The Minority Rights Sub-Committee was set up on February 27, 1947 by the Advisory Committee, according to the Cabinet Mission's plan. It had a preliminary meeting on the same day and the following day but had to sit further in April (17-19) and July (21-27) to formulate its report. In the first two sessions the Muslim League was absent.

That the task of the Sub-Committee was going to be tough was realised in the preliminary meeting when Raja- gopalachari deprecated the general desire to take up the question of 'political' minorities. He wanted the Sub-committee to concentrate upon the 'rights of the minorities so called'. Pant and Jagjiban Ram wanted the discussion of the question of political minorities too, as the Cripps broadcast after the announcement of the Cabinet Mission's plan, had made the task of the Sub-Committee clear. The next day the Sub-Committee approved a questionnaire of Munshi for its members, which asked: "(1) What should be the nature and scope of the safeguards for a minority in the new Constitution? (2)
(2) What should be the political safeguards of a minority (a) in the centre and (b) in the Provinces? (3) What should be the economic safeguard of a minority (a) in the centre and (c) in the Provinces? (4) What should be the religions, 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, under what circumstances?

The Sub-Committee actually did not take up the political questions till July, 1947 when the League participated in the work of the Constituent Assembly. In April, it sat to examine the report of the Fundamental Rights Sub-Committee from the Minorities' point of view. Their comments and suggestions were discussed by the Fundamental Rights Sub-Committee and subsequently, by the Advisory Committee. The Interim Report on Fundamental Rights was the result of these deliberations.

Minority Rights so-called: The Minority Rights Sub-Committee mainly sought (1) special reservation of public offices for the classes which were not adequately represented in the services (as a modification of equality of opportunity),

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1) The Proceedings of the Sub-Committee on Rights of the Minorities are taken from Shiva Rao's: The Framing of India's Constitution, Select Documents Vol. 2.
2) B. Shiva Rao: Select Documents, Vol. 2.
(2) freedom of conscience, profession, practice and propagation of
religion (3) right to set up denominational institutions, (4) right
of denominational institutions to own property, (5) education through
mother tongue, (6) protection of the language, script and culture
of minority groups, (7) free admission of all the minorities in the
state-aided schools and other educational institutions, (8) equal
state-aid to the institutions of minorities, (9) abolition of discrimi-
nation in places of public use, and (10) restriction of the right
of residence and possession of land in tribal areas. Most of these
demands conceded, though a few proved controversial (3).

Religious Freedom:

Religious rights became a central point of minority rights. On March 26, 1947 the Sub-Committee on Fundamental Rights (4) adopt-
ed a modified version of Munshi’s draft article on the freedom of
religion and conscience. Such rights would not include economic,
financial and political activities associated with the religious
activities. The sub-Committee adopted Rau’s clause about religious
denominations being free to manage their institutions and Ayyar’s
clause about communities being free to set up their religious
institutions. The two women members, Amrit Kaur and Hansa Mst Mehta,
were, however, opposed to this form of religious right which would
block the long-needed reforms of the practices like devdasi and
child-marriage. The objections were not heeded.

(3) Ibid,
(4) Ibid.
After this session, Ayyar sent a note on April 4, wherein he endorsed the viewpoints of Kaur and Mehta. Kaur and Mehta had, meanwhile, (31.3.57), sent a note to Rau repeating their protests. In the final session of the Fundamental Rights Sub-Committee, no concession was made towards their viewpoints.

Both in the Advisory Committee and in the Constituent Assembly (5) there were heated controversies on the freedom "to practise and propagate religion," as demanded by the Sub-Committee on Minority Rights. The Christian members were particularly concerned about the freedom of propagation, whereas allegations of undue influences being used in the "propagation" of religion were freely hurled by some Hindu members. This question was directly involved with the question of conversion. During consideration of the Report, the Advisory Committee accepted the freedom to "practise and propagate religion, and it was incorporated in the Draft Constitution.

Yet, Tajmul Hussain, during discussion of the Draft Constitution moved amendments (6) through which he sought

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to restrict religious freedom to practising it "privately" and to put a Law on persons having any visible mark of religious identity. A number of Muslims opposed it. In view of the heat already generated on the question the House turned down the amendment.

Munshi's draft about conversion (7) involved some controversy. According to the draft, conversion of a minor (below 18) without the parents' permission would not be recognised in law. Conversion through coercion, undue influence or the offering of material inducement was prohibited and made punishable by the law of the Union. The Fundamental Rights Sub-Committee revised them. The Advisory Committee finally amended the second provision to the effect that conversion through coercion etc. would not be 'recognised' by law and dropped the provision about the conversion of a minor. In the Constituent Assembly Munshi reviewed the controversy through amendment (8) which sought to add two disqualifications for conversion to the original one - 'Fraud' and 'Minorhood'. Asked to explain the new proposal, Munshi gave an evasive answer. Finally, the article was dropped on return from the re-examination by the Advisory Committee, on August 30, 1947(9).

The House readily accepted Munshi's amendment that, notwithstanding the 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", as well as for social welfare or reform (10), though L. Krishnaswami Bharati wanted a definition of 'religious institutions of public character' (11). Accepting Munshi's amendment, Patel congratulated the House on its acceptance of "this very controversial matter which has taken several days in the Committees and gone through several Committees" (12) so was adopted the clause on the management of religious institutions with a slight modification.

The question of religious instructions in educational institutions underwent several drafting operations. The Advisory Committee recommended that religious instruction would not be compulsory in "any school maintained or receiving aid out of public funds" (clause 16). The clause was first referred back, on May 1, 1947 (13) to the Advisory Committee which returned it in the same form on August 30, 1947. The clause was further referred to an ad hoc Committee (14) whose recommendation was incorporated in the Draft Constitution (15).

11) Ibid., p. 471.
12) Ibid., p. 477.
The new Article was broken into 3 parts:

(1) No religious instruction would be given by the State in the educational institutions "wholly maintained out of State" Fund. (2) Religious instruction was optional in an institution receiving aid from or recognised by the State. (3) A community or denomination could yet give such instruction "outside the working hours".

The Controversy still persisted until the Article was passed, with Ambedkar's own amendment to clause 1, deleting "by the State", and S.L.Saksena's amendment deleting clause 3 altogether, on December 7, 1947 (16).

Clause 18, relating to Minority Rights in education did not meet much difficulty, except that its sub-clause (2) relating to the freedom of admission of all communities in "state educational institutions" and banning of compulsory religious instruction was referred back to the Advisory Committee (17). The clause came back in the same form and was passed on August 30, 1947 (18).

On December 7 Art. 20 (Rights of Religious denominations) was subjected, in its introduction, to "public order,

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17) Constituent Assembly Debates, Vol. III. p. 503,
18) Constituent Assembly Debates; Vol. V. p. 402.
morality or health" (19). Art. 22 was passed on the same day, omitting "by the State". (20). Art. 23 was passed on 8.12.48 with Bhargava's amendment inserting a clause that no citizen would be denied admission into a State-aided institution on grounds only of religion, race, caste, language or any of them for original clause 2. (21).

As expected, great amount of heat over the question was generated by some of the Leaguers in the Assembly. Their fundamental demand, on Articles 20 and 23, was to express the right in a positive way, rather than in a negative language. Opposing the Drafting Committee's amendment on Art. 20, Naziruddin Ahmed, for instance, moved a clause which provided that nothing in the said right would affect the existence or enactment of a law for ensuring public order, morality and health (22). Z.H. Lari proposed an amendment on Article 23 to provide that the minorities would be protected in respect of their language etc. and would not merely "conserve" them, as provided in the Draft Constitution. Lari actually charged the Drafting Committee of having altered the spirit of the

22) Ibid p. 897.
of the Advisory Committee's recommendations, through the change of language (23) - a charge, which Ambedkar took pains to deny (24).

The problem of minorities has several and confusing facades. Because of long Gandhiite commitments of the Congress members there was a general eagerness for constitutionalizing prohibition. It was for Karimuddin (a Muslim Leaguer), however, to move in the Assembly for incorporation of prohibition in the Social Principles part (on 22.11.48). On Ambedkar's request the Article was held over. On the next day 2 amendments were moved on Art. 38 of the Draft seeking the incorporation of prohibition. It was for Jaipal Singh to make a strong attack on the move as an encroachment on the religious rights on the Advasis (25). Climaxing the debate Bhopinder Singh Mann (Sikh) moved for prohibition of tobacco (26) a taboo in his society. Ambedkar accepted the

23) Ibid, p. 893,
26) Ibid. p. 563.
first prohibition and not the second. So the first move was successful, the second defeated.

On the same day, when the House took up Thakurdas Bhargava's motion for banning of the Slaughter of useful cows (27) there was a passionate attack from the Muslim Leaguers who definitely thought that their religious rights were disregarded. The Congress side vainly tried to cite economic reasons for banning of cow slaughter. Finally, of course, it was passed and formed art. 33-A of the Draft Constitution.

One major issue on which the Muslim League members of the Constituent Assembly seemed to have taken a doubtful stand was the protection of Muslim personal laws. Masani, Mehta and Kaur in the Fundamental Rights Sub-Committee demanded the inclusion of a uniform social code as a Fundamental Right in view of the urgent need to reform the personal laws of the different communities. It was accepted only as a Social Policy to the great dislike of these members. (28)

27) Ibid, P. 568.
During discussion on the Directive Principles in the Draft Constitution (23.11.1948) a number of amendments were moved by Leaguers requiring a guarantee that the personal laws of the minorities would not be affected Munshi replied that such amendments could not prevent the State from legislating for social reforms (according to Art 19 of the Draft). He was joined by A.K. Ayyar and Ambedkar in making a fervent advocacy of a uniform civil code. The amendments were negatived (29).

The demand for the protection of personal laws of the Muslims was sought to be revived by Mohammad Ismail twice, in course of discussion of the Draft Articles on the Right of Freedom (30) and the Religious rights (31). On both occasions it was rejected as the House had already accepted, as a Directive Principle of State Policy, the development of a uniform Civil Code.

(30) Ibid, P.721.
(31) Ibid, P.830.
Political Minorities and Statutory Reservation

In B.N. Rau's questionnaire suggestions about the statutory provisions for the protection of minority interests had been invited. Of the 6 Provincial Constitution Committee members (32) who replied, Amrit Kaur (an Indian Christian and Congressite) pleaded for proportional representation to the legislature and executive, 4 were for statutory reservation in the legislature (including 2 for conventional representation in the executive) and 1 against reservation. In the Union Constitution Committee (33) reservation for minorities in the legislature was desired by Panikkar, Mukherjee and the Ayyanagar-Ayyar formula. The Union and Provincial Constitution Committees, however, decided to take the lead from the Advisory Committee on this point. Much of steam rolling was, however, done in the Constituent Assembly to remove the last vestiges of "the problem of minorities".

When on August 27, 1947, Patel moved the report of the Minority Rights Committee in the Constituent Assembly, he said that he was "happy to say that this report has been the result of a general consensus of opinion between

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(32) Provincial Constitution Committee's File.
(33) Union Constitution Committee's File.
the minorities themselves and the majority. Therefore, although it is not possible to satisfy all, you will see that this report has been the result of agreement on many points, and wherever there has been disagreement, the recommendations have been carried by a very large majority, so that except perhaps on one point the report has been practically an agreed report²⁷(34).

The Committee, it was reported, had considered three main points :- (1) Representation in legislatures-joint versus separate elaborates and weightage, (2) Representation in the Cabinet and (3) Representation in the services.

(1) It was decided by an overwhelming majority (actually by 28 votes to 3) that separate electorates should be abolished and substituted by reservation of seals in the legislature. Even then the Anglo-Indians would not claim any reservation and be satisfied with provision for adequate nomination by the Governors of the Provinces where they were inadequately represented.

Parsees had no claim for special treatment. Decisions on the plains tribes of Assam were withheld till the publication of the report of the Committee on Tribal Areas in Assam. (Three groups of people were less than $\frac{1}{2}$% of Indian population). For the Indian Christians reservation of seats in provincial legislatures, without weightage was recommended. (34A), In view of the uncertainty over the boundary of Punjab decision about the Sikhs was held over (These two groups had strength between $\frac{1}{2}$% and $\frac{3}{4}$% of the total Indian population).

Of greater strength were the Muslims and the Scheduled Castes, for whom reservation of seats for 10 years initially was recommended.

(2) The Committee favoured the growth of a convention rather than any statutory provision for allotment of positions in the Cabinet to the minorities in common with the Act of 1935.

(3) Reservation of certain posts in the services for certain communities (viz., the backward classes and the Anglo-Indians) was recommended, though services, it was thought, would generally go on the basis of merits.

(34A) The Indian Christian movement was chiefly under the National Congress. The important leaders of the Indian Christians in the Constituent Assembly, H.C.Mukherjee and Amrit Kaur, were Congressites of long standing.
During discussion of the Report B. Pocker Saheb Bahadur, a League member from Madras, moved, on August 27, an amendment (35) demanding separate electorate for Muslims. He was supported by Choudhury Khalikuzzaman, though other Muslims remained silent, it showed that the League's demand for separate electorate was not yet dropped.

The amendment was lost. The Report was accepted by the next day. In part XIV of the Draft Constitution special provisions for protection of minority rights and interests were made. The following major steps were suggested:

1) Reservation of seats in the House of the people for (a) the Muslims and the Scheduled Castes, (b) The Scheduled Tribes and (c) The Indian Christian Community in Madras and Bombay (Article 292).

2) Reservation of seats in the State Legislative Assemblies for (a) the Muslims, (b) the Indian Christian Community of Madras in Bombay and (c) the Autonomous Districts of Assam (Article 294).

3) Nomination of adequate number of Anglo-Indians in the legislatures of the Centre and the States if they were inadequately represented (Articles 293 and 295). (35A).

4) Claims of all minority communities would be taken into consideration, consistently with the maintenance of efficiency of the administration, in the making of appointment to services and posts in connection with the affairs of the Union or of States (viz., Railway, custom, postal and telegraph services). They would also get some special educational grants (Article 296).

5) For the first two years Anglo-Indian would enjoy all old privileges about appointment in certain services. (Article 297). They would continue to get certain special grants for the first three financial years (Article 298).

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

The Minority Rights Second Phase

The cause of separate electorates and statutory reservation in the executive was lost with the announcement

35A: About the Anglo-Indian Campaign for special representation see, F. Anthony's Presidential speech at the All-India Anglo-Indian Conference, 1956.
of the June 3 plan. There was actually a revulsion against it after the murder of Gandhi. Though the Drafting Committee had incorporated in the Draft Constitution the recommendation of the Advisory Committee, after publication of the Draft a large number of amendments poured in demanding the abolition of reservation. The Drafting Committee considered them as questions of policy, and therefore, did not move any amendment on their behalf.

The general discussion of the Draft Constitution revealed a varied approach of the minorities and a changed strategy of the Muslim League. Hasrat Mohani's emotional speech called for the abolition of separate treatment of the minorities and creation of non-communal political parties (36). All but two speakers of the Muslim League wanted abolition of separate electorates. Of these two, whereas Pocker Sahib reiterated the demand for separate electorate (37), Mohammad Ismail insisted on separate electorate as well as reservation of seats (37 A). But the majority of Leaguers were certainly confused. A number of them persuaded themselves to give

(37A) Ibid, p. 332.
up both these claims. The case for separate electorate was evidently lost. Reservation of seats for the minorities would mean in many cases the minority community members being elected by the majority community (38). Hence they would really represent the majority community. The partition had left the substantial numbers of Indian Muslim scattered all over the country, creating an electoral disadvantage for them. So they wanted 'proportional representation' for the legislative elections. Part of this strategy was their demand for a Swiss type of executive, elected through proportional representation. Both the moves were defeated.

Of the other minorities the Sikhs were the biggest group and more or less concentrated. They generally welcomed the minority provisions (39). So did the Anglo-Indian and the Indian Christians. Committee considered them as questions of policy, and therefore, did not move any amendment on their behalf.

On May 25, 1949 Patel submitted the report of a very important meeting of the Advisory Committee (40), held on May 11, 1949 including the report of a special sub-committee.

(38) Ibid., P.287.
(39) See Hukum Singh's Speech, Ibid., P.552.
The latter had been appointed with Patel (as Chairman), Nehru, Rajendra Prasad, Ambedkar and Munshi on February 24, 1948 to examine "certain minority problems affecting East Punjab and West Bengal". The sub-committee could not recommend either communal electorate or weightage in the legislature for the Sikhs as they had no shortcoming as a minority. They also did not recommend any arrangement for West Bengal different from that for other provinces (41). It was also reported that when the Advisory Committee had been considering the report of the Sub-committee on December 30, 1948. Some members of the Committee felt that "conditions having vastly changed since the Advisory Committee made their recommendations in 1947". There should be no reservation of seats for Muslims, Christians, Sikhs or any other religious minorities (42). A number of resolutions to that effect were given notice of, by H. C. Mukherjee (the Indian Christian leader of the Congress), Tajamul Hussain (a Shia Muslim of Bihar, who declared in the Assembly that he never had close connection with the Muslim League), P. R. Thakur, Lakshmi Kanta Moitra and, jointly, Govind Das and Thakurdas Bhargava (all Hindu Congressmen), seeking to recommend to the Constituent Assembly, the abolition of reservation of seats for minorities (43).

(42) Ibid, pp. 313.

(43) Proceedings of the Meeting in the Law Ministry File, CA/22/RR-49.
Patel, however, wanted each minority to give opinion about itself and the meeting of the Advisory Committee adjourned till May, 1949. The leaders of the Muslim and the Sikh Communities failed to meet during this period (of course, the Sikh members of the E. Punjab Legislative Assembly met on May 10, 1949 in Delhi). So, when the Advisory Committee met again on May 11, 1949, it had before it the resolution of Mukherjee and an amendment to it by V. I. Munniswami Pillai seeking the maintenance of reservation for the Scheduled Castes. Mukherjee's resolution found "the whole hearted support of an overwhelming majority of the members of the Advisory Committee" (44). 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, two other Muslim members Abul Kalam Azad and Hafizur Rahman were silent. Tajmul Husain was absent (45).

There is no 'proof' that the majority of the Muslim members of the House were in favour of the resolution that Patel moved on the same day (46) and

(44) See Saadulla's speech; Ibid. P.304.
(45) See Tajmul Husain's speech; Ibid, P.337. Congress-Muslims, led by Azad, were formerly advocates of reservation. Tajmul Husain had always opposed all kinds of safeguards; See Muslims Pilgrimage to Freedom, pp.207-8.
and that was carried overwhelmingly by the Assembly:

"(1) That notwithstanding any decision already taken by the Constituent Assembly in this behalf, the provisions of Part XIV of the Constitution of India be so amended as to give effect to the recommendations of the Advisory Committee contained in the Second Report and

"(2) that the following classes in East Punjab, namely Muzhabis, Ramdases, Kabir Panthis and Sikligars be included in the list of representation in the legislatures given to the Scheduled Castes."

Tajmul Husain claimed in the Assembly that out of the 33 muslim members of the Assembly 10 had migrated to Pakistan. 4 Leaguers from Madras were for separate electorate 4 Leaguers (from Bihar (2) and Assam (2), including Saadullah), were for reservation and 1 was for cumulative voting, (Z.M.Lari), leaving 1 member whose opinion was unknown (46A).

He claimed in his team 13 members (there was no proof of this claim, anyway). He even claimed that taking Lari

with him, he was in the 8-7 majority on the day of discussion, when 15 Muslims members were present, in the Assembly Considering Lari, who was opposed to both separate electorate and reservation may appear unreasonable to many, for, as already seen, many Leaguers considered proportional representation a better safeguard than reservation. In any event, the case for proportional representation had long been lost. Lari's effort to reopen the case after the loss of reservation was futile (46B). These was, at the same time, a strong feeling among many Muslims leaders that separate electorate or reservation will turn a Muslim into an alien in the eye of the majority community in India.

On August 23 and 24 Articles 292 and 294 of the Draft were so amended that reservation of seats only for Scheduled Castes, Scheduled Tribes and autonomous districts of Assam (in the House of the People and the Legislative Assemblies) was maintained. By another amendment the system of reservation was limited to a period of 10 years. Certain minor changes were done in respect of the Anglo-Indians. Mention of the Scheduled Tribes in

in the Constitution was, however, considered unnecessary. On September 17, 1949 the eighth schedule of the Draft constitution was deleted (47).

On October 14, 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 the Scheduled Castes and Tribes (who were backward people). Muslim and Sikh members strongly objected to the alteration of an already decided policy. The Sikhs directly blamed the Congress for breaking promises. Hukum Singh, who had supported abolition of reservation in the legislatures, now opposed the move:

"The Sikhs are told, when they remind the Congress of their past pledges in 1929, 1946 and again in 1947, that circumstances have changed. The Sikhs were recognised as one of the three main communities in the Cabinet Mission Plan of which the Constituent Assembly is the creature. The only changed circumstance is that the Muslims have got Pakistan. Does it stand to reason that because the Muslims have secured Pakistan, therefore the Sikhs have ceased to be minority?......(48).

(47) The list of Regional Languages took its place in the final Draft. 
Patel, however, denied that the Congress wanted to impose any decision on any community against its will. The amendment was adopted. It is useless to hold any individual or even the congress party responsible for this radical change. Ralph H. Retzlaff writes that "(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". (50).

(49) Ibid, pp.246-50.