"... The promotion and protection of the rights of persons belonging to national or ethnic, religious and linguistic minorities contribute to the political and social stability of States in which they live"¹

Almost all Nations and States have one or more minority groups within their national territories, characterized by their own religious, ethnic, cultural, or linguistic identity differing from that of the majority population. A Harmonious relation of one minority with the other and between the minorities and majorities is an immense asset to the multi-ethnic and multi-cultural diversity of global society. It is of primary importance that each citizen has respect for individual group’s identity. Meeting the aspirations of national, ethnic, cultural, religious and linguistic groups and ensuring the rights of persons belonging to minorities acknowledges the dignity and equality of all individuals.

I. MINORITY- THE CONCEPTUALIZATION.

The term “minority” is been derived from the Latin word “minor” and the suffix ‘ity’, meaning “small in number”.² According to Encyclopedia Britannica “minorities are group held together by ties of common descent, language or
religious faith and feeling different in these respects from the inhabitants of a given political entity”.

Louis Wirth, who initiated the study of Minority problems offered a definition and classification, of a Minority as, “a group of people who, because of physical or cultural characteristics, are singled out from the others in the society in which they live for differential and unequal treatment and who therefore regard themselves as objects of collective discrimination. Moreover, minority status carries with it an exclusion from full participation in the life of the society”

J.A. Laponce describes “Minority” as a group of persons having different race, language, or religion from that of majority of inhabitants.

In the treatise of the International Encyclopedia of Social Sciences published by Macmillan and Free Press, the word ‘minority’ has been defined as “In any society, it is a group which is different from the larger group, in terms of race, nationality, religion or language. Each group thinks it is distinct and looks down upon the other. As regards political power is concerned, the situation is different. The minorities are at the mercy of the larger group, which discriminates against the smaller group.”

According to Capotorti’s definition for the United Nation "Minority" means a community:

1. Compactly or dispersedly settled on the territory of a state;
2. Which is smaller in number than the rest of the population of a state;

3. Whose members are citizens of that State.

4. Which have ethnic, linguistic or cultural features different from those of the rest of the population.

5. Whose members are guided by the will to safeguard these features.

According to the new Encyclopedia Britannica, “minority is an aggregate of people who are distinct in religion, language, or nationality from other members of the society in which they live and who think of themselves and are thought of by others as being separate and distinct.”

The Oxford Dictionary defines minority as "the condition or fact of being smaller, inferior, or subordinate; smaller number or part; a number which is less than half the whole number."

First of all, it is the number count, or the statistical divide between two or more entities under consideration, resulting in majority/minority division. The minor, since it is numerically less, is perceived to be weak and has to be empowered separately through special measures to make it equal to the majority. In this power relation, the minor is supposed to be subordinate to the major.

The questions who is a minority? Which community fits into the definition of minority? Who are the beneficiaries of minority rights? and the possible
responses thereto have been subject of number of studies and long debates in many forums in which minority protection has been addressed. No clear-cut answers have been found and no satisfactory universal definition of the term “minority” has proved acceptable. The difficulty in reaching at an acceptable definition lies in the diversity of positions in which minorities exist. Some reside in well defined areas, separated from the dominant part of population, while others are scattered throughout the national community. Some minorities base a strong sense of collective identity on their well-remembered or recorded history and others maintain only fragmented notion of common heritage. In some cases, minorities enjoy a considerable degree of autonomy while in others there is no past history of autonomy or self government. Some minorities may require greater protection than others, because they have resided for longer period of time in a country, or they have a stronger will to maintain and develop their characteristics.

According to anthropologists Charles Wagley and Marvin Harris, minorities have following distinctive characteristics:\(^\text{10}\):

1. Minorities are subordinate segments of complex state society;

2. Minorities have special or cultural traits held in low esteem by the dominant segments of society;
3. Minorities are self conscious units bound by special traits which their members share and by the special disabilities which these bring;

4. Membership in a minority is transmitted by a rule of descent which is capable of affiliating succeeding generations even in the absence of readily apparent special cultural or physical traits; and

5. Minority peoples, by choice or necessity, tend to marry within the group.

A Minority or a subordinate group is a sociological group that does not represent a politically dominant plurality of total population of a given society. A sociological minority is not necessarily a numerical minority- it may include any group that is disadvantaged in relation to a dominant group in terms of political power, social status, education, employment and wealth. To avoid confusion, some writers prefer the terms “subordinate group” and “dominant group” rather than “minority” and “majority”. In socio-economic sense, the term “minority” refers to a socially subordinate ethnic group. Other minority groups include people with disabilities, “economic minority” people who are poor or unemployed, “age minorities” and “sexual minorities” whose sexual orientation is different. 11

II. SOCIOLOGY OF MINORITY GROUPS.

As discussed earlier sociologist Louis Wirth defined a minority group as “A group of people who, because of their physical or cultural characteristics
singled out from the others in the society in which they live of differential and unequal treatment and who therefore regard themselves as objects of collective discrimination.”

This definition includes both objective and subjective criteria i.e., membership of a minority group is objectively ascribed by society, based on an individual’s physical or behavioral characteristics; it is also subjectively applied by its members, who may use their status as the basis of group identity or solidarity. In any case, minority group status as the basis of group identity or solidarity. Minority group status is categorical in nature: an individual who exhibits the physical or behavioral characteristics of a given minority group will be accorded the status of that group and be subject to the same treatment as the other members of that group.

According to the contemporary sociologists, minority is a group of people distinguished from others in the same society by religion, race, nationality or language who both think of themselves as separate group and are thought of by the others as fundamental group identification from within the group and those of prejudice from without and a set of behaviors- those of discrimination and exclusion from without.\textsuperscript{13}

i. **Ethnic or Racial minorities.**

Every large society contains ethnic minorities who may be migrant, indigenous or landless nomadic communities. In some regions, subordinate ethnic groups may constitute a numerical majority such as Blacks in South
Africa under apartheid. International criminal law can protect the rights of racial or ethnic minorities in number of ways. The right to self determination is the key issue.\textsuperscript{14}

**ii. Religious Minorities.**

People belonging to religious minority group have a faith which is different to that followed by the majority. All most all the countries of the world have religious minorities. It is now widely accepted that people should have the freedom to choose their own religion, including not having any religion (atheism or agnosticism), and the right to convert from one religion to another. However, in some countries this freedom is restricted. As for example, in Egypt, a system of identity cards requires all citizens to state their religion—and the only choices are Islam, Christianity or Judaism. As another example, there are allegations of prejudice against Roman Catholics in the USA by Protestants.

A study suggests that atheists constitute a religious minority in the United States, with researchers concluding: “Americans rate atheists below Muslims, recent immigrants, gays and lesbians and other minority groups in ‘Sharing their vision of American Society.’ Atheists are also those minority groups that most Americans are least willing to allow their children to marry.”\textsuperscript{15}
iii. **Gender or Sexual Minorities.**

While in many societies, number of men and women are roughly equal, the position of women as a subordinate has led some to equate them with minorities. In addition, various gender variant people can be seen as constituting a minority group or groups, such as inter-sexual, trans-sexual, and gender nonconformists—especially when such phenomena are understood as intrinsic characteristics of an identifiable group. An identification of Lesbian, Gay, Bisexual and transgender people as minority group or groups has gained prominence in the western world since the 19th century. The acronym LGBT (Lesbian, Gay, Bisexual and Transgender) is currently used to group these identities together. The phrase sexual minorities can also be used to refer to these groups, and in addition may include fetishists, Polyamorists and people who prefer sex partners of a disparate age. The term queer is sometimes understood as an umbrella term for all non-normative sexualities and gender expressions, but does not always seek to be understood as minority; rather, as with many Gay Liberationists of 1960s and 70s, it sometimes represents an attempt to uncover and embrace the sexual diversity in everyone.\(^\text{16}\)

iv. **Age Minorities.**

The elderly, while traditionally or even (in a gerontocracy) dominant in the past, have in the modern age usually been reduced to the minority role
economically ‘non-active’ groups. Children can also be understood as a minority group in these terms, and the discrimination faced by the young is known as adultism, Discrimination against the elderly is known as ageism.\textsuperscript{17}

v. Disabled Minorities.

The Disability rights movement has contributed to an understanding of disabled people as a minority or a coalition of minorities who are disadvantaged by society, not just as people who are disadvantaged by the society but as people who are disadvantaged by their impairments. Advocates of disability rights emphasize difference in physical or psychological functioning, rather than inferiority—for example, some people with Autism argue for acceptance of neuro-diversity, much as opponents of racism argue for acceptance of ethnic diversity. The deaf community is often regarded as a linguistic and cultural minority rather than a disabled group, and many deaf people do not see themselves as disabled at all. Rather they are disadvantaged by technologies and social institutions, that are designed to cater for the dominant group.\textsuperscript{18}

III. MINORITIES ACCORDING TO LAW.

Law defines a ‘minority’ as “a group numerically inferior to the rest of the population in a non dominant position.” In the political sphere of some countries a minority is an ethnic group which is recognized as such by
respective laws of its country and therefore has some rights that other
dominant group lack. For instance, they might have right to education or
communication with the government in their mother tongue. Countries that
have special provisions for minorities include India, China, Germany,
Romania, Russia and the United Kingdom. The question of establishing
minority groups and determining the extent of privileges they might derive
from their status, is controversial. Some argue that minorities are owed
special recognition and rights, while others feel that minorities are unjustified
in demanding special rights, as this leads to preferential discrimination and
could hamper the ability of the minority to integrate itself into mainstream
society-perhaps to the point at which the minority follows a path to
separatism.\textsuperscript{19}

Despite the difficulty in arriving at a universally acceptable definition,
various characteristics of minorities have been identified, which, if taken
together, cover most minority conditions. The most commonly used
description of a minority in a given State can be summed up as \textit{a non-
dominant group of individuals who share certain national, ethnic,
religious or linguistic characteristics which are different from those of
the majority population.}

The Indian Constitution may justifiably be called as secular and
multicultural which recognizes the values of equal citizenship and equal rights.
After prolonged discussions in the Constituent Assembly, assimilation was offered on terms of equality to caste and class based minorities in the Constitution, but it was felt that to achieve this it would be necessary to recognize caste in the Constitution as a cause of inequalities and as a basis for affirmative action. At the same time, recognition and protection was offered to ethnic, religious, cultural and linguistic minorities. Equal respect, fairness and non discrimination were to be the guiding principles of state policies towards minorities and no compartmentalization was envisaged between State and religious activities.

A meaningful conception of minorities thus, would include sections of people who, on account of their non-dominant position in the country as a whole, are targets of discrimination and therefore deserve special consideration. The protection applies equally to individuals belonging to such groups is justified in the interest of welfare of the community as a whole.

IV. MINORITY IN INTERNATIONAL LAW.

The minority is generally thought as the opposite of the majority. In democratic societies, it is based on the numerical ratio to the population as a whole in particular place. There are times when the majority is minority and minority is majority. In international law the term minority is commonly used in restricted sense. It has come to refer chiefly to a particular kind of group which
differs from the dominant group within the state. The origin of minority group may be possible in any of the following manners:  

1. it may formerly have constituted an independent State with its own tribal organization;

2. it may formerly have been part of a State living under its own territory, which was later segregated from this jurisdiction and annexed to another State; or

3. it might have been, or yet be, a regional or scattered group which although bound to the predominant group by certain feelings of solidarity, has not reached even a minimum degree of real assimilation with the predominant group.

The Minority can be identified by distinguishing features as follows.

1. A minority group is a subordinate social group. Its members suffer disadvantages resulting from prejudice and discrimination. These may include segregation and persecution.

2. The members of a minority group have their own physic, culture, dialect, etc., which is the dominant group, holds in low esteem. The group usually has distinguished characteristics.
3. The members of minority group identify themselves as a part of the group. There is an in–group feeling of loyalty. Membership in minority group is usually not voluntary. It is by birth.

4. Members of a minority group have strong bound of brotherhood and generally believe in endogamy.

The term “Minority” first time evolved as a legal and constitutional concept after First World War. Further, the rights of minority were recognized through various international declarations. In the case of Acquisition of Polish Nationality, the Permanent Court of International Justice defined minority as inhabitants who differ from rest of the population in race, language or religion. The protection of minorities slowly evolved and came to be covered within the concept of Human Rights and fundamental freedoms as enshrined in the United Nations Charter.

Concern over the protection of certain minority groups was raised by the League of Nations at the end of the First World War. However, this organization for international peace and cooperation, created by the victorious European allies, never achieved its goals. The League floundered because the United States refused to join and because the League failed to prevent Japan’s invasion of China and Manchuria (1931) and Italy’s attack on Ethiopia (1935). It finally died with the onset of the Second World War (1939).
The system for the protection of minorities, as groups was established under the League of Nations and considered by the United Nations, to have outlived its political expediency, was replaced by the Charter of United Nations and the Universal Declaration of Human Rights and Freedoms and the principle of non-discrimination and equality in 1947. The view was that if the non-discrimination provisions were effectively implemented, special provisions for rights of minorities would not be necessary. It was very soon evident, however, that further measures were needed in order to better protect minorities from discrimination and to promote their identity. To meet this end, special rights for minorities were elaborated and measures adopted to supplement the non-discrimination provisions in international human rights instruments.

The term “minority group” often occurs alongside a discourse of civil rights and collective rights which gained prominence in the 20th century. Members of minority groups are prone to different treatment in the countries and societies in which they live. This discrimination may be directly based on an individual’s personal achievement. It may occur indirectly, due to social structures that are not equally accessible to all.

In the international sphere, the demand for special safeguards to protect the cultural or linguistic identity of minority communities has emerged from the principle that owing to war or like circumstances causing territorial changes
without the consent of people residing in those territories. The identity of such communities who have been torn asunder by circumstances beyond their control should be preserved from ethnic extinction, by affording safeguards through International Charters and National Constitutions.


The idea underlying the treaties for the protection of minorities is to secure for certain elements incorporated in a State, the population of which differs from them in race, language or religion, the possibility of living peaceably alongside that population and co-operating amicably with it, while at the same time preserving the characteristics which distinguish them from the majority, and satisfying the ensuring special needs.

In order to attain this object, two things were regarded particularly necessary, and have formed the subject of provisions in these treaties. The first is to ensure that nationals belonging to racial, religious or linguistic minorities shall be placed in every respect on a footing of perfect equality with the other nationals of the State. The second is to ensure for the minority
elements suitable means for the preservation of their racial peculiarities, their traditions and their national characteristic.

These two requirements are indeed closely interlocked, for there would be no true equality between a majority and a minority if the latter were deprived of its own institutions and were consequently compelled to renounce that which constitutes the very essence of its being a minority.

The Commission of Human Rights did not define the term minority before setting the Sub-Commission on Prevention of Discrimination and Protection of Minorities. The U. N. Assembly also did not define the term, “Right of peoples to self determinations” before proclaiming the application of the principle. Lack of proper definition was no obstacle to the drawing of the numerous international instruments containing provision on the rights of certain groups of the population to preserve their culture and use their own language. The terminology used to refer such groups varies from one instrument to another. For example, the UNESCO Convention against Discrimination in Education mentions ‘National Minorities’, while the expressions ‘National, Ethnical, Racial or Religious groups’ is used in the Convention on the Prevention and Punishment of the Crime of Genocide and ‘Racial or ethnic groups’ in the International Convention on Elimination of All Forms of Racial Discrimination.

The concept and protection of minorities came to be incorporated in U. N. in its Covenant on Civil and Political Rights. India is a party to the International
Covenant on Civil and Political Rights. Article 27 of the Covenant explicitly recognizes the rights of “ethnic, religious, or linguistic minorities”.

Though Article 27 of the International Convention on Civil and Political Rights does not define the word Minority but still gives them the following rights, ‘In those states in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, a community with the other members of the group, to enjoy their own culture, to profess and practice their own religion or to use their own language’.

On analysis of the above Article, it is clear that the protection is available to only ethnic, religious or linguistic minorities who are already in the existence. Other groups or newly created minority groups have not been protected under this Article.

As per the Article following rights have been conferred on the minorities.

1. To enjoy their own culture,

2. To profess and practice their own religion, or

3. To use their own language.

In examining the above three rights guaranteed in Article 27, it should be remembered that the rights do not exist in isolation there is a link between them since water tight compartments cannot be created between these rights.
The United Nations has sort two criteria to define the term minority. These criteria are:

1. **Objective Criteria**

2. **Subjective Criteria**

1. **Objective Criteria.**

   i. The first and foremost requirement is that of existence, within the State there has to be distinct groups possessing stable ethnic, religious or linguistic characteristics that differ sharply from rest of the population.

   ii. Second condition is the numerical size of such groups. It means that these groups must be numerically less to the rest of the population.

   iii. The third criterion is non-dominant position of the groups in question in relation to the rest of the population.

   iv. The fourth criterion is the juridical status of members of the groups. It is essential that the members of the minority groups must be nationals of the State.

1. **Subjective Criteria.**

   The requirement of subjective criteria is a will on the part of the members of the groups in question to preserve their own characteristics. In preserving, the will generally emerges from the fact that minority groups have kept their
distinctive identity over a period of time. Once the existence of a group or particular community having its own characteristics in relation to the population as a whole is established, this identity implies solidarity between the members of the group, and consequently a common will on their part to contribute to the preservation of their distinctive identity.

As per Article 27 of the Covenant, the term ‘Minority’ may be taken to refer to:

I. A group numerically less to the rest of the population of the State;

II. In a non–dominant position;

III. Whose members being nationals of the State possesses ethic, religious or linguistic characteristics differing from those of the rest of the population; and

IV. These members show a sense of solidarity towards preserving their culture, traditions, religion or language.

The Convention on the Rights of Child, contain provision addressing the rights of the minorities. Its Article 30 states:\textsuperscript{24}:

“In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, or child belonging to such minority or who is indigenous shall not be denied the right, in community with other members
of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion or to use his or her own language.”

A special Subcommittee on the Protection of Minority Rights appointed by the United Nations Human Rights Commission in 1946 defined the ‘minority’ as those “non-dominant groups in a population which possess a wish to preserve stable ethnic, religious and linguistic traditions or characteristics markedly different from those of the rest of the population.”

It was also stated by the sub-commission that only those sufficient by themselves to develop these characteristics and loyal to the country of which they may be the nationals can be termed minorities.

The U.N. Sub-Committee on Prevention of Discrimination and Protection of Minorities has defined a minority as follows:

A group of citizens of a State, constituting a numerical minority and in a non-dominant position in that State, endowed with ethnic, religious or linguistic characteristics which differ from those of the majority of the population, having a sense of solidarity with one another, motivated, if only implicitly, by a collective will to survive and whose aim it is to achieve equality with the majority in fact and in law.

The United Nations Commission on Human Rights in 1950 had defined minorities as below:
“Only those communities other than the ruling national community can be termed as minorities, who want to have a language, religion or race different from the language, religion and race of the national community. It is essential for being recognized as minorities that they should be sufficient in number and their constituents should be faithful to the nation in which they live.”

The circumstance in India is different in a number of significant ways to that in western countries like the United States, Germany or Canada. Indian society incorporates a bewildering number of minorities identified by factors like religion, caste, class or region. Moreover, the boundaries of all nation-states are expected to grant equal legal and human rights to such minorities, and not to practice any sort of discrimination against them to which the United Nation Organization lays stress on. Such groups have always been somewhat fluid and overlapping. However, the quintessential minority in most people’s perception is the religious minority. The question of who constitutes a minority, thus, has more to do with political and power relationships than with numerical characteristics. Ethnic groups which are subject to illegitimate discrimination in law or fact may be considered as minorities.

V. MINORITIES AS PER THE CONSTITUTION OF INDIA.

The architects of the Indian Constitution guaranteed to minorities all necessary rights and freedoms but have no where defined the expression “Minority”. Even there is no parliamentary legislation defining a ‘minority.’ The
Motilal Nehru Report (1928) which showed a prominent desire to afford protection to minorities, did not define the term. The Sapru Report (1945) also proposed, *inter alia*, a Minorities Commission but did not define it.\(^{27}\)

The Constituent Assembly had set up Advisory Committee under the Chairmanship of Sardar Vallabhbhai Patel on the subject of Fundamental Rights including rights of minorities, with the twin objectives of eliminating the chance of religion exploiting the State and vice-versa. The Advisory Committee appointed five sub-committees. One was the minorities sub-committee headed by H.C. Mukherjee, a Christian leader from Bengal. The Advisory Committee accepted the recommendations of Sub Committee partially and recommended the following clause to the Constituent Assembly:\(^{28}\)

1. Minorities in every unit shall be protected in respect of their language, script and culture, and no laws or, regulations may be enacted that may operate oppressively or prejudicially in this respect.

2. No minority whether based on religion, community or language shall be discriminated against with regard to admission into State educational institutions, nor shall any religious instruction be compulsorily imposed on such minority.
3. (a) All minorities whether based on religion, community or language shall be free in any unit to establish and administer educational institutions of their choice.

(b) The State shall not, while providing State aid to schools, discriminate against schools under the management of minorities whether based on religion, community or language.

The clause was incorporated as clause 24 with some drafting changes in the Draft Constitution prepared by the Constitutional Committee. The Drafting Committee revised the text of clause 24 twice, the most significant change being the re-drafting of sub-clause (1). The clause finally took the shape as Article 23 of the Draft Constitution. The Drafting Committee, at the revision stage divided Article 23 into two separate Articles - Article 29 and 30 as now contained in the existing Constitution. Due to the partition of country, there was a strong feeling against the communal forces and hence no attempt was made on any occasion even to define the term “minority” in precise words. The feeling was so strong that the words “certain classes” were substituted for the word “minorities” wherever it occurred in the text of the Constitution. The use of the term minority in the Constitution is not only very rare but also no group is mentioned explicitly as a minority therein. The term ‘minority’ is mentioned in only two Articles 29 and 30.
The term ‘minority’ has been incorporated in Article 29 and 30 of the Constitution, but it has nowhere been defined. The Preamble of the Constitution proclaims to guarantee every citizen ‘liberty of thought, expression, belief, faith and worship’. Set of Articles from 25 to 30 guarantee protection of religious, cultural and educational rights to both majority and minority communities. It appears that keeping in view the constitutional guarantee for protection of cultural, educational and religious rights of all citizens, it was not felt necessary to define 'minority'. Minority as understood from constitutional scheme denotes an identifiable group of people or communities who were seen as deserving protection from likely deprivation of their rights by other communities who happen to be in majority and likely to gain political power in a democratic form of Government based on election. In the background of constitutional scheme, the provisions of the Act therefore instead of giving definition of ‘minority’ only provide for notifying certain communities as 'minorities' who might require special treatment and protection of their religious, cultural and educational rights. The definition of 'minority' given under the National Commission of Minority Act 1992 is in fact not a definition as such but only a provision enabling the Central Government to identify a community as a 'minority' which, in the considered opinion of the Central Government deserves to be notified for the purpose of protecting and monitoring its progress and development through the Commission.
i. Religious Minorities.

If we see the provisions of the Constitution it talks about only two kinds of minorities’ i.e. Religious and linguistic minorities. India is a land of diversity consisting of different religions with Hindus in majority. According to the 2011 census the religious composition of the population is as follows;

<table>
<thead>
<tr>
<th>Religion</th>
<th>Population (%)</th>
<th>Growth (%)</th>
<th>Sex Ratio (2001-11)</th>
<th>Literacy (%)</th>
<th>Work participation</th>
<th>Sex Ratio (rural)</th>
<th>Sex Ratio (urban)</th>
<th>Sex ratio (child)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hindu</td>
<td>80.46</td>
<td>20.3</td>
<td>931</td>
<td>65.1</td>
<td>40.4</td>
<td>944</td>
<td>894</td>
<td>925</td>
</tr>
<tr>
<td>Muslims</td>
<td>13.43</td>
<td>36</td>
<td>936</td>
<td>59.1</td>
<td>31.3</td>
<td>953</td>
<td>907</td>
<td>950</td>
</tr>
<tr>
<td>Christian</td>
<td>2.34</td>
<td>22.6</td>
<td>1009</td>
<td>80.3</td>
<td>39.7</td>
<td>1001</td>
<td>1026</td>
<td>964</td>
</tr>
<tr>
<td>Sikh</td>
<td>1.87</td>
<td>18.2</td>
<td>893</td>
<td>69.4</td>
<td>37.7</td>
<td>895</td>
<td>886</td>
<td>786</td>
</tr>
<tr>
<td>Buddhist</td>
<td>0.77</td>
<td>18.2</td>
<td>953</td>
<td>72.7</td>
<td>40.6</td>
<td>958</td>
<td>944</td>
<td>942</td>
</tr>
<tr>
<td>Jain</td>
<td>0.41</td>
<td>26</td>
<td>940</td>
<td>94.1</td>
<td>32.9</td>
<td>937</td>
<td>941</td>
<td>872</td>
</tr>
<tr>
<td>Others</td>
<td>0.65</td>
<td>103.1</td>
<td>992</td>
<td>47</td>
<td>48.4</td>
<td>995</td>
<td>966</td>
<td>976</td>
</tr>
</tbody>
</table>

Source: Census report 2011

Thus from the census it is find that except Hindus followers of all other religion are minorities for a National Act or law, however in a state enactment the Hindus might also be in minority and national minorities might be in majority e.g. in Kashmir, Hindus are in minority and Muslims in majority. Similarly Christians are in majority in some eastern states whereas Hindus and Muslims are in minority. In order to ensure the protection of religious minorities the state has been constituted under the principle of secular notion and several religious rights has been granted to the people and religious
institutions under Article 25 and 26 with certain restrictions. A secular State does not mean an irreligious State, it only means that in matters of religion it is ‘neutral’, the State can have no religion of its own, and the State protects all religions but interferes with none. In a secular State, the State is only concerned with the relation between man and man; it is not concerned with the relation of man with God. The concept of secularism is one facet of the right to equality and implies that in matters of State, religion has no place, in other words State rights and benefits do not depend upon religion. Now ‘secularism’ has been elevated to the status of basic feature of the Constitution against which no law can be enacted and any State Government which acts against that ideal can be dismissed by the President.31

The National Commission for Minorities Act, 1992 enables the centre to notify minorities for the limited purposes of that Act only and in exercise of that power, the government had notified five religious communities-Muslims, Christians, Sikhs, Buddhists and Parsis to be regarded as minorities. These five communities constitute only 17% of the country’s population.32 As it is noticed from the results of the 2011 Census, Hinduism is by far the major religion of India. Thus, persons categorized as Hindus compose up 80.5 % of the total population of India. Furthermore, this is a figure, which has been constantly decreasing since the Census of 1961, when the figure was 83.4%.33
By far the largest religious minority in India consists of Muslims, population which is 13.4%. This is a figure, which if we look at it from a historical perspective, has increased almost in proportion to the decrease in the number of Hindus. Second among the religious minorities are the Christians who in 2011 made up 2.3% of the total population. The third religious minority is the Sikhs with 1.9% of the total population. Fourth are Buddhists who made up 0.8% of the total population, the Buddhists found in contemporary India are mainly of two varieties. The largest is the so-called Neo-Buddhists who are actually untouchables or Dalits who since the first half of the 1950’s have converted to Buddhism under the influence of Dr. Ambedkar in order to try to escape from Hindu suppression. The other group consists of Tibetan Buddhist most of whom are refugees from the Chinese occupation of Tibet in 1951. Included among the group of others are the two small religious communities of Parsis and Jews. As the sixth minority we find the Jains, who are adherents of an old indigenous religion, a little bit older than Buddhism, they make up 0.4% of the population.

The National Commission for Minorities Act 1992 says that “Minority, for the purpose of the act, means a community notified as such by the central government”-Section 2(c). Working under this provision, on October 23, 1993 the central government notified the Muslim, Christian, Sikh, Buddhist and
Parsis (Zoroastrian) communities to be regarded as “minorities” for the purpose of this act.

In several States (e.g. Himachal Pradesh, Jharkhand, Madhya Pradesh, Maharashtra, Uttar Pradesh and Uttarakhand), Jains have been recognized as a minority. The Jain community approached the Supreme Court seeking a direction to the central government for a similar recognition at the national level and their demand was supported by the National Commission for Minorities. But the Supreme Court did not issue the desired direction, leaving it to the state government to decide the issue (Bal Patil v Union of India)\(^36\). In a later ruling however, another bench of the Supreme Court upheld the Uttar Pradesh law recognizing Jains as a minority (Bal Vidya Mandir, Etah, U.P. v Sachiv, U.P. Basic Shiksha Parishad, Allahabad, U.P. and Ors.).\(^37\)

ii. Linguistic Minority.

As far as linguistic minority is considered, India has more than 1650 mother tongues, belonging to five different language families. They are rationalized into 216 mother tongues and grouped under 114 languages by the 1991 Census as Austro-Asiatic (14 languages with a total population of 1.13%), Dravidian (17 languages, with a total population of 22.53%), Indo-European (Indo-Aryan, 19 languages, with a total population of 75.28%, and Germanic, 1 language, with a total population of 0.02%), Semito-Harmitic (1 language, with a total population of 0.01%) and Tibeto-Burman (62 languages
with a total population of 0.97%). Earlier the territorialities of provinces or states were done mostly for administrative convenience ignoring the ethnic, religious, social, and linguistic aspect of the society. The Constitution of India originally listed fourteen languages Assamese, Bengali, Gujarati, Hindi, Kannada, Kashmiri, Malayalam, Marathi, Oriya, Punjabi, Sanskrit, Tamil, Telugu, and Urdu, into its Eighth Schedule in 1950. Since then, this has been expanded thrice, to include Sindhi, Konkani, Manipuri and Nepali, Bodo, Santhali, Maithili and Dogri.

The concept of linguistic minority in India is a relational one, and none of the definition captures the essence of all kinds of linguistic minorities that the national planning and language plans has thrown up in the country.

Linguistic minority for the purpose of Article 30(1) is one which must have separate spoken language and that language need not have a distinct script. In India, a number of languages are spoken having no script of their own. But people speaking such a language having no script of its own constitute a linguistic minority for the purposes of Article 30(1). A linguistic minority is to be determined with reference to the language spoken by the community and not with reference to any other language which the community wants it children to study.

Ultimately, it is left to the minority to establish its minority status in order to avail the benefits of the Article 30. The task is difficult especially because
the concepts of ‘religion’ and ‘language’ have not been adequately defined in the Article or the constituent assembly debates.

According to the 38th report of National Commission of Linguistic Minority, “In each State there is a language which is spoken by the majority of the residents of that State. All others who do not speak that language belong to linguistic minority.”

It is easy to categorize linguistic minorities. The classification of linguistic minority is not based on National level. Hindi as such is declared as the official language, it is as such spoken by less than 50% of the population; and in addition to this, there are thirteen other officially recognized languages. Thus, minority based on languages in the Indian constitution pertains mainly to a State and not at the National level.

VI. Minority as Per Judicial Trends

All democratic states ensure constitutional protection for minority rights. They can, however, be enforced only by an independent judiciary, comprising judges with a broad, liberal outlook when politicians, the executive and the legislature trammel on the rights of minorities. The expression ‘religious minority’ means ‘that the only and principal basis of the minority must be adherence to one of the many religions and not a sect or part of the religion.’
The question arises regarding what is the test to determine minority status based on religion or language of a group of persons residing in State or Union territory. The Article 30 for the first time came up for interpretation before the seven judge Constitution Bench constituted to consider the reference made by President under Article 143 in *re the Kerala Education Bill*, 1957. It held, “the existence of minority community should in all circumstances and for purposes of all law of that State be determined on the state basis only when, the validity of law extending to whole state is in question or it should be determined on the basis of the population of the particular locality, for the bill in practice before us extends to the whole of State of Kerala and consequently the minority must be determined by reference to the entire State. By this test Christians, Muslims and Anglo Indians will certainly be minorities in the State of Kerala.”

In other words, it can be said that the Supreme Court suggested the technique of arithmetical tabulation of less than 50 per cent of population for identifying a minority. This population was to be determined in accordance to the applicability of the law in question. If an Act is applicable nationwide then the minority group would be decided on the national figures and in the case of the Act being applicable in a State, the minority group would be decided on the State figures.
As in *D. A. V. College, Jullunder Case*, the Constitutional Bench of the Supreme Court observed: ‘Though there was a faint attempt to canvas the position that religious or linguistic minorities should be minorities in relation to the entire population of the country, in our view, they are to be determined only in relation to the particular legislation which is sought to be impugned, namely that if it is the State legislature these minorities have to be determined on the basis of the population of the State’.

The same person who while living in one city is a member of a linguistic minority becomes a member of the linguistic majority on coming back to his fore fathers’ land. Thus, the label of “minority” and “majority” is not permanently affixed to a person; it depends on his current abode and on the latest political boundaries pertaining to that abode. Surely, a Tamilian or a Bengali while living in New Delhi does not become relatively backward compared to his kith and kin in his home state. It cannot therefore be contended with any justification that the minorities were favoured by way of affirmative action in order to make them equal to others who were better placed educationally. The Article 30(1) empowers them with a right to establish and administer educational institute of their choice so that their children are not deprived of their culture and religion.

As far as language is concerned, the case of *D. A. V. College, Jullunder v State of Punjab* is considered important. In this case, the Court observed,
‘linguistic minority for the purpose of Article 30(1) is one which must at least have a separate spoken language. It is not necessary that language should also have a distinct script for those who speak it’.42

VII. CONSTITUTIONAL PROVISIONS FOR MINORITY RIGHTS.

It is praiseworthy that Constitution of India has afforded protection to the minorities in the country. The framers of the Constitution were quite conscious of the importance of these provisions. They understood very well that, in pluralistic society rights of minorities and weaker sections need to be safeguarded. The idea of giving some special right to the minorities is not to treat them as a privileged section of the population but to give them a sense of security. Special rights for minorities were designed not to create inequalities but to bring about equality by ensuring the preservation of the minority institutions and by guaranteeing autonomy in the matter of administration of these institutions.

In India, the safeguards for minorities under the constitution are in the form of fundamental rights. Firstly, the constitution nowhere discriminates among the citizens of India on the grounds of religion, race, caste, etc and secondly, the rights granted under Articles 25 to 30 are fundamental rights.

It is the state duty to protect the fundamental rights. If fundamental rights are violated the remedy lies under Articles 32 and 226. A person can directly
approach the Supreme Court or the High Court in case of violation of fundamental rights. So, the true spirit and intention of the Constitution is to provide a very formal and water tight arrangement for safeguarding the interest of minorities.

There are some Articles in the constitutions of India that exclusively safeguard rights of the minorities, whereas, there are certain Articles though not specifically meant for minorities still they strengthen the rights of minorities. The two Articles, 29 and 30 are placed under the Heading Cultural and Educational rights. These Articles are the only ones in whole Constitution, which specifically use the term minority. Article 29, is the most comprehensive Article declaring that “any section of the citizens residing in the territory of India or any part there of having a distinct language, script or culture of its own shall have the right to conserve the same.” Thus, the Article establishes an overall right of any group of citizens to maintain their language, including script, and culture. Article 30, Clause 1, is more specific and establishes that all “minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.” Further, Clause 2 states that, “the state shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under management of the minority, whether based on religion or language.” Although, Article 29 uses “Culture” instead of “religion”, it looks
obvious that these two Articles are very closely related, since the safest way to maintain and protect the language, culture, or religion of a group or minority is through the establishment of separate educational institutions. Thus, it can be well concluded from Article 30 Clause 2, that if the State supplies aid to educational institutions, it is also obliged to support institutions managed by religious or linguistic minorities.

Thus, it is evident that the Indian Constitution establishes that the Indian State shall be secular, in the sense that it is not allowed to give preference to any particular religion. At the same time, it gives full freedom to all religions to run their own affairs and offer to religious and linguistic minorities the special protection to run their own educational institutions funded or partly funded by the state.

Minorities in India have to face adverse discrimination and, therefore, do not stand on equal footing with others, which made the framers of the Constitution, accord special rights to the people who form religious or linguistic minority in India through Article 29 and Article 30.

On an outset, it is desirable to delineate Articles 29 and 30 of the constitution of India, with relevant subject matter for the purpose of this study. The need for defining minorities stems from Article 29 and 30, which guarantees minorities following privileges:
i. **Cultural and Educational Rights.**

1. **Article 29. Protection of interests of minorities.**

   A. 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.

   B. 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.

2. **Article 30. Right of minorities to establish and administer educational institutions.**

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

   A. (1) In making any law providing for the compulsory acquisition of any property of any educational institution established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.]

   B. 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. From the careful perusal of the above Articles of the Constitution of India it is found that Expression minorities has been used at four places in the Constitution of India. It has been used in the head note of Article 29 and 30 and in sub clause (1) and (2) of Article 30. Minorities in Article 30 has been used in two senses in Article 30, one based on religion and other based on language.

These provisions were to give religious and linguistic minorities’ security and confidence, and develop their own culture by bringing up their children in the manner and with the ideals they preferred that the Constitution of the country embodied a special provision in the list of Fundamental Rights.

VIII. Need of Minority Rights.

Former Chief Justice of India, Justice S. M. Sikri once said, “In fact one may well compare our nation to a big Jumbo jet flying through turbulent weather to a golden destination. For this flight, every section of the people must be galvanized together firmly as the various parts of the frame. The strength of the frame is equal only to the strength of the weakest section of the frame. One little crack, i.e. a disgruntled minority, would force the jet to the ground till the crack is repaired.”

This insight is an important rationale for the special protections accorded to the minorities in almost all the modern democracies including India.
The protection of the rights of minority is a *sine qua non* in a sound democracy. The very foundation of the minority protection is that the political non dominant i.e. a group small in number, need to be protected against interference of majority in their cultural and linguistic development. This differential treatment is necessary to preserve the basic characteristics which they possess and which distinguish them from majority of the population. Interest of minorities, their culture and individuality of minority need to be protected without jeopardizing the interest of majority at large.

Jawaharalal Nehru writing a note on Minorities stated, “the history of India and of the many countries of Europe has demonstrated that there can be no stable equilibrium in any country so long as an attempt is made to crush a minority or force it to conform to the ways of the majority .... therefore, we in India must make it clear to all that our policy is based on granting this freedom to the minorities and that under no circumstance will any coercion or repression of them be tolerated ...... We can also lie down as our deliberate policy that there shall be no unfair treatment of any minority”. Unlike our neighbouring countries, India did not give favoured status to the religion of the majority of its people, because the leaders feared that this would automatically reduce all others to the status of second-class citizens in their own country.
The Karachi Charter on Fundamental Rights of 1931 acknowledged the rights of the minorities to their religion, the freedom to profess and practice any religion, and laid down that the state should be neutral in religious matters. The members of the Constituent Assembly felt that the rights of minorities to their religion should be recognized. The Sub-Committee on Minorities gave many recommendations favoring them. The Advisory Committee on Fundamental Rights headed by Sardar Patel accepted most of the recommendations. The provisions were incorporated into the draft constitution in February 1948 under the title “Special Provisions Relating to Minorities”. But, later changes were made in the matter of political rights.

Tabling the report of the Advisory Committee in the constituent assembly on May 25, 1949, Sardar Patel said “Our general approach to the whole problem of the minorities is that; the State should be so run that, they should stop feeling oppressed by the mere fact, that they are minorities and that, on the contrary, they should feel that they have as honourable a part to play in the national life as any other section of the community”.

The idea of giving some special rights to the minorities is not to have a kind of a privileged or pampered section of the population, but to give to the minorities a sense of security and a feeling of confidence. Great leaders of India since time immemorial had preached the doctrine of tolerance and catholicity of outlook. Those noble ideas were enshrined in the Constitution.
Special rights for minorities were designed not to create inequality, their real aim was to bring about equality by ensuring the preservation of the minority institutions and by guaranteeing to the minorities autonomy in the matter of the administration of these institutions. The differential treatment for the minorities by giving them special rights was intended to bring about an equilibrium, so that the ideal of equality may not be reduced to a mere abstract idea but should become a living reality and result in true, genuine equality, an equality not merely in theory but also in fact. The majority in a system of adult franchise hardly needs any protection. It can look after itself and protect its interests. Any measure wanted by the majority can without much difficulty be brought on the statute book because the majority can get that done by giving such a mandate to the elected representatives. It is only the minorities who need protection, and Article 30, besides some other Articles, is intended to afford and guarantee that protection.

India is the second most populous country of the world with people inhabiting this vast land professing different religions and speaking different languages. Despite the diversity of religion and language, there runs through the fabric of the nation the golden thread of a basic innate unity. It is a mosaic of different religions, languages and cultures, each of them making a mark on the Indian polity and India today represents a synthesis of them all. The closing years of the British rule were marked by communal riots and
dissensions. There was also a feeling of distrust and the demand was made by a section of the Muslims for a separate homeland. This ultimately resulted in the partition of the country. Those who led the fight for independence in India laid great stress on communal amity and accord and wanted the establishment of a secular State wherein people belonging to the different religions should all have a feeling of equality and non-discrimination. Demand was also been made before the partition by sections of people belonging to the minorities for reservation of seats and separate electorates. In order to bring about integration and fusion of the different Sections of the population, the framers of the Constitution incorporated separate electorates and introduced the system of joint electorates, so that every candidate in an election should have to look for support of all Sections of the citizens. Special safeguards were guaranteed for the minorities and they were made a part of the fundamental rights with a view to instill a sense of confidence and security in the minorities. Those provisions were a kind of a Charter of rights for the minorities so that none might have the feeling that any section of the population consisted of first class citizens and the others of second-class citizens. The consequence was that minorities gave up their claims for reservation of seats.
Dealing with the question of minorities, the Chairman of the Advisory Committee Sardar Patel, in the course of his speech delivered on February 27, 1947 said;

“This Committee forms one of the most vital parts of the Constituent Assembly and one of the most difficult tasks that has to be done by us is the work of this committee. Often you must have heard in various debates in British Parliament that have been held on this question recently and before when it has been claimed on behalf of the British Government that they have a special responsibility - a special obligation-for protection of the interests of the minorities. They claim to have more special interest than we have. It is for us to prove that it is a bogus claim, a false claim, and that nobody can be more interested than us in India in the protection of our minorities. Our mission is to satisfy every interest and safeguard the interests of all the minorities to their satisfaction.”

In his Judgment in the St. Xavier College, Ahmedabad Vs the State of Gujarat, Justice K. K. Mathew quotes from Urmila Haksar, “Protection of minorities is the protection of non-dominant groups, which, while wishing in general for equality of treatment with the majority, wish for a measure of differential treatment in order to preserve basic characteristic which they possess and which distinguish them from the majority of the population”.

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IX. **Judges on Minority Rights.**

The rights promised in the Constitution are binding on the state and even the legislative assembly cannot modify these rights. Intrusion on these rights can be challenged. A study of Court cases reveals regular and frequent interpretation of these rights both in High Court and Supreme Court. In course of deciding the matter, judges have given the opinion on minority rights. Hereunder opinion of few eminent judges is discussed to gauge the judicial trend.

In the Kerala Education Bill, Reference Case (1959) Chief Justice S. R. Das observed, “So long as the constitution stands as it is and is not altered, it is, we conceive it, the duty of this court to uphold the Fundamental Rights and thereby honour our sacred obligations to the minority communities who are of our own”. Justice Das has made it very clear that these rights are to be treated as “Sacred obligations to the minorities”. Again he has made the following observations on Article 30 (1), “The minorities quite understandably regard it as essential that the education of their children should be in accordance with the teachings of their religion and their hope. Quite honestly such education cannot be obtained in ordinary schools designed for all the members of the public, but can only be secured in schools conducted under the influence and guidance of people well-versed in the tenets of their religion and in the traditions of their culture. The minorities evidently desire that
education should be imparted to their children of their community in an atmosphere congenial to the growth of their culture. Our constitution makers recognized the validity of their claims and to allay their fears conferred on them the fundamental rights referred to above”.  

Justice H. R. Khanna in the famous case of Ahmedbad St. Xavier’s College Vs State of Gujarat (1974), categorically stated that, “the provisions of the minority rights were a kind of Charter of Rights for the minorities so that none might have the feeling that any section of the population consisted of first-class citizens and the others of second-class citizens”.  

Justice K. K. Mathew and Justice Y. V. Chandachud in the same case noted as follows, “The parental right in education is the very pivotal point of a democratic system. It is the touchstone of difference between democratic education and monolithic system of cultural totalitarianism. When the modern State with its immense power embarks upon the mission of education its children, the whole tendency is towards state monopoly. The fundamental right of the religious and linguistic minorities to establish and administer educational institutions of their choice is the only legal barrier to confine the bursting expansionism of the new Educational Leviathan. Great diversity of opinion exists among the people of this country concerning the best way to train children for their place in society. Because of these differences and because of reluctance to permit a singly iron cast system of education to be
imposed upon a national, compounded of several strains, the Constitution has provided this right to religious and linguistic minorities".\textsuperscript{52}

The 11 Judge Constitution Bench headed by Justice B. N. Kripal in the T. M.A. Pai’s case ruled that minorities have an unfettered right to establish an educational institution of their choice but added that the State could bring regulatory measures, for ensuring educational standards and maintaining excellence thereof. At the same time, the Bench has given complete power to the management in the case of unaided educational institutions. Judges, in the various judgments have not only recognized the rights of minority but have time and again upheld their constitutional validity.\textsuperscript{53}
REFERENCES.


18. Ibid.

19. Ibid.


26. Ibid., p.12


28. Ibid


34. With regard to the data of the 2001 Census, Parsis and Jews have been included under the rubric ‘others’. However, according to the *Brief Analysis of Census 2001 Religion Data*, the number of Parsis were 69.601 (http://www.censusindia.net/religiondata/Brief_analysis.pdf). According to
non-official sources the number of Jews was about 4000 (http://www.answers.com/topic/demographics-of-india). Visited on 22\textsuperscript{nd} December 2016.

35. AIR 2005 SC 3172
37. AIR 1958 SC 956.
39. Ibid.,
40. AIR 1971 SC 1737.
41. AIR 1971 SC 1737.
42. Dr. M. P Raju, Minority Rights, Myth or reality, p. 11.
43. Ibid., pp11-12.
44. Constituent Assembly Debates, Vol II, p.125
45. Jawaharlal Nehru, A note on Minorities, ‘Young India’ May 15, 1930.
46. Dr. M. P Raju (2002), Minority Rights, Myth or reality, p. 15.

50. AIR 1954 SC 561


52. AIR 1954 SC 561