representatives in the Constituent Assembly. But they were, for all practical purposes, the nominees of the Congress party and they could not be expected to express any opinion other than that of the Congress. It is better to remark that they were the spokesmen more of the Congress party than that of the Christian community. In short the Christian community never demanded any thing special nor they are unhappy about the treatment the Constituent Assembly meted out to them.

The Muslim response was later viewed in derision specially in terms of their demand for separate electorate. A peculiar predicament had befallen to the members who

1. Amrit Kaur argued that no minority should demand any safeguard - ibid - p. 311

2. The Syrian Christians in Kerala which constitute a large portion of the Indian Christian population were more or less indifferent to the national issues in those days.

claimed to be speaking for the Muslims of India after the All India Muslim League decided to boycott the Constituent Assembly. On one side the Muslim League was criticised as the prime mover behind the creation of Pakistan. Unfortunately the Indian Muslims were looked down upon as leftovers and as if they had no 'locus standi' in the Indian political set up. Other side, the Muslim fundamentalists made the bargain as if they are the real representatives of the community. Unfortunately they could never think in terms of a state separated from the Church. The letter from Maulana Hifzur Rahman and Abdul Quaiz Ansari to the minority subcommittee merely reflected this fundamentalist approach. They have asked for "system of appointing khaziz to settle the questions of marriage and divorce, so that they may be decided according to the so called tenets of Islam and also for appointment of Muslim Judges in the Supreme Court and in the High Courts to decide the propriety of any cultural right.". It is needless to say that this Muslim fundamentalist approach could secure only a contemptuous response from the nationalist secular leaders of the Congress. Had the Muslim leaders visualised a secular, political framework, without of course, any damage

1. B. Shiva Rao - The Making of India's Constitution Vol. II p. 385
2. ibid, p.386.
Most of the respondents to the questionnaire suggested
the setting up of a Minorities Commission in order to take
necessary steps to see that the minorities are given a fair
treatment in the political economic and cultural spheres of
S.P. Mookerjee, S.H. Prater, Jairamdas Daulatram and Harnam
Singh were some of the members who considered this issue and
were on agreement with it. Babu Rajendra Prasad too
strongly advocated the creation of such a Minorities
Commission. "There should be an independent Minorities
Commission at the Centre and in the provinces composed of
representatives (but not necessarily a member of that
community) in the legislature. Function of the Commission
shall be to keep a constant watch over the interests of the
minorities to call for such information as the Commission
considers necessary, to review periodically, and to submit
reports to the Prime Minister. The recommendations of the
Commission shall be considered by the Cabinet..."

There were different views regarding the details of the
organisation functions and accountability of such a Minority

1. see, Babu Rajendra Prasad—India Divided—p.381.
Commission. Some suggested that it should be headed by a Supreme Court Judge. Others felt that the members of the minority communities in the legislature should elect such a Commission. But most of them envisaged that such a Commission should act as an independent agency.

Unfortunately most of them had only the Muslims in mind as a minority in India. A content analysis of the writings and notes of Babu Jagajjivan Ram and even Dr. Rajendra Prasad often during this period shows that they often restricted the concept of minority to Muslims in India. The context was extremely telling even in the formulation of their priorities. There was little concern at these stages on issues of linguistic and cultural minorities. Even the smaller religious minorities were left by the wayside. Only Harnam Singh proposed a viable and realistic concept of a Minorities Commission. S.H. Prater goes to the extent of suggesting the establishment of a minority office with a provision to take appeals to a mixed committee consisting of equal number of members. His suggestions reflect lack of trust and confidence in the sense of justice of Indians that he proposes to take appeals from the mixed committee to

1 S.H. Prater in his memorandum to the sub committee, quoted in B. Shiva Rao Vol.II p.360.
international organisations such as International Court of Justice.

Most of the members of the Advisory Committee and its Sub Committee were of the opinion that the political rights given to all citizens must equally be applicable in the case of minorities and they need not be given any special political rights or safeguards. Some members of the committee proposed that there should be a provision for representation of minorities in the cabinet. But this opinion was rejected by the Committee itself mainly because of practical problems. However the Committee was aware that there must be representatives of the minorities in the cabinet. There was a suggestion to include this idea in a Schedule as a convention or as some sort of directive principle as it was in the instructions to the Governors.

5 The Janatha Government in 1978 appointed a Minority Commission in order to remove the feelings of inequality and discrimination among the minority communities. This commission under the chairmanship of R.A. Ansari was often criticised as ineffective (see Hindustan Times, Jan. 29, 1982 p.5, The Tribune, Nov. 15 1978 p.4). The B.J.P. demands that this Commission is to be substituted by a Civil Rights Commission (see B.J.P. Manifesto 1991, op. cit. p.4.)
under the 1935 Government of India Act.

It is interesting to note the opinions expressed by various members regarding the elimination of safeguards to the minorities. The general impression was that they should be continued as long as the minorities wanted them. It is for the majority to create a sense of confidence in the minorities, thereby undermining the reason for their safeguards. The minorities must be economically socially and politically equal to the majority.

According to M. Ruthna Swamy "the majorities like all holders of power tend to abuse the power, so that safeguards against such abuses should always remain in Constitution. It can be eliminated when the minorities realise that their religion or culture is no bar to the enjoyment of all the rights of citizenship and when they feel that their political status or power are the same as that of the citizens of the majority communities".

1. "In making appointments to his Council of Ministers our Governor shall use his best endeavours to select his ministers in the following manner that is to say, to appoint in consultation with the person who in his judgement is most likely to command a stable majority in the legislature those persons (including so far as practicable members of important minority communities) who will best be in a position collectively to command the confidence of the legislatures."

see, Government of India Act 1935 Section VII.

Homi Modi, P.K. Salve and Jagajivan Ram were of the opinion that the safeguards should continue forever. However they made a distinction between the safeguards for religious and cultural rights and other safeguards. "Political safeguards can be eliminated after these minorities have been convinced that their rights shall be amply protected by the majority community even if they are not represented in the legislature".

According to Harnam Singh "under the existing conditions of India we do not see any possibility in the near future when minorities will not stand in need of protection. If however the majority wins the confidence of minorities by their sympathetic and generous treatment some of the special safeguards may automatically lapse".

P.K. Salve though asserted that the safeguards should continue for ever gave certain useful suggestions such as 1) gradual replacement of all communal educational institutions by the State Educational institutions 2) refusal on the part of the Government to give recognition to any political party on the basis of religion or faith (3) mixed armies consisting of all communities be formed (4) preaching of hatred against any community or class or instigation of

Therer was a lone voice from among the minorities themselves who strongly pleaded that there should not be any special safeguard for the minorities. It was that of Dr. Raj Kumari Amrit Kaur. On behalf of the Christian community and on her personal behalf she advocated a very secular and nationalist outlook. "I appeal to the members of the Christian community to eschew privileges, such an attitude would be wholly in keeping with the spirit of the teaching of Jesus Christ......privileges and safeguards really weaken those demand them. They are a definite bar to unity without which there can be no peace. No minority should demand any safeguards but should be brave enough to rely solely on the goodwill of the majority and its own internal moral strength. Nevertheless it is up to the majority communities to inspire the necessary confidence in the minorities as to enable them to adopt this attitude. The larger responsibility is really theirs".

At its second sitting from 17 to 19 April 1947 the Sub Committee considered the report on Fundamental Rights to examine its implications for minority rights. The third sitting was held from 21st July and lasted for 7 days. The

2. Raj Kumari Amrit Kaur, ibid p.311.
major issues it discussed during those days included the problem of reservation for the minority representation in the legislatures and the administrative machinery for the protection of minority rights. The Sub Committee decided by a majority of 28 to 3 that there should be no separate electorate for the elections to the legislatures. It was also decided that there should be reservation of seats for different recognised minorities in the various legislatures. On July 27, 1947 the Sub Committee finalised its report and it was submitted to the Advisory Committee.

ADVISORY COMMITTEE

This Committee under the chairmanship of Sardar Patel

1. The members of the Advisory Committee were:
Vallabhbhai Patel, Chairman
Surendra Mohan Ghose
Prithvi Singh Azad
H.J. Khandekar
P.R. Thakur
V.I. Muniswamy Pillai
Baldev Singh
Ujjal Singh
H.C. Mookerjee
P.K. Salve
Mehrchand Khanna
S.P. Mookerjee
Dharam Prakash
Jagajivan Ram
B.R. Ambedkar
Jogendra Singh
Pratap Singh
Gyani Kartar Singh
J.Alban D’Souza
J.L.P. Roche-Victoria
Frank Antony
Homi Mody
R.N. Brahma

K.T. Shah
A.V. Thakur
Rajakrishna Bose
Abdul Qayum Ansari
H.A. Lallejee
Kasturbha Lalbhai
N.Madhava Rao
D.Gopaldas Desai
Chengalraya Reddy
Laxmikanth Maitra
Sarangdhar Das
Tajamul Hussain
R.K. Sidwa
Khan Abdul Ghaffar Khan
J.J.M. Nichols Roy
Devendra Nath Samantha
J.B. Kripalani
Jairamdas Daulatram
Mrs. Hansa Mehta
Gopinath Bardoli
A.K. Aiyer
K.M. Munshi
M. Ruthna Swamy
was constituted by the Constituent Assembly in order to examine the fundamental rights to be incorporated in the proposed Constitution. The Sub Committee on minority rights had presented its findings and recommendations to this committee and they were substantially accepted. After detailed discussions a report was prepared which was later submitted to the President of the Constituent Assembly of India. The Constituent Assembly discussed this report for two days on 27 and 28 August 1947 and adopted the report with certain modifications.

The Advisory Committee suggested to abolish all kind of separate electorate because in its judgement such a system would further divide the country and alienate the minority communities from the majority. At the same time in order to alleviate the fear of the minorities, the committee suggested reservation of seats for different minorities in the legislature. This issue was discussed in detail and an

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...Continued...

Abdul Samad Khan
P.B. Shah
Jaipal Singh
Maulana Abdul Kalam Azad
Raj Kumari Amrit Kaur
Govind Ballabh Pant
Prushottom Das Tandon
Begum Aaizaz Rasul
Giani Gurumukh Singh

Hafizur Rehman
Mohammed Saadulla
S. Jafer Imam
Kameshwara Singh
Mohan Singh Mehta
Gokulbhai Bhatt
Seth Govinda Das
Thakur Das Bhargava

1.see Vallabhai Patel's report to the President, Constituent Assembly dated 8th August 1947 reproduced in CAD Vol.V 243.
appendix was added to the report suggesting how the representation in legislature was to be worked out. The committee was generous in permitting the minorities who had reserved seats in the legislature to contest general seats as well.

CONSTITUENT ASSEMBLY

On Wednesday 27th August 1947 the Constituent Assembly took up the discussion on the report on minority rights. On behalf of the Advisory Committee, its Chairman Sardar Vallabhai Patel presented the report. While introducing he has explained the salient features of the report. It goes to his credit that in spite of bitter controversies and divergent views, he was able to bring out almost a consensus report. The Assembly on 28th August 1947 adopted the report with minor modifications. The Assembly debated on the report for two days i.e. 27th and 28th August 1947. The major issues that were debated during these days included reservation in representation separate electorate and special safeguards for the Anglo Indians. Though the Assembly was dead against separate electorate, it was in the early stages in favour of giving reservation in

1.ibid p.249.
representation for the minority communities. The communities were to be represented proportionate to their population. Most minority groups and their representatives in the Assembly sought reservation for themselves. These included Congressmen and non-Congressmen. The Sikhs wanted reservation including the Akali Sikh leader and the Union Defence Minister Baldev Singh. The Parsi leader, Homi Mody supported reservation for his community until Sardar Patel dissuaded him. Although H.C. Mookerjee leader of the Indian Christians himself wanted to forego reservation, feared that many minority communities would not agree. He ultimately decided to disavow reservation and became a leader of the movement against it. The Anglo Indians under Frank Antony demanded special treatment. Among the Muslims including the "nationalist" Congress Muslims as well as

1. The report of the Advisory Committee contained the following provisions regarding reservation of seats in the legislature.
   1) Anglo Indians - no reservation but provision for nomination; Parsis no reservation.
   2) Indian Christians - reservation for representation in proportion to their population in the central legislature and in the provincial legislatures of Bombay and Madras.
   Muslims, Scheduled Castes - reservation of seats on the basis of population.
   3) Additional rights for minorities to contest general seats though they have reserved seats
      see The report of the Advisory Committee to the Constituent Assembly, C.A.D. Vol.V p.249.


League representatives there was strong support for reservation.

A major issue that was debated at length was that of separate electorate. Only the Muslim representatives asked for it and other minority groups were not keen on this demand. Naturally there was strong opposition from the Hindu side. Many thought that it was another attempt to further divide the country. Congres leaders were strongly pleading for a secular state. The other religious minorities were ready to sail or sink with the majority.

The most convincing and forceful arguments came from Pandit G.B. Pant. He was looking at the issue from the interest of the minorities themselves. If there is separate electorate for the minorities, he argued then they would be alienated from the majority. With separate electorate the Muslim representatives can be the representatives of Muslims only and they cannot be representatives of the whole people. This indirectly means that there can be a Hindu State, because the Hindu representatives represent Hindus and they are in a majority. In the general electorate

1. see Granville Austin: The Indian Constitution p.149.

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system the minority moves with majority. There is unity and
derstanding in the general electoral system.

After elaborate discussions the Sub-Committee on minorities had recommended reservation for a period of ten years. But later the Indian Christians and Parsis turned down reservation for their communities. It was not possible for the Sikhs to make a decision. It was the period of partition and it had affected the community very much. Though it is said that the Congress leaders such as Patel, Prasad and Nehru put pressure on the representatives of the minorities to give up their demand for reservation, it was basically the minorities who realised the irrelevance of reservation and as Sardar Patel puts it "Some of the minorities gladly surrendered this right and they wanted neither weightage nor separate electorate but in the general upheaval that it is taking place, they want to merge themselves in the nation and stand on their own legs. I congratulate those who have taken that stand." Though Jawaharlal Nehru, Sardar Patel and Rajendra Prasad did not want to impose their views on any one of the minority groups, they wanted a generous response from the side of the minorities. Finally Dr. H.C. Mookerjee introduced a


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The Scheduled Caste representatives were not convinced of the arguments and they demanded reservation and the article was adopted in this manner "The system of reservation for minorities other than scheduled castes in legislatures be abolished"

The final outcome was that the minorities were 'denied' the privilege of reservation and it was granted only to the scheduled castes and tribes and that too only for a period of 10 years. During the debate many members felt that the 10 years period was pretty too long and after 10 years there might not be any need for reservation either for scheduled castes or for the minorities.

There was a considerable section among the members of the Constituent Assembly who genuinely thought that the Advisory Committee had been overgenerous towards the

1. According to V.V. John "Dr. H.C. Mookerjee and Dr. Jerome D'Souza said to have been responsible more than any one else, for doing away with constitutional provisions for reservation for linguistic and religious minorities"
   see, V. Lawrence, A Great Indian Jesuit, Gujarath Sahithva Prakash,1986, p x.


3. It seems that that the negative impact of the whole arrangement is more conspicuous today. In spite of 40 years, not 10 years, we are no where near the possibility of abolishing the provision of reservation. In fact it has got well entrenched in the socio-political system of our country.
minorities. The Anglo Indians could very easily be cited as the most benefited section. Another example of generosity was the provision that the Scheduled Castes can contest the general seats even though they have reserved seats proportionate to their population. The inclusion of Dr. Ambedkar in the interim Government was viewed by P.S. Deshmukh and certain others as a great favour towards the Scheduled Castes implying that he was not worthy of this elevation and suggesting that his caste identity helped him.

A community which has really gained beyond all their numerical proportion was the Anglo-Indian community. Even in the 40s or 50s Anglo-Indians were not a downtrodden group but rather an advanced one. Nevertheless they were given special concessions. Even though they number less than 0.01% of the national population even today they have 2 M.Ps and some M.L.A.'s in some States, of course nominated by the President or Governor. For a period of 10 years i.e. 1950 to 1960 they were given special concessions regarding employment in the Railways and Post and Telegraph Departments. Such concessions were given even when they were not in any way inferior to any other group. Parsis could be a suitable comparison. They are a negligible

minority. But they did not ask for any special privilege. That is the case with the Indian Christians too. But Anglo-Indians were a lucky lot.

The tenor and tone of the discussions in the Constituent Assembly clearly reveal that Christians, Jains, Parsis and such other smaller minorities had a better amount of faith trust and confidence in the sense of justice and fairplay of the Congress. Whereas the Muslims and the Scheduled Castes the larger minorities often reflected some sort of mistrust in the majority community. Perhaps one has to look at things from the other side. The Hindu majority was more sympathetic and considerate to the smaller minority groups and was more reconciling to their demands.

Throughout the debates in the Constituent Assembly the minority is practically taken to indicate the Muslims and Scheduled Caste, except for a very few situations. Often there was an expression of aversion to the very fact and existence of the minorities. Minorities were looked upon as a nuisance and as if because of them the grant of independence was delayed. "The Hindus are a highly charitable and liberal minded people". P.S. Deshmukh reflects these sentiments. "The fact was that the minorities tyrannised

1. There is provision for two nominated members in the Lok Sabha for the Anglo-Indians who in fact form a microscopic minority. See Article 331 of the Constitution of India.
the majority......Muslims have almost everywhere enjoyed privileges far in excess of what may be called just or fair”.

The idea of linguistic minorities had not captured the serious attention of the Constituent Assembly as if linguistic minorities were only a philosophical possibility. The nightmare of partition and the holocaust on communal lines perhaps could never allow the honourable members to think of the minorities in other dimensions.

Considerable amount of prejudice or intolerance was reflected in the approach of some of the honourable members of the Assembly. A few of them could not digest the idea of any kind of minority in India. They believed that minority meant dissent, disagreement division and finally partition. Minority was identified with disunity at least at the subconscious level by a number of otherwise learned and politically broad minded people. This attitude gets fuller

1.P.S. Deshmukh, ibid p.201.

expression through the words of Biswanath Das "The minorities especially religious were given by the British. The linguistic minorities must learn the language of the province and get themselves assimilated.

Mahavir Tyagi argued that there is no relevance for minority in a democracy. According to him political democracy never recognises a minority. Minority must accent the majority" We want to dissolve the minorities into the majority by justice. These minorities cannot be recognised because in a country whose administration is supposed to be run on the basis of justice alone there is no question of minority or majority. Muhammadians are here because they are Indians, and not because they are Muhammadians......Let us not recognise any sections". Tyagi might have been approaching this issue from an idealist point of view. But there were voices heard on the floor of the Constituent Assembly branding the Muslim members as leftovers of the partition and as if they are not fully Indian. One gets an impression that even when some major issues or points were raised by Muslim members they were not treated with the attention deserved. There are occasions when Patel, Munshi or Pant raised an accusing finger at the Muslims and as if

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"your place is in Pakistan".

Sardar Patel in replying to the debate on the minority rights declared "you have asked for Pakistan. You have got it....". On certain other occasion he had expressed more or less the same contemptuous attitude even to the scheduled castes also. Patel, left to himself was not in favour of any kind of reservation. He might have been politically right too. But he got himself reconciled to the general opinion regarding reservation. Nevertheless the way he gave expressions to his feelings was to a greater extent offending and occasionally insulting.

Even Dr. Radhakrishnan considers the minorities as disruptive elements. He did not want these minorities perpetuated. He expected the minorities to be merged with the majority gradually. The concessions/reservation is

2. His reply to the debates on the Report on the minority rights "Those who want that kind of thing (separate electorate) have a place in Pakistan, not here.......my friends you must change your attitude, adopt yourself to the changed conditions..... Ask yourself whether you really want to stand here and cooperate with us.......and I know how much it cost me to protect the Muslim minorities here under the present condition.......You have got a separate state and you are responsible for it....... In the majority Hindu provinces you the minorities led the agitation. You got the partition.......Vallabhai Patel C.A.D. Vol.V p.271.
4. S. Radhakrishnan, ibid, p.283.
only a temporary phenomena. He might be right in approaching the political or economic minorities from this perspective. But if he meant religious minorities it is too presumptuous and his own words would put the great Professor in poor light.

CONCLUSION:

Had there been no partition, the Constituent Assembly would have been forced to enact an entirely different set of minority rights. If the Muslim League had not forced for the division of the country and if the Congress collaborated with the League for organising a new Government based on Cabinet Mission Plan, even Hindus would come under the category of minority in certain provinces or regions and in some other regions or provinces the Muslims would have been the majority, thereby the provision for safeguarding the interests of the minorities would have been equally applicable to both the Hindus and Muslims. This would have

1. According to the Cabinet Mission Plan, India was to remain as a single federal nation. The provinces were grouped into 3 blocks or regions, one group with a Hindu majority and another with Muslim majority. In the third, both the communities were more or less equal. The Central Government had to handle only limited powers.
resulted in an entirely different perspective towards the minorities and would have given more provisions for safeguarding their interests.

But the partition made the difference. The partition and the aftermath had made a tremendous change in the attitude of the members of the Constituent Assembly. Before partition, they were ready to consider some sort of reservation for the minority communities in different fields. As the proceedings of the Sub-Committee on minority rights show that there was near unanimity among the members regarding the provision for reservation and even for separate electorate. Later the minority issue took an entirely different turn and many among the members of the Constituent Assembly started looking at the minorities with sort of aversion and only minimum guarantees were provided for the minorities. This is the genesis of the articles 29 and 30.

The irony is that these minimum guarantees later turned out to be "special privileges" because the political structure envisaged by the Assembly guarantees enough and more rights to all the citizens for leading a free life in the society and these rights are comprehensive enough to protect the genuine interests even of the minorities.