Chapter-3

Legal Status of Various Minorities in India
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An attempt has been made in the previous Chapters to discuss the concept of minorities and their recognised rights at international level as well as in India. It emerges that the protection of the rights of minorities are recognised under international human rights law as well as in Indian legal regime. Now question arises: who is minority in India? India is a multi-religious and multi-cultural State. The multi-religiosity of India was exploited by the British to sow seeds of dissensions in the freedom movement, and the policy succeeded to the extent that when India became free it was split into two States on the basis of religion. The religious minorities much more than the cultural and linguistic minorities have been a sensitive issue in Indian politics. Another issue and it is submitted much more important and real has been of economically and socially backward sections which are commonly known as the Scheduled Tribes and the Scheduled Castes. Broadly speaking this was also issue of poorer sections of the poverty-ridden society. When the founding-fathers sat to draft the Constitution of India they were alive to these sensitive issues. There had never been any doubt in their minds that culturally and economically backward sections of the

society were to be provided with some special protection. There was also no
doubt in their mind that other minority groups were also be assured that in free
India their interests would not suffer any impairment at the hands of the
majority. This Chapter discusses the legal status of various minorities in India?

I. Who is Minority in India?

Article 30(1) of the Constitution of India provides that “All minorities, whether
based on religion or language, shall have the right to establish and administer
educational institutions of their choice.” This clause makes it clear that this
privilege is given, specifically and specially, only to religious and linguistic
minorities. However, it is not necessary that, in order to avail of this privilege,
one should prove that the relevant group constitutes both a religious and a
linguistic minority. It can be either or both. This was made clear by the Supreme
Court in D. A. V. College v. State of Punjab. The issue was whether the
Hindus or the Aryasamajis in Punjab constituted the kind of minority as
envisioned in Article 30(1). After holding that it was the State population that
would form the basis for determining the minority character of a community, a
point that is discussed more elaborately below, speaking for the bench,
Jagannmohan Reddy, J. said that the fact that the Hindus were in minority in the
State of Punjab was enough to entitle them to claim the protection of Article
30(1) even though their claim to be also a linguistic minority was disputed by
the State.

There is a historical context with the meaning of the term ‘minority’ in India
and it has often been a source of unnecessary confusion. During the course of
Independence struggle, the British adopted the policy of divide and rule,
projecting themselves as the saviours of minorities and in the process, all the
religious communities other than the Hindus were declared as minorities. That

was the position when India was being governed by a unitary administration and the situation did not change substantially even after the advent of the Government of India Act, 1935. The present Constitution creates a federal structure and also talks of linguistic minorities in anticipation of the Indian political map being redrawn by linguistic reorganisation of the States. Therefore, the linguistic minorities are bound to be determined on the basis of the State population and it would be only confusing to have a different criterion to determine the identity of religious minorities. The decisional law is to the same effect though it completed the journey by adopting a slightly zigzag route.

The matter came up before the Supreme Court in *In Re: The Kerala Education Bill, 1957.* The Governor of the State had reserved the Bill for the consideration of the President who, in turn, referred it to the Supreme Court for its opinion whether some of the provisions of the Bill were violative of the rights of the minorities under Article 30(1). The State raised certain preliminary issues, one of which was the assertion that the Muslims and Christians, who were alleging the violation of their rights, were in fact, in majority in the particular areas of the State where most of their educational institutions were located. Thus, the Court was invited to decide whether the minority character of a community could be determined on the basis of the population of particular regions of the State. The Court did not find it necessary to decide this issue because the impugned Bill was passed to be applied in the whole of the territory of Kerala and, therefore, the minority character was to be determined by taking into account the population of the entire State. That the Christians and the Muslim were minorities in Kerala as a whole was beyond doubt. The matter again cropped up in *D. A. V. College v. State of Punjab.* Here, the issue had a different colour. The question was whether the Hindus and the Aryasamajis

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could be treated as religious minorities in Punjab when they constituted the majority community when looked at from the angle of the population figures of the whole country. The Court decided that it depended on the fact whether the particular impugned law was a State law or a Union law. In the particular case, the impugned law was enacted by the reorganised State of Punjab where the Hindus were in a minority, and the Court held that they were entitled to the protection of Article 30(1). Thereafter, the matter was referred to as one of the issues for the opinion of the 11 judge special bench of the Supreme Court in *T. M. A. Pai Foundation v. State of Karnataka*. This was necessitated because of the 42nd amendment Act, 1976 of the Constitution which, among other things, deleted Entry 11 of the State List and transferred education, including University education, to Entry 25 of the Concurrent List. From amongst the 11 judges, 10 took the view that the minority character a community, both religious and linguistic, was to be determined of the basis of State population; only one judge, Ruma Pal, J., took the view that it should depend on whether the particular impugned law was a State law or was enacted by the Union Parliament. One of the issues that was referred to the special bench for its opinion was whether a sect of a religion could claim the protection of Article 30(1) if the larger religious group, of which the sect happens to be a part, is in majority in the State. The bench did not answer this question. The important Supreme Court decision on the point is *Brahmachari Sidheshwar Shai v. State of West Bengal*. In this case, the question was whether the Ram Krishna Mission could be considered a religion distinct from Hinduism. Even though the High Court had so held, a three-judge bench of the Supreme Court reversed the High Court on this issue. Instead, the Supreme Court held that the Ram Krishna


Mission had the status of a religious denomination and was protected under Article 26 and had the power to establish and maintain charitable institutions. However, on that date, the bench was not sure if educational institutions could be considered charitable institutions. Now, in *T. M. A. Pai Foundation*\textsuperscript{101} the Supreme Court has held that educational institutions can be established under Article 26(a). Still, one is not sure whether the Court would concede the amount of autonomy in internal administration under Article 26(a) as it does under Article 30(1). In principle, there should not be any difference, but it appears to be unlikely. This scepticism arises from the fact that the Court allows much less autonomy even in the management of purely religious institutions than it insists on for being accorded to the minority educational institutions in the administration of their purely secular affairs.

It is also important that we consider here the decision of the Supreme Court in *R. R. Bishop, S. K. Patro v. State of Bihar*.\textsuperscript{102} In this case, the question for decision was whether the Church Missionary Society Higher Secondary School, Bhagalpur was established by a minority community so as to extend the protection of Article 30(1) to this school. The High Court had held that the school was brought into existence in 1854 by the Church Missionary Society, London, and that such a society or its members could not claim to be citizens of India. Consequently, the High Court had held that the institution and its managers could not claim the protection of Article 30(1). On appeal, a constitution bench of the Supreme Court reversed this decision. The Court noted that, apart from the Missionary Society of London, the local Christians of Bhagalpur had also a significant role in the establishment of the school. Moreover, in 1854 there was not in existence any distinct concept of Indian citizenship. This much was enough to decide the case. But, in the author’s


\textsuperscript{102} AIR 1970 SC 259: (1969) 1 SCC 863.
opinion the Court went a little too far when it further held that Article 30(1), unlike Article 29, does not insist on the requirement of citizenship and that it would be enough if someone was a resident of India. The requirement of citizenship is implicit in the very concept of minority or majority. Moreover, it is only the citizens who have the constitutionally protected right of residence in India.

*Bal Patil v. Union of India,*\(^{103}\) related to the question whether the Jain community could be conferred with the ‘minority’ status. Rejecting this, the court, speaking through Dharmadhikari J traced the historical development of the conferment of minority status. It pointed out that the partition-related bloodshed led to considerable fear among minorities, particularly Muslims, which needed to be allayed:\(^{104}\) It is with the above aim in view that the framers of the Constitution engrafted group of Articles 25 to 30 in the Constitution of India. The minorities initially recognised were based on religion and on a national level e.g. Muslims, Christians, Anglo-Indians and Parsis. The court held that the framers of the Constitution did not intend to expand this list of minorities.\(^{105}\) Stating that Hinduism constituted a vast amalgamation of beliefs and group identities (based on both beliefs and caste), it also pointed out that if minority status were conferred on one such entity such as Jainism, others would demand similar status.\(^{106}\) Bodies like Minorities Commission should work towards conditions where shielding or protecting minorities becomes unnecessary.\(^{107}\)

*In Sarbananda Sonowal v. Union of India,*\(^{108}\) it was contended by counsel that since the Illegal Migrants (Determination by Tribunals) Act,

\(^{103}\) (2005) 6 SCC 690.

\(^{104}\) Id. at 701.

\(^{105}\) Id. at 703.

\(^{106}\) Id. at 701-02.

\(^{107}\) Id. at 703.

1983 was so ineffective in stemming the influx of refugees, it effectively reduced Assam residents to the status of cultural and linguistic minorities in their own land, and thus impinged on their rights under Article 29(1). The court noted that such a possibility always exists, but declined to comment on the issue since the necessary factual basis for such a contention was not laid out in the pleadings.109

II. Various Recognized Minorities in India and their Legal Status

India at present have the following recognized minorities: (i) Scheduled Castes, (ii) Scheduled Tribes, (iii) Backward Classes, (iv) Other Backward Classes, (v) Religious and linguistic minorities, and (vi) Anglo-Indians. The roster of Scheduled Castes and Scheduled Tribes is a fluctuating one. The some new are added and some old are deleted in the lists by the Presidential Orders, by which periodically the declaration of Scheduled Castes is made.

A. Scheduled Castes and Scheduled Tribes

(i) Legal Status

The Scheduled Castes are one of the four classes—the last and lowliest and the most depressed class—into which Hindus were placed in our ancient social order. Then they were called the Sudras whose main function was to serve the first three classes,110 the Brahmins, Kshatriyas and Vaishyas. Gandhiji called them Harijans. The Constitution calls them Scheduled Castes. The various castes and sub-castes of the Sudras or harijans have been placed in a Schedule to the Scheduled Castes and Scheduled Tribes Order (Amendment) Act, 1976. According to 1971 census the number of these people was 50 million or about 14.7 per cent of the population of India. Obviously this has been the class of people who have been down-trodden, not merely during the Hindu period but

109 Id. at 719 (SCC).

110 Manusmriti; X, at p. 80.
throughout the history of India. To bring them up to the standard of other people of India and to enable them to mingle with the national mainstream were obviously the national goal, and if the Constitution of India expressed any particular solicitude for them it was but natural.

The Constitution does not define or specify as to which are the Scheduled Castes. According to Article 366(24) read with Article 341 the Scheduled Castes are those castes, races or tribes or a part thereof as the President may notify. Article 341(1) empowers the President to specify by public notification the castes, races or tribes or part thereof in each State and Union Territory which qualify to be called Scheduled Castes. This means the list of scheduled castes may differ from State to State (in respect of States, the President issues notification after consulting the Governor of the State concerned). Article 341(2) lays down that once the President notifies the Scheduled Castes, any change in the List can be made by Parliament-by law and not by the President through a notification. Several notifications were issued by the President under Article 340(1). Some of these were not found satisfactory. The Government of India after consulting the Backward Classes Commission, passed the Scheduled Castes and Scheduled Tribes Order (Amendment) Act, 1956. Today the matter is governed by the Scheduled Castes and Scheduled Tribes Order (Amendment) Act, 1976.111

The Scheduled Castes Order, 1950 lays down, "No person who professes a religion different from the Hindu or the Sikh religion shall be deemed to be a member of a Scheduled Caste." In Panjabrac v. Meshram,112 a member of Scheduled Castes had converted himself to Buddhism and when he contested the reserved seat as a member of the Scheduled Castes, it was held that he could

111 After the reorganization of States several Presidential Orders were issued. These were modified and consolidated by the Act of 1956.

112 AIR 1965 SC 1179.
not do so, as on his conversion to Buddhism he had ceased to be a member of the Scheduled Castes. Another question of equal importance arose in *C. M. Arumugam v. S. Rajgopal* 113 where a member of a Scheduled Caste who had earlier converted to Christianity reconverted to his original faith. Could he be treated as a member of Scheduled Caste? The Supreme Court held that he would be, provided that his caste to which he originally belonged accepted him as its member. The Supreme Court observed that caste was a social combination of persons governed by its rules and regulations and it might admit a new member just as it could expel an existing member.

The Constitution does not define or specify the Scheduled Tribes either. According to Article 366 (25) of the Constitution; the Scheduled Tribes are those tribes or tribal communities or parts or groups thereof which are so notified by the President of India. Article 342 (1) lays down that the President may specify by notification the Scheduled Tribes with respect to each State and Union Territory. Once the President exercises his power under Article 342 (1) any subsequent change in the list can be made only by Parliament by making a law. The President passed two orders: the Constitution (Scheduled Tribes) Order, 1950, and the Constitution (Scheduled Tribes-Part C State) Order, 1951. There was dissatisfaction with the lists in these orders and consequently the matter was referred to the Backward Classes Commission. On the recommendation of the Commission, the Parliament modified that Order in 1956 and the Scheduled Castes and Scheduled Tribes Order (Amendment) Act, 1976 was passed.

With a view to achieving the objective of ameliorating the lots of Scheduled Castes and bringing them shoulder to shoulder with other citizens in the national mainstream certain protections and privileges are provided to the Scheduled

113 AIR 1967 SC 939.
The reservation in favour of the SCs and STs must continue as at present, that is, without the application of a means test for a further period of 15 years. Another 15 years will make it 50 years from the commencement of the Constitution, a period reasonably long for these classes to overcome the baneful effects of social oppression, isolation and humiliation,

2. The means test that is, the test of economic backwardness ought to be applicable even to the SCs and STs, after 15 years (after 2000 AD);

3. So far other backward classes are concerned two tests should be applied:
   (a) that they should be comparable to the SCs and STs, in the matter of their backwardness; and
   (b) that they should satisfy the means test as the State Government may lay down in the context of prevailing economic conditions.

4. The policy of reservation in employment, education and legislative institutions should be reviewed every five years or so. This will afford an opportunity:
   (a) to the State to rectify distortions arising out of particular facts of the reservation policy; and

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114 AIR 1985 SC 1495.
(b) to the people, both backward and non-backward, to ventilate their views in a public debate on the practical impact of the policy of reservation.

(ii) Reservation in Educational Institutions

Article 15(1) of the Constitution of India, as a manifestation of the fundamental right of equality forbids discrimination by the State on grounds of religion, race, caste, sex, or place of birth. But Article 15(4) permits the State to make special provisions for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes. This provision has enabled the Union and the State Governments to make reservation of seats in the educational and technical institutions for the Scheduled Castes, Scheduled Tribes and other Backward Classes. However, the reservation in educational institution must satisfy the various facets of equality. Equal protection of the laws, on the other hand, would mean: ”Equality must be among the equals, unequals cannot claim equality.” Thus, the law should be equal and equally administered, that “likes should be treated alike.” Equal justice requires that likes should be treated alike but if there are relevant differences, due allowance should be made for them. It is well-settled that among equals, the law should be equal and should be equally administered and that likes should be treated alike. In other words, “likes should be treated alike” means the right to equal treatment in “similar circumstances” both in the privileges conferred and in the liabilities imposed by the laws. However, the principle does not take away from the state the power of classifying persons for legitimate purposes. If there is any “reasonable” basis for classification, the legislature would be entitled to provide for a different treatment.


It has been repeatedly held by the Apex Court that Article 14 does not prohibit reasonable classification for the purpose of legislation or for the purposes of adoption of a policy of the legislature or the executive, provided the policy takes care to reasonably classify persons for achieving the purpose of the policy and deals equally with all persons belonging to a well defined class.\textsuperscript{119} It is not open to the charge of denial of equal protection on the ground that the new policy does not apply to other persons. However, in order to pass the test of permissible classification, as has been laid down by the Apex Court in a number of its decisions,\textsuperscript{120} two conditions must be fulfilled:

1. The classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and

2. The differentia must have a rational relation to the object ought to be achieved by the statute in question.\textsuperscript{121}

Within the prohibition on unequal treatment in Article 14, the Apex Court has developed a general principle of reasonableness which every state action must satisfy. Article 14 forbids class legislation but permits reasonable classification.


provided that it is founded on intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group and the differentia has a rational nexus to the object sought to be achieved by the legislation in question. In *National Council for Teacher Education v. Shri Shyam Shiksha Prashikshan Sansthan*,\(^{122}\) the Apex Court referred to a large number of judicial precedents involving interpretation of Article 14 and culled out several propositions including the following:

1. The State, in the exercise of its governmental power, has of necessity to make laws operating differently on different groups or classes of persons within its territory to attain particular ends in giving effect to its policies, and it must possess for that purpose large powers of distinguishing and classifying persons or things to be subjected to such laws.\(^{123}\)

2. The constitutional command to the State to afford equal protection of its laws sets a goal not attainable by the invention and application of a precise formula, therefore, classification need not be constituted by an exact or scientific exclusion or inclusion of persons or things. The courts should not insist on delusive exactness or apply doctrinaire tests for determining the validity of classification in any given case. Classification is justified if it is not palpably arbitrary.\(^{124}\)

3. The principle underlying the guarantee of Article 14 is not that the same rules of law should be applicable to all persons within the Indian territory or that the same remedies should be made available to them irrespective of differences of

\(^{122}\) AIR 2011 SC 932: (2011) 3 SCC 238.  
\(^{123}\) *Heena Kausar v. Competent Authority*, AIR 2008 SC 2427: 2008 (7) SCALE 331.  
circumstances. It only means that all persons similarly circumstanced shall be
treated alike both in privileges conferred and liabilities imposed. Equal laws
would have to be applied to all in the same situation, and there should be no
discrimination between one person and another if as regards the subject-matter
of the legislation their position is substantially the same.\footnote{125}

4. By the process of classification, the State has the power of determining who
should be regarded as a class for purposes of legislation and in relation to a law
enacted on a particular subject. This power, no doubt, in some degree is likely
to produce some inequality; but if a law deals with the liberties of a number of
well defined classes, it is not open to the charge of denial of equal protection on
the ground that it has no application to other persons. Classification thus means
segregation in classes which have a systematic relation, usually found in
common properties and characteristics. It postulates a rational basis and does
not mean herding together of certain persons and classes arbitrarily.\footnote{126}

5. The law can make and set apart the classes according to the needs and
exigencies of the society and as suggested by experience. It can recognize even
degree of evil, but the classification should never be arbitrary, artificial or
evasive.\footnote{127}

6. The classification must not be arbitrary but must be rational, that is to say, it
must not only be based on some qualities or characteristics which are to be
found in all the persons grouped together and not in others who are left out


but those qualities or characteristics must have a reasonable relation to the
object of the legislation. ⁱ²⁸

Article 16(1) forbids the State to make discrimination in regard to employment
or appointment to any office under the State. But Article 16(4) permits the
Union and the State Governments to make provisions for the reservation of
posts or appointments in favour of any backward class of citizens which “in the
opinion of the State is not adequately represented in the services under the
State”. Article 335 permits the Union and the State Governments to take into
consideration the claim of Scheduled Castes and the Scheduled Tribes,
consistent with the maintenance of the efficiency of administration, in the
making of appointments to services and posts in connection with the affairs of
the Union or of a State. Article 320(4) lays down that the Public Service
Commission need not be consulted in respect of the manner in which any
provision referred to in clause (4) of Article 16 may be made or as respect the
manner in which effect may be given to the provision of Article 335. Under
these provisions the Union and the State Governments have made reservations
for the Scheduled Castes the Scheduled Tribes and Backward Classes.

(iii) Reservation in Lok Sabha and State Assemblies

Articles 330, 332 and 334 of the Constitution provide for, reservation of seats
in the Lok Sabha and State Legislative Assemblies for the Scheduled Castes and
the Scheduled Tribes. ⁱ²⁹ Article 330(2) lays down that the number of seats in
any State or Union Territory for the Scheduled Castes and the Scheduled Tribes
under clause (1) shall bear as nearly as may be the same proportion to the total
number of seats allotted to that State or Union Territory in the House of the
People as the population of the Scheduled Castes in the States or Union

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Territory as the case may be, in respect of which seats are so reserved bear to the total population of the State or Union Territory. The 42nd Amendment has frozen the number of seats for the Scheduled Castes and the Scheduled Tribes at the level of the 1971 Census, and this number will not be changed until the first census held after the year 2000. The Government has felt that the handicaps and disabilities with which these Castes and Tribes have been suffering, have not been removed and from the pace with which we are proceeding, it appears there would not be removed for at least another half a century.

(iv) Additional Safeguards for Scheduled Tribes

The Scheduled Tribes in many respects are different and distinct from the Scheduled Castes. The most outstanding feature of their life is that they live in their areas and do not mingle with other sections of society. The type of life they lead requires some special protection. Article 19(5), 275 and 339(2) deal with special protections. Clauses (d) and (e) of Article 19(1) guarantee to all citizens freedom to move throughout the territory of India and to reside and settle in any part of the territory of India. But Article 19(5) enables the State to impose restrictions on these freedoms for the protection of the interest of the Scheduled Tribes. In several tribal areas these freedoms have been restricted and the law also forbids the sale or transfer of tribal land to non-tribals.

Article 275 empowers the Union to give special grants to the Slate Governments for purpose of promotion of the welfare of the Scheduled Tribes and for the purpose of raising the level of administration of the Scheduled Areas. These grants are usually canalized through the Finance Commission.

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131 Rupees 101.10 crores was made available to Uttar Pradesh, Bihar, West Bengal, Andhra Pradesh, Rajasthan, Madiya Pradesh, Mysore, Haryana, Assam, Punjab, Gujarat, Kerala, Maharashtra, and Tamil Nadu by the 7th Finance Commission.
The Fifth and the Sixth Schedules to the Constitution also deal with the Scheduled Tribes. The Fifth Schedule empowers the Governor with the approval of the President to enact special legislation for protecting the Scheduled Tribes from the exploitation by money-lenders, regulating allotment of land, and prohibiting or restricting the transfer of land in the Scheduled Areas. The Dhebar Commission (appointed under Article 339) recommended that the general laws of the States might be modified to protect the interest of the Scheduled Tribes living outside the Scheduled Areas. Pursuant to this recommendation many State Governments have enacted laws to that effect.

The Sixth Schedule deals with the administration of Tribal Areas in Assam, Meghalaya and the Union Territory of Mizoram. Article 334(2) lays down that the power of the Union extends to giving directions to a State as to drawing up and execution of schemes considered essential for the welfare of the Scheduled Tribes in the State. The welfare plans for the Scheduled Tribes are mostly taken up as the plan programmes and the Planning Commission co-ordinated the activities of the Union and States in this regard. The Finance Commission also makes grants for the welfare of the Scheduled Tribes, Scheduled Castes and backward classes.

Article 164 lays down that there shall be a Minister-in-charge of the Tribal Welfare in each of the States of Bihar, Madhya Pradesh and Orissa. Such a minister may also be entrusted with the task of welfare of the Scheduled Castes and backward classes.

(v) Commissioner for Scheduled Castes and Scheduled Tribes

Article 338 stipulates that the President shall appoint an officer for the Scheduled Castes and Scheduled Tribes (such an officer has been appointed is known as Commissioner for the Scheduled Tribes and Scheduled Castes) whose
duty is to investigate all matters relating to the safeguards provided for the Scheduled Castes and the Scheduled Tribes and to report to the President upon the working of these safeguards at such intervals as the President may direct. The Reports of the Commissioner are required to be laid before each House of Parliament. The Commission makes annual reports which are discussed in both Houses of Parliament. A large number of complaints from individual and non-official agencies regarding harassment and injustice to the member of the Scheduled Castes and Scheduled Tribes are received by the Commissioner. He usually investigates these complaints with a view to ascertaining the facts. The Commissioner's report usually contains three sets of matters: (a) reports about the matters relating to social disabilities and other ills; representations made by the Scheduled Castes and Scheduled Tribes; the sufficiency or otherwise of the administrative set-up in the State to look after their welfare and interest; reservations made for them in educational institutions and government services; educational facilities existing there; and the working of the welfare schemes and projects launched by the State Governments for improving the lot of the Scheduled Castes etc. (b) reviews the working of the constitutional safeguards, the working of non-governmental agencies engaged in the task of improving the lot of these people, and (c) make suggestions for Improving the lot of these people. The Commissioner can also be entrusted by the President under Article 338(3) to look after the matters of such backward classes as may be specified by order. This provision has not yet been implemented.

In its 1957-58 Report the Commissioner made interesting observations and recommendations which should be an eye-opener to the nation. The Commissioner observed that the backwardness had a tendency to perpetuate itself and becomes a vested interest and if the ultimate goal of having a classless

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and casteless society was to be attained the list of Scheduled Castes and Scheduled Tribes should be reduced from year to year and should be ultimately replaced by the list based on income-cum-merit. In fact backwardness has become a vested interest and no one cares to pay heed to such reports. On the contrary, the list of Scheduled Castes and Scheduled Tribes is expanding year after year. The Advisory Committee appointed by the Union Government in 1965 also made a similar suggestion of gradually rescheduling some of the advanced castes and tribes till a time is reached when the list becomes blank. It was for a dead-line to be fixed for the purpose but such suggestions do not appeal so much deeply entrenched is the vested interest in maintaining the list.

In 1968 the Parliament appointed a Parliamentary Committee for the welfare of the Scheduled Castes and the Scheduled Tribes. The Committee consists of 30 members, 20 from the Lok Sabha and 10 from the Rajya Sabha. The task of the committee is to guide, criticise and control the Union Government in all matters relating to the Scheduled Tribes and Scheduled Castes. It also takes into consideration the Report of the Commissioner for the Scheduled Castes and Scheduled Tribes. It looks into the reservation made for these Castes and Tribes in Government employment. It reports to Parliament.

The 65th Constitutional Amendment 1990 stipulates to establish a “National Commission for Scheduled Castes and Scheduled Tribes in place of the special officer. The Commission shall consist of a Chairman, vice-Chairman and five members, appointed by the President.

**B. Backward Classes and other Backward Classes**

For backward classes, the Indian Constitution does not use one term. In Article 15(4) and Article 340, these are designated as “socially and educationally backward classes.” in Article 16(4) as “backward classes” and in Article 46 as “weaker sections of the people.” “Backward class” is not used as synonymous
with “backward caste” or “backward community.”

With a view to identifying backward classes and laying down the criterion for the same, Article 340(1) stipulates for the appointment of a Commission by the President. On the receipt of the report of the Commission the President may specify the backward classes by passing an order. The Commission for Backward Classes was appointed in 1952, *inter alia*, to lay down the criteria for the classifying backward classes. The Commission submitted its reports in 1955. But the report could not suggest any criterion. The majority was of the view that the position of the individual in the social hierarchy based on caste should determine the backwardness. The Chairman of the Commission did not agree with this view. The other criteria suggested by the Commission were: lack of general educational advancement among the major sections of a caste or community inadequate representation in the field of trade, commerce and industry communities having a large percentage of small land owners with uneconomic holdings. The Union Government did not accept the recommendations as it was of the view that the caste system was a great hindrance in our advancement towards egalitarian society and therefore the recognition of caste as a basis of backwardness would go to perpetrate the caste system. The Government of India rightly felt that in a caste itself some members may be characterized as backward educationally and economically, while others may not be so characterised; and even in the educationally and economically forward castes there may be some members who are backward. The conditions differ not merely from State to State but also from region to region. The Union Government did also accept the other criteria recommended by the Commission as these were too vague.

The Union Government was of the view that the matter needed further investigation. It further decided that pending such investigations relief might be provided to two groups of people: (a) those who suffered on account of

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environment and occupation, and (b) those in the light of reasonable average standard were adjudged socially and economically backward. Till this day any objective criterion for specifying backward classes has eluded the nation with the result that each State specifies its own backward classes on the basis of its own criterion where political considerations play no less a role. The present Position is this: for the purpose of Articles 15(4) and 16(4) the States determine their own backward classes, and for the purpose of admission to the educational institutions run by the Union, for the purpose of appointment in the Union services and for the purpose of Article 338(3) (the Commissioner for the Scheduled Castes and Scheduled Tribes who also looks after the backward classes), the Union determines the backward classes. The Government of India has expressed that economic criterion would be a better determinant than caste.\(^{134}\) The task of determining backward classes has become very difficult. A stage has almost been reached when most communities and classes of people want to be designated as backward so that they have all the “advantages” of backward classes. Once a community is designated as backward, its rich and poor both claim the advantages and privileges, and what happens more often than not is that the rich grab all benefits and poor remain where they are.

*M. R. Balaji v. State of Mysore,\(^ {135}\)* is the first case in which the Supreme Court was called upon to determine the question. The Mysore Government reserved 68 per cent seats in the medical and engineering colleges thus: backward classes 28 per cent; more backward classes 2 per cent; Scheduled Castes 15 per cent; and Scheduled Tribes 3 per cent. The first two categories were designated on the basis of castes and communities. By this process 95 per cent ‘population of the State was desigllated as backward. The Supreme Court held the order as void. The Supreme Court observed that: (a) under Article 15(4) backwardness

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\(^{135}\) AIR 1953 SC 649.
had to be both social and educational and not social or educational; caste might
be one of the factors to be taken into account but it cannot be the sole factor,
and poverty, occupation, place of habitation, etc., are factors that have to be
taken into consideration; that (b) a community which was well below the State
average could be treated as backward class but not the caste or community
whose average was slightly above or very near or just below the State average
and that (c) there was nothing like backward and more backward under Article
laid down that backwardness should be determined on the basis of (i) economic
condition and (ii) profession. Thus, a family whose income was less than Rs.
1200 per year and which followed occupations such as agriculture, petty
business, inferior services. crafts, etc., were designated as backward. In this case
the order was challenged on the ground that caste should have also been a
criterion. The Supreme Court held that caste could be only one of the various
factors and an order which ignored the caste totally could not be bad on that
basis. The court observed that Article 15(4) uses expression “classes” and caste
and class were not synonymous. In P. Rajendran v. State of Madras, the court
upheld the Madras Government order specifying backwardness on the basis of
occupation and finding some of the castes as a wholly backward on that
criterion. The court observed that though whole castes were listed as backward
classes the basis was not caste but occupation. Similarly, the list prepared by the

136 The measures of educational backwardness, according to the Mysore order was on the basis of the
average of student population in the last three high school classes of that community. This average
for the whole of the State was 6.9 per thousand, and any community whose average was below this
qualified to be designated as backward.

137 See State of Kerala v. N. M. Thomas (1963) 2 SCC 310; and D. N. Chanchala v. State of
Mysore, AIR 1971 SC 1763 and Akhil Bharatiya Shoshit Karmachari Sangh v. Union of India
(1981) 1 SCC 246. In Thomas, Krishna Iyer J. disagreed with Balaji and said there could be "less
backward" and "more backward" in a class itself.
138 AIR 1964 SC 1823.
139 AIR 1968 SC 1012.
Andhra Pradesh Backward Classes Commission listed certain castes as backward but after making due inquiry and applying factors like poverty, occupation educational backwardness, the list was held valid. But if the list is prepared solely on the basis of caste is cannot be upheld.

In *State of U. P. v. Pradip Tandon*, Uttar Pradesh Government had made reservation in favour of hill people and Uttarakhand area as well as in favour of rural people. The court held the reservation for the former as valid as it was satisfied that people living in those areas were socially and educationally backward, but held the reservation for the latter as void since 80 per cent of the population of State being rural such large population could not be designated as backward. Interestingly and rightly, the court rejected ‘poverty’ as sole test of backwardness; where whole country is poor, poverty would be a bad test. Designation of “small cultivators” and “low paid pensioners” as backward classes also did not find favour with the court.

The Supreme Court observed that though poverty could not be the sole criterion (it could certainly be one of the criteria), certain traditional occupations or habitations in certain inaccessible areas could be the sole criterion for determining backwardness. In *State of Kerala v. Krishan Kumar* the order listing some classes as backward but exempting therefrom the families having an aggregate income of Rs. 6000 annually or more was held valid. Thus

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142 AIR 1975 SC 563.
144 AIR 1976 Ker 54.
neither caste nor poverty can be the sole criterion for determining backwardness, though both are relevant and may be sufficient.

The Supreme Court has also ruled that excessive reservation is also bad. The court held that the maximum limit should not be more than 50 per cent for backward classes and Scheduled Tribes.\textsuperscript{146} However, the maximum limit of 50 per cent is only for these three classes mentioned in Article 15(4) there could be additional reservation for other classes.\textsuperscript{147} In \textit{Devadasan v. Union of India},\textsuperscript{148} the Supreme Court by four to one held the carry forward rule as unconstitutional.

Under Article 338(3) the Commissioner of Scheduled Castes and the Scheduled Tribes may also be entrusted with the functions and responsibilities in respect of such backward classes as may be specified by the President.

The Union Government has a separate Department of Social Welfare functioning since 1964. A Directorate of Backward Classes Welfare was also set up in this Department in 1967 to watch the progress of the welfare schemes in the States and to advice the States in their proper implementation. The Department of Social Welfare discharges two main functions: it co-ordinates the welfare activities of the Union Ministers and the State Ministers concerning the Scheduled Castes, etc., and looks after the implementation of the plan programmes for the backward class. In the States also there are Social Welfare Departments. Some States also have Harijan Welfare or Tribal Welfare Departments.

The then V. P. Singh Government by a notification sought to make reservation of 27 per cent seats for Other Backward Classes. It again led to country wide violent agitation and self-immolation by youths. On October 1, 1990 a five-

\textsuperscript{146} See also \textit{Mandai Case}, AIR 1993 SC 417.

\textsuperscript{147} \textit{D. N. Chanchala v. State of Mysore}, AIR 1971 SC 1762.

\textsuperscript{148} AIR 1964 SC 149.
Judge Bench of the Supreme Court stayed the implementation of the notification. Meanwhile the V.P. Singh Government fell. The Rao Government sought to make reservation of 19 per cent seats for economically backward classes among all sections of the people.

By several writ petitions, these notifications were challenged and a nine-judge Bench of the Supreme Court considered the matter and the judgment was delivered on 16-11-1992. By a majority 6-3 verdict the Constitution Bench of the Supreme Court held that the notification issued by the National Front Government providing for 27 per cent job quotas for other backward classes (OBCs) was enforceable provided the government removed the economically better-offs from the list of beneficiaries. The Court struck down the amended notification issued by the Rao government by which 10 per cent posts were reserved for other economically backward sections who were not covered by any of the existing reservation schemes. However, the court added that job reservation for OBC was restricted in initial employment alone and not for promotions.

The Court held that the reservation should not be more than 50 percent for SC, ST and OBC. The court added while 50 per cent should be the rule, it was not necessary to ignore certain extraordinary situations inherent in the great diversity of the country and its people. The court allowed some-relaxation in the rule for those living in far-flung areas. The rules of 50 per cent should be applied every year. “It cannot be related to the total strength of the class category service or cadre.” The court added yet another caveat. There are certain services, such as defences where it may not be advisable to apply the rule of reservation.

149 The Malldal Case (Indra Swabvey v. Union of India, AIR 1993 SC 477).
The Constitution does not prescribe the procedure for Identification of backward classes or other backward classes. The Mandal Commission has done some exercise, but it is submitted that it is not complete the majority in the Supreme Court said: identification of the backward classes could be determined with reference to caste among, and along with, other occupational groups, classes and sections of people.

It was not necessary for a class to be designated as backward as it was situated similarly to the Scheduled Castes and Scheduled Tribes. It was incorrect to say that backward classes under Article 16(4) are the same as the socially and educationally backward classes under Article 15(4).

Moreover, a backward class cannot be identified only and exclusively with reference to the economic criteria, the court said, and added: “there is no constitutional bar to classify the backward classes of citizens into backward and more backward categories.” The Supreme Court has directed that the Centre and the State Government should set up Commissions for examining request against wrong inclusion or non-inclusion in list of the OBC. The Court directed that such Commissions should be set up within four months. Thereafter all matters relating to wrong inclusion, non-inclusion, etc. would be open to judicial scrutiny by the Supreme Court alone. The Supreme Court has also directed the government to determine the basis of removing “the creamy layer” among the SC, ST and OBC with a view to determining a “genuine backward classes.” It is, we would submit, not an easy job. In their dissenting judgments the three judges were in favour of striking down both the notifications as they have been issued without any application of mind. They have directed the Central Government to reconsider the question of reservation as contemplated under Article 16(4).
In the opinion of the minority, all those persons whose means had exceed a predetermined economic level would be denied reservation. Amongst the correctly identified backward classes which are entitled to reservation in jobs, preference should be given to the comparatively poorer or more disadvantaged sections.

The minority was of the view that reservation of seats or posts solely on the basis of economic backwardness had no justification in the Constitution. The minority also concurred with the majority that reservation of seats or posts for backward classes, including those belonging to the Scheduled Castes and Scheduled Tribes, must remain well below 50 per cent of the total seats of posts.

The minority also agreed with the majority that total reservation should not exceed 50 per cent. It should not be available to promotions. The minority said that it was open to the state to adopt any valid affirmative action-programme for amelioration of the disabilities of all disadvantaged persons, including backward classes. The judges said such action must be tailored to the constitutional requirement. The requirement is that no citizen should be excluded from being considered on the basis of merit for any public employment except that a valid reservation has been made in favour of the backward classes.

Referring to the constitutional provision against discrimination on the basis of sex, caste, religion, race, descent or place of birth, the judges ruled that any discrimination solely on anyone of or more of these grounds will result in invidious reverse discrimination which is impermissible. They added, reservation under Article 16 of the Constitution is meant exclusively for backward classes who are not adequately represented in the services under the state. Only such backward classes were entitled to reservation. Their backwardness must be identified either by means of notification by the President of on an objective consideration by the state. In the case of other backward classes entitled to reservation, the burden lies on the state to show that
these classes had been subjected to discrimination and had therefore been reduced to a state of helplessness, poverty and consequential social and educational backwardness as in the case of SC/STs. The minority said:

These classes of citizens segregated in slums and ghettos and afflicted by grinding poverty, disease, ignorance, ill-health, and backwardness and hunted by fear and anxiety are the constitutionally intended beneficiaries of reservation.

Without disturbing the existing reservation policy for Scheduled Castes and Scheduled Tribes even if some of them had converted to some other religion the judge said they would continue to enjoy reservation until they ceased to be backward.

Once a class of citizens was identified as backward, the court said, the “means test” must be strictly and uniformly applied to exclude all those persons who had crossed the predetermined economic level. Reservation in all cases must be confined to a minority of available posts or seats to avoid sacrifice of merit. The minority added while reservation was to remedy historical discrimination and its continuing ill-effects, the affirmative action programmes were intended to redress discrimination of all kinds, whether current or historical. The minority was of the view that poverty demands affirmative action. Its eradication is the constitutional mandate. The immediate target to every affirmative action programme was to eradicate “poverty causing backwardness.” Poverty, the court said had the continuing ill effect of causing backwardness comparable to scheduled castes or scheduled tribes.

C. Linguistic and Religious Minorities

Divisive forces based on race, religion and language stood threatening the unity of the country when Constitution making was underway. “Those who framed
the Constitution were conscious of the stupendous task of converting a traditional society stratified into numerous social groups bound by the usage and conventions prevailing in them and owning allegiance to them, into one united political community. That task was to provide the members of these groups a sense of belongingness to a common political community, a sense of identity and loyalty towards such a community.\textsuperscript{150} India is a multi-language and multi-religious slate. When India became free-the States were not divided on the linguistic basis.

The process of linguistic re-organisation of the States took quite sometime. But even after the re-organisation of the States on linguistic basis the problem of unilinguism remained, and there was hardly any State which had no linguistic minority. In view of this, the State re-organisation Commission was entrusted with the task of examining the problem and of recommending measures for strengthening the constitutional safeguards to minorities and of suggesting an agency for enforcing the same. On the recommendation of the Commission, the Constitution (Seventh Amendment) Act, 1956 inserted two new articles in the Constitution. Article 350-A provides, “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 groups and the President may issue such directions to any state as he considers necessary or proper for securing the provision of such facilities.” The new Article 350B lays down that the President shall appoint a Special Officer for linguistic minorities who will investigate all matters relating to the safeguards provided for linguistic minorities under the Constitution and report to the President upon those matters within the specified time. All such reports are to be laid before each House of Parliament by the President and to be sent to the State Governments.

\textsuperscript{150} J. H. Shelat, \textit{Minorities and the Law} (1972), 53.
The Constitution of India guarantees several other safeguards to minorities. These safeguards are contained in clauses (1) and (2) of Article 29, clauses (1) and (2) of Article 30, Article 347 and Article 350. Article 14 generally bars all discrimination. However, Articles 15 (1) and 16(2) do not specifically bar discrimination on the ground of language. Similarly, Articles 15(4) and 16(4) do not contain any specific provision for the linguistic minorities. Article 345 contains the general provision relating to the official language of a state, viz., the legislature of the State may by law adopt anyone or more of the languages in use in the State or Hindi as the language or languages to ‘be used for all or any of the official purposes of that State. Article 347 contains the specific provision that on a demand being made in that behalf, the President may, if he is satisfied that a substantial proportion of the population of a State desires the use of any language spoken by them to be recognized by that State, direct that such language shall also be officially recognized throughout the state or any part thereof for such purpose as he may specify.

The Constitution does not contain any definition of linguistic or religious minorities. The internationally formulated definition of “minority” is: 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 population.\(^{151}\) Article 30 confers on the minorities based on religion or language the right to establish and administer educational institutions of their choice. In *re the Kerala Educational Bill, 1957*\(^{152}\) (which concern a religious minority) the court observed that a minority was a group which was numerically less than 50 per cent. But the question is: less than 50 per cent of what? Is it of the entire population of India or of a State or a part thereof? This has to be answered in


\(^{152}\) AIR 1958 SC 956.
the context that a community may be concentrated in a part of a state and these may form a majority in that part though in reference to the whole of State it is a minority group. The Supreme Court, without expressing any final opinion, observed that a concerned state law is applicable to the whole of State, the minority is to be determined by reference to the whole of State and any group, linguistic or religious, which is numerically less than 50 per cent of the entire State population may be considered as a minority for the purpose of the constitutional safeguards to minorities. A linguistic minority may be denied as a group of people having mother-tongue different from that of the majority in a State or a part thereof.¹⁵³ The question again came before the Supreme Court in D. A. V. College Jullundur v. State of Punjab.¹⁵⁴ The question before the Court was: Whether Arya Samajists, founder of the D.A.V. College Trust, formed a religious as well as linguistic minority? Reiterating the test laid down and in the Kerala Educational Bill, the court observed:

A linguistic minority is one which must, at least, have a separate spoken language. It is not necessary that language should also have a distinct script for those who spoke it to be a linguistic minority.

The same question came before the Supreme Court in D. A. V. College, Bhatinda v. State of Punjab.¹⁵⁵ In this case under the Punjabi University Act, 1961 it was laid down that the sole medium of instruction and examination in the colleges affiliated to the Punjabi University would be Punjabi in Ginnukhi script. The D. A. V. College Bhatinda contended that it was an institution maintained by a religious minority and therefore the said Act directly infringed their

¹⁵³ M. P. Jain, Minority and the Law, (1972) 44.


¹⁵⁵ (1971) 2 SCC 261.
fundamental right guaranteed under Article 29 to conserve its language and script. The contention was upheld by the court.\textsuperscript{156}

In \textit{A. S. E. Trust v. Director, Education, Delhi Adm.},\textsuperscript{157} the Delhi High Court considered the question whether the Arya Samajists constitute a religious minority for purposes of Article 30(1). The Delhi High Court observed that the Arya Samaj was a religious denomination for the purpose of Article 26 and thus might claim rights under Articles 25, 28 and 29, but it was not a minority for purposes of Article 30(1). The court opined that the Arya Samajists were reformers of Hinduism and therefore were part of the Hindu community; if various sects and sub-sects and movements of Hindus were to become minorities, the Hindu community would cease to be a majority. In view of this the court said that only Muslims, Christians, Jains, Buddhists, Sikhs, etc. which have separate identity from Hindus could be called minorities. It seems that it escaped the notice of the learned judges of the Delhi High Court that the Buddhists and Sikhs (some hold Jains too) are nothing but reformist movements of Hindus and the Codified Hindu Law calls Sikhs, Jains and Buddhists as Hindus.\textsuperscript{158} If we look at the matter from separate identity angle, the Arya Samajists have a separate identity they are against idol-worship, while most of the Hindus are idol-worshippers.

In \textit{Dipendranath v. State of Bihar}\textsuperscript{159} the court held that Brahmo Samaj was a religious minority and a school managed and administered by it had the

\textsuperscript{156} See also \textit{A. M. Patroni v. Keshavan}, AIR 1965 Ker 75 where the right of minority to appoint head-master of its choice was upheld.

\textsuperscript{157} AIR 1976 Delhi 207.

\textsuperscript{158} Hindu Marriage Act, 1955; Hindu Succession Act, 1956; Hindu Minority and Guardianship Act, 1956; Hindu Adoptions and Maintenance Act, 1956.

\textsuperscript{159} AIR 1962 Pat 101 (FB).
protection of Article 30(1) and the Government could not interfere in its management.

Besides, Indian Parliament passed in 1992 the National Commission for Minorities Act, 1992 under which India has established a National Commission for Minorities.

D. Anglo Indians

Article 366(2) defines “Anglo-Indian” as “a person whose father or any of whose other male progenitors in the male line was of European descent and who is domiciled within the territory of India and is or was born within such territory of parents habitually resident therein and not established there for temporary purposes only.” The Anglo-Indians are a minority community. Their number is very small.

The Constitution of India provides them several safeguards, most of which are of a temporary nature. During the British rule in certain services Anglo-Indians had virtually a monopoly of employment. Thus Railways, Customs, and Post and Telegraph were mostly manned by the Anglo-Indians. Article 336 laid down that during the first two years after the commencement of the Constitution, appointments of members of the Anglo-Indian Community to these services would be made on the same basis as immediately before August 15, 1947. Then during succeeding period to two years the number of posts reserved for them in these services would be less by ten per cent than the number so reserved during the immediately preceeding period of two years. The reservation was to come to end after 10 years, and it came to an end on January 25, 1960.

During the British regime the Anglo-Indian community was getting some special grants. Article 337 lays down that during the first three financial years
after the commencement of the Constitution the same grants would be made by the Union and each of the States for the benefit of the community in respect of education as were made in the financial year ending on March 31, 1948. These grants, too, were to come to an end in the same manner as the reservation of appointments. However, no Anglo-Indian educational institutions could claim the grant unless 40 per cent of the annual admissions in the institutions run by them were made available to non-Anglo-Indian communities.

Article 331 empowers the President to nominate not more than two members of the Anglo-Indian community in the Lok Sabha if he is of the opinion that the Anglo-Indian community has not got adequate representation. The State Governors have similar power to nominate one member of the Anglo-Indian community in the Vidhan Sabha for the same reason. The Vidhan Sabhas of Andhra Pradesh, Bihar, Tamil Nadu, Maharashtra, Mysore, Uttar Pradesh and West Bengal have a nominated Anglo-Indian member. Originally this reservation was for ten years, but it has been extended up to January 25, 2000.

The Commissioner for the Scheduled Castes and the Scheduled Tribes may also be entrusted with the task of looking after the interest of the Anglo-Indian community.

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161 Proviso second to Article 337 of the Constitution of India.


163 Article 333, Ibid.