CHAPTER II
Concept of Minority

"... The promotion and protection of the rights of persons belonging to national or ethnic, religious and linguistic minorities contribute to the political and social stability of States in which they live"\(^{29}\)

2.1 Introduction

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

2.2 Concept of Minority

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

\(^{29}\) Preamble of the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities
in the society in which they live for differential and unequal treatment and who therefore regards themselves as objects of collective discrimination. Moreover, minority status carries with it an exclusion from full participation in the life of the society”\textsuperscript{30} J.A Laponce describes “Minority” as a group of persons having different race, language, or religion from that of majority of inhabitants.

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

According to Capotorti’s definition for the United Nation\textsuperscript{31} “Minority” means a community:

a) Compactly or dispersedly settled on the territory of a state;

b) Which is smaller in number than the rest of the population of a state;

c) Whose members are citizens of that State.

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

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

According to the new Encyclopedia Britannica, “Minority is an aggregate of people who are distinct in religion, language, or nationality from other

\textsuperscript{30} Laponce J. A. \textit{The protection of minorities}, University of California publication in Political Science Volume 1960 Pg 5

\textsuperscript{31}Pan, Christoph/Beate Sibylle Pfeil, \textit{National Minorities in Europe}, Handbook, Vienna (Braumüller, Ethnos 63, 2003), Volume I and II
members of the society in which they live and who think of themselves and are thought of by others as being separate and distinct.” The Oxford Dictionary defines minority as “the condition or fact of being smaller, inferior, or subordinate; smaller number or part; a number which is less than half the whole number.

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

Who is a minority? Which community fits into the definition of minority? Who are the beneficiaries of minority rights? These questions and the possible responses thereto have been subject of number of studies and lengthy debates in many forums in which minority protection has been addressed. No definite answers have been found and no satisfactory universal definition of the term “minority” has proved acceptable. The difficulty in arriving at an acceptable definition lies in the variety of situations in which minorities exist. Some live in well defined areas, separated from the dominant part of population, while others are scattered throughout the national community. Some minorities base a strong sense of collective identity on a well-remembered or recorded history; others retain only fragmented notion of common heritage. In certain cases, minorities enjoy a considerable degree of autonomy while in others there is no past history of autonomy or self government. Some minority groups may require greater protection than others, because they have resided for longer period of time in a country, or they have a stronger will to maintain and develop their characteristics.
According to anthropologists Charles Wagley and Marvin Harris, minorities have following distinctive characteristics:

1. Minorities are subordinate segments of complex state society;
2. Minorities have special or cultural traits held in low esteem by the dominant segments of society;
3. Minorities are self conscious units bound by special traits which their members share and by the special disabilities which these bring;
4. Membership in a minority is transmitted by a rule of descent which is capable of affiliating succeeding generations even in the absence of readily apparent special cultural or physical traits; and
5. Minority peoples, by choice or necessity, tend to marry within the group.

A Minority or a subordinate group is a sociological group that does not constitute a politically dominant plurality of total population of a given society. A sociological minority is not necessarily a numerical minority—it may include any group that is disadvantaged with respect to a dominant group in terms of social status, education, employment, wealth and political power. To avoid confusion, some writers prefer the terms “subordinate group” & “dominant group” rather than “minority” and “majority”.

In socio-economics, the term “minority” typically refers to a socially subordinate ethnic group. Other minority groups include people with disabilities, “economic minorities” people who are poor or unemployed, “age minorities” and “sexual minorities” whose sexual orientation is different.

2.3 Sociology of minority groups

Sociologist Louis Wirth defined a minority group as “A group of people who, because of their physical or cultural characteristics singled out from the others in the society in which they live of differential and unequal treatment and who

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32 Dr M. P. Raju; Minority Rights:Myth or Reality, Media House, Delhi, 2002 Referred on pg 15
therefore regard themselves as objects of collective discrimination."33 This definition includes both objective and subjective criteria: membership of a minority group is objectively ascribed by society, based on an individual’s physical or behavioral characteristics; it is also subjectively applied by its members, who may use their status as the basis of group identity or solidarity. In any case, minority group status as the basis of group identity or solidarity. Minority group status is categorical in nature: an individual who exhibits the physical or behavioral characteristics of a given minority group will be accorded the status of that group and be subject to the same treatment as the other members of that group.

According to the contemporary sociologist, minority is a group of people-differentiated from others in the same society by race, nationality, religion or language who both think of themselves as differentiated group and are thought of by the others as fundamental group identification from within the group and those of prejudice from without and a set of behaviors- those of discrimination and exclusion from without34.

2.3.1 Racial or ethnic minorities

Every large society contains ethnic minorities. They may be migrant, indigenous or landless nomadic communities. In some places, subordinate ethnic groups may constitute a numerical majority such as Blacks in South Africa under apartheid. International criminal law can protect the rights of racial or ethnic minorities in number of ways35. The right to self determination is the key issue.

2.3.2 Religious Minorities

34 International Encyclopaedia of Social Science, 365, in M. P. Raju; *Minority Rights: Myth or Reality*, pg 14, Media House, Delhi, 2002.
Persons belonging to religious minorities have a faith which is different to that held by the majority. Most countries of the world have religious minorities. It is now widely accepted that people should have the freedom to choose their own religion, including not having any religion (atheism or agnosticism), and including the right to convert from one religion to another. However in some countries this freedom is constricted. For example in Egypt, a system of identity cards requires all citizens to state their religion – and the only choices are Islam, Christianity or Judaism. As another example, there are allegations of prejudice against Roman Catholics in the USA by Protestants.

A 2006 study suggests that atheists constitute a religious minority in the United States, with researchers concluding: “Americans rate atheists below Muslims, recent immigrants, gays and lesbians and other minority groups in ‘Sharing their vision of American Society.’ Atheists are also minority groups most Americans are least willing to allow their children to marry.36

2.3.3 Gender and Sexual Minorities

While in most societies, number of men and women are roughly equal, the status of women as a subordinate group has led some to equate them with minorities37. In addition, various gender variant people can be seen as constituting a minority group or groups, such as inter-sexual, trans-sexual, and gender nonconformists – especially when such phenomena are understood as intrinsic Characteristics of an identifiable group.

An understanding of Lesbian, Gay, Bisexual and transgender people as minority group or groups has gained prominence in the western world since the 19th century. The acronym LGBT is currently used to group these identities together. The phrase sexual minorities can also be used to refer to these groups, and in addition may include fetishists, Polyamorists and people who

36 The Ultimate outsider! Reported on website www.atheists.org, March 25,2006
prefer sex partners of a disparate age. The term queer is sometimes understood as an umbrella term for all non-normative sexualities and gender expressions, but does not always seek to be understood as minority; rather, as with many Gay Liberationists of 1960s and 70s, it sometimes represents an attempt to uncover and embrace the sexual diversity in everyone.

2.3.4 Age Minorities

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

2.3.5 Disabled Minorities

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

2.4 Minorities according to law

Law defines a ‘minority’ as “A group numerically inferior to the rest of the population in a non dominant position.” In the politics of some countries a minority is an ethnic group that is recognized as such by respective laws of its
country and therefore has some rights that other group lack. Speakers of legally recognized minority language, for instance, might have right to education or communication with the government in their mother tongue. Countries that have special provisions for minorities include China, Germany, India, Romania, Russia and the United Kingdom.

The issue of establishing minority groups, and determining the extent of privileges they might derive from their status, is controversial. There are some who argue that minorities are owed special recognition and rights, while others feel that minorities are unjustified in demanding special rights, as this amounts to preferential discrimination and could hamper the ability of the minority to integrate itself into mainstream society—perhaps to the point at which the minority follows a path to separatism.

Despite the difficulty in arriving at a universally acceptable definition, various characteristics of minorities have been identified, which, taken together, cover most minority situations. The most commonly used description of a minority in a given State can be summed up as a **non-dominant group of individuals who share certain national, ethnic, religious or linguistic characteristics which are different from those of the majority population.** In addition, it has been argued that the use of self-definition which has been identified as "a will on the part of the members of the groups in question to preserve their own characteristics" and to be accepted as part of that group by the other members, combined with certain specific objective requirements could provide a viable option.

Protection of minorities is the protection of non-dominant groups, which, while wishing in general for equality of treatment with the majority, wish for a measure of differential treatment in order to preserve basic characteristics which they posses and which they distinguish them from the majority of the population. The protection applies equally to individuals belonging to such groups is justified in the interest of welfare of the community as a whole.
The Indian Constitution may justifiably be described as secular and multicultural but in a specific way. Difference is recognized but so also are the values of equal citizenship and equal rights. After protracted discussions in the Constituent Assembly, assimilation on terms of equality was offered to caste and class based minorities in the Constitution, but it was felt that to achieve this it would be necessary to recognize caste in the Constitution as a cause of inequalities and as a basis for affirmative action. At the same time, recognition and protection was offered to religious, cultural and linguistic minorities. Equal respect, fairness and non discrimination were to be the guiding principles of state policies towards minorities and no wall of separation was envisaged between State and religious activities.

A meaningful conception of minorities would include sections of people who, on account of their non-dominant position in the country as a whole, are targets of discrimination and therefore deserve special consideration.

The protection applies equally to individuals belonging to such groups is justified in the interest of welfare of the community as a whole.

2.5 Minority as per international law
Almost all states have one or more minority groups within their national territories, characterized by their own ethnic linguistic or religious identity which differs from that of majority population. A harmonious relation among minorities and between minorities and majorities and respect of each group’s identity is a great asset to multi ethnic and multi cultural diversity of our global society. Meeting the aspirations of national, ethnic, religious and linguistic groups and ensuring the rights of persons belonging to minorities acknowledges the dignity and equality of all individuals, furthers participatory development, and thus contributes to the lessening of tensions among groups and individuals. These factors are major determinant of stability and peace.
Generally, the minority is thought as the opposite of the majority. In democratic societies, it is based on the numerical ratio to the population as a whole in particular place. There are times when the majority is minority and minority is majority. In international law the term minority is commonly used in restricted sense. It has come to refer chiefly to a particular kind of group which differs from the dominant group within the state. The origin of minority group may be possible in any of the following manners\textsuperscript{38}:

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

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

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

Minority can be identified by following distinguishing features\textsuperscript{39}.

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

2. The members of a minority group have their own physic, culture, dialect, etc. which is the dominant group holds in low esteem. The group usually has distinguished characteristics.

3. The members of minority group identify themselves as a part of the group. There is an in–group feeling of loyalty.

4. Membership in minority group is usually not voluntary. It is by birth.


\textsuperscript{39} Charles Wagley and Marvin Horris, \textit{Minorities in the New World}, 1964, pg 4-11 quoted in Dr Chandra Satish, \textit{Minorities in National and International Laws}, Deep & Deep Publications, New Delhi, 1985
5. Members of a minority group have strong bounds of brotherhood and generally believe in endogamy.

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

Concern over the protection of certain minority groups was raised by the League of Nations at the end of the First World War. However, this organization for international peace and cooperation, created by the victorious European allies, never achieved its goals. The League floundered because the United States refused to join and because the League failed to prevent Japan’s invasion of China and Manchuria (1931) and Italy’s attack on Ethiopia (1935). It finally died with the onset of the Second World War (1939).

In 1947, the system for the protection of minorities, as groups established under the League of Nations and considered by the United Nations to have outlived its political expediency, was replaced by the Charter of United Nations and the Universal Declaration of Human Rights and Freedoms and the principle of non-discrimination and equality. The view was that if the non-Discrimination provisions were effectively implemented, special provisions for rights of minorities would not be necessary. It was very soon evident, however, that further measures were needed in order to better protect persons belonging to minorities from discrimination and to promote their identity. To meet this

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40 1923 Series B.7, page 14 quoted in Minorities and the Law at page 78, in M. P. Raju; Minority Rights: Myth or Reality, pg 14, Media House, Delhi, 2002.
end, special rights for minorities were elaborated and measures adopted to supplement the non-discrimination provisions in international human rights instruments.

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

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

The human rights of minorities are explicitly set out in Universal Declaration of Human Rights, the International Covenants, The Convention of Elimination of all forms of Racial Discrimination, The Convention on the Rights of the Child, The Declaration on Rights of persons belonging to National or Ethnic, Religious or Linguistic Minorities and other widely adhered to international human rights treaties and Declarations.

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

In order to attain that object, two things were regarded as particularly necessary, and have formed the subject of provisions in these treaties.

The first is to ensure that nationals belonging to racial, religious or linguistic minorities shall be placed in every respect on a footing of perfect equality with the other nationals of the State. The second is to ensure for the minority elements suitable means for the preservation of their racial peculiarities, their traditions and their national characteristic.

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

The Commission of Human Rights did not define the term minority before setting the Sub-Commission on Prevention of Discrimination and Protection of Minorities. The U. N. Assembly also did not define the term, “Right of peoples to self determinations” before proclaiming the application of the principle. Lack of proper definition was no obstacle to the drawing of the numerous international instruments containing provision on the rights of certain groups of the population to preserve their culture and use their own language. The terminology used to refer such groups varies from one instrument to another. For example, the UNESCO Convention against Discrimination in Education mentions ‘National Minorities’, while the expressions ‘National, Ethnical, Racial or Religious groups’ is used in the Convention on the Prevention and Punishment of the Crime of Genocide and ‘Racial or ethnic groups’ in the International Convention on Elimination of All Forms of Racial Discrimination.
The U. N. concept and protection of minorities came to be incorporated in its Covenant on Civil and Political Rights. India is a party to the International Covenant on Civil and Political Rights. Article 27 of the Covenant explicitly recognizes the rights of “ethnic, religious, or linguistic minorities”.

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

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

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

1. To enjoy their own culture,
2. To profess and practice their own religion, or to use their
3. To use their own language.

In examining the three rights guaranteed in Article 27, it should be remembered that the rights do not exist in isolation there is a link between them since water tight compartments cannot be created between these rights. The United Nations\(^4\) has sort two criteria to define the term minority. These criteria are:

   i) Objective Criteria
   ii) Subjective Criteria

Objective Criteria

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

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

iii) The third criterion is non-dominant position of the groups in question in relation to the rest of the population. It should not be that the minority is in dominant position ruling over the majority. For example, the black majority is ruled by the white who are minority in South Africa.

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

Subjective Criteria.

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

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

1. A group numerically less to the rest of the population of the State;
2. In a non-dominant position;
3. Whose members being nationals of the State possesses ethnic, religious or linguistic characteristics differing from those of the rest of the population; and
4. These members show a sense of solidarity towards preserving their culture, traditions, religion or language.
The Convention on the Rights of Child⁴², contain provision addressing the rights of the minorities. Its Article 30 states:

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

A special Subcommittee on the Protection of Minority Rights appointed by the United Nations Human Rights Commission in 1946 defined the ‘minority’ as those “non-dominant groups in a population which possess a wish to preserve stable ethnic, religious and linguistic traditions or characteristics markedly different from those of the rest of the population.” It was also stated by the sub-commission that only those sufficient by themselves to develop these characteristics and loyal to the country of which they may be the nationals can be termed minorities.

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

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

The United Nations Commission on Human Rights in 1950 had defined minorities as below:

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

The situation in India is different in a number of significant ways to the situation in western countries like the United States, Germany or Canada. Indian society incorporates a bewildering number of minorities identified by factors like religion, caste, class or region. Moreover, the boundaries of all nation-states are expected to grant equal legal and human rights to such minorities, and not to practice any sort of discrimination against them. The United Nation Organization lays stress on it. Such groups have always been somewhat fluid and overlapping. However, the quintessential minority in most people’s perception is the religious minority.

The question of who constitutes a minority, thus, has more to do with political and power relationships than with numerical characteristics. Ethnic groups which are subject to illegitimate discrimination in law or fact may be considered as minorities.

2.6 Minority as per the Constitution of India

The architects of the Indian Constitution guaranteed to minorities all necessary rights and freedoms but have no where defined the expression “Minority”. There is no parliamentary legislation either defining a ‘minority.’ The Motilal Nehru Report (1928) showed a prominent desire to afford protection to minorities, but did not define the expression. The Sapru Report (1945) also proposed, inter alia, a Minorities Commission but did not define Minority.
The Constituent Assembly had set up Advisory Committee under the Chairmanship of Sardar Vallabhbhai Patel on the subject of Fundamental rights including rights of minorities, with the twin objectives of eliminating the chance of religion exploiting the State and vice-versa. The Advisory Committee appointed five sub-committees. One was the minorities sub-committee headed by H.C. Mukherjee a Christian leader from Bengal.

The Advisory Committee accepted the recommendations of Sub Committee partially and recommended the following clause to the Constituent Assembly:

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

2. No minority whether based on religion, community or language shall be discriminated against with regard to admission into State educational institutions, nor shall any religious instruction be compulsorily imposed on such minority.

3. (a) All minorities whether based on religion, community or language shall be free in any unit to establish and administer educational institutions of their choice.

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

The clause was incorporated as clause 24 with some drafting changes in the Draft Constitution prepared by the Constitutional Advisor. The Drafting Committee revised the text of clause 24 twice, the most significant change being the re-drafting of sub-clause (1). The clause finally took the shape as Article 23 of the Draft Constitution. The Drafting Committee, at the revision
stage divided Article 23 into two separate Articles - Article 29 and 30 as now contained in the existing Constitution.  

Due to the partition of country there was a strong feeling against the communal forces and hence no attempt was made on any occasion even to define the term “minority” in precise words. The feeling was so strong that the words “certain classes” were substituted for the word “minorities” wherever it occurred in the text of the Constitution. Not only is the use of the term minority in the Constitution very rare but also no group is mentioned explicitly as a minority therein. The term ‘minority’ is mentioned in only two Articles, 29 and 30.

The expression ‘minority’ has been used in Article 29 and 30 of the Constitution but it has nowhere been defined. The Preamble of the Constitution proclaims to guarantee every citizen 'liberty of thought, expression, belief, faith and worship'. Group of Articles 25 to 30 guarantee protection of religious, cultural and educational rights to both majority and minority communities. It appears that keeping in view the constitutional guarantee for protection of cultural, educational and religious rights of all citizens, it was not felt necessary to define 'minority'. Minority as understood from constitutional scheme signifies an identifiable group of people or community who were seen as deserving protection from likely deprivation of their rights by other communities who happen to be in majority and likely to gain political power in a democratic form of Government based on election.

In the back ground of constitutional scheme, the provisions of the Act therefore instead of giving definition of 'minority' only provide for notifying certain communities as 'minorities' who might require special treatment and protection.

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of their religious, cultural and educational rights. The definition of 'minority' given under the National Commission of Minority Act, 1992 is in fact not a definition as such but only a provision enabling the Central Government to identify a community as a 'minority' which in the considered opinion of the Central Government deserves to be notified for the purpose of protecting and monitoring its progress and development through the Commission.

2.6.1. Religious Minorities

If we see the provisions of the Constitution it talks about only two kinds of minorities’ i.e. Religious and linguistic minorities. India is a land of diversity consisting of different religions with Hindus in majority. According to the 2001 census the religious composition of the population is as follows-

**Religious Composition of the Indian Population**

<table>
<thead>
<tr>
<th>Religious group</th>
<th>Population (%)</th>
<th>Growth (%)</th>
<th>Sex Ratio(1991-2001)</th>
<th>Literacy (%)</th>
<th>Work participation</th>
<th>Sex ratio(rural)</th>
<th>Sex ratio(urban)</th>
<th>Sex ratio(child)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hindu</td>
<td>80.46</td>
<td>20.3</td>
<td>931</td>
<td>65.1</td>
<td>40.4</td>
<td>944</td>
<td>894</td>
<td>925</td>
</tr>
<tr>
<td>Muslim</td>
<td>13.43</td>
<td>36</td>
<td>936</td>
<td>59.1</td>
<td>31.3</td>
<td>953</td>
<td>907</td>
<td>950</td>
</tr>
<tr>
<td>Christian</td>
<td>2.34</td>
<td>22.6</td>
<td>1009</td>
<td>80.3</td>
<td>39.7</td>
<td>1001</td>
<td>1026</td>
<td>964</td>
</tr>
<tr>
<td>Sikh</td>
<td>1.87</td>
<td>18.2</td>
<td>893</td>
<td>69.4</td>
<td>37.7</td>
<td>895</td>
<td>886</td>
<td>786</td>
</tr>
<tr>
<td>Buddhist</td>
<td>0.77</td>
<td>18.2</td>
<td>953</td>
<td>72.7</td>
<td>40.6</td>
<td>958</td>
<td>944</td>
<td>942</td>
</tr>
<tr>
<td>Jain</td>
<td>0.41</td>
<td>26</td>
<td>940</td>
<td>94.1</td>
<td>32.9</td>
<td>937</td>
<td>941</td>
<td>872</td>
</tr>
<tr>
<td>Others</td>
<td>0.65</td>
<td>103.1</td>
<td>992</td>
<td>47</td>
<td>48.4</td>
<td>995</td>
<td>966</td>
<td>976</td>
</tr>
</tbody>
</table>

Source: Census report 2001
Thus we find that except Hindus all followers of other religion are minorities for a National Act or law, however in a state enactment the Hindus might also be in minority and national minorities might be in majority e.g. in Kashmir, Hindus are in minority and Muslims in majority. Similarly Christians are in majority in some eastern states whereas Hindus and Muslims are in minority.

In order to ensure the protection of religious minorities the state has been constituted under the principle of secular notion and several religious rights has been granted to the people and religious institutions under Article 25 and 26 with certain restrictions. A secular State does not mean an irreligious State, it only means that in matters of religion it is ‘neutral’, the State can have no religion of its own, and the State protects all religions but interferes with none. In a secular State, the State is only concerned with the relation between man and man; it is not concerned with the relation of man with God. The concept of secularism is one facet of the right to equality and implies that in matters of State, religion has no place, in other words State rights and benefits do not depend upon religion. Now ‘secularism’ has been elevated to the status of basic feature of the Constitution against which no law can be enacted and any State Government which acts against that ideal can be dismissed by the President.

The National Commission for Minorities Act, 1992 enabled the centre to notify minorities for the limited purposes of that Act only and in exercise of that power, the government had notified five religious communities- Muslims, Christians, Sikhs, Buddhists and Parsis- to be regarded as minorities. These five communities constitute 17% of the country’s population.

As will be seen from the published results of the 2001 Census, Hinduism is by far the major religion of India. Thus, persons categorized as Hindus make up 80.5 % of the total Indian population. Furthermore, this is a figure which has

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44 http://socialjustice.nic:in/obes/minority.htm
been constantly decreasing since the Census of 1961, when the figure was 83.4 %.

By far the largest religious minority in India consists of people belonging to Islam, to which 13.4 % of people belong. This is a figure which, if we look at it from a historical perspective, has increased almost in proportion to the decrease in the number of Hindus. Thus, in 1961 only 10.7 % of the populations were Muslims. This means that the increase in Muslims within the last 40 years has been 2.7 % of the total population, whereas the decrease in the number of Hindus has been 2.9 %. Second among the religious minorities are the Christians who in 2001 made up 2.3 % of the total population. Apart from a slight decrease of 0.1 %, this percentage has been more or less stable since 1961. The third religious minority is the Sikhs with 1.9 % of the total population. This figure has also been comparatively stable with slight increase of 0.1 since 1961. Fourth are Buddhists who made up 0.8 % of the total population, a slight increase of 0.1 % since 1961. The Buddhists found in contemporary India are mainly of two varieties. The largest is the so-called Neo-Buddhists who are actually untouchables or Dalits who since the first half of the 1950’s have converted to Buddhism under the influence of Dr. Ambedkar in order to try to escape from Hindu suppression. The other group consists of Tibetan Buddhist most of whom are refugees from the Chinese occupation of Tibet in 1951. Included among the group of others are the two small religious communities of Parsis and Jews. According to the 1991 Census 76,382 persons were registered as belonging to the old Zoroastrian faith, while in the same year only 5271 Jews were left in India.

46 Eleanor Zelliot, From Untouchable to Dalit. Essays on the Ambedkar Movement, New Delhi 1996
47 With regard to the data of the 2001 Census, Parsis and Jews have been included under the rubric ‘others’. However, according to the Brief Analysis of Census 2001 Religion Data, the number of Parsis were 69,601 (http://www.censusindia.net/religiondata/Brief_analysis.pdf). According to non-official sources the number of Jews was about 4000 (http://www.answers.com/topic/demographics-of-india). Visited on 22nd December 2011
As the sixth minority we find the Jains, who are adherents of an old indigenous religion, a little bit older than Buddhism. They make up 0.4% of the population, a figure which has decreased by 0.1% since 1961.

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

In several States (e.g. Himachal Pradesh, Jharkhand, Madhya Pradesh, Maharashtra, Uttar Pradesh and Uttarakhand), Jains have been recognized as a minority. The Jain community approached the Supreme Court seeking a direction to the central government for a similar recognition at the national level and their demand was supported by the National Commission for Minorities. But the Supreme Court did not issue the desired direction, leaving it to the state government to decide the issue (Bal Patil v Union of India48). In a later ruling however, another bench of the Supreme Court upheld the Uttar Pradesh law recognizing Jains as a minority (Bal Vidya Mandir, Etah, U.P. v Sachiv, U.P. Basic Shiksha Parishad, Allahabad, U.P. and Ors.49).

2.6.2. Linguistic Minority

So far as linguistic minority is considered India has more than 1650 mother tongues, belonging to five different language families. They are rationalized into 216 mother tongues, and grouped under 114 languages by the 1991 Census: Austro-Asiatic (14 languages, with a total population of 1.13%), Dravidian (17 languages, with a total population of 22.53%), Indo-European (Indo-Aryan, 19

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48 AIR 2005 SC 3172
49 MANU/SC/3685/2006
languages, with a total population of 75.28%, and Germanic, 1 language, with a total population of 0.02%), Semito-Harmitic (1 language, with a total population of 0.01%), and Tibeto-Burman (62 languages with a total population of 0.97%). Earlier the territorialities of provinces or States were done mostly for administrative convenience ignoring the ethnic, religious, social, and linguistic aspect of the society. The Constitution of India originally listed fourteen languages Assamese, Bengali, Gujarati, Hindi, Kannada, Kashmiri, Malayalam, Marathi, Oriya, Punjabi, Sanskrit, Tamil, Telugu, and Urdu, into its Eighth Schedule in 1950. Since then, this has been expanded thrice, to include Sindhi, Konkani, Manipuri and Nepali, Bodo, Santhali, Maithili and Dogri. The Language Policy of India relating to the use of languages in administration, education, judiciary, legislature, mass communication etc. is pluralistic in its scope. It is both language development oriented and language survival oriented. The language policy is intended to encourage the citizens to use their mother tongue in certain delineated levels and domains through some gradual processes, but the stated goal of the policy is to help all languages to develop into fit vehicles of communication at their designated areas of use, irrespective of their nature or status like major, minor, or tribal languages.

The concept of linguistic minority in India is a relational one, and no one definition captures the essence of all kinds of linguistic minorities that the national planning and language plans has thrown up in the country. In the British India, India was perceived to have 'English' 'the Indian vernaculars', 'provincial languages', and other 'dialects'. Then, the word 'minorities' meant mainly the religious minorities. This was inevitable because, for the British, the major power to contend with in the acquisition of Indian territories was the Mughal Empire, which happened to be a Muslim rule over the majority Hindu. Their world view was thus shaped by this dichotomy. The progress of the struggle for the independence of India since the partition of Bengal and even before this point in modern history, revolved around the world view that the India consisted of Hindu-Muslim societies.
The Notion of linguistic minorities is largely the contribution of independent India. The British went after their administrative convenience. Moreover, several of the Indian territories they acquired and integrated were already multilingual under some princely rule or the other. They have established themselves in their chosen settlements long before their incessant acquisition of territories began. Their central trading posts had become multilingual, and the empire began spreading out from these factory towns. The English became the language of government; there was no compulsion on them to divide the territories on the basis of the dominant Indian languages used in each of these territories. Growing linguistic identity consciousness among the people of various presidencies and provinces became a focal point for the Indian National Congress in their attempt to mobilize popular support for the struggle for independence. The Congress in many of its resolutions recognized the popular aspirations and thus they could not avoid creating linguistically organized States. Thus, focused linguistic majority-minority concept is mainly the result of the creation of linguistic states and choice/categorization of language(s) by the language policy of the Union and the governments of States and Union Territories.

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

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

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

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

2.7 Constitutional Assembly Debates on Minority Rights

In the Assembly’s deliberations, the minorities question was regarded as encompassing the claims of three kinds of the communities: religious minorities, Scheduled Castes, and backward tribes, for all of whom safeguards in different forms had been instituted by the British and by Princely States in the colonial period. The representatives of most group claiming special provisions in some form emphasized that the group was minority of some kind. So close was the identification of the term ‘minority’ with the notion of special treatment for a group that even those opposed to the continuation of the colonial system of minority safeguards employed the same language to justify their stand. For instance, it was argued that the ‘so-called minorities’ were not the ‘real minorities’. The latter were variously identified as ‘the agriculturist’, ‘the rural people’, ‘the backward provinces’, even ‘the masses’. The claim was
that these were the groups that ought to receive special treatment rather than the communities hitherto favored by the British\textsuperscript{50}.

Most representatives of the scheduled Castes in the Constituent Assembly also claimed minority status but cultural distinctness from the majority community did not usually figure in this claim. Rather, such claims emphasized that untouchables were culturally part of Hindu community, or least that they were different type of minority from the religious minorities. It was stressed that they were a ‘political minority’\textsuperscript{51}, that the term ‘minority’ in their case did not connote numerical disadvantage but rather, entitlement to special treatment on account of social and economic ‘backwardness’\textsuperscript{52}. Not all representatives of the scheduled castes claimed minority status for the community and the concomitant ‘political safeguards.’ Some argued, in keeping with the dominant nationalist opinion, that the reserved quotas in legislatures and public employment were undesirable and that the solution to the problems of these groups lay in the removal of economic and social disabilities\textsuperscript{53}.

The strongest opposition to minority safeguards during the Constituent Assembly debates stemmed from concern regarding their implications for national unity and was usually accompanied by a particular understanding of the history of minority safeguards. Such safeguards were regarded as instruments of a colonial ‘divide and rule’ policy, deliberately fashioned by the duplicitous colonial rulers to create strife between different sections of the nation, to deny that India was a nation and to delay the transfer of power once it became inevitable. These strategies were seen to have enabled the legitimization and the perpetuation of colonial rule and to have culminated in the dismemberment of the country\textsuperscript{54}.

\textsuperscript{50} Constituent Assembly Debates Vol. II Pg. 264  
\textsuperscript{51} Constituent Assembly Debates Vol. I Pg. 139, 284  
\textsuperscript{52} Constituent Assembly Debates Vol. V Pg. 202.  
\textsuperscript{53} Constituent Assembly Debates Vol. I Pg. 147 Vol. III pg 470.  
\textsuperscript{54} Constituent Assembly Debates Vol. I Pg.114 Vol. II pg 205,285.
A second concern pertained to the implications of minority safeguards for the emergence of a common national identity. Nationalist opinion, for all its appeals to an eternal India, recognized that the new State had to create a common national identity that would unite its citizens, transcending group identities based on ‘caste, creed, and religion’ that divide them. Minority safeguards implied the recognition of group identities in the political realm that it was felt, would promote particular group identities at the expense of wider national identities among citizens necessary for securing the political integrity of the nation\textsuperscript{55}.

The distribution of minorities in South Asian states was such that the members of almost all religious denominations were present in one state or the other which created a peculiar chemistry of minority consciousness. The Muslims, Sikhs, Christians, Buddhists, Jains and Parsees in India; the Hindus and Christians in Pakistan and Bangladesh and Muslims and Christians in Sri Lanka have minority status. Such a situation led to reciprocity in the treatment of minorities and safeguarding of their rights. The idea of reciprocity had found articulation during the debate over minority rights in the Constituent Assembly in India. Participating in the debate, Mahavir Tyagi who later became a member of the Nehru’s Cabinet had suggested that consideration of minority rights should be postponed until Pakistan’s stand on this question became clear. Responding to it, Dr. B. R. Ambedkar, the architect of the Indian Constitution, had asserted that the rights of the minorities should be absolute rights. They should not be subjected to any consideration as to what another party may like to do to the minorities within its jurisdiction\textsuperscript{56}.

‘Minority’ as a concept has not been adequately defined in the Indian Constitution. Although mentioning the cultural attributes of religion and language, the Constitution does not provide details on the geographical and

\textsuperscript{55} Constituent Assembly Debates Vol. II pg 224
\textsuperscript{56} Constituent Assembly Debates, Vol. II:
It will be noted that the term minority was used therein not in the technical sense of the word ‘minority’ as we have 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 the purposes of this Article 23, if a certain number of people from Madras came and settled in Bombay for certain purposes, they would be, although not a minority in the technical sense, cultural minorities.... 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 narrow sense of the term when the intention of the house was to use the word “Minority” in much wider sense, so as to give cultural protection to those who are technically not minorities but minorities nonetheless.

It seems from above exploration that the scope of Article 23 of the draft, Now Article 29, was broaden by dropping the word “Minority” to include all such minorities that were not minority in technical sense but were minority nonetheless. The later part of Article 23(1) of draft Article, which corresponds

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57 Constituent Assembly Debates, Vol. II : 922-923
to Article 30, was confined to those minorities which were minorities in technical sense.

The Drafting Committee incorporated two more amendments of the substantial nature. By one the “language, Script and Culture” in Clause (1) was replace by “Language, Script or Culture”. By other it was sought to prohibit discrimination against any minority in the matter of admission by State added institutions as well as State owned institutions.

After drafting the Constitution, the draft Article 23 was presented for consideration before the Constituent Assembly. During the debate a number of amendments were moved and Assembly witnessed a long debate on sufficiency, adequacy or scope of rights. Amendments moved by Dr Ambedkar and Thakurdas Bhargava were accepted and adopted and remaining were rejected. Which such amendments Article 23 of Draft constitution was accepted by the Constituent Assembly.

Subsequently, at the revision stage, the drafting committee divided Article 23 into two Articles i.e. Article 29 and Article 30 which are referred under Constitutional Provisions of this chapter.

Thus, Constitution makers granted to the religious and linguistic minorities right to conserve their language, Script and culture and also provided them the right to establish and administer educational institutions of their choice. State was not to discriminate in giving grants on grounds of religion, language, etc, though the institutes maintained by the State or receiving grants from the State were not to discriminate any citizen on the ground of religion, race, language, caste or any of them. By granting autonomy, it was hoped, that minorities while preserving their Culture and Language and through their educational institution will contribute to the growth and development of the nation.
Minority rights impose no obligation or burden on the State to finance any education project to safeguard minority rights. It ensured that the State could not impose other culture on minority. In the words of Ambedkar\textsuperscript{58},

\begin{quote}
I think another thing which has to be borne in mind in reading Article 23 is that it does not impose any obligation or burden upon the State. It does not say that, when for instance the Madras people come to Bombay, the Bombay government shall be required by law to finance any project of giving education either in Tamil language or in Andhra language or any other language...The only limitation that is imposed by Article 23 is that if there is a cultural minority which wants to preserve its language, its script and its culture, the State shall not by law impose upon it any other culture which may be either local or otherwise. Therefore this Article really is to be read in a much wider sense and does not apply only to what I call the technical minorities as we use it in our Constitution.
\end{quote}

Succinctly, it is left to the minority to establish its minority status in order to avail the benefits of the Article 30. The task has not been difficult as State has been considered as unit to decide minority status and the group numerically less than 50\% of the population of the State has been considered as minority. This parameter has been applied for both linguistic and religious minority. There has been no difficulty in establishing minority status even though the concepts of ‘religion’ and ‘language’ have not been adequately defined in the Articles or the Constituent Assembly Debates.

In Constitution of India there are two Articles that deal with minorities’ rights i.e. Articles are 29 and 30. These two Articles confer fundamental rights to religious and linguistic minorities. But the Constitution neither defines

\textsuperscript{58} Constituent Assembly Debates, Vol II: 923
minority nor does it prescribe sufficient guidelines to determine a group minority. Makers of constitution and members of constituent Assembly left it to the wisdom of the courts to do so.

2.8 Minority as Per Judicial Trends

All democratic states ensure constitutional protection for minority rights. They can, however, be enforced only by an independent judiciary, comprising judges with a broad, liberal outlook when politicians, the executive and the legislature trammel on the rights of minorities.

The expression ‘religion minority’ means ‘that the only and principal basis of the minority must be adherence to one of the many religions and not a sect or part of the religion.’

The question arises regarding what is the test to determine minority status based on religion or language of a group of persons residing in State or Union territory. The Article 30 for the first time came up for interpretation before the seven judge Constitution Bench constituted to consider the reference made by President under Article 143 in re the Kerala Education Bill, 1957. It held, “The existence of minority community should in all circumstances and for purposes of all law of that State be determined on the State basis only when the validity of law extending to whole State is in question or it should be determined on the basis of the population of the particular locality, for the bill in practice before us extends to the whole of State of Kerala and consequently the minority must be determined by reference to the entire State. By this test Christians, Muslims and Anglo Indians will certainly be minorities in the State of Kerala.”

In other words it can be said that the Supreme Court suggested the technique of arithmetical tabulation of less than 50 per cent of population for identifying

59 AIR 1958 SC 956
a minority. This population was to be determined in accordance to the applicability of the law in question. If an Act is applicable nationwide then the minority group would be decided on the national figures and in the case of the Act being applicable in a State, the minority group would be decided on the State figures.

It has been argued by few scholars that the proposition lay down by the court to determine the minority has many snags. One is that, the population of state may be so fragmented in linguistic, religious or cultural groups that no group may fall under the protection of Articles 29 and 30 without there being a single majority community against which minorities may claim protection. Second is that, certain communities which may be in majority in a particular state like Sikhs in Punjab or Muslims in Jammu and Kashmir or Christians in Nagaland, may be minority in relation to the entire population of India. Can they be majority from one point of view and in minority from the other? Suppose, there are a number of educational institutions set up by Christian minority, spread all over the country, then, applying the test formulated by the Supreme Court, the educational institutions situated in Nagaland would not be entitled to the protection of Articles 29(1) and 30(1) but the same would have the protection as minority in Gujarat. Thus the test laid down by the court does not specify minority.

In *D.A.V. College, Jullunder’s Case* ⁶⁰, the Constitutional Bench of the Supreme Court observed: ‘Though there was a faint attempt to canvas the position that religious or linguistic minorities should be minorities in relation to the entire population of the country, in our view, they are to be determined only in relation to the particular legislation which is sought to be impugned, namely that if it is the State legislature these minorities have to be determined on the basis of the population of the State’.

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⁶⁰ AIR 1971 SC 1737
Arya Samaj claimed to be a linguistic minority in Punjab. Since they are a minority in Punjab, they automatically got a minority status under Article 30 (1). The Court observed: ‘A linguistic minority for the purpose of Article 30 (1) is one, which must have a separate spoken language. It is not necessary that the language must have a distinct script for those who speak it to be linguistic minority’.

The Calcutta High Court was required to deal with this issue in the case of Shree Jain Swetamber Terpathi Vidyalaya. The Court held that Jains professed a faith different from the Hindus and were a religious minority entitled to benefits of Article 29 and 30.

Claiming rights being linguistic minority have its own limitations. For example Gujaratis are a minority in Maharashtra where as Maharashtrians are a minority in Gujarat. Prior to reorganization of the Bombay State, Ahmedabad was part of it and Gujaratis were a minority there. Hindi speaking sections of people called "bhaiyas" are a minority in Maharashtra. Marwaris and U. Pians, called "Hindustanis", are a linguistic minority in Calcutta. But as soon as a "bhaiya" goes back from Mumbai to his home State Uttar Pradesh or Bihar, or a Marwari or "Hindustani" goes back from Calcutta to Rajasthan or Uttar Pradesh he reverts to his status as a member of a majority community. A Tamilian or a Bengali while living in New Delhi is a member of a linguistic minority but as soon as he goes back to live in Tamil Nadu or West Bengal he becomes a member of the majority community. All this follows from the Supreme Court decision in the two cases, D.A.V. College, Bhatinda v. State of Punjab and D.A.V. College, Jullunder v. State of Punjab decided on the same day by the same Constitution Bench, holding that Arya Samajist Hindus

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61 AIR 1982 CAL 101
63AIR 1971 SC 1737
(claiming Hindi in Devanagri as their language) were a religious as well as linguistic minority in the Sikh-majority state (having Punjabi in Gurmukhi as the State language).

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

As far as language is concerned, the case of D. A. V. College, Jullunder v State of Punjab\textsuperscript{64} is considered important. In this case, the Court observed, ‘A linguistic minority for the purpose of Article 30(1) is one which must at least have a separate spoken language. It is not necessary that language should also have a distinct script for those who speak it’.

**Protection under Article 30(1) not available to Denominations or Sects**

Hindus may be in a majority in Uttar Pradesh but Arya Samajis a sect are in a minority there. Thus, can Arya Samajis claim the benefit under Article 30 (1) on the basis that it is a minority? So also Christians may be in a majority in Meghalaya but Protestants are in a minority. Can they claim benefits under Article 30 (1) despite being part of the Christian fold. A highly contentious issue there has not been a single judgment of the Supreme Court directly dealing

\textsuperscript{64} AIR 1971 SC 1737
The Supreme Court held in *Bramchari Sidheswari Shai v State of West Bengal*\(^{65}\) that the Ramakrishna Mission a Hindu sect under Article 26 of the Constitution cannot be considered a religious minority under Article 30. This makes it clear that Court decision of granting protection of Article 30 (1) is available only to religious groups.

Thus whether Auroville (Emergency) Provisions Act, 1980 violated Article 30 (1) came up before the Supreme Court in *S. P. Mittal vs Union of India*\(^{66}\). Aurobindo society claimed to be a religious denomination or sect. The Court held that the Society was not entitled to protection under Article 30.

In the case of *Arya Samaj Education Trust v Director of Education*\(^{67}\) the court held that Arya Samaj was not entitled to protection under Article 30. The Court went into the historical context and assessed the Report of the Minority Sub-Committee to the Constituent Assembly and the debates thereafter, came to the conclusion that the words ‘based on religion’ in Article 30 (1) were always meant to include religious groups and not sects or denominations. Excerpts from the report as quoted in a Delhi High Court judgment -

“The word ‘minority’ used in the expression minorities based on religion used in Article 30 (1) connotes only those religious minorities which had claimed separate rights from those of the Hindus prior to the Constitution such as the Muslims and the Sikhs. The Christians did not seem to have claimed separatist’s rights but they were nevertheless a distinct minority based on a religion, which at no stage was regarded as a part of Hinduism. Because of the political origin of the sense in which the word ‘minority’ was used in India, it was never meant to be applied to a part or a section of the Hindus such as the Arya Samaj and several other Hindu sects. No section or class of Hindus was ever referred to as a minority”.

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\(^{65}\) (1995) 4 SCC 646.
\(^{66}\) AIR 1983 SC 1
\(^{67}\) AIR 1976 DEL 207
In T.M.A. Pai Foundation v State of Karnataka\textsuperscript{68}

The eleven judge bench of the Supreme Court delivering the judgment in above case held by majority that

- The form minority in Article 30(1) covers linguistic and religious minorities.
- For the purpose of determining the ‘minority’ the unit will be the State and not the whole of India. Minorities have to be considered State wise.

The Cabinet has reportedly approved a proposal (May 2007) to define minorities State-wise in line with several Supreme Court judgments, most notably that in T.M.A. Pai. For the purpose of this legislation, minority will be specified as such in relation to a particular State/Union Territory by a presidential notification issued after consultation with the State Government; this will be in addition to the five minorities (Muslims, Christians, Sikhs, Buddhists, and Parsis) referred to in the NCM Act, 1992.

The Constitution does not define a minority or provide details relating to the geographical and numerical specification of the concept, it is clear that the constitutional scheme envisages this to be determined at the national level. Over the years, judicial pronouncements have given a restricted meaning to minority rights by limiting them to education and defining minorities at the State level in terms of protection under Article 30 which provides religious or linguistic minorities the right to set up educational institutions of their choice. The legitimization of a restrictive conception of minority rights can also be noticed, in this context, in the Central Government’s proposal to adopt a State-specific notion of minorities.

Supreme Court principle in the 2002 judgment, in T.M.A. Pai Foundation \& Others vs. the State of Karnataka and Ors\textsuperscript{69}, the Supreme Court deliberated on

\textsuperscript{68} (2002) 8 SCC 481
the various contentions that the Centre, State, or a particular region within a State may be considered as the basic unit for protection of the right of minorities to set up minority educational institutions, and whether a minority in a State would lose its minority status if within a particular region of the State it happened to be in a majority. The Court has set out the principle that minority status should be determined in relation to the population of the State and not to India as a whole. It ruled that as the reorganization of the States in India had been effected on linguistic lines, for the purpose of determining a minority, the unit would be the State and not the whole of India. Thus, religious and linguistic minorities, who have been placed on a par in Article 30, have to be considered in terms of the State concerned.

The concept of minority is still evolving, the issue resurfaced in _Bal Patil v Union of India’s case_70 and _Anjuman Madarsa Noorul Islam Dehra Kalan, Ghazipur v State of Uttar Pradesh, case_71; these two judgments have further complicated the question of definition of minorities, as both these judgments relate, for the most part, to definitional issues. Bal Patil questioned the identity of Jains as a religious minority while in Anjuman Madarsa Noorul Islam Dehra Kalan, Ghazipur v State of Uttar Pradesh, Hon’ble S. N. Srivastava J72 ruled that Muslims, by virtue of their numbers, cannot be considered a minority in Uttar Pradesh.

A study of court cases reveals a continuous struggle between the State and minorities on these issues. For instance, Patna High Court announced Arya Samaj [Arya Pratinidhi Sabha vs State of Bihar73], a minority distinct from the Hindus. However, in 1976, Delhi High Court in _Arya Samaj Education Trust v_
Director of Education\textsuperscript{74} decided against providing benefits of Article 30 to denominations and sects.

Similarly, in 1962, Brahmo Samaj of Bihar made this claim, which was accepted by the High Court in Dipendra Nath Sarkar v State of Bihar\textsuperscript{75}. The court, however, did not accept such a claim in the cases of Chaudhari Janki Prasad and others v State of Bihar\textsuperscript{76} and S. P. Mittal vs Union of India\textsuperscript{77}. The ambiguous definition of religion has potential for controversy.

The principal rationale for State-specific minorities rests on the idea that the linguistic reorganization of States necessitates that they be treated as the basic unit for determination of minorities. As both linguistic and religious minorities are covered under Article 30, both sets of minorities have to be State-specific. The linguistic reorganization of States meant that, for the purpose of Article 30, linguistic minorities had to be determined in relation to the State because their language was not one of the official languages; other minorities are those whose mother tongue is an official language but who live outside the State(s) where the language is official. In this sense, the linguistic reorganization of States has a definite bearing on linguistic minorities because protection under Article 30 is available not only to the linguistic minorities sharing the major languages of the States, but also to speakers of the numerous languages that are not represented by any particular State on its own.

As regards religious minorities, linguistic reorganization should not really matter in the exercise of their right to set up educational institutions of their choice or seek admission in such institutions or the exercise of other minority rights. In comparison to linguistic minorities, for whom the official language matters, there is no congruence between religious identity and State

\textsuperscript{74} AIR 1976 DEL 207
\textsuperscript{75} AIR 1962 Patna 101
\textsuperscript{76} AIR 1974 PAT 187
\textsuperscript{77} AIR 1983 SC 1
boundaries. For protection under Article 30, linguistic minorities make claims upon the States rather than the Centre, but this need not be so for religious minorities who are dispersed throughout India and whose identity is not linked to specific State(s). In this context, defining minorities at the State level would limit the notion of minorities, entailing as it does the adoption of an essentially statistical conception of minorities. Thus, a religious group, which is numerically smaller than the rest of the population of the State to which it belongs, would be entitled to be termed a minority in that State even though the group may be numerically in a majority in India as a whole and hence not lacking in power or voice in the decision-making structures. This will doubtless add to the list of minorities and extend the benefits of minority entitlements to these groups, even as it will deny the same benefits to groups that are minorities in accordance with nationally and internationally accepted definitions of minorities.

2.9 Constitutional Provisions related to minority rights

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

In India, the safeguards for minorities under the constitution of India are in form of fundamental rights. Firstly the constitution nowhere discriminates among the citizens of India on the grounds of religion, race, caste, etc and secondly, the rights conferred under Articles 25 to 30 are fundamental rights.
The State is duty bound to protect the fundamental rights. If fundamental rights are infringed the remedy lies under Articles 32 and 226. A person can directly approach the Supreme Court or the High Court in case of violation of fundamental rights. So the true spirit and intention of the Constitution is to provide a very formal and water tight arrangement for safeguarding the interest of minorities.

There are some Articles in the constitutions of India that exclusively safeguards minority’s rights, whereas, there are certain Articles though not specifically meant for minorities but they strengthen minorities’ rights.

The following two Articles, 29 and 30 are placed under the Heading: Cultural and Educational rights. These Articles are the only ones in whole Constitution which specifically use the term minority. Article 29, is the most comprehensive Article, declaring that “any section of the citizens residing in the territory of India or any part there of having a distinct language, script or culture of its own shall have the right to conserve the same.” Thus the Article establishes an overall right of any group of citizens to maintain their language, including script, and culture. Article 30, Clause 1, is more specific and establishes that all “minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.” Furthermore, Clause 2 says that “the state shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under management of minority, whether based on religion or language.” Although Article 29 uses “Culture” instead of “religion”, it seems obvious that these two Articles are very closely related, since the safest way to maintain and protect the language, Culture, or religion of a group or minority is through the establishment of separate educational institutions. It can be well concluded from Article 30, Clause 2, that if the State supplies aid to educational institutions, it is also obliged to support institutions managed by religious or linguistic minorities.
It is thus evident, that the Indian Constitution establishes that the Indian State shall be secular, in the sense that it is not allowed to give preference to any particular religion. At the same time it gives full freedom to all religions to run their own affairs and offer to religious and linguistic minorities the special protection to run their own educational institutions funded or partly funded by the state.

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

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

**Cultural and Educational Rights**

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

(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.

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

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

**2.10 Why Minority Rights?**

Justice S. M. Sikri, former Chief Justice of India, has once said, “In fact one may well compare our nation to a big Jumbo jet flying through turbulent weather to a golden destination. For this flight every section of the people must be galvanized together firmly as the various parts of the frame. The strength of the frame is equal only to the strength of the weakest section of the frame. One little crack, i.e. a disgruntled minority, would force the jet to the ground till the crack is repaired.” This realization is an important rationale for the special
protections accorded to the minorities in almost all the modern democracy including ours.\textsuperscript{78}

The protection of the rights of minority is a \textit{sine qua non} in a healthy democracy. The very basis of the minority protection is that the political non dominant i.e. a group small in number, need to be protected against interference of majority in their cultural and linguistic development. This differential treatment is necessary to preserve the basic characteristics which they posses and which distinguish them from majority of the population. Interest of minorities, their culture and individuality of minority need to be protected without jeopardizing the interest of majority at large.

Jawaharlal Nehru writing a note on Minorities in ‘Young India’ on May 15, 1930 stated, “the history of India and of the many countries of Europe has demonstrated that there can be no stable equilibrium in any country so long as an attempt is made to crush a minority or force it to conform to the ways of the majority .... therefore we in India must make it clear to all that our policy is based on granting this freedom to the minorities and that under no circumstance will any coercion or repression of them be tolerated ...... We can also lie down as our deliberate policy that there shall be no unfair treatment of any minority”. Unlike our neighbouring countries, India did not give favoured status to the religion of the majority of its people, because the leaders feared that this would automatically reduce all others to the status of second-class citizens in their own country.

The Karachi Charter on Fundamental Rights of 1931 acknowledged the rights of the minorities to their religion, the freedom to profess and practise any religion, and laid down that the state should be neutral in religious matters. The members of the Constituent Assembly felt that the minorities’ rights to their religion should be recognised. The Sub-Committee on Minorities gave

\textsuperscript{78} Dr M. P. Raju; \textit{Minority Rights, Myth or reality, pg. 11, Media House Delhi, 2002}
many recommendations favouring them. The Advisory Committee on Fundamental Rights headed by Sardar Patel accepted most of the recommendations. In February 1948, the provisions were incorporated into the draft constitution under the title “Special Provisions Relating to Minorities”. But later changes were made in the matter of political rights. Tabling the report of the Advisory Committee in the constituent assembly on May 25, 1949 Sardar Patel said, “Our general approach to the whole problem of the minorities is that the State should be so run that they should stop feeling oppressed by the mere fact that they are minorities and that, on the contrary, they should feel that they have as honourable a part to play in the national life as any other section of the community”.

The idea of giving some special rights to the minorities is not to have a kind of a privileged or pampered Section of the population but to give to the minorities a sense of security and a feeling of confidence. The great leaders of India since time immemorial had preached the doctrine of tolerance and catholicity of outlook. Those noble ideas were enshrined in the Constitution. Special rights for minorities were designed not to create inequality. Their real effect was to bring about equality by ensuring the preservation of the minority institutions and by guaranteeing to the minorities autonomy in the matter of the administration of these institutions. The differential treatment for the minorities by giving them special rights is intended to bring about an equilibrium, so that the ideal of equality may not be reduced to a mere abstract idea but should become a living reality and result in true, genuine equality, an equality not merely in theory but also in fact. The majority in a system of adult franchise hardly needs any protection. It can look after itself and protect its interests. Any measure wanted by the majority can without much difficulty be brought on the statute book because the majority can get that done by giving such a mandate to the elected representatives. It is only the minorities who need protection, and Article 30, besides some other Articles, is intended to afford and guarantee that protection.
India is the second most populous country of the world. The people inhabiting this vast land profess different religions and speak different languages. Despite the diversity of religion and language, there runs through the fabric of the nation the golden thread of a basic innate unity. It is a mosaic of different religions languages and cultures. Each of them has made a mark on the Indian polity and India today represents a synthesis of them all. The closing years of the British rule were marked by communal riots and dissensions. There was also a feeling of distrust and the demand was made by a Section of the Muslims for a separate homeland. This ultimately resulted in the partition of the country. Those who led the fight for independence in India always laid great stress on communal amity and accord. They wanted the establishment of a secular State wherein people belonging to the different religions should all have a feeling of equality and non-discrimination. Demand had also been made before the partition by sections of people belonging to the minorities for reservation of seats and separate electorates. In order to bring about integration and fusion of the different Sections of the population, the framers of the Constitution did away with separate electorates and introduced the system of joint electorates, so that every candidate in an election should have to look for support of all Sections of the citizens. Special safeguards were guaranteed for the minorities and they were made a part of the fundamental rights with a view to instill a sense of confidence and security in the minorities. Those provisions were a kind of a Charter of rights for the minorities so that none might have the feeling that any Section of the population consisted of first-class citizens and the others of second-class citizens. The result was that minorities gave up their claims for reservation of seats.

Sardar Patel, who was the Chairman of the Advisory Committee dealing with the question of minorities, said in the course of his speech delivered on February 27, 1947:
This Committee forms one of the most vital parts of the Constituent Assembly and one of the most difficult tasks that has to be done by us is the work of this committee. Often you must have heard in various debates in British Parliament that have been held on this question recently and before when it has been claimed on behalf of the British Government that they have a special responsibility--a special obligation--for protection of the interests of the minorities. They claim to have more special interest than we have. It is for us to prove that it is a bogus claim, a false claim, and that nobody can be more interested than us in India in the protection of our minorities. Our mission is to satisfy every interest and safeguard the interests of all the minorities to their satisfaction.”

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

2.11 Opinion of Judges on Minority Rights

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

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79 Constituent Assembly Debates, Vol II:
In the Kerala Education Bill\textsuperscript{81}, Reference Case (1959) Chief Justice S. R. Das observed, “So long as the constitution stands as it is and is not altered, it is, we conceive it, the duty of this court to uphold the Fundamental Rights and thereby honour our sacred obligations to the minority communities who are of our own”. Justice Das has made it very clear that these rights are to be treated as “Sacred obligations to the minorities”. Again he has made the following observations on Article 30 (1), “The minorities quite understandably regard it as essential that the education of their children should be in accordance with the teachings of their religion and their hope. Quite honestly such education cannot be obtained in ordinary schools designed for all the members of the public, but can only be secured in schools conducted under the influence and guidance of people well-versed in the tenets of their religion and in the traditions of their culture. The minorities evidently desire that education should be imparted to their children of their community in an atmosphere congenial to the growth of their culture. Our constitution makers recognized the validity of their claims and to allay their fears conferred on them the fundamental rights referred to above”.

In the famous case of Ahmedbad St. Xavier’s College Vs State of Gujarat\textsuperscript{82} (1974) Jus. H. R. Khanna categorically stated that, “the provisions of the minority rights were a kind of Charter of Rights for the minorities so that none might have the feeling that any section of the population consisted of first-class citizens and the others of second-class citizens”.

In the same case Justice K. K. Mathew and Justice Y. V. Chandachud have noted as follows, “The parental right in education is the very pivotal point of a democratic system. It is the touchstone of difference between democratic education and monolithic system of cultural totalitarianism. When the modern State with its immense power embarks upon the mission of education its

\textsuperscript{81} AIR 1954 SC 561
children, the whole tendency is towards state monopoly. The fundamental right of the religious and linguistic minorities to establish and administer educational institutions of their choice is the only legal barrier to confine the bursting expansionism of the new Educational Leviathan. Great diversity of opinion exists among the people of this country concerning the best way to train children for their place in society. Because of these differences and because of reluctance to permit a singly iron cast system of education to be imposed upon a national, compounded of several strains, the Constitution has provided this right to religious and linguistic minorities”.

In the T. M.A. Pai’s case\textsuperscript{83} the 11 Judge Constitution Bench headed by Justice B. N. Kripal ruled that minorities have an unfettered right to establish an educational institution of their choice but added that the State could bring regulatory measures, for ensuring educational standards and maintaining excellence thereof. At the same time the Bench has given complete power to the management in the case of unaided educational institutions.

Judges, in the various judgments have not only recognised the rights of minority but have time and again upheld their constitutional validity.

\textbf{2.12 Concept of Minority for the research purpose:}

Since minority is defined nowhere in the Constitution of India that guarantees minority rights it has become very important to decide as to who would constitute minority for research purpose. Article 30 safeguards rights of two kinds of minorities namely religious and linguistic.

As for religious minorities, Muslims, Christians, Sikhs, Buddhists, and Parsis referred to in the National Commission of Minority Act, 1992 in Section 2 (C) will be considered as minorities.

Linguistic minority for the research will be according to the 38\textsuperscript{th} report of National Commission of linguistic Minority, which states, “In each state there is

\textsuperscript{83} (2002) 8 SCC481
a language which is spoken by the majority of the residents of that state. All others who do not speak that language belong to linguistic minority.” ‘Linguistic minority’ for the purpose of Article 30(1) is one which must have separate spoken language and that language need not have a distinct script.