CHAPTER – I
Chapter - 1

RIGHTS OF MINORITIES AND THE CONSTITUENT ASSEMBLY OF INDIA

Under the exigencies of Second World War, when the British government started moving towards the settlement of India’s independence, the process for the creation of constitution making body gained momentum. After a series of measures taken in this direction by the British government, there came finally the Cabinet Mission Plan in 1946 which suggested for setting up of Constituent Assembly and proposed for this Constituent Assembly to set up an Advisory Committee on the rights of citizens, minorities and tribal and excluded areas. The Cabinet Mission made it clear that the secession of sovereignty to the Indian people on the basis of a constitution framed by Constituent Assembly would be conditional on adequate provisions being made for the protections of Minorities.

Question of Safeguarding Minorities: Views of the Congress

According to the terms of the Cabinet Mission’s statement of May 16, 1946 the election to the Constituent Assembly was held in the summer of 1946 and the Assembly was finally convened on December 9 the same year. Almost throughout the period for which Assembly met, the question of safeguards of minorities remained an important and controversial issue and continued to engage the attention of the members till the Assembly had completed the draft of the entire constitution in November 1949.

So far as the minority question was concerned, the convening of the Assembly had brought the Congress in a very delicate position. It had to secure the consensus of minorities
while still satisfying the majority. Throughout the period during which the Congress party had struggled for recognition of rights and protection of interests, it had kept before it the ideal of Indian national unity as a basic premise. Therefore, in securing the agreement of minorities if it conceded too much in favour of protection of minority interests, it would serve to perpetuate the consciousness of separate identities among the minorities. But if it conceded too little it would expose itself to the change of having little or no concern for minorities’ interests. For several decades in the past it had been a potential weapon in the hands of the Muslim League. They advocated that minority interests were not safe in the hands of ‘brute’ Hindu majority and the British ruler had never forgotten to assert that they had a special obligation to protect the minorities. The Congress too had consistently declared in the past that it was its primary duty as well as its fundamental policy to protect the religious, linguistic, cultural and other rights of minorities so as to assure for them in any scheme of government to which congress would be a party. The widest scope for their development and their full participation in the political economic and cultural life of the nation would be ensured. Congress was thus put on trial and had necessity to demonstrate its good intentions.

The Congress utilized the very first opportunity in the Assembly to express its intentions when the Objectives Resolution was moved by Jawahar Lal Nehru on December 13, 1946 for the proposed constitution, two of its clauses declared.

i. Wherein shall be guaranteed and secured to all people of India justice - social, economic and political; equality of status of opportunity and before the law; freedom of thought, expression, belief, faith, worship, vocation, association and action subject to law and public morality; and
Wherein adequate safeguards shall be provided for minorities, backward and tribal areas and depressed and other backward classes.

As Nehru himself stated, the resolution was in the nature of a pledge, a statement of policy, an expression of the underlying policy of the proposed constitution. Indeed the resolution was a solemn expression of the spirit that had pervaded the whole freedom movement. The same spirit was evident in the resolution for setting up of an Advisory Committee on Fundamental Rights & Minorities. Moving the resolution in the Assembly on January 29, 1947, Pandit G.B Pant put particular emphasis on the importance of questions of Minorities.

A satisfactory solution of the question pertaining to minorities will ensure the health, vitality and strength of free state of India. So far the minorities have been incited and have been influenced in a manner which has hampered the growth of cohesion and unity. But now it is necessary that a new chapter should be started and we should all realize our responsibility. Unless the minorities are fully satisfied, we cannot make progress; we cannot even make peace in an undisturbed manner.

While constituting the Advisory Committee, which was to be the principal instrument for securing the just consideration of the minorities problem in terms of Cabinet Mission statement of May 16, 1946, the Congress party took care to ensure that the communities and major classes have proper representation. There was no representative of the Muslim League on the committee as the League had from the very beginning boycotted the Assembly.

The Advisory Committee met on February 27, 1947 under the chairmanship of Sardar Patel and divided itself into four sub-committees two of them being Sub Committees on Minorities and Sub-Committees on Fundamental Rights. It was in these two
sub committees that the problems of safeguard for minorities was gradually settled.

**Sub – Committee on Minorities**

The Sub – Committee on Minorities was appointed on 27 February, 1947 along with Fundamental Rights Sub-Committee. The Sub Committee on Minorities under the chairmanship of H.C. Mookherjee, a Christian leader from West Bengal met the same day it was created i.e. on February 27, 1947. It held a total of three sittings. At its first sitting on Feb 27 and 28, 1947 after the election of H.C Mookherjee as Chairman, it discussed general scope of work and procedure. In order to ascertain the views of its members, the Sub Committee also adopted a questionnaire prepared by K.M. Munshi.

At its second sitting on April 17-19, 1947, the Sub Committee discussed report of the Sub Committee on Fundamental Rights and considered how far its recommendation required amendment or amplification for the specific purpose of protecting minority rights. At its third sitting on July 21-27, the major points arising out of replies to the questionnaire and the notice and memoranda received from members and others were considered.

The questionnaire which was adopted and circulated to members to get their views was in the following terms.

1. What should be the nature and scope of the safeguards for a minority in the new constitution?

2. What should be the political safeguards for a minority
   (a) In the Centre;
   (b) In the Provinces?

3. What should be the economic safeguards for a minority
   (a) In the Centre;
In the Provinces

4. What should be the religious, educational and cultural safeguards for a minority?

5. What machinery should be set up to ensure that the safeguards are effective?

6. How is it proposed that the safeguards should be eliminated in what time and under what circumstances?

Besides replies to this questionnaire from members the Sub-Committee received memoranda and notes from certain minorities organization. Memoranda were submitted on behalf of the Scheduled Castes, Scheduled Tribes, Sikhs and Anglo Indians demanding constitutional safeguards. No specific communal safeguards were asked for on behalf of Indian Christians and Parsees. Also, no memoranda was presented on behalf of the Muslim League as it was still not participating in the proceedings of the Assembly.

In this respect the most detailed note came from Dr. B.R. Ambedkar who submitted it on behalf of the Scheduled Castes. As a leader of the Scheduled Castes, he was primarily concerned with the political and social safeguards for the Scheduled Castes, and with ensuring that the new constitution provided adequately for their uplift. By way of political safeguards, he suggested the establishment of non-parliamentary irremovable executives both in the Union and in the units. He proposed that the Scheduled Castes should have a minimum representation according to their population ratio in the legislatures, ministries, in municipalities and local boards. These representatives were to be elected through separate communal electorates. In the ministries of the Union and of the units the representatives of the Scheduled Castes and other minorities were to be elected by the members of the legislature belonging to each minority community by the method of proportional representation by means of the single
transferable vote. Ambedkar suggested further that the Scheduled Castes should have a minimum share of the posts in the various public services in proportion to their population and that this reservation should be made all along the line – in the Union services, the services of the units and in the services of municipalities, local boards and other local authorities. On every public service commission and other selection committees the Scheduled Castes were to have at least one representative.\textsuperscript{15}

On the social side, Ambedkar was specially concerned with what he called social boycott, which he described as a "Sword of Damocles". Only the untouchables knew what a terrible weapon this could be. He therefore suggested stringent punishment for social boycott and for promoting, instigating or threatening social boycott.\textsuperscript{16}

Ambedkar’s suggestions for the amelioration of the conditions of the Scheduled Castes included generous provision of funds in the budgets of the governments of the Union and of the units for higher education, secondary and college education, and for education abroad of members of this community; the settlement of Scheduled Castes in separate villages; and the setting up of a settlement commission for this purpose. Finally, to watch over the progress of these measures, he wanted an office of superintendent of Minority Affairs to be created with the same status as the Auditor – General, whose duty would be to prepare an annual report on the treatment of minorities by the public as well as by the governments of the Union and the states; and on any transgressions of safeguards or miscarriage of justice arising out of communal bias by the governments and their officers. These reports were to be placed before the Union and the state legislatures and to be discussed by them\textsuperscript{17}.

Jagjivan Ram, a prominent leader of the Scheduled Castes (who was a Minister in the Central government), emphasized that the guarantees should be directed to the protection of racial and
religious minorities (for example, Christians and aboriginals) from “extinction” and the assimilation of minorities like the Scheduled Castes in the parent body by bringing them to a level equal with that of others in the community. Many of the safeguards could in his view be provided in the form of fundamental rights. The specific safeguards which he suggested for the Scheduled Castes were reservation of seats in proportion to their population in the legislatures and in the central and state cabinets; and reservation of posts in services of all categories, civil and military, and in the judiciary. He also urged special ameliorative measures; a housing Board to allot suitable plots and provide healthy houses; free education at all stages in all educational institutions; and generous stipends for higher and specialized education, both in India and abroad. Like Ambedkar, Jagjivan Ram also pleaded for the establishment of an independent minorities commission to deal with the welfare of minorities and to examine all cases of infringement of their rights, privileges and facilities. He suggested that the guarantee of religious and cultural freedom to racial and religious minorities should be a permanent feature of the constitution; but the special provisions regarding Scheduled Castes could be eliminated when untouchability itself was totally eliminated; when all Hindu temples were open to all the castes in Hindu society; when water or the food of one caste was not considered “polluted” by the touch of any other caste; and Hindus of all castes could participate in all religious and social functions. Any resolution for the abolition of any of the safeguards for Scheduled Castes would require in its favour a two-thirds majority of all the members of the Scheduled Castes in all assemblies of the units and a similar two-thirds majority in Union Legislature.¹⁸

Other suggestions for safeguards for Scheduled Castes were contained in a memorandum sent by the All-India Adi Hindu Depressed Classes Association and in the reply of H.J. Khandekar, a member of the Minorities Sub-Committee. The
Depressed Classes Association formulated a long list of measures for the uplift of the Scheduled Castes; in particular it claimed reservation of seats in the various Legislatures in proportion to their population and asked that either elections to these reserved seats should be through separate electorates, or, if the principle of joint electorates was adopted, every candidate should, before he was declared elected, secure at least 40 per cent of the votes polled by members of the Scheduled Castes. Khandekar also gave a long list of general and specific suggestions, mainly on the lines of the proposals made by Jagjivan Ram; his main claim was that Scheduled Castes being in terms of population equal to Muslims, the reservation of seats in the Legislatures, Ministries, judiciary and the public services should not be less favourable than the representation given to Muslims. The safeguards provided that all concessions and privileges given to minority communities should be effective for a period of thirty years, after which the communities should be consulted as regards their modification.  

At this stage, the Muslims League was not participating in the proceedings of the Assembly; and no memorandum on behalf of the Muslim community was presented.

Ujjal Singh and Harnam Singh, two members of the Minorities Sub-Committee, presented a detailed memorandum setting out the safeguards to be provided for the Sikhs. The primary point made in this memorandum was that the Punjab must remain the "homeland and holy land of the Sikhs" in spite of the communal disturbances which were at that time taking place in that province. The suggestion was also made that the Punjab should be divided into two separate autonomous units; or if this was not possible under the Cabinet Mission’s proposal of May, 1946, then that it should be divided into two sub-provinces – North-West and South-East Punjab each with its own legislature and cabinet. Affairs of joint concern were to be dealt with by a
joint legislature comprising an equal number of members elected by each sub-provincial legislature. The Sikhs were to be given weightage in this joint legislature on the same lines as would be adopted for Muslims in the Central Legislature; likewise a 25 per cent representation was to be given to Sikhs in the joint Cabinet. The Cabinets were to be chosen on the Swiss model, Legislatures and cabinet having the same fixed term of office. The memorandum mentioned the North-West Frontier Province, Baluchistan and the United Provinces as the other Provinces in which Sikhs were interested; and it suggested the appointment of a Sikh member in the cabinets of the first two and a Minister for smaller minorities in the United Provinces. The reservation of posts in the services 25 per cent in the Punjab and 10 per cent in the United Provinces – was another proposal. The memorandum asked among other things for economic and social safeguards, a guarantee of religious rights –including the right to wear *kirpans* and prepare and use *jhatka* meat. The memorandum also sought a guarantee of the right to employ the Punjabi language for the conduct of legislative and administrative business in the Punjab.  

One of the demands outlined in the memorandum was that three backward classes among the Sikhs known as *Mazhabis*, *Ramdasias* and *kabirpanthis* – should be provided with the same special educational facilities and reservations in the public service that were provided for Scheduled Castes and aboriginal tribes. There were other proposals for political safeguards for Sikhs at the Centre. Mainly, these were that 6 per cent of the seats in the central Legislature should be reserved for Sikhs; and Sikh should always be member of the Central Cabinet; that 5 per cent of posts in the Central Services should be reserved for Sikhs; and that in the defense services the proportion of Sikhs should not be lower than what they already enjoyed.  

Memoranda were also submitted on behalf of the smaller minorities. Two were submitted on behalf of the Anglo-Indians,
one by Frank Anthony and one by S.H. Prater. The needs of this small community, which had adopted western ways and standards of living, were three-fold. First they wanted a guarantee as a fundamental right of facilities to receive educational grants secured, they wanted the liberal educational grants secured for Anglo-Indian and European Schools by the government of India Act, 1935, to be not only continued, but increased in relation to their requirements. Thirdly, special provision should be made in the constitution for securing for them a preferential claim to a percentage of appointments in the Railways, in the customs and in the public services, particularly in these departments, for their existence, and any sudden upsets would seriously prejudice the community's economy.

Regarding political safeguards, Frank Anthony suggested that Anglo-Indians should be given increased representation in the Central Legislature. They were already represented in the Legislature Assemblies of Madras, Bombay, Bengal and the United Provinces; he suggested an extension of such representation to Sind, Assam and Orissa. Prater asked for representation in all Provincial Legislatures. Both of them wanted an Anglo-Indian to be included in the Central Cabinet.

R.N. Brahma, a member from Assam, wanted safe-guards for those tribal people in Assam who had left the tribal regions and had settled down in the plains. These persons spoke their own dialects and the majority of them followed their tribal form of religion and worship; and, according to him, they could be grouped together and given representation in the central and provincial legislatures on the population basis, and a due share of posts in the public services. It was also suggested that three seats in the Assam cabinet should be reserved for them. These tribals were backward people in relation to the rest of the population and he wanted special provision for their educational and cultural development and a special machinery set up in the
form of a board or a committee to advise and look after the education of these tribal people. Another proposal was that special statutory provision should be made to protect them from exploitation and particularly the prevention of alienation of their lands; and reservation of sufficient land for the considerable proportion of landless tribal people in the plains districts of Assam.²³

No specific communal demands were put forward on behalf of Indian Christians. Homy Mody, on behalf of the Parsees, said that his community had never asked for any special privileges, but their position was that if other minorities were accorded special representation anywhere, the Parsees should also receive treatment at least equal to that given to one of the smaller minorities. His view, however, was that there could not be such a thing as a political safeguard of any value for a minority; what the minorities wanted was political opportunity and such opportunity have to be given by way of minimum representation in the legislatures and the executive.²⁴

Rajkumari Amrit Kaur was against safeguards of any kind. She said; “privileges and safeguards really weaken those that demand them.... Axiomatically there is no reason why the interests of any individual or community should not be safe in the hands of a good person or persons, irrespective of their personal religion”.

In view of the tense communal atmosphere prevailing in India, however, she felt that some steps were necessary to inspire confidence in the minorities; the two concrete suggestions she made were the setting up of a special tribunal to decide what a communal issue was; and when a communal issue arose, a board (in which no community would have more than one vote) could vote by a majority any measure which it felt was not for the public good.²⁵
Syama Prasad Mookerjee and Jairamdas Daulataram in their memoranda detailed the fundamental rights which they thought would be necessary for the protection of minority rights. The former suggested the setting up in each Province of a Minorities Commission, consisting of the representatives of minorities, to advise on the protection of minorities interests. Jairamdas Daulatram favoured the setting up of a minority protection court, nominated by the Chief Justice of the Supreme Court, to adjudicate on complaints by minorities of unfair treatment. Mookerjee suggested reservation of seats in legislatures for important minorities; and both of them sought the inclusion of representatives of minority communities in the various Ministries.

K.T. Shah focused attention on the growth of religious minorities in India. The continuance of separate electrorates had led to the evolution of political parties on religious lines rather than on economic or political ideals. The rights of communities based on religion or race would have to be defined with some care and precision, so as not only to meet all the just demands for safeguarding their religion and culture, but also to prevent any abuse of the rights guaranteed to minorities as against the rest of the community. The rights of minorities were not the obligations of the majority alone, but rather the guarantees of the entire community.

M. Ruthnaswamy argued that the tendency of a majority would be to make little of the rights and liberties of a minority. For national religious and cultural minorities (in which category be included Muslims, Sikhs, Indian Christians and Anglo-Indians), he thought that there should be a two-fold safeguard. They should be allowed to profess, preach and propagate their religion; and adequate provision should be made for the promotion of their religious and secular culture. This provision should include institutions maintained by these religious communities; special
grants for the promotion of education of backward minorities; and the provision by the State of schools for minority communities, where their religion and culture would be taught. He also advocated representation of such minorities in the central, provincial and state Ministries and all departments of the administration according to population. In order to ensure that they should be placed under the protection of the federal court; he thought that on account of the high prestige for impartiality enjoyed by courts of law in India, minorities like individuals would find in them the best defense of their rights and liberties, and in order that this federal justice might be easily available and accessible, he suggested the widespread establishment of local units of the federal court in every province, large state and in groups of small states.

It was against the background of these divergent views that the Minorities Sub-Committee met on April 17, 18 and 19, 1947, to consider this important matter. At these meetings the Sub-Committee considered the interim proposals of the Fundamental Rights Sub-Committee in so far as these had a bearing on minority rights. These discussions covered such important matters as the prohibition of discrimination on grounds of race, religion, caste etc.; the abolition of untouchability and the mandatory requirement that the enforcement of any disability arising out of untouchability should be made an offence punishable according to law; freedom of professing, practicing and propagating one's religion; the right to establish and maintain institutions for religious and charitable purpose; the right to be governed by one's personal law; the right to use one's mother-tongue and establish denominational, communal or language school, etc.

Having dealt with question of fundamental rights for minorities, the Minorities Sub-Committee met again on July 21, 1947, to consider the political safeguards for minorities and their
representation in the public services. By this time the question of partition had been decided and the Muslim league was also represented in the Sub Committee. The issues for the consideration of the Sub – Committees were formulated as follows:-

1. Representation in the legislatures; joint vs separate electorates and weightage;
2. Reservation of seats in the cabinets;
3. Reservation in public services
4. Administrative machinery to ensure protection of minority rights partly covered by making certain fundamental right justiciable.

Discussions on these issues continued till July 27. Unanimous decision could not be reached on many points, and in fact the voting on several items was very close. On some points the voting was equal and where voting was equal, the chairman of the Sub Committee did not consider it necessary to exercise his casting vote since in any case these matters were to be discussed by the Advisory Committee. The report of the Sub – Committee submitted on July 27 contained only a summary of the conclusions of the committee and also mentioned the result of the vote on each issue.  

The Sub Committee decided by a large majority against separate communal electorates for elections to the legislatures. It was understood that in arriving at this decision it was open to the Sub-Committee to express its preference for any one of several forms of joint electorates that could be devised. But the Sub-Committee chose not to make any such recommendation.

On the issue of reservation of seats for minorities in the legislatures the Sub-Committee decided, again by a large majority, and as a general principle, in favour of reservation of seats for the different recognized minorities in the various
legislatures; and such reservations would initially be for a period of ten years, the position to be reconsidered at the end of the period.\textsuperscript{33}

The Sub Committee then proceeded to consider what minorities and in which provinces were to be given the right of reserved seats. For this purpose, the "recognized" minorities were divided into three groups; Anglo-Indians, Parsees and the tribesmen living in the plains of Assam, these communities being minorities having less than $\frac{1}{2}$ per cent population in the Indian Dominion; Indian Christians and Sikhs, being minorities having a population of not more than $1 \frac{1}{2}$ percent; Muslims and Scheduled Castes, being minorities having a population exceeding $1 \frac{1}{2}$ percent.\textsuperscript{34}

The question of representation in the Central and Provincial Legislatures for Parsis and Anglo-Indians was deferred for later consideration by the Advisory Committee.\textsuperscript{34}

The representatives of the Indian Christians were prepared to accept reservations proportionate to their population in the central legislature and in the Provincial legislatures of Madras, Bombay, Assam and East Punjab, where the Indian Christians population was sufficiently numerous to give them separate seats.

In the other Provinces, they were content with seeking election for the general seats. They were opposed on principle to weightage being given to any community but if it was conceded to Sikhs, Muslims and the Scheduled Castes, the Indian Christians would also demand the same privilege. The Christians would also demand the same privilege. The Christian position was accepted by the Sub-Committee. The Sub Committee also decided not to give weightage to any of the minorities. So far as the Sikhs were concerned, consideration of safeguards was deferred in view of the uncertain position in East Punjab then prevailing owing to the mass displacement of population taking place.\textsuperscript{36}
The Sub-Committee decided to refer to the Advisory committee a proposal that a minority candidate standing for election for a reserved seat should poll a minimum number of votes of his own community before he was declared elected. It was, however, accepted that a member of a minority community which had reserved seats could also contest the unreserved seats.37

Ambedkar had an interesting suggestion to make. The candidates belonging to a majority community should, before being declared elected, poll a minimum number of votes from among the minority communities in their constituencies. This would have amounted to a minority exercising a sort of veto on the majority communities and not accepted.38

On the reservation of seats for minorities in the cabinets, voting was close. The Sub Committee accepted by eight votes to seven K.M. Munshi’s proposal that there should be no statutory provision but it supported the adoption of a convention on the lines of paragraph VII of the Instrument of instructions issued to the governors of provinces under the 1935 Act. This was to be provided in a schedule to the Constitution.39

On the reservation of places in the public services, it was agreed that there should be such reservation for the Scheduled Castes, Muslims, the plains tribesmen and the Anglo-Indians. The Indian Christians and the Parsees, however, did not want any reservation. The question of reservation in the services for posts for which competitive examinations were held was separately considered. Reservation was favoured for the Scheduled Castes but not for Muslims, Sikhs and the tribesmen. The Anglo-Indians did not want reservation in services of this category, nor the Parsees and Indian Christians, who sought no reservation in any services, whether by competition or otherwise. Voting took place on a resolution proposed by Ali Zaheer which provided that in making appointments the provincial and the central governments
should keep in view the claims of all minorities, consistently with
the consideration of efficiency of administration. There were nine
votes in favour, and nine against this proposal.40

The setting up of a competent and impartial administrative
machinery to ensure protection of minority right was a matter on
which great stress was laid; the Sub-Committee accepted
Ambedkar's proposal for an independent officer being appointed
by the President at the centre and by the governors in the
provinces, to report to the Union and provincial Legislatures
respectively on the working of the minorities' safeguards. The
Committee also accepted K.M. Munshi's proposal that there
should be provision enabling the setting up a commission for a
periodic investigation into the conditions of socially and
educationally backward classes.41

Rajkumari Amrit Kaur was opposed both to reservation and
to weightage for any community. In her minute of dissent she held
that anything in the nature of privileges for any special class or
section of society was wrong in principle; and when it was given
on the ground of religion, it was doubly wrong, for all religions
stood for the brotherhood of man and not for separatism.
Moreover, such reservations and special privileges would militate
against the declared objective of the Indian union, which was to
establish a classless society. Special privileges and protection,
she feared, would lead to the fragmentation of the Indian
nation.42

On the other hand H. J. Khandekar, in his note of dissent
strongly emphasized the need for statutory provisions for the
reservation of seats in the central and provincial cabinets for the
Scheduled Castes. The condition of other minorities was different
from that of the Scheduled Castes who deserved special
treatment in this matter.43
Report of the Advisory Committee

When the report of the Sub-Committee came up for consideration before the Advisory Committee in July 1947, they endorsed almost all the conclusions reached by the Sub Committee except with regards to Anglo Indians for which it appointed a sub-committee to report on the position of the community in certain services and the existing educational facilities for them.44

The report of the Minorities Sub-Committee was discussed by the Advisory Committee for four days, from July 28 to 31. Khaliquzzaman, a prominent Muslim league leader, put forward the suggestion that the question of safeguards for minorities should be decided by a small committee of persons belonging to the majority community authorized by the Congress high command to take decisions. He thought that this would be a better procedure than discussion in a sub-committee. The proposal was however not accepted.

The general attitude of the Advisory Committee on the question of constitutional safeguards was set out as follows in its report:

We have felt bound to reject some of the proposals placed before us partly because as in the case of reservation of seats in cabinets, we felt that a rigid constitutional provision would have made parliamentary democracy unworkable and partly because, as in the case of the electoral arrangements, we considered it necessary to harmonize the special claims of minorities with the development of a healthy national life. We wish to make it clear, however, that our general approach to the whole problem of 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. In particular, we think it is a fundamental duty of the state to take
special steps to bring up those minorities which are backward to the level of the general community.45

The Committee totally rejected separate electorates of any kind, as having in the past sharpened communal differences and proved to be one of the main stumbling blocks to the development of a healthy national life. All elections to central and provincial legislatures were to be held on the basis of joint electorates. In order, however, that the minorities should not feel apprehensive about the system of unrestricted joint electorates or the quantum of their representation, the Advisory Committee recommended as a general rule that seats for different recognized minorities should be reserved in various legislatures on the basis of their population. No weightage was to be given to any community but members of a minority community would be entitled to contest unreserved seats in addition to the seats reserved for them. The Committee was also opposed to any kind of cumulative voting or to any requirement that a member of a minority community contesting a reserved seat should poll a minimum number of votes of his own community. In their view a combination of these two would have all the evil effects of separate electorates.46

Dealing with the quantum of representation to be given to individual minority communities, the Committee recommended that Muslims and Scheduled Castes should get reserved seats in proportion of their population; Indian Christians accepted reservation of seats in accordance with the population in the centre and in Madras and Bombay; the Parsees withdrew their claim for any kind of statutory reservation; so far as the Anglo-Indians community was concerned, after much discussion, the representatives of this community were persuaded to withdraw claims for any statutory reservation of seats in the legislatures, on the understanding that the President of the Union and the governors of Provinces would have the power to nominate their
representatives if they failed to secure any representation as a result of the general elections. The consideration of safeguards for the Sikh community was postponed; so was the case of tribesmen living in the plains of Assam, pending the report of Committee on Tribal areas, the Excluded and Partially Excluded Areas of Assam.\textsuperscript{47}

On the representation of minorities in cabinets, the Committee accepted the view of the Minorities Sub-committee that there should be no statutory provision for such reservation, but that a convention on the lines of the Instrument of instructions to the Governor-General under the Government of India Act, 1935, could be provided in a schedule to the constitution.

The Committee also decided against any specific provisions for reservation of appointments in the public services; and it was in favour of a general provision on the lines suggested by Ali Zaheer that in the all Indian and provincial services, the claims of minorities should be kept in view consistently with the efficiency of administration. When this matter was discussed in the Advisory Committee, Kahlizuzzaman wanted that reservation of appointments in the public services should be provided for all minorities on a population basis; and Ambedkar pressed the case of the Scheduled Castes for separate treatment and the reservation of post for them on a population basis. Neither of these proposals was accepted by the Committee\textsuperscript{48}.

The Committee decided however to consider the case of the Anglo-Indians for special treatment, because of the complete dependence of the economy of the community on its position in certain services. A sub-committee was appointed to consider this matter and it reported on August 22, 1947\textsuperscript{49}, that the whole economy of the Anglo-Indian community was dependent on their finding employment in certain types of posts in the Railways, the Posts and Telegraphs and the Customs Departments. A survey
made in Bombay had shown that 76 percent of the employable section of the community was dependent for livelihood on these appointments and in the opinion of the Sub Committee the position elsewhere was substantially similar. The special reservation given by the government of India Act 1935, extended only to certain categories of posts in these departments. If these safeguards were not continued for some years, the Anglo-Indian community would be subjected to a sudden economic strain which it might not be able to bear. The Sub-Committee recommended that the reservation of appointments enjoyed by the Anglo-Indians in these services should be continued for the time being but reduced gradually and cease to exist after ten years.50

The Sub-Committee also reported that special educational grants totaling four and a half million rupees were being made to about 500 Anglo Indian school in India. A sudden reduction in this grant would seriously dislocate the economy of these schools. It was therefore recommended that the special assistance given to these schools would be reduced gradually over a period of ten years; thereafter they would be treated in the same manner as other similar schools.51

The Advisory Committee accepted these recommendations and included them in a supplementary report which was submitted to the President of the Assembly on August 25, 1947.52

The Advisory Committee came to the conclusion that the best machinery for ensuring the implementation of the guarantees and safeguards provided for the minorities in the constitution was for the centre and each of the units to appoint a special minority officer charged with the duty of enquiring into allegations of infringement of safeguards and of reporting to Parliament or the appropriate legislature.53

The Committee also accepted the recommendations of the Minorities Sub-Committee in favour of a provision to set up a
statutory commission, the scope of whose inquiry would be much wider than the safeguards of the recognized minorities. The Advisory Committee thought that it was the primary duty of the state to take special steps to bring up those sections of minorities which were backward to the level of the general community. The commission proposed was to investigate into the conditions of all "socially and educationally backward classes", to study the difficulties under which they laboured and recommend the steps to eliminate these difficulties and the finances to be provided for the purpose.54

Political Representation of Minorities: Partial Success

The reports of the Advisory Committee on minority rights and on Anglo-Indians were considered by the Constituent Assembly on August 27 and 28. Introducing the report on the minority rights, Vallabhbhai Patel described the report as "the result of a general consensus of opinion between the minorities themselves and the majority".55

The Assembly adopted all the recommendations of the Committee without any modification. Discussion mainly centered round the issue of joint or separate electorates. B. Pocker, a Muslim Leaguer from South India, moved an amendment for continuing separate electorates for the Muslim community with the support of Khaliquzzaman, which was strongly opposed by Govind Vallabhbhai Pant terming the proposal as suicidal for the minorities themselves. He warned them.

If you have separate electorates for the minorities, the inevitable result is that the majority becomes isolated from the minorities, and being thus cut off from the minorities, it can ride roughshod upon them".56

Commenting on the attitude of the Muslim League Vallabhbhai Patel, the Chairman of the Advisory Committee, said:
When I agreed to reservation on the population basis, I thought that our friends of the Muslim League would see reasonableness of our attitude and accommodate themselves to the changed conditions after the separation of the country. But I now find them adopting the same methods which were adopted when separate electorates were first introduced in this country, and in spite of ample sweetness in the language used there is a full dose of poison in the method adopted.

The amendment for continuation of separate electorates was rejected by the Assembly. The Constituent Assembly was meeting at a time when the effect of the Radcliffe award on the population structure of the Provinces of East Punjab and West Bengal could not be accurately gauged, because of a large-scale migration of populations taking place across the frontiers of East Punjab and West Bengal. The Assembly accordingly decided to postpone consideration of minority rights in the political field to be provided in the constitution for the Sikhs and other minorities in East Punjab. The Assembly also agreed to the suggestion of the representative of West Bengal to Postpone consideration of the Proposal that members of minority communities in that province would have the right to contest general seats in addition to the seats reserved for them on their population strength.

The Scheduled Castes were always considered to be that section of the Hindu community which was subject to certain social disabilities like untouchability and K.M. Munshi moved an amendment which described the Scheduled Castes as a "section of the Hindu community". This was accepted (but subsequently modified as certain Sikh communities were also included as Scheduled Castes).

Another attempt was made during the discussion of the report to introduce the principle of separate communal voting. S. Nagappa on behalf of the Scheduled Castes moved an amendment that a candidate from that community should, before
being declared elected to a reserved seat, be required to poll 35 per cent of the votes polled by the community; and a similar amendment was moved in respect of all minorities by K.T.M. Ibrahim. Vallabhai Patel was severely critical of this suggestion; he saw in the amendment a further attempt at sowing the seeds of communal disruption and categorically refused to accept the amendment. The amendment was rejected by the Assembly.

These decisions of the Constituent Assembly were incorporated in the Draft Constitution prepared by the Constitutional Advisor. Meanwhile the North-East Frontier (Assam) Tribal and Excluded Areas Sub – Committee submitted its report on July 25, 1947, while the Excluded and Partially Excluded Areas (other than Assam) Sub-Committee submitted an interim report on August 18 and a second report on September 25. By their terms of reference these two Sub-Committees were required to draw up schemes of administration for the tribal areas as well as for the excluded and partially excluded areas. As they proceeded with their labours, the two Sub-Committees found that a considerable proportion of the tribal and aboriginal population lived outside these areas. Thus in Assam the total tribal population according to the census of 1941 was about 2 ½ million, but of these 64 per cent lived in the plains.

In the same way the Sub-Committee on excluded and partially excluded areas in provinces other than Assam also found a considerable proportion of the tribal population inhabiting regions outside these areas.

The problem of the tribal and excluded areas as such did not adequately cover the backwardness of the tribal people and the task of the two committees became somewhat complicated in consequence. The Assam Sub-Committee recommended that the areas where the tribes predominated should be divided into autonomous districts and regions and considerable administrative
and judicial powers given to local councils set up in these areas. But apart from the recommendations for the administration of these areas, the Committee had important suggestions to make regarding the uplift of the political life of the Province and the country. It suggested that the excluded areas in Assam (other than the frontier tracts) should be enfranchised on the basis of Adult suffrage. Joint electorates were recommended, but the constituencies were to be confined to the autonomous districts, and persons other than those belonging to the hill tribes were to be debarred from standing for election from these constituencies. Weightage was not considered necessary, but the hill districts could be represented in a proportion not less than what was due on the basis of population, even if this involved a certain weightage in rounding off. For the tribal population in the plains districts, the recommendation was that they should for all practical purpose be treated as a minority.\(^{65}\)

The Assam Sub-Committee also recommended that representation for the hills in the Ministry should be guaranteed by statutory provision if possible. The hill areas contained close on a million persons and the Sub-Committee thought that it would be wise for any Ministry to make a point of having at least one colleague from the hill areas. If specific provision in the constitution was not possible the Sub-committee suggested a suitable instruction be given in the instrument of instructions to the governor. The Sub-Committee observed that since the development of the hill areas was a matter requiring special attention, the governor should be in a position to appoint a special minister if necessary from among the hill people.\(^{66}\)

The Sub-Committee also emphasized the need for associating the hill people with the administration and suggested recruitment of a due proportion of hill people to the public services. Finally the Sub-Committee made special recommendations for the development of the hill areas. It
proposed that the deficit in the ordinary administration of these areas should be made good by the centre on the basis of the annual average deficit for the past three years; and in addition the cost of development schemes should also be met from the central exchequer.\textsuperscript{67}

The Sub-Committee charged with the duty of considering the excluded and partially excluded areas outside Assam had a different plan. It suggested the setting up of tribal Councils to advise on matters relating to the administration of these areas, which were to be called Scheduled Areas. But in addition the Committee proposed that the tribals are accorded special representation in the legislatures with reserved seats in proportion to their population in the same manner as the Scheduled Castes, through joint electorates. The Sub-Committee also suggested reservation of appointments in the public services.\textsuperscript{68}

Even more important perhaps were the two recommendations made by the Sub-Committee for securing continuous attention to the uplift of the aboriginal population, both in the scheduled areas and outside. In its view, the provision of roads, schools, medical facilities and other "dire needs" would involve a heavy outlay of funds and consequently assistance from the centre would be inevitable. The Sub-Committee therefore suggested that statutory provision should be made giving power to the central government to require the Provincial governments to draw up schemes for the welfare and development of backward areas and tribals; and that the centre should contribute the funds for the execution of such schemes. As a necessary corollary to this power, the Sub-Committee also recommended to the central government to institute at any time a special commission to enquire into the progress of plans of development and into the conditions of the scheduled areas and tribals in general.\textsuperscript{69}
At the time the reports of these two Sub Committees were received, the stage had already been reached of the constitution being drafted. Their recommendations were incorporated in the Draft Constitution first by the constitutional Advisor and thereafter by Drafting Committee.

The Draft Constitution prepared by the constitutional Advisor in October 1947 incorporated the decisions of the Constituent Assembly on the problem of minorities; it also included provisions to give effect to the recommendations of the two Sub-Committees on tribes – the sub-committee on tribal and excluded and partially excluded area in provinces other than Assam. Since these recommendations related to a variety of matters, they were not all placed together but formulated in various parts of the draft constitution.70

The Drafting Committee formulated the various provisions into ten articles and placed them in part XIV under the title “special provisions relating to minorities.”71 This part of the Draft constitution was based on the decision of the Constituent Assembly and the recommendations of the two Sub-Committees on tribal people. Article 292 reserved seats in the House of people for Muslims, Scheduled Castes, Scheduled Tribes and in the state of Madras and Bombay for Indian Christians. Article 294 made a similar provisions for these communities in the legislative assemblies of part I states. Article 293 authorised the President to nominate not more than two members of Anglo-Indian community to House of the People. Article 295 contained a similar provision in relation to state legislatures. Article 296 required that consistently with the maintenance of efficiency of administration, the claim of the minority community should be taken into consideration in the making of appointments to public services. Article 297 continued in force the reservation of posts for Anglo Indian in the Railways, Customs and Posts and Telegraph services on the same basis immediately before August
15, 1947. The reservation was to last for ten years. Article 298 made provision as to educational grants for these communities. This special concession was to last for ten years. Article 299 made provision for appointment of a special officer for minorities to look after the safeguards. Article 300 empowered the President to appoint a commission to report on the administration of scheduled areas and the welfare of the Scheduled Tribes. A similar provision was made under Article 301 for appointment of a commission to investigate the conditions of all socially and educationally backward classes.

As the position of East Punjab and West Bengal was uncertain on account of large scale shifting of population following partition, the Draft Constitution did not incorporate any provision with regard to these provinces. The question of Sikhs still remained to be settled. For consideration of these matters a meeting of the Advisory Committee was held on February 24 1948. The Committee appointed a Sub Committee for this purpose which favoured reservation of seats for Sikhs as for other minorities. The Sub Committee saw no reason why the arrangement approved by the Assembly for other provinces should not be applied in case of West Bengal also.72

A special Sub-Committee consisting of Sardar Vallabhai Patel (Chairman), Pandit Jawaharlal Nehru, Dr. Rajendra Prasad, K. M. Munshi and Dr. B. R. Ambedkar (Members) was appointed to report on the minority problems affecting East Punjab and West Bengal following partition of the country. The report of the Sub-Committee was considered by the Advisory committee on December 30, 1948 but the consideration of the report was postponed. At this meeting a suggestion of a very fundamental character was made. Some of the members of the Committee felt that conditions having vastly changed since Advisory Committee made recommendation in 1947, it was no longer appropriate in the context of free India and of present conditions that there
should be reservations of seats for Muslims, Christians, Sikhs or any other religious minorities. Although the abolition of separate electorates had removed much of the poison from the body politic, the reservation of seats for religious minorities, it was felt, "did lead to a certain degree of separatism and was to that extent contrary to the conception of secular democratic states". Dr. H. C. Mookherji, Mr. Tajammul Hussain, Shri Lakshmi Kanta Maitra and certain other members gave notice of resolution seeking to recommend to the Constituent Assembly that there should be no reservation of seats in the legislature for any community in India. They sought to submit a resolution seeking to do away with reservation for all minorities.

The Advisory Committee again met on May 11, 1949 and submitted its proposals to the Constituent Assembly. The Committee also placed before the Assembly the views expressed by some members at its meeting held on December 30, 1948 for abolition of all kinds of reservations. It observed that since it had made its recommendation on reservation of seats in 1947, the condition had changed and it was no longer appropriate in the context of free India to reserve seats for any religious minority. Although the abolition of a separate electorate was a right step and would remove much of the poison from the body politic, the reservation of seats if allowed would lead to a certain degree of separation between the various communities and to that extent was contrary the conception of secular democratic state. The Committee observed that the members of various minority communities were allowed adequate time for ascertaining the views of the people of their respective communities so that any decision on this issue was voluntary and was not an imposed decision. It reported that the resolution for abolition of reservation adopted in the meeting of Advisory Committee on Minorities held on May 11, 1949 was passed with an overwhelming majority. Explaining the decision to the Assembly
on May 25, 1949, Patel said that the vast majority of minority communities, including Muslims had themselves realized the evil of such reservation in the past, and consequently the voting for the abolition of communal reservation was almost unanimous and only one member had voted against the proposal 74.

The Advisory Committee therefore recommended that reservation for Muslims, Sikhs, Christians or any other religious community should be abolished and should be provided only to Scheduled Castes and Scheduled Tribes. The reason stated for retention of reservation in the legislature for these communities was that they were backward and therefore needed opportunity to actively participate in the political life of the country. The Committee also recommended for retention of the provision for nomination by the President and Governors of the members of Anglo-Indian community in view of the special position enjoyed by the community.

When these recommendations were placed before the Assembly, the majority of the speakers which included members of all communities – Muslims, Christians, Anglo-Indians, Scheduled Castes as well as Hindus offered full support to the proposal to abolish reservations on religious grounds. Jawaharlal Nehru was so much moved by the new changes that he described the proposal as a historic turn in our destiny 75.

Towards Preservation of Distinct Identity

By not accepting the demands for separate electorates and reservation of seats on religious consideration, the Constituent Assembly thus sought to do away with any protective principle which could further damage the cause of national unity. But it also sought to reassure the minorities that their special interests which they cherished as fundamental to their life were safe under the constitution. This assurance more particularly concerned with
cultural and educational interests of minorities which the Assembly sought to protect as justiceable rights.

A guarantee of protection of these interests first found a place in the drafts prepared by K. M. Munshi, as well as those prepared by K. T. Shah and Harnam Singh, all of which were submitted to the Sub Committee on Fundamental Rights. Since these drafts contained provisions which were intended to be incorporated as fundamental rights, but which related to the protection of minorities, the Sub Committee on Fundamental Rights in its meeting held on March 27, 1947 decided that a guarantee of this kind should more appropriately be dealt with the Sub-Committee on Minorities. This Sub-Committee prepared an interim report which dealt with the question of fundamental rights from the point of view of minorities and this report was submitted on April 1947, which recommended for the following:

i. All citizens are entitled to use their mother tongue and the script thereof, and to adopt study or use another language and script of their choice.

ii. Minorities in every unit shall be adequately protected in respect of their language and culture, and no government may enact any laws or regulations that may act oppressively or prejudicially in this respect.

iii. No minority whether of religious community or language shall be deprived of rights or discriminated against in regard to the admission into state educational institutions nor shall any religious instruction be compulsorily imposed on them.

iv. All minorities whether of religious community or language shall be free in any unit to establish and administer educational institutions of their choice and they shall be entitled to state aid in the same manner and measure as is given to similar state aided institutions.
v. Notwithstanding any custom, law, decree or usage, presumption in terms of dedication, no Hindu on ground of caste, birth or denomination shall be precluded from entering an educational institution dedicated or intended for the use of the Hindu community or any section thereof.

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

When this report came to be considered by the Advisory Committee in its meeting held on April 22, 1947, there were divergent views on various aspects of this report. Alladi Krishnaswami objected to the clause (i) seeking to protect mother tongue as unnecessary since mother tongue was a matter no body other wise also could interfere with. K.M. Munshi explaining the reason for incorporation of the guarantee with respect to one's mother tongue said that the clause was adopted from the minorities' rights in the polish treaty which was later incorporated in the Polish constitution. He said that attempts were made in Europe and other places to prevent the minorities from using and studying their own language. This right had therefore come to be regarded as a classical right of minorities.\(^7\)

In spite of Munshi insistence, the clause was deleted. Clause (ii) and (iii) were accepted with slight modification. There was much discussion on clause (IV) which provided for the right to establish and administer educational institutions and the right to state aid. One objection to the inclusion of this right which came from Raj Kumari Amrit Kaur and found support from Alladi Krishna Swami Ajyer was that such a right would perpetuate communal institutions and that the state should not give any aid to such institutions.\(^9\) However the objection could not persuade the Committee and the clause as slightly modified in its form was
adopted with a majority vote. Clause (v) and (vi) were deleted as redundant.

Another suggestion which, if accepted would have shaken the very foundations on which minority rights had been demanded and were to be conceded was G.B pant’s suggestion who argued that the rights recommended by the Sub-Committee could more appropriately be incorporated in the constitutions as directive principles which would be kept in view by the legislature but would not be enforceable in a court of law. While Munshi opposed if they were made non justiceable, Sardar Ujjal Singh and Ruthna Swami opposed the proposal on the ground that a change of these rights from the status of fundamental rights to the status of moral precepts would not be acceptable to minorities. The Advisory Committee ultimately came to recommend the following.\(^8\)

i. 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.

ii. No minority whether based on religion, community or language shall be discriminated against in regard to admission into state educational institutions nor shall any religious instruction be compulsorily imposed on them.

iii. (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.
When these recommendations came up before the Constituent Assembly on May 1, 1947 for their acceptance, a suggestion came from Mahavir Tayagi that the consideration of the whole problem of minority rights should be postponed till it was known whether the country to be partitioned and if so what treatment was to be meted out to minorities in Pakistan or in any other part of India which might organize themselves separately. But this argument could not find any support from the Assembly. Strongly opposing the idea, Ambedkar said that the rights of minorities in India were not relative. They were absolute and not subject to any consideration as to what Pakistan or any other party might like to do to minorities within its own jurisdiction. However on the suggestion of Munshi and Ambedkar, sub-clause (2) was referred back to the Advisory Committee for clarifying its scope in respect of state aided institutions. The Assembly adopted the rest of the clause without any modification. The Advisory Committee deleted the words “nor shall any religious instruction be compulsorily imposed on them” for the reason that this had already been incorporated in clause 16. Several members wanted amendments when sub clause 9(2) came up before the Assembly on August 30, 1947 in its redrafted shape.

When the whole clause came to be considered by the Drafting Committee in its meeting held on November 1, 1947 it made certain modification of a fundamental nature. As it appeared in article 23 of the draft constitution the text read as following.

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

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

3. (a) All minorities whether based on religion community or language shall have the right to establish and administer educational institution of their choice.

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

Thus the Drafting Committee sought to make a distinction between the right of any section of the citizen to conserve its language, script or culture and the right of a minority based on religion or language to establish and administer educational institutions of its choice for the Committee replaced the word ‘minority’ by the words any section in the earlier part of the Draft article 23, while it retained the word ‘minority’ in the latter part.

In response to the heated and prolonged controversy which the change had sparked off in the Assembly, Ambedkar sought to explain the reason for substituting “any section” for “minority”

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 purpose 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, but which are none the less minorities in the cultural and linguistic sense. For instance for the purpose of this article 23, if a certain member of people from Madras came and settled in Bombay for certain purpose they would be, although not a minority in the technical sense, cultural minority. Similarly if a certain number of Maharashtrians went from Maharashtra and settled in Bengal, although they may not be minorities in the technical sense, they would be cultural and linguistic minorities in Bengal. The article intends to give protection in the matter of culture, language and
script not only to a minority technically but also minority in the wider sense of the term as I have explained just now. This is the reason why we dropped the word “minority” because we felt that the word might be interpreted in the narrow sense of the term when the intention of this House... was to use the word “minority in much wider sense, so as to give cultural protection to those who were technically not minorities but minorities none the less.\(^4\)

The above explanation thus seems to be an attempt to broaden the scope of the earlier part of the draft article 23 (corresponding to the present article 30) to remain confined to those minorities which he described as minorities in the technical sense – politically recognized minorities.

In the draft article, two more amendments of substantial nature were incorporated. By amendment, the words “language script and culture” were replaced by the words “language”, script or culture” in clause (1). The amendment was suggested by Drafting Committee itself. The reason for the necessity of such amendment was explained by B.N. Rao who pointed out in his note that there were sections of people with a separate language and script but who had no separate culture and other who had separate culture but no separate language or script. To these he pointed out, clause (1) as originally framed would not afford any protection. He exemplified by saying that Muslims in West Bengal did not differ from the Hindus there in respect of their language and script but had a distinct culture of their own and the Andhra and Orissa had a language and script of their own but not a culture different from ‘majority of the inhabitants.\(^5\) The other amendment suggested by Mrs. Purnima Banerji, Diwakar and Krishnamoorthy Rao sought to prohibit discrimination against any minority in the matter of admission by state aided institutions (as well as state owned institutions).\(^6\)

When the draft article 23 came up for consideration before the Constituent Assembly on December 7 and 8, 1947, a number
of amendment were moved and the Assembly witnessed a long debate on the question of sufficiency or adequacy or the scope of the rights. These were mostly with regard to assurance to minorities with distinct language and script that they be entitled to primary education through their mother tongue. But these amendments failed to materialize in the face of opposition from many quarters. Govind Ballabh Pant emphasized that primary education was important and should be made universal. But as it involved heavy expenditure and that as the state had limited resources what was desirable that as a first step attempt should be made to extended primary education to the large number of illiterate in the country. He emphasized that if every school was to have two or three sets of teacher to teach different languages, the country would not be able to introduce universal primary education or compulsory primary education. Santhanam also expressed similar views and emphasized that practical difficulties were involved in accepting the right to primary education in the mother tongue as a justiceable right. He pointed out that Z. H. Lari's amendment which represented the demand of the Muslim community to educate its children in and through the Urdu language, could not be practically implemented as it involved immediate establishment or primary education in the mother tongue for every section of citizens. Ambedkar also while accepting the importance of education in the mother tongue shared the general view that such a right could not be made a fundamental rights enforceable through a court of law.

After a prolonged debate, when the amendments were put to vote, only the amendment moved by Ambedkar himself and the two amendments moved by Thakurdas Bhargava and accepted by Ambedkar were adopted. All others including those of Lari were rejected and the Draft article 23 as amended was accepted.

The Draft Committee, subsequently at the remission stage, divided article 23 into two separate articles – Article 29 and 30.
29 (1) any section of 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 the state funds on grounds only of religion, race, caste, language or any of them.

30 (1) All minorities whether based on religion or language shall have the right to establish and administer educational institution of their choice.

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

Thus except for a few concession which the Assembly admitted for the Anglo-Indian community, no other religious minorities could secure any political rights. The concession to Anglo Indians as finally incorporated in the constitution comprised of provisions authorizing the President to nominate not more than two members of Anglo Indian community to the House of people if in his opinion that community happened to be inadequately represented – a similar provision for nomination in the state legislative assemblies. We thus see that Constituent Assembly did not concede any political rights to any other minorities. What it ultimately conceded turned out to be certain rights relating to education, language and culture and came to be incorporated as Article 29 and 30.

Conclusion

As is evident from the discussion of this chapter that during the Constituent Assembly sessions starting with ‘Objectives Resolution’ moved by Nehru on 13 December 1946, minority
rights underwent a big transformation. The Objectives Resolution pledged to provide in the constitution adequate safeguards for minorities and other backward classes. These concerns remained under consideration right up to 1949 when draft constitution was taking final shape.

The Advisory Committee of the Constituent Assembly on fundamental rights and minorities headed by Sardar Patel with the help of its Sub Committee headed by rather pliant Christian member H.C Mukherjee addressed itself to two sets of minority rights, each having two sub categories. One set related to political and economic rights, the other to religious educational and cultural rights.

The Sub Committee addressed itself to the following issues with regard to protection of political and economic rights of minorities and provision of machinery of implementation; representation in legislature, joint versus separate electorates and weightage; reservation of seats in cabinets; reservation in services and an administrative machinery to ensure protection of minority rights. The Sub Committee in its recommendation made in its report of 27 July 1947 included; reservation of seats for recognized minorities under any one of the several methods of joint electorate that could be devised; no statuary provision for reservation of seats for minorities in cabinets yet providing for such representation through a convention under a schedule of constitution; reservation in public sector for recognized minorities and the appointment of independent officers by the President at the centre and by the Governors in the provinces to report to the legislators about the working of the safeguards.

The Advisory Committee accepted most of the recommendations and adopted its report on minority rights on 8th August 1947. The Constituent Assembly adopted on 27 & 28 August 1947 the entire report of the Advisory Committee providing for reservation of seats for minorities on the basis of
their population on the joint electorate in all central and provisional legislatures. In February 1948 the above recommendations were duly written into the Draft constitution in part XIV under the title 'special provision related to minorities'. But the decision of partition and the great upheaval that was brought with it had the ultimate effect on the whole complexion of minority problems and interests. The partition and its aftermath, the fragmentation of the Muslim and Sikh political force and the pressure of 'changed circumstances' made the Constituent Assembly act as a benevolent despot rather than to work as an arbiter of demands. The Assembly failed in its cherished objectives, which it adopted at its inception and pursued until partition to bring about constitutional arrangement on the question of minorities to the satisfaction of all concerned groups. The compulsion of forging a homogenized, pure, undiluted nationhood on the part of Congress leaders and the circumstances in which the partition was affected cast their shadow on the whole process of constitutional protection of minorities robbing it of much of its original vital contents.

Endnotes


9. B. Shiva Rao, n.1, p. 747

10. The remaining two sub – committees were on tribal and excluded areas.


14. Ibid, pp.7-8

15. B. Shiva Rao, n.i, pp. 748 – 49

16. Ibid, p. 49

17. Ibid

18. Ibid, pp.749-50
19. Ibid, p.750
20. Ibid, pp.750-51
21. Ibid, p. 751
22. Ibid, p.752
23. Ibid
24. Ibid
25. Ibid, p.753
27. Ibid
28. Ibid, p.754
29. Ibid
32. B. Shiva Rao, n.1, p. 755
33. Ibid
34. Ibid
35. Ibid
36. Ibid
37. Ibid
38. Ibid, pp.755-56
39. Ibid, p.756
40. Ibid
41. Ibid
42. Ibid, p. 759
43. Ibid
44. Anwarul Yaqin, n.13, p.10
45. Report, August 8, 1947, Select Documents, II 12 (i) pp.416-17
46. B. Shiva Rao, n.1, pp. 757-58
47. Ibid, p. 758
48. Ibid
49. Select Documents ,Vol. II 12 (ii) pp. 419 – 21
50. B. Shiva Rao, n.1, pp. 758-59
51. Ibid, p.759
52. Select Documents, Vol. II 12 (iii) pp. 421-22
53. B. Shiva Rao, n.1, p. 759
54. Ibid
56. Constituent Assembly Debates, Vol. V p. 244
57. Ibid, p. 296
58. B. Shiva Rao, n.1, p. 760
59. Ibid
60. Constituent Assembly Debates, Vol. V, p. 284
64. B. Shiva Rao, n.1, p.761
65. Ibid, p. 761-62
66. Ibid, p. 762
68. B. Shiva Rao, n.1, p. 762
69. Select Documents, Vol. III, 7 pp 733-779
70. Select Documents, Vol. III, 1 (i) pp 22, 80-1, 95-6, 160-74
71. B. Shiva Rao, n.1, p. 764
72. A. Yaquin, n. 13, pp.12 -13
73. B. Shiva Rao, n.1, p.769
74. Ibid, p. 771
76. Select Documents, Vol. II, pp.76, 50-1, 82
78. Advisory Committee Proceedings, Select Documents, Vol. II, p. 278
80. Ibid, p. 298
81. A. Yaquin, n.13, p.17 (corresponding to present Article 28 in the constitution
82. Ibid, pp. 17-18
84. Cited in A. Yaqin, n.13, p. 19
85. B. Shiva Rao, n.1, p. 276
86. Comments and Suggestions on the draft constitution, Select Documents, Vol. IV, p. 45
88. Ibid, pp 21
89. Ibid, pp 21-22
90. Ibid