Chapter-1

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I. Statement of Problem

In the present era the term “minority” has been applied to more or less distinct groups, living within a State, which are dominated by majority group. Despite innumerable references to minorities to be found in international legal instruments, there is no generally accepted definition of the term “minority”. The attempt at giving a definition universally accepted has always proved a task of such difficulty and complexity that neither the experts in this field nor the organs of the United Nations agencies have been able to accomplish it to date. The reason for this is the number of different aspects of the minorities and their protection. On the basis of this consciousness of difference, minorities will possibly make certain political claims. In every case they desire the enjoyment of all human rights and basic freedoms without any discrimination. Beside it, they also desire positive support from the State in the preservation of their distinctive characteristics, or partial or full autonomy, or sometimes even succession from the State. These desires and the claim of minority to application of the principle of non-discrimination cannot be questioned, since this principle is proclaimed unequivocally in the United Nations Charter,\(^1\) the

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\(^1\) The Charter of the United Nations was signed on 26 June 1945, in San Francisco, at the conclusion of the United Nations Conference on International Organization, and came into force on 24 October 1945. The references to human rights in the Charter of the United Nations (See Preamble,
1948 Universal Declaration of Human Rights\textsuperscript{2} and the two 1966 United Nations Covenants\textsuperscript{3} on human rights. Besides, the United Nations General Assembly adopted the 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities.\textsuperscript{4}

The problem of minority is the most baffling question confronting modern democracies.\textsuperscript{5} The minorities and the majority community have lived here holistically. There was neither the communal problem nor communal riots. The problem of minorities saw its birth during the British rule in India.\textsuperscript{6} However, the nature of the problem of the minorities is not always and everywhere the same. The problem of the minority arises only in a democracy. Prof. Humayun Kabir in his book “Minorities in a Democracy”\textsuperscript{7} observed that: “There can be no question of minorities except in a democracy. Unless there is a democracy the problem would not arise in that form at all.” The reason is that it is only in a democracy where recognition is given to equal rights and duties for all without

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\item Articles 1, 55, 56, 62, 68 and 76) have provided the basis for elaboration of the content of standards and of the machinery for implementing protection of human Rights.
\item The Universal Declaration of Human Rights, was adopted by the UN General Assembly on December 10, 1948 to serve as “a common standard of achievement for all peoples and all nations”(Preamble).The Declaration affirming, inter- alia, in Articles 1 and 2 that “all persons are born free and equal in dignity and rights” and entitled to the enjoyment of human rights “without distinction of any kind.” See Sir Robert Jennings and Sir Arthur Watts, \textit{Oppenheim's International Law}, Pearson Education, New Delhi (Ninth Edition, 1996).
\item General Assembly Resolution 47/135, Dated December 18, 1992.
\item The Encyclopedia Americana Vol. 19, N.Y. Americana Corp/ed. 1961, p. 206; “The movements of peoples, ideologies and political boundaries, have meant that distinctive minorities have been common phenomena throughout the history.”
\item Firma K. L. Mukhopadhyay, Calcutta (1968) p. 2.
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distinction of their religion, race, caste or language. In a totalitarian state, the minorities are not allowed to keep their separate identities, as there everything exists for the state. The minorities in totalitarian regime dissolve their identity in the identity of the state.

The framers of the Constitution of India were alive to the complex character of the problem. They had a firm faith that healthy national consciousness would grow if the minorities are guaranteed liberty, equality, fraternity and justice. The cultural and educational rights of the minorities incorporated in the Constitution of India, basically are the balancing approach to harness a healthy and prosperous life and status for all, including the minorities. Special rights for the minorities have been designed in the Constitution to bring about equality by ensuring the preservation of the minorities 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 is intended to bring about equilibrium. 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 that is why to ensure equality, the Constitution of India guarantees special rights in favour of the minorities. And the judicial precedents have clearly recognised that running of minority institutions is also as fundamental and important as the right conferred on the other citizens of the country.

According to advisory opinion of the Permanent Court of International Justice on Minority School in Albama (6th April, 1945), Publication of the Court, Series A/B No; 64, p. 19: "whereas equality in fact may involve the necessity of differential treatment in order (attain a result which establishes an equilibrium between different situations ... It is easy to imagine cases in which equality of treatment of the majority and of (he minority whose situations and requirements are different, would result in inequality ... The equality between members of the majority and the minority must be effective, genuine equality ...."
The historical background of the problem of minorities in India can be picked up since the advent of British Rule in India. Syed S. Pirzada has summarised the history of the British Rule in India in the following words:

"Clive to Canning, Curzon to Cripps, Minto to Mountbatten, Simla Deputation to Simla Conference, Partition of Bengal to Partition of India, Fourteen Points to, Fourteen August ... are the headlines of the march of events from Plassey to Pakistan."\(^9\)

The reason for tracing the problem since British Era in India, is that, India has had the minorities since time immemorial, but the problem of protecting any particular group of interest had never arisen. There was a communal harmony and mutual understanding. In the war of 1857, all the Communities in India fought unitedly as a common cause against the British invaders and suffered heavily and almost equally. The war of 1857 shocked the British administration in India. With the intention to break the solidarity of the people of India and their, combinations, they resorted to "Divide and Rule Policy".\(^10\) Under the myth of the ‘martial race’ the policy was first of all tried in the organisation of Indian Army. Jawahar Lal Nehru has rightly pointed out that:

"The policy of balanced counter poise was deliberately furthered in the Indian Army. Various groups were so arranged as to prevent any sentiment of national unity growing up amongst them, and tribal and communal loyalties and slogans were encouraged."\(^11\)

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After the Indian Army, the Britishers, picked up Indian Civil Society. The Muslims were picked up for isolation from Hindus. The responsibility to achieve the object was given to Professor Theodore Beck. He was appointed Principal of the Anglo-Oriental College of the Muslims at Aligarh. Prof. Beck was successful in not only creating a gulf between Hindus and Muslims but also widening it up to such an extent that it could not be bridged till today. Prof. R. Coupland has summarised his opinion in this context:

“It marked the turning of the tide, the end of the decline and the beginning of the recovery.”

The work of the Prof. Beck was estimated by a British ruler Sir John Strachey, as that of an Englishman engaged in empire-building activities in a far off land. Undoubtedly, there were other leaders in the Muslim Community who preached the idea of communal separatism and exclusiveness but the part played by Sir Syed Ahmed Khan and Mohammed Ali Jinnah in widening the gulf and complicating the understanding and harmony between the two major communities of India need a specific mention here. Sir Syed Ahmed Khan was the leader of the Muslims for 40 years from 1858 to 1898. Two begin with he believed that Hindus and the Muslims constitute one nation. Once Sir Syed Ahmed Khan had said:

“India is like a beautiful bride whose two eyes are the Hindus and the Muslims and her two eyes be of equal lustre.”

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12 R. Coupland, *The Indian Problem*, Oxford University, Bombay (1944) p. 32.


During the struggle for independence one of the problems in the transfer of power by the British Rulers was the problem of the protection of minorities in India. Since the problem of minorities had assumed political colour, the Indian National Congress was of the opinion that the only solution to the problem of minorities, was to incorporate in the constitution a detailed list of fundamental rights, applicable to all Indian citizens irrespective of their affiliation to any particular religion. The demand for the guaranteed fundamental rights was made for the first time in the Constitution of India Bill, 1895, framed by the Indian National Congress\textsuperscript{15} and was thereafter expressed in several resolutions passed by the Congress, particularly between 1917 and 1919.\textsuperscript{16} Mrs. Besant’s Commonwealth of India Bill, 1925, further stressed the need for equality before the law, individual liberty, freedom of conscience, free expression of opinion, free assembly, right of free education, free profession and practice of religion. The All Parties Conference was convened in 1928, and it appointed a committee under the chairmanship of Moti Lal Nehru, in order to suggest an amicable solution to the problem of communalism and other matters relating to Constitution. All religious communities and groups in India were given representation in the Committee. The Committee submitted a report on August 10, 1928. The report is commonly known as ‘Nehru Report’. The recommendations of the report may be summarised as follows:\textsuperscript{17}

1. India was to be a secular state with no state religion;


\textsuperscript{16} Chakrabarty and Bhattacharya, \textit{Congress in Evolution}, The Book Co. Ltd., Calcutta (1940).

2. The Committee considered the country as an organic whole and not one composed of heterogeneous and independent elements as the Princes, linguistic and religious minorities;

3. It embodied safeguards for Muslims and other minorities in the form of fundamental rights, which guaranteed social and religious liberty to all sections of the country’s population; and

4. It repudiated separate electorates and suggested joint electorates with reservation of seats for Muslims where they were in minority and for non-Muslims in N.W.F.P.

The Report was an act of great statesmanship. In the words of Lal Bahadur:

“The Nehru Report was the practical side of the Indian agitation and was projected to serve as a fitting reply to the racial arrogance of Lord Birkenhead, the then Secretary of State.”

But there were forces which worked against the very spirit of this venture. Muslims who had supported the Report, started opposing it and as an alternative of it offered Fourteen Points prepared by M.A. Jinnah. Simon Commission which came to India in 1928 killed the enthusiasm for the Report and tried to poison Communal groups, as a result of which, Sikhs claimed separate representation and the Harijans leaders too started grumbling. As a result of all this; the Nehru Report died an unnatural death. The Karachi Resolution, 1931 was another major step in the development of constitutional rights for the Indian people, and was somewhat unique for its emphasis on states positive obligations

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19 Adopted at Karachi by the Congress Session held in March, 1931.
towards betterment of social and economic conditions of the people and removal of inequality and discrimination inherent in the society. After the Nehru Report and Karachi Resolution, another effort was made in November, 1944 when a committee under the chairmanship of Sir Tej Bahadur Sapru was given the responsibility to attempt to solve the communal question. The report was submitted in December, 1945: It was opposed to the idea of dividing the country as it would endanger the peace and would hamper the orderly progress and the problem of minorities would continue to exist. The report recommended a number of fundamental rights to be incorporated in the Constitution to be framed, assuring, (a) the liberties of the individual; (b) freedom of press and association; (c) equality of rights of citizenship of all nationals irrespective of birth, religion, colour caste or creed; (d) full religious toleration; and (e) protectionist language and culture of all communities. The Report recommended the establishment at the Centre and in each of the Provinces of an independent Minority Commission, to keep a constant watch over the interests of the minority communities. The report also recommended reservation of 10% seats in the legislatures to some special interests and the rest 90% seats in the legislatures were to be distributed among: (i) Hindus, (ii) Muslims, (iii) The Scheduled Castes, (iv) Sikhs, (v) Indian Christians, (vi) Anglo Indians, and (vii) other communities.

The report recommended that in the interest of promoting national unity, Hindu Community should agree that in Central Assembly the Muslim representation shall be on a par with the representation given to Hindus (other than the Scheduled Castes) in spite of disparity in their respective population strength. The proposals given by the Sapru Committee were criticised by different persons from different points of view. In the words of Dr. Rajendra Prasad:

20 Sapru Committee Report, 1945, pp. VIII-IX.
“What was considered to be a defeat by one group of critics was regarded as a merit by another group and so many of the criticism cancelled one another; with the result that in spite of the talented effort of the eminent personalities, of which it was composed, the Committee failed in its effort to advance the position.”\(^{21}\)

The Constituent Assembly had its first meeting on 9th December 1946 and in its second meeting on 13th December 1946 Jawahar Lal Nehru moved a resolution and with it started the procedure of providing constitutional safeguards to the minorities in India. This resolution, which came to be, known as ‘Objective Resolution’ was welcomed by M.R. Masani,\(^{22}\) the representative of the Parsees; S. Ujjal Singh,\(^{23}\) representative of the Sikh community; P. R. Thakur\(^{24}\) the representative of the scheduled castes and by Rev. Jorme D’Souza\(^{25}\) the representative of the Christian community. The resolution ultimately was incorporated as the ‘Preamble’ of the Constitution which proclaims in unequivocal terms, ‘Justice, Liberty, Equality, Fraternity’ as the inalienable rights of man. The Constituent Assembly after adopting the Objective Resolution, constituted an Advisory Committee on the subject of fundamental rights of the minorities. Moving the resolution for the setting up of Advisory Committee in the Constituent Assembly on January 29, 1947 Govind Ballabh Pant laid particular emphasis on the importance of the question of minorities:

\(^{23}\) Ibid., p. 105.
\(^{24}\) Ibid., p. 139.
\(^{25}\) Ibid., p. 139.
"A satisfactory solution of the question pertaining to minorities will ensure the health, vitality and strength of the free state of India ... so far, the minorities have been incited and have been influenced in a manner which has hampered the growth of cohesion and unity. But now it is necessary that a new chapter should start and we should all realise our responsibility. Unless the minorities are fully satisfied, we cannot make progress; we cannot even make peace in an undisturbed manner." 

The Draft Constitution of India as settled by the Drafting Committee headed by Dr. B.R. Ambedkar, was submitted to the President of the Constituent Assembly on February 21, 1948. It was introduced in the Assembly for discussion on November 4, 1948. The Draft Constitution was divided into 18 parts. Part 14 of the Draft Constitution contained Articles 292 to 301, which concerned with the minorities. These provisions were in addition to safeguards given to the minorities in Part-III of the draft constitution, by means of fundamental rights. Articles 292 to 294 of the draft constitution made provision for reservation of seats for minorities in the Parliament and the State Legislatures. The seats were reserved for Muslims, Indian Christians, Anglo-Indians, Scheduled Castes and Scheduled Tribes.

But on December 30, 1948 at the meeting of Advisory Committee a resolution was moved to, abolish reservation for all minorities." The Advisory Committee met again on May 11, 1949. The Advisory Committee felt that since it had made the recommendation on reservation of seats in 1947, the conditions in the

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26 Ibid., pp. 310-311.

27 Now Articles 330 to 334 of the Constitution of India in Part XVI.

Country had changed after the partition and, it was no longer appropriate in the context of free India to reserve seats for any religious minority. Although the abolition of separate electorates was a right step and would remove much” of the poison from the body politic, the reservation of seats if allowed would lead to a certain degree of separation as between the various communities and to that extent was contrary to the conception of secular democratic state. This resolution for abolition of reservation was adopted. The Advisory Committee then submitted its report to the Constituent Assembly. Explaining the decision to abolish the reservation to the Assembly on May 25, 1949, Sardar V. Patel said that the vast majority of minority communities, including Muslims, had themselves realised the evil of such reservation in the past, and consequently the voting for the abolition of communal reservation was, almost unanimous and only one member voted against the proposal.29

The Advisory Committee therefore recommended to’ the Constituent Assembly that reservation for Muslims; Sikhs, Christians or any other religious community should be abolished and it should-be kept only for Scheduled Castes and Scheduled Tribes, On being put to vote, all the communities offered full support to the proposal, Jawahar Lal Nehru was so much moved by it that he described it as a, “historic turn in Our destiny’s ‘In case of Anglo-Indians, Articles 283 and 295 of the Draft Constitution authorised the President of India and the Governors of the States to nominate them if they are not adequately represented. Articles 296, 297, 298 protected the claim’ of ‘the minority community to service. Article 299 of the Draft Constitution made provision for the appointment by the President of a special officer for minorities for the Union and for each State. The duty of the Special Officer was to investigate all matters relating to the safeguards for minorities under the Constitution in connection with the affairs of the Union and to report to the President upon the

29 Ibid. p. 771.
working of the safeguards. The Special Officer in the State was to investigate all matters relating to the safeguards provided for the minorities under this Constitution in connection with the affairs of the State and to report to the Governor of the State upon the working of the safeguards. Article 300 stipulated the appointment of a commission to report on the administration of scheduled areas and welfare of Scheduled Tribes. Articles 301 of the Draft Constitution stipulated appointment of a commission to investigate the condition of Backward Classes.

The original draft of the fundamental rights which was sub-mitted along with the report of the ‘Sub-committee on Fundamental Rights’ to the Constituent Assembly on April 16, 1947 did not contain any provision corresponding to Article 30(1) of the Constitution. K. N. Munshi, K.T. Shah and Harnam Singh prepared a draft in which the rights now contained in Article 30(1) of the Constitution (along with other rights) was proposed to be considered on national minorities based on religion. The Sub-committee on Minorities prepared an interim report which dealt with the question of fundamental rights from the point of view of minorities and was submitted in April, 1947. The report recommended the following:

1. All citizens are entitled to use their mother tongue and the script thereof, and to adopt, study or use any other language and script of their choice.
2. Minorities in every unit shall be adequately protected in respect of their language and culture, and no government may enact any law or regulations that may act oppressively or prejudicially in this respect.
3. No minority whether of religion, community or language shall not be deprived of rights or discriminated against in regard to the admission into

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state educational institutions, nor shall any religious instructions be compulsorily imposed on them.

4. All minorities whether of religion, community or language shall be free in any unit to establish and administer educational institutions of their choice, and they shall be entitled to state aid in the same manner and measure as is given to similar state-aided institutions.

5. Notwithstanding any custom, law, decree or usage, presumption in terms of dedication, no Hindu on grounds of caste, birth or denomination shall be precluded from entering an educational institution dedicated or intended for the use of the Hindu community or any section thereof.

6. No disqualification shall arise on account of sex in respect of public services or professions or admission to educational institutions saves and except that this shall not prevent the establishment of separate educational institutions for boys and girls.

The report submitted by the Sub-committee on Minorities was considered on April 22, 1947 by the Advisory Committee. Alladi Krishnaswami objected to Clause (i), seeking to protect mother tongue, as unnecessary, since according to him mother tongue was a matter nobody otherwise also could interfere with. K.M. Munshi explained that the clause was taken from the minorities rights in the Polish Treaty which was later incorporated in Polish Constitution. He said that attempts were made in Europe and other places to prevent the minorities from using or studying their own language." In spite of K. M. Munshi's justification, the clause was deleted. Clauses (ii) and (iii) were accepted with slight modifications. There was a lot of discussion on Clause (iv) which provided for the right to establish and administer educational institutions and the right to state aid. Raj Kumari Amrit Kaur and Alladi Krishnaswami Ayyar were of the opinion that such a right would perpetuate communal institutions.
and the state should not give any aid to such institutions.\textsuperscript{31} However, the objection did not persuade the Advisory Committee and the clause as slightly modified in its form was supported by a majority vote. Clauses (v) and (vi) were deleted as redundant. The Advisory Committee ultimately recommended the following:

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 in regard to admission into state educational institutions, nor shall any religious instruction be compulsorily imposed on, them.

3. All minorities whether based on religion, community or language shall be free in any unit to establish and administer educational institutions of their choice; 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.\textsuperscript{32}

The recommendations of the Advisory Committee were discussed on May 1, 1947 in the Constituent Assembly. On the suggestion of K. M. Munshi and Ambedkar Clause (2) was referred back to the Advisory Committee for clarifying its scope in respect of State-aided institutions. The Assembly adopted the rest of the Clauses without any modification. The Advisory Committee deleted from Clause (2) the words, "nor shall any religious instruction be

\textsuperscript{31} C. A. D. Vol. VIII, p. 330.

compulsorily imposed on them” for the reason that this had already been incorporated in Clause 16 of the Draft Constitution, which is now Article 28 of the Constitution. The Clause was then considered by the Drafting Committee in its meeting held on November 1, 1947 which further modified it. The Clause, as it appeared in Article 23 of the Draft Constitution reads as follows:

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

2. No minority whether based on religion, community or language shall be discriminated against in regard to the admission of any person belonging to such minority into any educational institution maintained by the state.

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

It would be noted that in the Draft Constitution (1st Draft) the rights were conferred on “minorities”. However, the Drafting Committee later sought to draw a distinction between the expression “any section of the citizens” and the expression “all minorities”. In response to the heated and prolonged controversy which the change had sparked off in the Assembly, Ambedkar explained the reason for substituting of the word “minority” by the words “any section” in Clause (1) of Draft Article 23, in those words:

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“The first point that I would like to submit to the House as to why the Drafting Committee thought it necessary to alter the language of paragraph 18 of the Fundamental Rights is this. On reading the paragraph contained in the original Fundamental Rights, it will be noticed that the term “minority” was used therein not in the technical sense or the word “minority” as we been accustomed to use it for the purposes of certain political safeguards, such as representation in the legislature, representation in the services and so on. The word is used not merely to indicate the minority in the technical sense of the word, it is also used to cover minorities which are not minorities in the technical sense but which are nonetheless minorities in the cultural and linguistic sense. For instance, for purposes of this Article 23, if a certain number of people from Madras came out and settled in Bombay for certain purposes, they would be, although not a minority in the technical sense, cultural minorities. Similarly, if a certain number of Maharashtrians went from Maharashtra and settled in Bengal, although they may not be minorities in the technical sense, they would be cultural and linguistic minorities in Bengal. The article intends to give protection in the matter of culture, language and script not only to a minority technically, but also to a minority in the wider sense of the terms as I have explained just now. That is the reason why we dropped the word “minority” because we felt that the word might be interpreted in the narrow sense of the term, when the mention of this House, when it passed Article 18, was to use the word “minority” in a much wider sense, as to give cultural
protection to those who were technically not minorities but minorities nonetheless.34

In the draft article two more amendments were made. By one amendment, the words, “language, script and Culture” were replaced by the words “language, script or culture” in Clause (1), and by the second amendment the word “community” was dropped. The Draft Committee, subsequently, at the revision stage, divided Article 23 into two separate articles which later on became Articles 29 and 30 and are enumerated in Part III of the present Constitution and are as follows:

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

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

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

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

It may be added here that by the Constitution (44th Amendment) Act, 1978 Clause (I-A) was inserted in Article 30 of the Constitution. Clause (IA) reads as follows: “(I-A) In making any law providing for the compulsory acquisition of

34 Ibid., pp. 893, 899, 919, 922.
any property of an 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.” The addition of Clause (1-A) to Article 30 was consequential to deletion of Articles 19(1)(f) and 31 from the Constitution. Part III of the Constitution of India under the beading of “Fundamental Rights”, it may be noted, guarantees to all, including the minorities, the right to equality;\textsuperscript{35} the right to freedom of religion\textsuperscript{36} and other basic rights.\textsuperscript{37}

However, the minority problem has been the bone of Indian life. It had very much influenced and coloured the political life of the nation even after Independence. The word “minority” has not been defined in the Constitution of India and the question may be what is the true scope and ambit of this concept. There is a wide spread dispersal of minorities in India, sometimes living in enclaves. They may be said to possess peculiar characteristics. The Constitution specifically recognises religious, linguistic, cultural minorities and provides that those who have distinct language, script or culture of its own shall have the right to conserve the same. Thus, in order to preserve the peculiar characteristics, tradition of these groups, the Constitution has provided certain safeguards in Articles 29 and 30. These guarantees show a sensitive regard for the minorities, their culture, their institutions, etc. At the same time, no citizen of India shall be denied admission into any educational institutions maintained by the State or by the minority receiving aid out of State funds on ground only of religion, race, caste, language or any of them. The guarantees which are

\textsuperscript{35} Constitution of India, Part III, Articles 14, 15, 16, 17, 29 (2).

\textsuperscript{36} Ibid., Articles 25 to 28.

\textsuperscript{37} Ibid., Articles 19, 20, 21, 32.
available to minorities were wisely incorporated to avoid the impact of the trials of the culture of the majority on the culture of the minority so that these may not be an erosion of their culture which may be preserved.

It does not require any authority to be cited to say that India consists of numerous religions and many ethnic and linguistic groups. These differences also result in creating cultural diversity. How had the British dealt with this diversity? They took it as an opportunity to keep the Indians divided and perpetually engaged in mutual fights. It was their constant refrain that nothing like India existed except as a geographical expression. In other words, the people of India lacked any common bond of Indianness, each group having its own distinct and separate identity. This separateness was cemented and accentuated by the British by adopting a policy of separate representation of each community in elective bodies based on separate electoral roll of each community. Places in services and educational institutions were also distributed broadly on proportionate quota basis. This policy of divide and rule served the imperial policy of the British immensely; and when they ultimately left, they left the country divided though not fully balkanised as they might have wished.

The framers had fought against the above policy and they had to devise the means to combat it. AI; the Preamble to the Constitution clearly indicates, the unity and integrity of India is the aim that the entire constitutional governance has to help attain. But, it does not appear that the framers believed in the theory that all the cultures, when they come together, melt and become one.\textsuperscript{38} They did not believe in forced cultural cohesion or assimilation.\textsuperscript{39} Accordingly, they made a compromise by making a distinction between public and private spheres.


\textsuperscript{39} Forced cultural assimilation is definitely not the policy of the Constitution, though some people continue to talk of cultural nationalism.
of life. While in public sphere every person is to be conceived just as an Indian, irrespective of his community, culture or other elements of diversity.\footnote{See Article 15(1) of the Constitution.} In his private sphere, he is free to practise and project his distinct identity. It is in that spirit that one should read Article 29(1) which says 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 has the right to conserve the same. This is supplemented by Articles 371A(1)(a) and 371G(a)\footnote{Family law apart, civil and criminals laws are generally applicable to all the citizens uniformly. Therefore, the provisions of Articles 371A(1)(a) and 371 G(a) can be said to be major concessions so that the sensitivities of Nagas and Mizos are not hurt.} which, respectively, provide with reference to Nagaland and Mizoram that an Act of Parliament would not apply without the consent of the local Legislative Assembly in respect of the people’s religious or social practices, their customary law and procedure, administration of civil or criminal justice which is done according to local customary law, and ownership and transfer of land.

The dominant culture and the language spoken by the majority are bound to have their special place; but the minority’s language and culture cannot be totally disregarded or ignored. The Constitution allows the people in the minority to send their complaints in their own language\footnote{See Article 350 of the Constitution.} and also to ask for facilities for their children to be given primary education in their mother tongue.\footnote{See Article 450A of the Constitution.} Moreover, since India is a Union of States, many languages are bound to be the official language of one State or the other, which involves all kinds of official patronage. Different linguistic or cultural groups have the liberty to use all possible ingenuities to keep their language and culture alive. They can run educational institutions for the purpose and can even claim some state assistance. But then, this is the age of globalisation, mass communication,
information technology revolution, frequent travels and migrations. Therefore, no culture or language can live in total isolation. Different cultural and linguistic groups are bound to influence each other. Consequently, the melting pot theory may not be intentionally practised; still, similar things are bound to happen to an extent in the long run which cannot be avoided. It has happened in the past and what we consider today the dominant culture of India is a composite culture with infusions from a variety of sources.\textsuperscript{44}

The marginal note to article 29(1) indicates that the right given in that clause is available only to the minority groups. In real life in a democratic society, people are expected to protect their interests, including group interests, both through political process and judicial process. Therefore, ordinarily, the majority need not resort to a court of law for the vindication of their legitimate claims and interests where they would need the help of a constitutionally mentioned guarantee. However, the discussion in the study would indicate that there are difficulties in defining a minority and in that respect the definition of a cultural minority would be most difficult. Then, the people may experience impediments in their efforts to preserve their culture from certain policy decisions both at the central and state levels. In its outer manifestation, culture is a Way of life and the controversies in other countries would suggest that it is in the area of dress-code that the educational institutions and defence organisations have come into conflict with the people who have asserted their right to refuse to dress up differently from what their culture mandates. In India, fortunately, we have been spared of such

In \textit{Re Kerala Education Bill 1957} \textsuperscript{45} the Apex Court held that minority must be determined by reference to the entire State and any community, linguistic or

\textsuperscript{44} See Article 51A(b) of the Constitution of the Constitution.

\textsuperscript{45} 1957 AIR 1958 SC 956.
religious, which is numerically less than 50 percent of the entire state population may be regarded as minority for purposes of Article 30(1). However, time and again, the court has changed the criteria for determination of minority. 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.” In *Ravneet Kaur v. Christian Medical College, Ludhiana*\(^{46}\) the full bench of the Punjab and Haryana High Court held that a private educational institution receiving aid from state funds may not be a “state” as defined in Article 12 but if a citizen is denied admission by such institution on any of the grounds mentioned in article 29(2), then such institution is not immune from the judicial surveillance of the Supreme Court and the high court. The aggrieved person can seek writ for the enforcement of his fundamental right either under Article 32 or 226 of the Constitution. Under Article 30 the minorities have the right to establish and administer educational institutions of their choice. However, regulatory measures can be taken by the state in administration of the said institutions.\(^ {47}\)

But, the state cannot refuse to recognise the minority institution as such on the ground that the institution imparts not only religious or linguistic instruction but also medical education. The minority communities have the fundamental right to establish educational institutions not only to impart religious and linguistic education but also other types of education of secular character and the state cannot discriminate in granting aid to such institutions.\(^ {48}\) Since the minority educational institutions have the right of management of such institutions, they can appoint principal of their own choice and this right cannot be taken away by

\(^{46}\) AIR 1998 P&H 1.

\(^{47}\) *J. K. Kalra v. Regional Inspectress of Girls School*, AIR 1997 All 44.

any rules or regulations.49 A critical perusal of the educational status of minorities reveals that so far as educational conditions of the various minorities are concerned there are sectarian and regional heterogeneity. Muslims possess more literacy than the other religion of the minorities. In certain regions high rate of literacy is found among the Muslims than the Muslims in other region. Thus, it will be seen that regional and even sectarian and caste differences must be taken into account while trying to understand the situation of Indian minorities. Keeping in view the problem of minorities in realisation of their right to education in India the present doctoral research work has been undertaken by the researcher on the topic:

"Right to Education of Minorities in India: A Socio-Legal Studies"

II. Object of the Study

The Constitution of India as well as international human rights law conferred a host of special rights to minorities. However, numbers of conflicts have arisen, particularly between the claims of the minorities to establish and administer educational institutions of their choice and the claim of the State to regulate the rights of the minorities concerning the establishment and administration of their educational institutions, guaranteed by the Article 30 of the Constitution of India. The object of the present study is to explore if the judiciary has been successful in balancing the conflicting rights of the minorities and the State. This leads us to pinpoint the judicial principles laid down and to evaluate them. The major issues like the minority status and its proof, right to establish and administer educational institutions, the problem of recognition and affiliation, state aid, medium of instructions, admission, the governing bodies and the extent of the power of the State to regulate have been exhaustively dealt with.

Attention has also been given to find out whether the intention and sprite that underlines the language of the fundamental rights have how far been achieved? Besides, right of the non-minority students to be admitted to the minority institutions educational institutions is a controversial issue in the contemporary era. Therefore, the object of the study is also to explore this issue considering the other sub-issues directly or indirectly related to this major issue.

III. Methodology and Framework of the Study

To conduct the present study analytical doctrinal method will be adopted. In this connection the present study is mainly based on doctrinal method. However, occasionally non-doctrinal method has also been taken in to consideration. Doctrinal research will be extended for critical evaluation of existing problems relating to right to education of minorities. This right to education of minorities also recognised under international human rights law therefore the study proposes to examine the latest dimensions of international human rights law on the subject. In this connection a large number of international documents, reports, books and journal be studied. To examine the Indian position the study will explore the historical documents, books, journals, case law as well as legislations on the subject. Besides, newspapers, periodicals, various websites and unpublished scholarly writings will also be taken into consideration. Keeping in view the statement of problem and the object of the present study as delineated above, the study is proposed to be divided into four more chapters. The matters to be discussed in these chapters are briefly enumerated into: (i) concept of the minority and its status under international law, (ii) legal status of various minorities in India, (iii) Constitutional and legislative protection of right to education of minorities in India, (iv) role of judiciary in protecting the right
to education of minorities in India, and (vi) concluding observations and recommendations.