CHAPTER-1

INTRODUCTION

Minority: Meaning and Scope

The expression ‘minority’ is compound of the Latin word ‘minor’ and the suffix ‘ity’ meaning, inter alia, ‘the smaller in number’. The Webster’s New Encyclopedic dictionary defines ‘minority’ as “the smaller in number of two groups constituting a whole; a part of population differing from others in some characteristics and often subjected to differential treatment.”¹ Encyclopedia Britannica defines ‘minorities’ as “groups held together by ties of common descent, language, or religious faith and feeling themselves different in these respects from the majority of the inhabitants of a given political entity.”² According to J.A. Laponce, “A minority is a group whose race, language, or religion is different from that of the majority.”³ He has also given another definition which defines minority in a very broad way as “A minority is a group that thinks of itself as a minority.”⁴ The United Nations Sub-commission on Protection of Discrimination and Protection of Minorities defined minorities “(i) the term minority includes only those non-dominant groups in a population which possess and wish to preserve stable ethnic, religious or linguistic traditions or characteristics markedly different from those of the rest of the population; (ii) such minorities should properly include a number of person sufficient by themselves to preserve such traditions or characteristics; and (iii) such minorities must be loyal to the State of which they are nationals.”⁵ It means ‘a non-dominant’ group.

According to Kristin Henrard there is no generally accepted definition of the minority concept, it is possible to distinguish certain essential components, some of which are objective and others subjective, which contribute to a better understanding of the minority concept.⁶ The objective components of the minority concept can be listed as possessing ethnic, religious or linguistic features which are different from those possessed by the rest of the population, comprising a minority position numerically as compared to the rest of the population, that is comprising less than 50% of the total population, and fulfilling the so-called “non-dominance” requirement, namely that the minority should not have a dominant position over the rest of the population.⁷ The subjective component refers to the collective wish of the minority group to preserve and develop its own, separate identity.⁸

⁴. Id at 4.
⁷. Ibid.
⁸. Ibid.
The reference in the above definition to "the rest of the population" implies that the reference point does not have to be one monolithic bloc but can itself consist of several population groups. Thus, the minority concept can be applied in plural societies where there is no clear majority population. This understanding also colours the meaning of the non-dominance requirement: non-dominance does not necessarily imply being subordinate or oppressed, it merely denotes that the group concerned is not dominant. It is precisely in situations in which the numerical minority rules the state that the need for this third criterion becomes apparent: the criterion of non-dominance denies the qualification "minority" to such groups which are obviously not in need of special protection.

**Minority Group: Meaning and Scope**

Minority Group means a group of people sharing common ethnic, racial, or religious backgrounds, especially when constituting a comparatively small proportion of a given population in a society. Minority groups often have fewer rights and less power than majority groups. A primary factor in the existence of minorities is immigration, but settlement by one people can also result in the indigenous or conquered people becoming a minority, as in the case of Native Americans or the Aboriginal Australians. In Europe, throughout history, ties of minority peoples with their countries of ethnic origin have led to international disputes and wars, as in the case of the Sudetenland. In a heterogeneous society, cultural and class differences between diverse elements of the population can become more pronounced, causing inequalities through discrimination. A minority or subordinate group is a sociological group that does not constitute a politically dominant plurality of the total population of a given society. A sociological minority is not necessarily a numerical minority — it may include any group that is disadvantaged with respect to a dominant group in terms of social status, education, employment, wealth and...
political power\textsuperscript{16}. To avoid confusion, some writers prefer the terms "subordinate group" and "dominant group" rather than "minority" and "majority", respectively\textsuperscript{17}.

In socioeconomics, the term "minority" typically refers to a socially subordination ethnic group in terms of language, nationality, religion and culture\textsuperscript{18}. Other minority groups include people with disability, "economic minorities", "age minorities" (who are younger or older than a typical working age) and sexual minorities\textsuperscript{19}. Members of minority groups are prone to different treatment in the countries and societies in which they live\textsuperscript{20}. This discrimination may be directly based on an individual's perceived membership of a minority group, without consideration of that individual's personal achievement\textsuperscript{21}. It may also occur indirectly, due to social structures that are not equally accessible to all\textsuperscript{22}. Activists campaigning on a range of issues may use the language of minority rights. In recent years, some members of social groups traditionally perceived as dominant have attempted to present themselves as an oppressed minority, such as white, middle-class heterosexual males\textsuperscript{23}. Studies have consistently shown a correlation between negative attitudes toward minorities\textsuperscript{24}. Persecuted minority groups in recent history include Jews under Nazi Germany\textsuperscript{25}.

Sociologist Louis Wirth defined a minority group as "a group of people who, because of their 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.\textsuperscript{26}

This definition includes both objective and subjective criteria: 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\textsuperscript{27}. In any case, minority group status is categorical in nature: an individual who exhibits the physical or behavioral characteristics of a given minority


\textsuperscript{17} Ibid.

\textsuperscript{18} Assembly debate on 1 October 1990 (14th Sitting) (see Doc. 6294, report of the Committee on Legal Affairs and Human Rights, Rapporteur : Mr Brincat; and Doc. 6302, opinion of the Political Affairs Committee, Rapporteur : Mr Baumel).

\textsuperscript{19} Ibid.

\textsuperscript{20} Ibid.

\textsuperscript{21} Ibid.

\textsuperscript{22} Ibid.

\textsuperscript{23} Ibid.

\textsuperscript{24} Ibid.

\textsuperscript{25} Ibid.

\textsuperscript{26} Ibid.

\textsuperscript{27} Ibid.
group will be accorded the status of that group and be subject to the same treatment as other members of that group.\textsuperscript{28}

According to Kristin Henrard "a minority is a group numerically smaller than the rest of the population of the state. The members of this non-dominant group have ethnic, religious or linguistic characteristics different from those of the rest of the population and show, even implicitly, a sense of mutual solidarity focused on the preservation of their culture, traditions, religion or language."\textsuperscript{29}

Therefore, the term ‘minority’ refers to a group in terms of language, religion, ethnicity or race, nationality, gender and culture leading to distinct treatment on one of these bases.

**Kinds of Minority Group**

There are many types of minority group in a society. A few of them are as follows, namely\textsuperscript{30}:-

1. **Racial or Ethnic Minorities**

   Every large society contains ethnic minorities. They may be migrant, indigenous or landless nomadic communities. In some places, subordinate ethnic groups may constitute a numerical majority, such as Blacks in South Africa under apartheid.

2. **Religious Minorities**

   Persons belonging to religious minorities have a faith which is different to that held by the majority. Most countries of the world have religious minorities. It is now widely accepted in the west that people should have the freedom to choose their own religion, including not having any religion (atheism or agnosticism), and including the right to convert from one religion to another. However in many countries this freedom is constricted. For example in Egypt, a new system of identity cards requires all citizens to state their religion - and the only choices are Islam, Christianity or Judaism. A 2006 study suggests that atheists constitute a religious minority in the United States, with researchers

\textsuperscript{28} Ibid.
\textsuperscript{29} Supra n. 6.
3. Gender and Sexual Minorities

While in most societies, numbers of men and women are roughly equal, the status of women as a "subordinate" group 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 intersexuals, transsexuals, and gender nonconformists — especially when such phenomena are understood as intrinsic characteristics of an identifiable group. An understanding of lesbian, gay, bisexual and transgender people as a minority group or groups has gained prominence in the Western world since the 19th century. The acronym LGBT 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, practitioners of BDSM, 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 a minority; rather, as with many Gay Liberationists of the 1960s and '70s, it sometimes represents an attempt to uncover and embrace the sexual diversity in everyone.

4. Age Minorities

The elderly, while traditionally influential or even (in a gerontocracy) dominant in the past, have in the modern age usually been reduced to the minority role of 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. Various local and international statutes are in place to mitigate the exploitation of children, such as the Convention on the Rights of the Child, as well as a number of organizations that make up the children's rights movement. The youth rights movement campaigns for social empowerment for young people, and against the legal and social restrictions placed on legal minors. Groups that advocate the interests of senior citizens range from the charitable (Help the Aged) to grass-roots activism (Gray Panthers), and often overlap with disability rights issues.

5. 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 their impairments. Advocates of disability rights emphasise difference in physical or psychological functioning, rather than inferiority — for example, some people with autism argue for acceptance of neurodiversity, 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.
6. Linguistic Minorities

Language has been one of the most pertinent factors contributing to the cultural diversity of societies throughout the world. Linguistic diversity constitutes a particularly prominent policy-challenge for democratic polities, since traditional notions of democracy have often presumed the existence of linguistically homogenized demos as epitomized in the classical model of the nation-state. However, the increasing recognition of linguistic human rights in international law has contributed, along with other social and economic factors, to a far-reaching transformation of the model of the nation-state, providing new normative yardsticks for democratic modes of governing multi-lingual societies. These include, not least, the recognition of the human rights of linguistic minorities.

According to the 1991 census, within India’s 28 states and 7 union territories there are 114 languages. Of these languages, 18 are scheduled, or listed in the Constitution, and 94 are non-scheduled languages. Subtracting such foreign languages as Arabic and Tibetan, there are 90 tribal languages. Of the 114 languages in India, 87 are used in the press, 71 on the radio, 13 in the cinema and state administration, and, most significant to our interest, 47 are used as media of instruction. Giving a simple statistic on the number of languages in India is not a simple task, however. According to Annamalai India has about 200 total languages reducible from the various dialects. The Summer Institute of Linguistics estimates 850 languages in daily use and lists 398 of them in their Ethnologue (2003) using sociolinguistic survey methods.

The main source of information about numbers of minority languages in India comes from the census, conducted every ten years since 1881. While the 1991 census listed 114 languages, it also listed 1576 mother tongues. The question on the 1991 census asked simply for mother tongue, with an additional question for listing other languages spoken. The number of mother tongues returned on census forms in the 1961 and 1971 censuses was around 3000, in 1981 there were around 7000, and in 1991 the census returned 10,000 mother tongues. Regarding the complexity of defining and differentiating language and dialect, the Registrar General of India said in 1951: "...In view of these doubts and difficulties, it was decided that the Census of India should not be committed to the resolution of any controversy in such matters and the name given by the citizen to his own mother-tongue should be as such and the returns of identical names totaled" (Census of India, 1951). The need, however, for some classification of the mother tongues can be seen not only in the vast numbers returned but also through a closer look at the returns. In 1951, for example, 73 languages and dialects were listed as


32. Grierson (1966) provided details on Indian languages in a vast 11-volume Survey of Indian Languages. He listed 179 languages and 544 dialects.
spoken by only one person and 137 by two to ten persons. Sometimes mother tongue names are spelled differently, different names are used in different areas for the same language, caste names are listed instead of language or dialect names and, interestingly, a few mother tongues returned on the census stated that all of the speakers were male and for others all of the speakers were female (Sarker, 1964).

Dua notes also that sometimes “the notion of mother tongue has been mixed up with region, religion, profession, ethnicity, caste names, and the like (1986: 135). Khubchandani (2001: 8) also mentioned the reasons for variations in a person or group’s claims and the desire by some to avoid association with their mother tongue. Such factors in diverse reporting of mother tongue had also been noted by Sarker (1964). Cynthia Groff 3 Currently the method for wading through the complexity of census results is described officially as follows: “These vast raw returns need to be identified and classified in terms of actual languages and dialects to present a meaningful linguistic picture of the country. This operation of linguistic identification of raw mother tongue returns, or linguistic rationalization and classification, produced a list of rationalized mother tongues in each census: For example, the list produced in 1961 was containing 1652 mother tongue names, in 1991 it was 1576. These 1576 rationalised mother tongues were further classified following the usual linguistic methods and grouped under appropriate languages. The total number of languages so arrived at was 114 in 1991 Census”

The question of who speaks what language in India starts with the question of what is to be considered a language. Adding to the complexity, in addition to the differences in what people claim as their mother tongue are the different definitions of “mother tongue” used in the various censuses. As we know, languages are defined differently by linguists than by speakers: linguistic definitions versus social definitions. And within the latter we must consider political definitions. The difference between language and mother tongue or dialects is described by Sarker (1964) as comparable to the complexity of defining mountains and hills. Mother tongue can be defined narrowly or broadly according to Khubchandani (2001: 4). The narrow definition of mother tongue as a child’s home language is exemplified in the 1951 Census definition: “The language spoken from the cradle...in the case of infants and deaf mutes... the mother tongue of the mother” (quoted in Khubchandani, 2001: 4). The broad definition of mother tongue, on the other hand, classifies all minority languages that have no written form or script as “dialects” of the regional language (2001: 4). In the choice between definitions we find a covert element of language planning. The classification of a spoken form as a language versus a dialect could be considered status policy planning. In addition, the rationalization process named as a census procedure along with classification also serves as language planning as it narrows down and names which dialects are available to be classified as languages. While not equivalent to officialization, these language planning acts could be considered part of a language planning goal of legitimization, between standardization and prohibition in the range of status policy goals. I refer to the organization of language planning goals set forth by Hornberger (1994: 78). Political motivations behind the legitimization of language can be found in the Indian context as in other countries. Khubchandani (2001) mentions the denial of the rights of linguistic minorities through
use of the broad definition of mother tongue. Another example is the highly politicized question of whether Hindi, Urdu, and Hindustani are one, two, or three languages (2001).

Daswani (2001) makes reference to the impact of one's affiliation and purposes on presentations of the number of languages in India. As the first prime minister of India, Jawaharlal Nehru had an interest in promoting the unity of the Indian people. He said: “The notion that India has hundreds of languages is, like most other notions about her, 2
Sum of the languages and dialects from Grierson’s work based on the 1891 Census (Sarker 1964) Cynthia Groff 4 entirely based on the lively imagination of some persons and has no basis in fact. India has a dozen languages, one of which – Hindustani – is spoken by about a third of her entire population and is understood by a great part of the rest” (King, 1997: 3). Later he called the notion of many languages “...a fiction of the philologist’s and the census commissioner’s mind” (1997: 4). Current interests are still strong for avoidance of political uprisings through minimization of minority languages. Mahapatra makes this implication saying that “the government through its language census has also vastly increased the figure of scheduled languages to 95 percent of the total population in India and thus relegated the non-scheduled language speakers to a mere 5 percent” (1986: 208), an observation mentioned also by Khubchandani (2001: 8). The process of rationalization and the broad definition of mother tongue mentioned above can explain how this happens. In his introduction to Sarker’s (1964) *Handbook of Languages and Dialects of India*, Y.M. Mulay states that “the classification and grouping of all the Indian languages and dialects have not yet been finalized. While defending Sarker’s objectivity, he points out that the controversial nature of the subject may invite criticism…” (1964). Minimization of language status through denial of diversity occurs through the census and by and for political interests. This minimization of minority languages, a kind of non-legitimization, is still more covert than legitimization in the census example and could also be considered a status policy goal, just above prohibition.

7. Minorities in Law and Government

In the politics of some countries, a minority is an ethnic group that is recognized as such by respective laws of its country and therefore has some rights that other groups lack. Speakers of a legally-recognized minority language, for instance, might have the right to education or communication with the government in their mother tongue. Countries that have special provisions for minorities include China, Canada, Germany, India, Romania, Russia, and the United Kingdom (which does maintain the concept of a British supra-nation, however). Differing minority groups often are not given identical treatment. Some groups are too small or too indistinct compared to the majority that they either identifies as part of the same nation as the members of the majority or they identify as a separate nation but are ignored by the majority because of the costs or some other aspect of providing preferences. For example, a member of a particularly small ethnic group might be forced to check “Other” on a checklist of different backgrounds, and consequently might receive fewer privileges than a member of a more defined group.

Many contemporary governments prefer to assume the people they rule all belong to the same nationality rather than separate ones based on ethnicity. The United States asks for race and ethnicity on its official census forms, which thus breaks up and
organizes its population into different sub-groups, but primarily on racial origin rather than national one. Spain does not divide its nationals by ethnic group, although it does maintain an official notion of minority languages. Some minorities are so relatively large or historically or otherwise important that the system is set up in a way to guarantee them comprehensive protection and political representation. As an example, the former Yugoslav republic of Bosnia and Herzegovina recognizes the three main nations, none of which constitute a numerical majority, as constitutive nations, see nations of Bosnia and Herzegovina. However, other minorities such as Roma and Jews, are officially labelled as "others" and are excluded from many of these protections - for example they may not be elected to a range of high political positions including the presidency.

The issue of establishing minority groups, and determining the extent of privileges they might derive from their status, is controversial. There are some who argue that minorities are owed special recognition and rights, while others feel that minorities are unjustified in demanding special rights, as this amounts 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 or supremacism. In Canada, some feel that the failure of the dominant English-speaking majority to integrate French Canadians has given rise to Quebec separatism.

It seems historically the existence of both minorities and the democracies in human history have lived not only side by side, but also is part of one another. This is the reason why we have to agree with one of the Indian thinkers; Professor Humayun Kabir in his book "Minorities in a Democracy" observed that, "We cannot have a democracy without minorities without distinct and different groups. In a sense the problem of minorities is a special feature of democracy. Where there is no democracy, the question of minorities as such cannot arise. Unless there is a democracy the problem would not arise in that form at all." Concerning the deeper relationship of minorities and a democracy, Mahatma Gandhi once has said that in a democratic system "a civilization can be judged by the way it treats its minorities." Minorities need to trust that the democratic government will protect their rights and self-identity. Once this is accomplished, such groups can participate in, and contribute to their country's democratic institutions. Among the basic human rights that any democratic government must protect are freedom of speech and expression; freedom of religion and belief; due process and equal protection under the law; and freedom to organize, speak out, dissent, and participate fully in the public life of their society. Democracies understand that protecting the rights of minorities to uphold cultural identity, social practices, individual consciences, and religious activities is one of their primary tasks. Acceptance of ethnic and cultural groups that seem strange if not alien to the majority can represent one of the greatest challenges that any democratic government can face. But democracies

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34. James Massey, "Minorities in a Democracy with Special Reference to India", 13 J.R.C., 1997, p. 3.
36. Ibid.
37. Ibid.
38. Ibid.
39. Ibid.
recognize that diversity can be an enormous asset. They treat these differences in identity, culture, and values as a challenge that can strengthen and enrich them, not as a threat.

There can be no single answer to how minority-group differences in views and values are resolved -- only the sure knowledge that only through the democratic process of tolerance, debate, and willingness to compromise can free societies reach agreements that embrace the twin pillars of majority rule and minority rights.

The United Nations Declaration on the Rights of Persons Belonging to National, Ethnic, Religious and Linguistic Minorities says that the promotion and protection of the rights of persons belonging to such minorities contribute to the political and social stability of the countries in which they live. Meeting their aspirations and ensuring their rights acknowledges the dignity and equality of all individuals and furthers participatory development. This in turn contributes to the lessening of tensions among groups and individuals. These factors are major determinants for stability and peace. All developed countries and most developing ones give appropriate emphasis to looking after the interests of minorities. Thus, in any country, the faith and confidence of the minorities in the functioning of the State in an impartial manner is an acid test of its being a just State. As the processes of economic development unfold, pressures are likely to build up and intensify when there is unequal development and some groups or minorities lag behind in the development process. Ideally, development processes should remove or reduce economic and social obstacles to cooperation and mutual respect among all groups in the country. If development processes are misdirected, they may have the opposite effect. It is this aspect which is important and needs to be addressed so as to give confidence to minorities.

According to the report of Prime Minister’s High Level Committee the Indian Constitution is committed to the equality of citizens and the responsibility of the State to preserve, protect and assure the rights of minorities in matters of language, religion and culture.

Cultural, Linguistic and Religious Diversity in India

India is the second most populous country of the world. The people inhabiting this vast land profess different religions and speak different languages. In this Country many
ethnic or religious and multi-language people reside. According to the 2001 census, out of its total population of 1,129,866,154 people, 80.44 percent follow Hindu religion, 13.42 percent follow Muslim religion, 2.33 percent follow Christian religion, 1.84 percent follow Sikh religion, 0.68 percent follow Buddhist religion, 0.38 percent follow Jain religion, and the remaining 0.65 percent follow other religions of the world. Although Hindi is the national language, India is believed to have 1,652 mother tongues spoken by people numbering over a lakh. Table 1 shows the growth of Scheduled languages from 1971, 1981, and 1991, and Table 2-A and 2-B show the population of major religious communities.

### Table 1

<table>
<thead>
<tr>
<th>Sr No</th>
<th>Language</th>
<th>Persons who returned the language as their mother tongue</th>
<th>Decade percentage increase</th>
<th>1971-81</th>
<th>1981-91</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Assamese</td>
<td>8,959,558 *</td>
<td>13,079,696 *</td>
<td>*</td>
<td>*</td>
</tr>
<tr>
<td>2</td>
<td>Bengali</td>
<td>44,792,312 51,298,319</td>
<td>69,595,738</td>
<td>14.52</td>
<td>35.67</td>
</tr>
<tr>
<td>3</td>
<td>Gujarati</td>
<td>25,865,012 33,063,267</td>
<td>40,673,814</td>
<td>27.83</td>
<td>23.02</td>
</tr>
<tr>
<td>4</td>
<td>Hindi</td>
<td>208,514,005 264,514,117</td>
<td>337,272,114</td>
<td>26.86</td>
<td>27.51</td>
</tr>
<tr>
<td>5</td>
<td>Kannada</td>
<td>21,710,649 25,697,146</td>
<td>32,753,676</td>
<td>18.36</td>
<td>27.46</td>
</tr>
<tr>
<td>6</td>
<td>Kashmiri</td>
<td>2,495,487 3,176,975</td>
<td>27.31 **</td>
<td></td>
<td>**</td>
</tr>
<tr>
<td>7</td>
<td>Konkani</td>
<td>1,508,432 1,570,108</td>
<td>1,760,607</td>
<td>4.09</td>
<td>12.13</td>
</tr>
<tr>
<td>8</td>
<td>Malayalam</td>
<td>21,938,760 25,700,705</td>
<td>30,377,176</td>
<td>17.15</td>
<td>18.20</td>
</tr>
<tr>
<td>9</td>
<td>Manipuri</td>
<td>791,714 901,407</td>
<td>1,270,216</td>
<td>13.86</td>
<td>40.91</td>
</tr>
<tr>
<td>10</td>
<td>Marathi</td>
<td>41,765,190 49,452,922</td>
<td>62,481,681</td>
<td>18.41</td>
<td>26.35</td>
</tr>
<tr>
<td>11</td>
<td>Nepali</td>
<td>1,419,835 1,360,636</td>
<td>2,076,645</td>
<td>4.17</td>
<td>52.62</td>
</tr>
<tr>
<td>12</td>
<td>Oriya</td>
<td>19,863,198 23,021,528</td>
<td>28,061,313</td>
<td>15.90</td>
<td>21.89</td>
</tr>
<tr>
<td>13</td>
<td>Punjabi</td>
<td>14,108,443 19,611,199</td>
<td>23,378,744</td>
<td>39.00</td>
<td>19.21</td>
</tr>
<tr>
<td>14</td>
<td>Sanskrit</td>
<td>2,212 6,106</td>
<td>49,736</td>
<td>176.04</td>
<td>714.54</td>
</tr>
<tr>
<td>15</td>
<td>Sindhi</td>
<td>1,676,875 2,044,389</td>
<td>2,122,848</td>
<td>21.92</td>
<td>3.84</td>
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<tr>
<td>16</td>
<td>Tamil</td>
<td>37,690,106 *</td>
<td>53,006,368</td>
<td>*</td>
<td>*</td>
</tr>
<tr>
<td>17</td>
<td>Telugu</td>
<td>44,756,923 50,624,611</td>
<td>66,017,615</td>
<td>13.11</td>
<td>30.41</td>
</tr>
<tr>
<td>18</td>
<td>Urdu</td>
<td>28,620,895 34,941,435</td>
<td>43,406,932</td>
<td>22.08</td>
<td>24.23</td>
</tr>
</tbody>
</table>

Source: Census of India: 1991

* Full figures for Assamese and Tamil for 1981 are not available.
** Full figures for Kashmiri for 1991 are not available.

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55. Id at 563.
## TABLE 2-A

### POPULATION BY MAJOR RELIGIOUS COMMUNITIES
(Census -1981)

<table>
<thead>
<tr>
<th>State/Union Territory</th>
<th>Hindus</th>
<th>Muslims</th>
<th>Christians</th>
<th>Sikhs</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Population</td>
<td>Population</td>
<td>Population</td>
<td>Population</td>
</tr>
<tr>
<td>India (1)</td>
<td>549,724,717</td>
<td>75,571,514</td>
<td>16,174,498</td>
<td>13,078,146</td>
</tr>
<tr>
<td>State:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>A.P.</td>
<td>47,525,681</td>
<td>4,533,700</td>
<td>1,433,327</td>
<td>16,222</td>
</tr>
<tr>
<td>Assam</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bihar</td>
<td>58,011,070</td>
<td>9,874,993</td>
<td>740,186</td>
<td>77,704</td>
</tr>
<tr>
<td>Gujrat</td>
<td>30,518,500</td>
<td>2,907,744</td>
<td>132,703</td>
<td>22,438</td>
</tr>
<tr>
<td>Haryana</td>
<td>11,547,676</td>
<td>523,536</td>
<td>12,215</td>
<td>802,230</td>
</tr>
<tr>
<td>Himachal</td>
<td>4,099,706</td>
<td>69,613</td>
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### Union Territory:

<p>| A. &amp; N. Islands       | 16,188 | 48,274 | 991 |
| Arunachal             | 184,732| 5,073  | 27,306 | 1,231 |
| Chandigarh            | 9,115  | 4,470  | 95,370 |
| D. &amp; N. Haveli        | 1,932  | 2,025  | 11 |
| Delhi                 | 481,802| 61,609 | 393,921 |
| Goa, Daman &amp; Diu      | 48,461 | 318,249 | 1,380 |
| Lakshadweep           | 38,173 | 266    | .. |
| Mizoram               | 35,245 | 2,205  | 413,840 | 421 |
| Pondicherry           | 36,663 | 49,914 | 31 |</p>
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<tr>
<th>State/Union Territory</th>
<th>Buddhists Population</th>
<th>Jain Population</th>
<th>Others Population</th>
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<td>2,826,502</td>
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<td>3,658</td>
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<td>Union Territory:</td>
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<tr>
<td>Pondicherry</td>
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(1) Excludes, Assam
** Indeterminate
Despite the diversity of religion or ethnicity 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 has made 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 always: aid great stress on communal amity and accord. They wanted the establishment of a secular State wherein people belonging to the different religious should all have a feeling of equality and non-discrimination. 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.

Basic and Fundamental Rights of Minorities under Indian Constitution

Since the 17th century, if not earlier, human thinking has been veering round to the theory that man has certain essential, basic, natural and inalienable rights or freedoms and it is the function of the State, in order that human liberty may be preserved, human personality developed, and an effective social and democratic life promoted, to recognise these rights and freedoms and allow them a free play.56 The doctrine of natural rights is itself an offshoot of the doctrine of natural law.57 Since natural law consists of rules founded on the primary instincts of man as modified by his inborn perception of what is right or wrong, it follows that natural rights constitute the primary rights and obligations of men to another as soon as they begin to live in a society, i.e., in association with others.58 And since the rules of natural law are of universal application, natural rights also inhere in every human being, in all ages and in all climes.59 The political implication of the theory of natural rights is that these rights, being inherent in man, existed prior to the birth of the State itself and cannot, therefore, be violated by the State.60 Just as natural law stands above the law of the land, so natural rights are thought to be of a higher sanctity than legal rights which are actually prescribed by the legal sovereign for the time being, because natural rights exist independent of the law of the land and are not prescribed by any human authority.61

Though there has been an unending controversy as to whether rights are anterior to political society or are created by the latter, philosophers agree on the point that there are

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58 Ibid.
59 Ibid.
60 Ibid.
61 Ibid.
certain basic and inalienable rights which are inherent in free and civilised human beings.\textsuperscript{62} Under an unwritten Constitution, as in England, these natural or basic rights came to be variously called as civil rights or civil liberties and freedoms or individual liberty.\textsuperscript{63} When guaranteed and entrenched by a written Constitution, these rights are called 'Fundamental Rights', because they are guaranteed by the fundamental law.\textsuperscript{64} The underlying idea in entrenching certain basic and Fundamental Rights is to take them out of the reach of transient political majorities.\textsuperscript{65} It has, therefore, come to be regarded as essential that these rights be entrenched in such a way that they may not be violated, tampered or interfered with by an oppressive government.\textsuperscript{66} With this end in view, some written Constitutions guarantee a few rights to the people and forbid government organs from interfering with the same.\textsuperscript{67} In that case, a guaranteed right can be limited or taken away only by the elaborate and formal process of Constitutional amendment rather than by ordinary legislation.\textsuperscript{68} These rights are characterized as Fundamental Rights.\textsuperscript{69} Part III of the Constitution of India guarantees Fundamental Rights. Some Fundamental Rights have been guaranteed to citizens only such as Articles 15, 16, 19, 29 whereas the rest of the fundamental rights are guaranteed to citizens and aliens alike. Some of the provisions of Part III of the Indian Constitution put restrictions upon State action such as Articles 14, 15(1), 16, 18(1), 19, 20, 21, 22 and 31 whereas other provisions put limitations upon the freedom of action of private individual as well such as Articles 15(2), 17, 18(2), 23(1) and 24. The Supreme Court has observed that the purpose of enumerating Fundamental Rights in the Constitution is to safeguard the basic human rights from the vicissitudes of political controversy and to place them beyond the reach of the political parties who, by virtue of their majority, may come to form the government at the centre or in the State.\textsuperscript{70}

Part III of the Indian Constitution contains many fundamental rights intended to secure confidence among Indian minorities and guarantees of their enforcement by cheap and rapid procedure of filing a writ petition. Article 14 provides that the State shall not deny to any person equality before the law and the equal protection of the laws within the territory of India. Article 15(1) forbids discrimination on grounds of religion, race, caste, sex, or place of birth. Article 15 (2) provides that no citizen shall, on grounds only of religion, race, caste, sex, place of birth, or any of them, be subject to any restriction with regard to access to shops, public restaurants, hotels, or places of entertainment, or with regard to the use of wells, tanks, bathing ghats, roads or places of public resort maintained wholly or partly out of State funds, or dedicated to the Public. Article 17 provides that Untouchability is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of Untouchability shall be an offence punishable in accordance with law.

\textsuperscript{62} Ibid.
\textsuperscript{63} Id at 49.
\textsuperscript{64} Ibid.
\textsuperscript{65} Supra n.56.
\textsuperscript{66} Id at 968.
\textsuperscript{67} Ibid.
\textsuperscript{68} Ibid.
\textsuperscript{69} Ibid.
\textsuperscript{70} Chairman, Railway Board v. Chandrima Das, AIR 2000 SC 988.
The object of Articles 25 to 30 is to preserve the rights of religious and linguistic minorities, to place them on a secure pedestal and withdraw them from the vicissitudes of political controversy. Article 25 (1) provides that subject to public order, morality and health and to the other provisions of this part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion. Article 25 (2) provides that nothing in this article shall affect the operation of any existing law or prevent the State from making any law—(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice; (b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

Explanation 1 to Article 25 provides that the wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion. Explanation II to Article 25 provides that in sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jain or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly. Article 26 provides that subject to public order, morality and health, every religious denomination or any section thereof shall have the right—(a) to establish and maintain institutions for religious and charitable purposes; (b) to manage its own affairs in matters of religion; (c) to own and acquire movable and immovable property, and (d) to administer such property in accordance with law. Article 27(1) provides that no person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination. Article 28 provides that no religious instruction shall be provided in any educational institution wholly maintained out of State funds. Article 27 (2) provides that nothing in clause (1) shall apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution. Article 27 (3) provides that no person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto.

Article 29 (1) provides that any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same. Article 29 (2) provides that 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. Article 30 (1) provides that all minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice. Article 30 (1A) provides that in making any law providing for the compulsory acquisition of any property of an education 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. Article 30 (2) provides that 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.

Article 344 provides: (1) the President shall, at the expiration of five years from the commencement of this Constitution and thereafter at the expiration of ten years from such commencement, by order constitute a Commission which shall consist of a Chairman and such other members representing the different languages specified in the Eighth Schedule as the President may appoint, and the order shall define the procedure to be followed by the Commission. Article 350-A provides that it shall be the endeavour of every State and of every local authority within the State to provide adequate facilities for instruction in the mother-tongue at the primary stage of education to children belonging to linguistic minority group; and the President may issue such directions to any State as he considers necessary or proper for securing the provision of such facilities. Article 350-B provides: (1) there shall be a Special Officer for linguistic minorities to be appointed by the President. (2) It shall be the duty of the Special Officer to investigate all matters relating to the safeguards provided for linguistic minorities under this Constitution and report to the President upon those matters at such intervals as the President may direct, and the President shall cause all such reports to be laid before each House of Parliament, and sent to the Governments of the States concerned.

A legal right is an interest protected by law and is enforceable in the courts of law.71 While an ordinary legal right is protected and enforced by the ordinary law of the land, a fundamental right is one which is protected and guaranteed by the written Constitution of a State.72 These are legal rights in the sense of Justiciability; but they are called ‘fundamental’ because while ordinary rights or rights created by the Legislature may be changed by the Legislature in its ordinary process of legislation, a fundamental right, being guaranteed by the Constitution, cannot be altered by any process shorter than that required for amending the Constitution itself.73 Nor can it be suspended or abridged except in the manner laid down in the Constitution itself.74 An ordinary legal right appertains to private law and denotes the relationship between two private citizens; a fundamental right appertains to public law and is a right which an individual possesses against the State itself.75 The party bound by a fundamental right is the State.76

In enacting fundamental rights in Part III of our Constitution the founding fathers showed that they had the will, and were ready to adopt the means, to confer legally enforceable fundamental rights.77 A right without a remedy does no have much substance. The Fundamental Rights guaranteed by the Constitution would have been worth nothing had the Constitution not provided an effective mechanism for their

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72. Ibid.
73. Ibid.
74. Ibid.
75. Ibid.
76. Ibid.
enforcement. First, against whom were fundamental rights to be enforced? Broadly speaking, against "the State", not as ordinarily understood. Secondly, against what activity were fundamental rights enforceable? Article 13 is a key provision as it makes Fundamental Rights justiciable. Article 13 provides:

1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.

2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.

3) In this article, unless the context otherwise requires,:

(a) "law" includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law;

(b) "laws in force" includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas.

4) Nothing in this article shall apply to any amendment of this Constitution made under Article 368.80

Thirdly, who will secure guarantee of these fundamental rights. Articles 32 and 22681 confer power on the Supreme Court and High Courts respectively to enforce the Fundamental Rights. Article 32 runs as follows:

(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this part is guaranteed.

(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this part.

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78. Article 12 states, "In this part, unless the context otherwise requires, "the State" includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India".

79. Supra n. 77.

80. Article 368 (3) states, "Nothing in Article 13 shall apply to any amendment made under this article.

81. Article 226 (1) states, "Notwithstanding anything in article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, order or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by part III and for any other purpose."
(3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and 
(2), Parliament may by law empower any other court to exercise within the local limits of 
its jurisdiction all or any of the powers exercisable by the Supreme Court under clause 
(2).

(4) The right guaranteed by this article shall not be suspended except as otherwise 
provided by this Constitution.

In Romesh Thappar case,\(^82\) the Supreme Court has emphasized that this Court is 
thus constituted the protector and guarantor of the Fundamental Rights, and it cannot 
consistently with the responsibility so laid upon it, refuse to entertain applications 
seeking protection against infringement of such rights. In Daryao case,\(^83\) the Supreme 
Court has observed:–

"The Fundamental Rights are intended not only to protect individual’s rights but 
they are based on high public policy. Liberty of the individual and the protection of the 
Fundamental Rights are the very essence of the democratic way of life adopted by the 
Constitution, and it is the privilege and the duty of this Court to uphold those rights. This 
Court would naturally refuse to circumscribe them or to curtail them except as provided 
by the Constitution itself."

In Prem Chand Garg v. Excise Commissioner, Uttar Pradesh,\(^84\) the Supreme Court 
has described the significance of Article 32 in the following words:–

"The Fundamental Right to move this Court can therefore be appropriately 
described as the cornerstone of the democratic edifice raised by the Constitution. That is 
why it is natural that this Court should regard itself ‘as the protector and guarantor of 
Fundamental Rights’ and should declare that “it cannot, consistently with the 
responsibility laid upon it, refuse to entertain applications seeking protection against 
infringement of such rights...In discharging, the duties assigned to it, this Court has to 
play the role of a ‘sentinel on the qui vive’ and it must always regard it as its solemn duty 
to protect the said Fundamental Rights ‘zealously and vigilantly’\(^85\)

Justice Shastri in A.K. Gopalan v. State of Madras,\(^86\) observed that...the insertion 
of a declaration of Fundamental Right in the forefront of the Constitution, coupled with 
an express prohibition against legislative interference with these rights (Article 13) and 
the provision of a constitutional sanction for the enforcement of such prohibition by 
means of a judicial review (Article 32) is...a clear and emphatic indication that these 
rights are to be paramount to ordinary State-made laws. A salient feature of Fundamental 
Rights under the Indian Constitution is that not only the rights themselves, but the 
constitutional remedy to move the Supreme Court for their enforcement is also 
guaranteed as a Fundamental Right, as a result of which this remedy and the power of

\(^{84}\) AIR 1963 SC 996.
\(^{85}\) Id at 999.
\(^{86}\) (1950) SCR 76 at 204-05.
Fourthly, who can challenge the constitutionality of a law or an executive action for the violation of any provision of the Part III of the Indian Constitution? According to Dr. Durga Das Basu, the provisions which are strictly in the nature of constitutional limitations [e.g. Article 15 (1)] are binding upon the State without any exception and any act of the State (legislative or executive) which contravenes any of these provisions would be altogether void, to the extent of such contravention [Article 13 (2)]. On the other hand, the provisions in the nature of individual rights are subject to regulation by the State itself within certain prescribed limits, and if such restrictions made by the State are within those limits [e.g., Article 19 (2)-(6)], they cannot be held to be void on account of being in contravention of the constitutional guarantee of the rights in question. The guarantees, in short, are subject to reasonable regulation by the State within prescribed limits. In Hamdard Dawakhana case, the Court has held that no one but whose right is directly affected by a law can raise the question of the constitutionality of the law. In Dwarkadas Srinivas case, the Court has held that a person who challenges the constitutionality of a statute must show that he has sustained or is immediately in danger of sustaining some direct injury as the result of enforcement of the statute and that the injury complained of is justiciable. In Kochunni K.K. v. State of Madras, the Court has held that where an enactment may immediately on its coming into force take away or abridge the fundamental rights of a person by its very terms, the aggrieved person may at once come to the Court without waiting for the State to take some overt action threatening to infringe his fundamental right. In Nabhirajah D.K. v. State of Mysore, the Court has held that a person who is not possessed of a fundamental right cannot challenge the validity of a law on the ground that it is inconsistent with a fundamental right. In Charanji Lai Choudhury case, the Court has held that a corporation has a legal entity separate from that of its shareholders. Hence, in case of a corporation, whether the corporation itself or the shareholders would be entitled to impeach the validity of the statute will depend upon the question whether the rights of the corporation or of the shareholders have been affected by the impugned statute.

In Basheshar v. C.I.T., the Supreme Court has held that a fundamental right being in the nature of a prohibition addressed to the State, none of the fundamental rights in our Constitution can be waived by an individual.

88. Supra n. 70 at 611.
89. Ibid.
90. Ibid.
93. Supra n. 87.
94. AIR 1952 SC 339.
96. 1959 Supp. (1) SCR 528.
Purpose of the Study

The purpose of this study is to know:-

(1). What are the rights of Minorities under the International Law?

(2). How the Framers of our Constitution thought to safeguard the educational and cultural rights of minorities in India.

(3). What is the meaning and content of the expression of ‘minorities’ in Article 29 and Article 30 of the Constitution of India?

(4). What is the test to determine minority status based on religion or language of a group of persons residing in a State or Union Territory?

(5). Whether minority status of a given group of persons has to be determined in relation to the population of the whole of India or population of the State where the said group of persons is residing?

(6). What is meaning of the expression ‘religion’ in Article 30 (1)? Can the followers of a particular religion claim protection under Article 30 (1) on the basis that they constitute a minority in the State?

(7). What are the indicia for treating an educational Institution as a minority educational institution?

(8). What is the meaning of the words ‘education’ and ‘educational institutions’ in Article 30 of the Constitution of India?

(9). Whether a minority educational institution, though established by a minority, can cater to the needs of that minority only? Can there be an enquiry to identify the person or persons who have really established the institution? Can a minority institution provide cross-border or inter-State educational facilities and yet retain the character of minority educational institution?

(10). To what extent can professional education be treated as a matter coming under minorities’ rights under Article 30?

(11). Whether the admission of students to minority educational institution, whether aided or unaided, can be regulated by the State Government or by the University to which the institution is affiliated?

(12). Whether the minorities’ rights to establish and administer educational institutions of their choice includes the procedure and method of admission and selection of students in these institutions?
(13). Whether the member of a linguistic non-minority in one State can establish a trust/society in another State and claim minority status in that State?

(14). What is the scope of right of minorities to establish and administer educational institutions of their choice under Article 30(1).

(15). What would happen if a minority belonging to a particular State establishes an educational institution in that State and administers it but for the benefit of members belonging to that minority domiciled in the neighbouring State where that community is in majority? Would it not be a fraud on the Constitution?

(16). Whether the transposition of the subject 'Education' from List II to List III of the Seventh Schedule of the Constitution by the Forty-second Amendment to the Constitution has brought change to the test for determining who are minorities for the purposes of Article 30 of the Constitution?