CHAPTER – II

CONSTITUTIONAL SAFEGUARDS

The idea of framing the Constitution through sovereign Constituent Assembly took its origin in the philosophy of popular sovereignty in the West during the 18th century. The first definite reference to the demand of Constituent Assembly for India to determine her political destiny may be traced back to the assertion of Mahatma Gandhi as early as in 1922. He said: “Swaraj will not be a free gift of the British Parliament. It will be a declaration of India’s full self-expression expressed …through the freely chosen representations.” Since then this demand had been affirmed from time to time by various public organizations and political leaders. The prominent among them are:

Nehru Report

The All Parties Conference convened in 1928, appointed a committee under the chairmanship of Motilal Nehru, in order to suggest an amicable solution to the problem of communalism, besides a number of other constitutional matters. In this committee full and adequate representation was given to all religious communities and groups of India. The deliberation of the committee are recorded, in the name of Nehru Report – a milestone in the constitutional history of India.

The recommendations of the Report concerning our subject may be summarized as follows:

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

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

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

d. It repudiated separate electorates and suggested joint electorates with reservation of seats for Muslims where they were in minority and for non-Muslims in NWFP. The principle of weightage was wholly condemned as unworthy of adoption.²

Its proposals were conceived in a spirit of idealism and accommodation and there was 'width, warmth and largeness in the edifice'. In the words of Lal Bahadur: “The Nehru Report was the practical side of the Indian agitation and was projected to serve as a fitting reply to the racial arrogance Lord Birkenhead, the then Secretary of State.”³

But there were forces which were working against the very spirit of this venture. They never wanted to see this Report prove a success. The rallying of tactics of the Simon Commission killed the enthusiasm for the Report, and tried to poison communal groups. As a result, the reactions of the communal parties and groups were ominous. The Sikhs claimed representation for their communities if other communities were to be given reservation. Similarly, Harijan leaders also grumbled. So much so that even the Muslims who had supported the underlying idea of this report earlier, started opposing it, and offered, as an alternative, Fourteen Points prepared by M. A. Jinnah. Hence the report died its own death.

2 Nehru Committee Report, All Parties Conference (Allahabad: All India Congress Committee), 1928, pp. 100 -124.
August Offer

The demand for Constituent Assembly was resisted by the British Government till the break of World War II. It was officially admitted by them for the first time in August 1940. Lord Linlithgow in a statement dated 8 August 1940 said: “His Majesty’s Government authorize me to declare that they will most readily assent to the setting up, after the conclusion of the war, with the least possible delay, of a body representative of the principal elements in India’s national life in order to devise the framework of the new constitution.” From this statement two facts emerged. First, the British Government recognized that the framing of the new constitution would be primarily the responsibility of the Indians themselves. Secondly, communal unity was made a pre-condition to any future constitutional set-up. With the use of the ‘principal elements in India’s national life’ they obviously meant the different communities of India.

Intense controversy raged round this August Offer – as it was popularly known. The Congress rejected this offer, because it did not meet its immediate demand for a national government. The Muslim League, however, welcomed the assurance that no new constitution would be adopted without the consent of the minorities. But at the same time it declared that it stood by its Lahore Resolution.

Hence the August offer failed to satisfy the Indian national aspirations as well as communal politics of the Muslim League. It is recorded as a failure in the history of the Indian national movement.

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5 Ibid., p. 506.
6 Jinnah, M. A., His Speeches and Writings (Madras: Ganesh & Co.), 1918, pp. 142-45.
After facing the unfavourable reaction to the August Offer, the British Government sent in March 1942, Sir Stafford Cripps, a member of the Cabinet and Leader of the House of Commons, with fresh proposals. The ‘Draft Declaration’ of His Majesty’s Government stated that ‘immediately after the cessation of hostilities, steps shall be taken to set up in India....an elected body charged with the task of framing anew constitution of India.’ The Cripps proposals contemplated that the members of the constitution making body would be elected by proportional representation by the lower chambers of the Provincial Legislatures, and its total strength would be roughly one-tenth of the electoral college.

It gave option to a Province or an Indian State to join the proposed union or to remain outside and retain its previous constitutional position. Hence there was a clear promise that such non-acceding provinces would be allowed to form union of their own and to have the same full status as the Indian union. This arrangement was suggested, with a view to protecting the interests of minorities. Undoubtedly the Cripps Mission for the first time proposed to raise the status of India into a full-fledged dominion, but by granting the right of secession to provinces and the Indian States, it also gave encouragement to the demand for the partition of country. The Congress Party could not afford to appreciate this offer on this very ground. The Working Committee of the Indian National Congress in a resolution stated: “The acceptance before-hand of the novel principle of non-accession for a province is also a severe blow to the conception of Indian unity.”

Though the Muslim League welcomed the central theme of the scheme, it urged that there should be a separate constitution-making body for building Pakistan. Their main objection was to the provision regarding the

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8 Ibid., p. 525.
single constitution-making body for the whole India in which non-Muslims would have a large majority. Thus the Cripps proposals also proved unacceptable to both the leading organizations which then mattered the most in this country. The failure of the Cripps Mission led to widespread disappointment in India. It was followed by the dynamic ‘Quit India’ campaign launched by Mahatma Gandhi and ‘Divide and Quit’ slogan given by Jinnah. In the light of these developments the law and order in the country was disturbed. This state of affairs continued for nearly three years. It was in June 1945 that fresh attempts were made by the British Government through Lord Wavell, the Viceroy and Governor General of India, to deal with the Indian Constitution problem.

Lord Wavell suggested a political conference of Indian Leaders with the avowed purpose to consider the means by which a new constitution could come into force. The conference was convened at Simla on 25 June, 1945. But this conference of Indian leaders, too, ‘became transformed into familiar pattern of futile discussions between the Congress and the Muslim League, and between party leaders and the Viceroy.’

The Sapru Committee Report

The constitutional proposals of Sapru Committee like Nehru Report was another non-party attempt to solve the communal question. This committee was set up by the Non-Party Conference held in November 1944, with Sir Tej Bahadur Sapru as its Chairman. The major issue before the committee was to examine the whole communal and minorities question from the constitutional and political points of view.

The voluminous report was published in December 1945, with a very comprehensive as well as objective account of the problem of minorities in India. It suggested a number of political steps of constitutional character to ensure and safeguard the interests of minorities. The recommendations of this

9 Menon, V. P., Transfer of Power (Delhi: Orient Longmans), 1957, p. 214
committee in brief were the following: the committee opposed outright the idea of dividing the country into two or more separate independent sovereign states: “(It) is unjustified and will endanger the peace and orderly progress of the whole country without any compensating advantage to any community.”\(^{10}\)

The report further asserted that “even if the country was divided, the problem of minorities will continue to exist and the communal situation will probably then become even more acute than it has been at any time.”\(^{11}\)

The committee recommended a number of fundamental rights to be incorporated in the future Constitution of India, assuring: (a) the liberties of the individual; (b) the freedom of the Press and association; (c) equality of rights of citizenship of all nationals irrespective of birth, religion, colour, caste and creed; (d) full religious toleration, including non-interference in religious beliefs, practices and institutions; and (e) protection to language and culture of all communities. Then the recommendation goes on to say: “It should further contain specific declarations......for the complete abolition of disabilities imposed by tradition and custom on the Scheduled Castes and the safeguarding of special religious customs like wearing of Kirpans by the Sikhs”\(^{12}\)

Another relevant suggestion is given under Recommendation of the Report. It provides for the establishment ‘at the Centre and in each of the Provinces, of an independent Minority Commission, which shall be composed of a representative of each of the communities (not necessarily a member of that community) represented in the Legislature…. To keep a constant watch over the interests of minority communities in the area.”\(^{13}\)

The most important safeguard given to the minorities in a democracy is considered in the scheme of representation. The report suggested: “The Union Legislature shall consist of the Head of the State and two chambers – the

\(^{10}\) The Sapru Committee Report, p. vi, Appendix No. II, Part III
\(^{11}\) Ibid., p. 327.
\(^{12}\) Ibid., p. 255.
\(^{13}\) Ibid., p. 259.
Union Assembly and the Council of State....Ten per cent of the total strength shall be reserved for the representation of the following communities: (1) Hindus, other than Scheduled Castes, (2) Muslims, (3) the Scheduled Castes, (4) Sikhs, (5) Indian Christians, (6) Anglo-Indians, and (7) Other Communities. In case the Muslim community on their part agree to the sub-situation throughout of joint electorates with reservation of seats for separate communal electorates and in that case only this Committee would recommend that, in the interests of promoting national unity, the Hindu community should agree that in the strength of the Central Assembly excluding the seats allotted to special interests, such as commerce and industry, landholders, labour, etc. Muslim representation from British India shall be on a par with the representation given to the Hindus (other than the Scheduled Castes) in spite of the great disparity in their respective population strengths."14 Similarly, ‘the executive of the Union shall be a composite cabinet in the sense that the following communities shall be represented on it, viz., (1) Hindus, other than Scheduled Castes, (2) Muslims, (3) the Scheduled Castes, (4) Sikhs, (5) Indian Christians, and (6) Anglo-Indians. The representation of these communities in the executive shall be, as far as possible, a reflection of their strength in the legislature.'15

The proposals of the Sapru Committee were criticized by different persons from different points of view. In the words of Dr. Rajendra Prasad: “What was considered to be a defect by one group of critics was regarded as a merit by another group and so many of the criticism cancelled one another. With the result that inspite of the talented effort of the eminent personalities, of which it was composed, the committee failed in its efforts to advance the position.”16

14 Ibid., pp. viii-ix, Appendix No. II.
15 Ibid., p. x, Appendix, No. II.
16 Prasad, R., India Divided (Bombay: Hind Kitab), 1947, p. 382.
Cabinet Mission

After the failure of the Cripps Proposals as well as the efforts of Lord Wavell to resolve the constitutional deadlock, the British Cabinet sent three of its members including Stafford Cripps to India on 15 March, 1946 with the intention of using their utmost endeavours to help her to attain her freedom as speedily and fully as possible. The Cabinet Mission announced on 16 May, 1946 its proposals and procedure to be followed in framing the new Constitution of India. It examined in detail the question of a separate and fully independent sovereign state of Pakistan as claimed by Muslim League and came to the conclusion that neither a larger nor a smaller sovereign state of Pakistan would provide an acceptable solution to the problem for which it is sought for. Instead, it suggested that in a preliminary meeting of the Constituent Assembly an advisory committee be set up to suggest and discuss the rights of minorities, etc.

Mahatma Gandhi welcomed the Plan ‘as the best document that the British Government could have produced in the circumstances.’ And the Muslim League also expressed its acceptance of the scheme embodied in the statement of the Cabinet delegation in a resolution passed on 6 June 1946. Thus the attitude of the two contending parties towards the plan of the Cabinet Mission was quite encouraging, but later on a controversy developed over the question of the interpretation of certain clauses of the plan as well as on account of a hasty statement of Pt. Nehru. This controversy proved fatal later on for the unity of India. The British Government exploited this controversy and came out with its own interpretation which was decidedly quite opposite to the stands it had already taken. It interpreted the clauses in a way which favoured the Muslim League’s stand; this ultimately expedited the division of the country. The British Government sent Lord Mountbatten to India in place

17 Gwyer and Appadorai, op. cit., p. 577.
18 Harijan, 26-05-1946, p. 152.
19 Gwyer and Appadorai, op. cit., p. 618.
of Lord Wavell, to find an agreed solution on the basis of the Cabinet Mission Plan. He consulted the parties concerned and gave his quick and simple diagnosis in the form of the division of the country. It materialized in the passage of the Indian Independence Act of 1946.

Constituent Assembly

The constituent Assembly of India was convened under the Cabinet Mission Statement of 16 May, 1946. It had set out in detail the method and procedure of its composition. In paragraph 18 of the Cabinet Plan, it was envisaged that the structure of this body should be ‘as broad-based and accurate a representation of the whole population as is possible.’ Three main divisions into Muslim, Sikh, and the General were recognised for the purposes of giving representation of this body.

As to the procedure for the election, of the Constituent Assembly, the Cabinet Mission rejected the idea of adult suffrage on the plea that ‘it would lead to a wholly unacceptable delay in the formation of the new constitution.’ It suggested, instead, indirect elections by the Provincial Legislative Assemblies. The representatives of each community in a province were to be elected by the members of that community in the Provincial Legislature. Under this scheme by the end of July 1946, the elections had almost been completed.

Since the composition of the Constituent Assembly suggested under the Plan was for the undivided India, 296 members were to be elected from the Provinces and 93 from the Indian States. The division of 296 seats among the representatives of British India (Provinces) of the various communities and interests were as follows:

20 Gwyer and Appadorai, op. cit., p. 581.
21 Ibid., p.582.
Hindus 163
Parsis 3
Muslims 80
Sikhs 4
Anglo-Indians 3
Scheduled Castes 31
Indian Christians 6
Backward Tribes 6

Total 296

In the light of this break-up of the representatives of the Constituent Assembly into various communities, one finds ample evidence to prove that every community in India, big or small, was given due representation into it. Truly speaking, it was the whole of India in a miniature. But as things proceeded, it appeared as if all was not well with it. The Muslim League withdrew itself from its earlier stand and decided to boycott the proceedings of the Constituent Assembly. Their main contention was that since Congress has returned in overwhelming majority in the house, ‘it would rest entirely with the majority to take such decisions as they may think proper or suit them.’

The attitude of the British Government towards the Constituent Assembly of India was far from friendly, it was rather deplorable. On account of their own political interests, they played a double game. On the one hand, they pleaded: “We cannot allow minority to place a veto on the advance of the majority.” On the other hand, when Muslim League decided to boycott the proceedings of the Constituent Assembly. His Majesty’s Government could not, of course, contemplate forcing such a constitution upon any unwilling parts of the country.” So much so, Churchill, the former Prime Minister of England is reported to have remarked at the absence of the Muslim League in the Constituent Assembly, “(it) was something like the absence of the bride in the church when the marriage was going to take place.”

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23 Gwyer and Appadorai, op. cit., p. 620.
25 Gwyer and Appadorai, op. cit., p. 661.
In spite of these hostile attitudes, the first meeting of the Constituent Assembly did take place as per schedule on 9 December, 1946. Out of the total 296 members who were to take part in the preliminary session, 210 attended. These 210 members consisted of 155 Hindus out of a total of 160, 30 Scheduled Castes representatives out of total of 33, all the five Indian Christians out of a total of six representatives of the Backward Tribes, all the three Anglo-Indians, all the three Parsis and only four Muslims out of 80.27

The only significant absentees were the Muslim League members. And as stated earlier they had political motives in boycotting it. With this exception almost all other minorities irrespective of the member’s political affiliation joined it. As a result of the partition of the country, under the 3 June, 1947 Plan, the representative of certain areas joined Pakistan and hence they ceased to be the members of the Constituent Assembly. The structure of the constitution-making body was re-organised. The total strength of the House was reduced to 324 of which, 235 members represented the Provinces and 89 the Indian States. Hyderabad State did not send its quota of 16 representatives to the Constituent Assembly at any stage. Hence out of the remaining 308, 277 appended their signatures on 26 November, 1949 declaring it as finally passed. At that time minority community wise break-up of this august body was as follows:28

<table>
<thead>
<tr>
<th>Community</th>
<th>Members</th>
</tr>
</thead>
<tbody>
<tr>
<td>Muslims</td>
<td>36</td>
</tr>
<tr>
<td>Parsis</td>
<td>3</td>
</tr>
<tr>
<td>Sikhs</td>
<td>6</td>
</tr>
<tr>
<td>Christians</td>
<td>6</td>
</tr>
<tr>
<td>Anglo-Indians</td>
<td>3</td>
</tr>
</tbody>
</table>

The reasons for its fluctuation were obvious. The partition of the country and slow process of integration of Indian States were the main factors responsible for it. Whatever might have been the total strength of the

27 Ibid.
28 Ibid.
Constituent Assembly at any stage, it nevertheless represented a cross-section of the population of the country. And members of the minority communities were not merely idle spectators but they actively participated in the meetings of the Assembly. Their opinions determined a number of decisions taken by the Assembly. So much so, a number of representatives of minority communities held important offices under the Constituent Assembly. The Chairman of the Drafting Committee, B.R. Ambedkar was the chief spokesman of the Scheduled Castes. Similarly the Chairman of the Sub-Committee on Minorities and the Vice-President of the Constituent Assembly was a Christian representative Dr. H.C. Mookherjee. To conclude, one can say with all confidence that the apprehensions of the Muslim League for not joining it were based on wrong notions.

The pledges of pre-Independence era were uppermost in the minds of the framers of the Constitution. They were conscious of the sensitivity of the depressed people about their plight in the society. Their first achievement in the Constituent Assembly was the adoption of the historic Objectives Resolution on 22 January 1947, moved by Jawaharlal Nehru. They declared in the resolution their firm and solemn resolves to frame a constitution wherein the people of India would be guaranteed and secured, inter alia, social, economic and political justice; and equality of status, of opportunity and before the law, and wherein, inter alia, the depressed and backward classes would be provided with adequate safeguards.

The clause laid down the fundamental content of what the Constitution should seek to achieve in these respects. It incorporated the great ideal of equality as found in the western philosophy, without any prejudice to the ancient Indian tradition of equality as contained in a hymn of Rigveda:

All human beings are equal. The king should have the same regard for his subjects that a mother has for her sons.

The adoption of the resolution and hence of the clause was the first step towards giving shape, in the printed and written word, to a nation's dream and aspiration.

The Constituent Assembly elected on 24 January the Advisory Committee on Minorities, Fundamental Rights, etc. with Sardar Vallabhbhai Patel as its chairman. On this occasion Govind Ballabh Pant laid emphasis on the importance of fundamental rights and pleaded for the special case of the depressed classes. He observed:

"We have to take particular care of the Depressed Classes, the Scheduled Castes and the Backward Classes. We have to atone for our omissions. . . . We must do all we can to bring them up to the general level and it is a real necessity as much in our interest as in theirs that the gap should be bridged. The strength of the chain is measured by the weakest link of it and so until every link is fully revitalised, we will not have a healthy body politic."

The Advisory Committee submitted to the Constituent Assembly its interim and supplementary reports on fundamental rights in April and August 1947 respectively. These rights included rights of equality. The latter provided for the removal of certain disabilities and abolition of untouchability. After their first reading in the Assembly the amended clauses formed the basis on which equality provisions were drafted by the Drafting Committee headed by B.R. Ambedkar, appointed on 29 August. The draft preamble provided for equality of status and of opportunity. One of the draft articles provided, *inter alia*, that, on grounds of religious, race, caste and sex, citizens would not be subjected to any disability, liability, restriction or condition with regard to (a) access to shops, public restaurants, hotels and places of public entertainment, or (b) the use of wells, tanks, roads and places of public resort maintained wholly or partly out of the revenues of the state or dedicated to the use of general public. The other draft article declared the abolition of untouchability and forbade its practice in any form. It also declared that the enforcement of

any disability arising out of untouchability would be an offence punishable according to law.

During the course of the second reading in the Constituent Assembly certain changes were made and explanations given in regard to the first draft article as given above. The expression "place of birth" was added after the term "sex" so that discrimination on this ground under the guise of local patriotism might be eliminated and prohibited. The expression "bathing ghats" was inserted after the term "tanks". The words "the revenues of the State" were substituted by the words "state funds". The latter is obviously a wider phraseology. Explanations of certain expressions given by Ambedkar may also be noted. The word "shop" was defined as a place where its owner was prepared to offer his services to anybody who went there. Thus, it was not used in the limited sense of permitting entry, but in the most comprehensive sense. Laundries, barbers' shops and the like would be covered by the term. The expression "places of public resort" would include a burial ground subject to the condition that it was wholly or partly used in a special sense. A place would be a place of public resort provided it was wholly or partly maintained out of state funds. Thus the provision was made fairly comprehensive.

In view of the past distressing experience of discrimination, official or otherwise, in regard to the access to, and use of, certain places, the draft article in its amended form was deemed necessary in a constitution founded upon democratic equality of all citizens. The draft article abolishing untouchability was adopted as such. Though the term "untouchability" had no legal meaning, the assembly took it for granted that everyone was aware of the meaning of the kind of untouchability sought to be eradicated. Moreover, probably no precise definition of the word could be given. The class of untouchables had been known in India for acres and, therefore, there was no need for a precise definition of their identity.

The caste system in India has been responsible for unhappiness of a large section of the people. Dogs and swine might enter the precincts of Hindu
temples but the shadow of an untouchable was considered an abomination. Untouchability proved to be a greater curse than slavery and gave rise to many disabilities and inequalities. Many untouchables even sought conversion to different faiths. This had attracted the attention of distinguished social reformers and political magnates for more than a century. A specific provision was, therefore, to be made for eradicating the social device of untouchability.

One of the members of the Assembly, belonging to the depressed classes, spoke thus:

"[The draft article] about untouchability is one of the most important of the fundamental rights. This ... does not propose to give any special privileges and safeguards to some minority community, but it proposed to save one-sixth of the Indian population from perpetual subjection and despair, from perpetual humiliation and disgrace. The custom of untouchability has not only thrown millions of the... population into the dark abyss of gloom and despair, shame and disgrace but it has also eaten into the very vitality of our nation. I have not a jot of doubt . . that this . . [provision] will be accepted by this House unanimously; not only the Indian National Congress is pledged to it, but for the sake of fairness and justice to the millions of untouchables of this land, for the sake of sustaining our goodwill and reputation beyond the boundaries of India, this must find a place in the constitution of free and independent India ... So . . . today the 29th November 1948 is a great and memorable day for us, the untouchables. This day will go down in history as the day of deliverance, as the day of resurrection of the 5 crores of Indian people. Standing on the threshold of this new era, at least for . . . the untouchables, I hear distinctly the words of Mahatma Gandhi . . [who said]: "I do not want to be reborn, but if I am reborn, I wish that I should be born as a Harijan, as an untouchable, so that I may lead a continuous struggle, lifelong
struggle against the oppressions and indignities that have been heaped upon these classes of people."\(^{31}\)

At the end of debates the draft article was unanimously adopted by the Assembly.

The Advisory Committee finalised the draft Constitution provisions. Its third reading began on 17 November 1949. There was a general discussion. The caution issued by Ambedkar is worth noting:

"Political democracy cannot last unless there lies at the base of it social democracy ... [which] means a way of life which, recognizes liberty, equality and fraternity as the principles of life ... [These principles] form a union of trinity in the sense that to divorce one from the other is to defeat the very purpose of democracy.... We must begin by acknowledging the fact that there is complete absence of two things in Indian society. One of these is equality. On the social plane we have in India a society based on the principle of graded inequality which means elevation for some and degradation for others. On the economic plane, we have a society in which there are some who have immense wealth as against many who live in abject poverty. On the 26th of January 1950, we are going to enter into a life of contradictions. In politics we will have equality and in social and economic life we will have inequality. How long shall we continue to live this life of contradictions? How long shall we continue to deny equality in our social and economic life? If we continue to deny it for long, we will do so only by putting our political democracy in peril. We must remove this contradiction at the earliest possible moment or else those who suffer from inequality will blow up the structure of political democracy which this Assembly has so laboriously built up.\(^{32}\)

The draft Constitution was completed by the end of February, 1948. The draft Constitution underwent three readings by the Constituent Assembly. On November 25, 1949, Dr. Ambedkar, its principal architect, rose to reply to


\(^{32}\) Ibid., Vol. X – XII, p. 979.
the debate which followed the third reading. He delivered a 40 minute speech in which he made an impassioned appeal to the people of independent India to defend their freedom with the last drop of their blood. He also cautioned against hero worship and in the end of his speech he made fervent appeal to all Indians to be a nation in the true social and psychological sense by totally discarding the caste system. The entire Constituent Assembly, including Prime Minister Nehru, listened to his speech with rapt attention and he was applauded by all the Members when he sat down.

The problem of the minorities engaged considerable attention of the Drafting Committee because of its complicated character and unpleasant history behind it. While introducing the Draft in the Constituent Assembly, the Chairman of the Drafting Committee in reference to this problem regretfully remarked: "In this country both the minorities and the majorities have followed a wrong path. It is wrong for the majority to deny the existence of minorities. It is equally wrong for the minorities to perpetuate themselves."33

The Draft Constitution is divided into 18 parts and Part 14 that runs from Arts. 292 to 301, is exclusively devoted to the special provisions relating to minorities, over and above Part III of the Constitution (Draft) also provides a number of safeguards to various minorities by means of fundamental rights. Arts. 292 to 294 of the Draft Constitution provide reservation of seats for minorities in the House of People and the Legislative Assemblies of the States. The reservation is stipulated for the Muslims, Indian Christians, Anglo-Indians, Scheduled Castes and Scheduled Tribes. In the case of the Anglo-Indians, the position is further clarified that President and the Governors have the powers to nominate Anglo-Indians to the House of People and the State Legislatures respectively, in case they consider that this community is not adequately represented.

In connection with the claims of minority communities to services and posts, Art. 296 of the Draft Constitution provides: "Subject to the provisions

of the next succeeding Article the claims of all minority communities shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State for the time being." And Arts. 297 and 298 further provide special provision for Anglo-Indian community in certain services and special provision with respect to educational grants for the benefit of Anglo-Indian community respectively for temporary period.

Further, the Draft Constitution stated under Art. 299 (1): "There shall be a Special Officer for minorities for the Union who shall be appointed by the President, and a Special Officer for minorities for each State... (2) It shall be the duty of the Special Officer for the Union to investigate all matters relating to the safeguards provided for minorities under this Constitution in connection with the affairs of the Union and to report to the President upon the working of the safeguards... (3) It shall be the duty of the Special Officer for a State so specified to investigate all matters relating to the safeguards provided for minorities under this Constitution in connection with the affairs of the State and to report to the Governor of the State upon the working of the safeguards. Furthermore, the Constitution stipulated under Art. 300 to appoint a Commission to report on the administration of the scheduled areas and the welfare of the Scheduled Tribes and under Art. 301 appointment of a Commission to investigate the conditions of Backward Classes.

After analysing the special provisions relating to minorities, we find a few general provisions relevant to minorities in Part III of this Document, under the heading of Fundamental Rights. Rights of minorities as a matter of fact are a corollary to the Rights of Man. Throughout the independence struggle and constitutional history of India both were simultaneously demanded and promised. The interim Report on Fundamental Rights was presented to the Constituent Assembly by the Advisory Committee on 29 April, 1947. These recommendations of the committee were adopted with
certain modifications by the Assembly and were later on incorporated in the Draft Constitution. Right to equality, rights relating to religion, and educational and cultural rights are some of the important rights for the purposes of minority safe-guards.

'Right to Equality'\textsuperscript{34} prevents any arbitrary discrimination by the laws of the State on the grounds of religion, race, caste or sex and provides equality of opportunity in matters of public employment. Similarly 'Rights relating to Religion'\textsuperscript{35} provides freedom of conscience and free profession, practice and propagation of religion. Right to the protection of cultural and educational norms of the minorities are guaranteed under Art. 23 of the Draft Constitution.\textsuperscript{36} Here the recognition is given not only to the religious minorities but also the rights of linguistic and cultural minorities are safeguarded. The very heading of the article 'protection of interests of minorities' suggests that the Drafting Committee intended to provide safeguards to the minorities in a more formal way by inserting this article in the Constitution.

The Draft provisions of the Constitution, relating to minorities were much appreciated by the representatives of different minorities. But there were a number of suggestions to strengthen these provisions still further. S. Nagappa, a representative of the Scheduled Castes pointed out that there shall be a mandatory provision in the Constitution for the inclusion of the minorities in the formation of cabinet. He said: "Nothing has been said that, when the leader of a party forms a government, his government should be so formed as to reflect all shades of opinion and all classes of people. If such a provision is included, it will go a long way in solving the minority problem. I

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\item \textsuperscript{34} Draft Constitution of India, Arts. 9 and 10.
\item \textsuperscript{35} Ibid., Art. 19.
\item \textsuperscript{36} Text of the Art. 23 "Any Section of the citizens residing in the territory of India or any part thereof having a distinct language, script and culture of its own shall have the right to conserve the same."
\end{itemize}
am thankful to the Drafting Committee for having conceded most of the points of these minorities. If the Drafting Committee had taken care to include such a provision as I have mentioned regarding the formation of Cabinets, both Provincial and Central, they could have solved the minority problem completely. Thakur Dass Bhargava suggested reservation for the minorities by nomination. He said in the Assembly: "In regard to reservations therefore my position is that if reservations are thought to be necessary by this House, the reservation should be made only by nomination."38

A few representatives of the Muslim League exploited this opportunity to express their disapproval of the principle of joint electorate with reservation of seats. Kazi Syed Karimuddin asserted in the Assembly: "Joint electorates with reservation of seats is absolutely of no consequence to the minorities. It would do them positive disservice."39 Similarly, Mehboob Ali Baig expressed his dissatisfaction with the principle of joint electorate for the concern of minorities with the remarks that 'this system of Government would lead to fascism or totalitarianism and it is capable of riding roughshod over the valued rights of the citizens and also of the minorities.'40 He rather proposed a system of proportional representation instead, as a safe device in case of minorities. "If in case of minorities a device is found, for instance, the election being based on what is called proportional representation by the system of single transferable vote ... I think that might go a long way."41 Z.H. Lari, a prominent Muslim League member, supported this proposal in this way: "The only means of safeguarding minorities is by adopting the system of proportional representation."42

38 Ibid., p. 277.
39 Ibid., p. 242.
40 Ibid., p.297.
41 Ibid.
42 Ibid., p. 300.
ARTICLES OF THE CONSTITUTION OF INDIA

Equality before the law is a basic Fundamental Right guaranteed under Article 14 of the Constitution. But the principle of 'equality' is a double weapon. It places the strong and the handicapped on the same footing in the race of life. It is a dictum of social justice that there is equality only among equals. To treat unequals as equals is to perpetuate inequality. The humaneness of a society is determined by the degree of protection it provides to its weaker, handicapped and less gifted members.

'Equality of opportunity' and 'equality of treatment' places the weak and the strong on par and to that extent, it amounts to denial of social justice. In fact, it is 'equality of results' which is the acid test of society's egalitarian-pretentions. In a highly unequal society like ours, it is only by giving special protection and privileges to the under-privileged section of society that we can enable the weak to resist exploitation by the strong.

It was in view of these considerations that our Constitution makers made special provisions under Articles 15(4), 16(4) and 46 etc. to protect the interests of SCs, STs and OBCs. Some people consider provisions like reservation of posts for backward classes etc., as a violation of their Fundamental Right and denial of meritorious person's legitimate. In fact, 'merit' itself is largely a product of favourable environmental privileges and higher rating in an examination does not necessarily reflect higher intrinsic worth of the examinee. Children of socially and educationally backward parents coming from rural background cannot compete on an equal footing with children from well to do homes. In view of this 'merit' and 'equality' should be viewed in proper perspective and the element of privilege should be duly recognized and discounted for when 'unequals' are made to run the same rate.

The element of conflict between the Fundamental Rights and the Directive Principles of State Policy has been the subject matter of numerous
Parliamentary debates and judicial pronouncements. In pursuance of Articles 15(4) and 16(4) a number of State Governments made reservations in Government services and educational institutions for OBCs and several petitions were filed before the High Courts and the Supreme Court against such orders. Gradually in sizeable body of case law has grown on the subject and a gist of it is given below.

Caste is an important factor in the identification of Other Backward Classes among Hindu communities. Backwardness must be both social and educational and not either social or educational. Caste is also a class of citizens and if the caste as a whole is socially and educationally backward, reservation can be made in favour of such a caste on the ground that it is a socially and educationally backward class of citizens within the meaning of Article 15(4). The further division of backward classes into 'back-ward' and 'most backward' is not warranted by Article 15(5). The aggregate reservation of posts under Article 15(4) should be less than 56%. Objective criteria should be evolved on the basis of field survey, etc., for identifying OBCs.

Southern States have done much more for the welfare of Other Backward Classes than Northern States. Moreover, in the South the whole operation was conducted quite smoothly whereas in the North even modest welfare measures for OBCs have given rise to sharp resistance. The Commission approached Tata Institute of Social Sciences, Bombay, to prepare a comparative study of the 4 States of Tamil Nadu, Karnataka, Bihar and Uttar Pradesh, so as to have better appreciation of this phenomenon.

Tata Institute Study formulated a number of hypotheses in this regard. They are: Reservation scheme had a much longer history in the South; forward castes were more divided among themselves in the South; OBCs were not getting along very well with SCs/STs in the North and thus divided the backward classes movement; backward classes were more politicised in the South; reservation scheme was introduced too suddenly in the North; the capacity of backward classes to retaliate depends upon their numbers, political
consciousness, dominance and perceived lack of alternative opportunities; more rapid expansion of tertiary sector gave opening to forward castes in the South which was not available to the same extent in the North, etc.

Tata Institute Study supports the above hypotheses by citing a number of examples and historical developments in these States under consideration.

Article 15,

Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.

(1) The state shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

(2) No citizen shall on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to

(a) access to shops, public restaurants, hotels and places of public entertainment; or
(b) the use of walls, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of state funds or dedicated to the use of general public.

(3) Nothing in this article shall prevent the State from making any special provision for women and children.
(4) Nothing in this article or in clause (2) of article 29 shall prevent the state from making special provisions for the advancement of any socially and educationally backward classes of citizens for the Scheduled Castes and Scheduled Tribes.\textsuperscript{44}

The pith of the article lies in the words 'discriminate against' which is explained by the Oxford Dictionary as 'to make an adverse distinction with regard to; to distinguish unfavourably from others.' Similarly the U.N. defines discrimination as 'unequal and unfavourable' treatment, either by denying rights or social advantage to members of a particular social category; or by imposing special burdens on them; or by granting favours exclusively to the members of another category, creating in this way inequality between those who belong to the privileged category and the others.\textsuperscript{45} Etymologically also, the word 'discriminate', which comes from Latin origin, means to divide, separate or distinguish.

This meaning of the term has been upheld by the Judiciary in India as well. Interpreting - the scope of the article, the Supreme Court held that it is plain that the fundamental right conferred by Art. 15(I) is conferred on a

\textsuperscript{44} Annual Report of Ministry of Social Justice and Empowerment for 1997-98.

\textsuperscript{45} 'Discrimination' United Nations 1949. Sales No. 1949, XIV. Para 37, Chapter IV.
citizen as an individual and is a guarantee against his being subjected to
discrimination in the matter of rights, privileges and immunities pertaining to
him as a citizen generally. It means, the article says that no person of a
particular religion or caste, etc. shall be treated unfavourably when compared
with persons of other religions and castes, etc. merely on the ground that they
belong to a particular religion or caste

The second important thing in the article is the use of words 'only' and
'any of them'. Both have special place in it. Dr. V.P. Luthera has cited a
number of judicial decisions to prove that the word 'only' is very important for
understanding the full meaning of the article. He comments: "Its significance
lies in the fact that what is ordained is that the state shall not make any of the
grounds mentioned in Art. 15(l) the sole basis of discrimination against any
citizens. It may make any of these grounds a legal basis of discrimination but,
in doing so, it must also show that there is another ground for discrimination,
accompanying it. It cannot, therefore, discriminate against any citizens on
religious grounds only but it can discriminate against them on religious
grounds provided the religious grounds are accompanied by another
ground." D.D. Basu expresses a similar opinion about the word 'only' in the
article: "The significance of the word 'only' is that other qualifications being
equal, the race, religion, etc. of a citizen shall not be a ground for preference
or disability. If there is any other ground or consideration for the differential
treatment besides those prohibited by article, the discrimination will not be
unconstitutional." The words 'any of them' as used in the article are intended
to give further emphasis that none of the grounds mentioned in the article can
be made the sole basis of discrimination.

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47 Luthera, V.P., The Concept of the Secular State and India (Oxford: Oxford
University Press), 1964, p.68.
48 Basu, D.D., Commentary on the Constitution of India (Calcutta: S. C,
In this article two notable exceptions are made in its application. Clause 3 of the article permits the state to make special provisions for the benefit of women and children and similarly Clause 4 allows the state to make any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

In this connection a point may be raised—how to reconcile the principle of protective discrimination and non-discrimination? Does the Constitution guarantee rights on the one hand and snatch them away from the other? No doubt the scope of Art. 15 seems to be restricted by the incorporation of these clauses but a deeper study of the Constitution and that of the Indian society justify it. Speaking about the first exception, M.V. Pylee says: "The special treatment meted out to women and children is in the larger and the long-range interest of the community itself. It also recognizes the social customs and background of the country as a whole." 49 About the second exception, it has got to be noted that it was not in the original Constitution but was incorporated by the Constitution (First Amendment) Act, 1951, which was necessitated because of certain adverse court decisions. At the time of its amendment in the Parliament the Law Minister said, "The necessity for the amendment of Art. 15 has arisen on account of the judgements recently delivered by the Supreme Court in two cases which came up before them from Madras State. One case was The State of Madras vs. Champakam Dorairajan and the other was Venkataramana vs. The State of Madras." 50

Since in the absence of this amendment the reservation of seats for Backward Classes in educational institutions had been a contradiction in terms, so it was thought fit to add it. More so, the spirit of it was in keeping with the Objectives Resolution of the Constituent Assembly which stated

among other things that 'adequate safeguards shall be provided for minorities, backward and tribal areas, and depressed and other backward classes.'\textsuperscript{51} In the words of Ratna Revankar: "It is quite appropriate that the Backward Classes should look to the Constitution for special favours to redress the wrongs done in the past by creating social disabilities. It is equally justifiable that the Constitution should make special provision to safeguard the interests of Backward Classes."\textsuperscript{52}

Leaving aside these two reasonable limitations and exceptions the principle of non-discrimination as enshrined in the Constitution is absolute, and elaborate. It is a guarantee against every form of discrimination by the state on the basis of religion, race, caste or sex. It also strikes at the root of provincialism by prohibiting discrimination based upon one's place of birth. No doubt the absence of discrimination has a negative character for the protection of minorities, yet it is a test of democracy and equity.

Article 16

Equality of Opportunity in Matters of Public Employment

(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

(3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office (under the Government of, or any local or other authority within, a State or Union Territory, any requirement as to residence

\textsuperscript{51} The Constituent Assembly Debates, Vol. 1, p. 59.
(4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.

(4A) Nothing in this article shall prevent the State from making any provision for reservation in matters of promotions to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State.\(^53\)

(5) Nothing in this article shall effect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.

From the text of the article, it is evident that with regard to public employment the guarantee is stated both positively and negatively. Clause 1, of the article, emphasises that the state, in employing persons, shall give equal opportunity to all citizens and Clause 2 forbids the state from making any person ineligible to hold an office or discriminate against him in respect of that office, on grounds of religion, race, caste, sex, place of birth, or any of them. The former is a positive guarantee and the latter, a negative one.

If one examines the similar provisions of some of the constitutions of the world, one finds that hardly any other constitution has gone into such details in regard to the question of equality in public services. The Government of India Act, 1935 (Section 298) stated in this connection: "No subject of His Majesty domiciled in India shall on grounds only of religion,\(^53\)

\(^{53}\) Clause (4A) inserted by the Constitution (77th Amendment) Act, 1995 with effect from 17.6.95.
place of birth, descent, colour or any of them be ineligible for office under the
Crown in India.... The Constitution of the Union of Soviet Socialist Republics
declares under Art. 123: "Equality of rights of citizens of the U.S.S.R.,
irrespective of their nationality of race, in all spheres of economic,
government, cultural, political and other social activity, is an indefensible
law." The Constitution of Federal Republic of Germany under Art. 140 and
also that of the Constitution of Weimar Germany vide Art. 130 provide: "The
enjoyment of civil and political rights, as well as admission to official posts, is
independent of religious creed."

Similarly the Constitution of Japan under Art. 14 says: "All of the
people are equal under the law and there shall be no discrimination in political,
economic or social relations because of race, creed, sex, social status or family
origin." And Art. 170 of the Constitution of the Netherlands stipulates: "The
adherents of the various religious denominations shall all enjoy the same civil
and political rights and shall have an equal right to hold dignities, offices and
employments, "The Constitution of United States of America under Art. 6
affirms: "No religious test shall ever be required as a qualification to any
office or public trust under the United States." Universal Declaration of
Human Rights under Art. 21(2) says: "Everyone has the right of equal access
to public service in his country."

It is obvious from a comparison of the above provisions of the various
constitutions that the phraseology used in the Indian Constitution to connote
non-discrimination in matters of public employment is extensive and much
wider in scope. Most of the constitutions have used either a general term for
the purpose or placed only one or two factors to explain the absence of
discrimination. The Constitution of India has covered almost all possible
factors of discrimination. The provisions of Indian Constitution in this respect
are most specific and clear, distinct and definite, and also, thereby, the idea of
the universality of Indian citizenship is postulated.
No doubt there are certain exceptions like those in Art. 15 in this beneficiary provision of the Constitution also. Clauses 3 to 5 explain these exceptions. The first in the series is that 'any requirements as to residence within that State or the Union territory prior to such employment or appointment may be made necessary for particular positions.' Since the Constitution intended to establish a common citizenship in the country, the members of the Constituent Assembly took note of the exception seriously. Defending the limitation of Clause 3, B.R. Ambedkar observed in the Assembly: "The argument that residence should not be a qualification to hold appointments under the State is a perfectly valid and a perfectly sound argument. At the same time, it must be realised that you cannot allow people who are flying from one province to another, from one State to another, as mere birds of passage without any roots, without any connection with that particular province, just to come, apply for posts and, so to say, take the plums and walk away. Therefore some limitation is necessary."55

In the Draft Constitution56 this exception was missing but it was incorporated subsequently on the plea that this arrangement would be in the interests of efficiency of the services in the particular States. But even here it is important to note that the power to legislate on this matter is vested in the Parliament instead of leaving it to individual State to make discretionary powers.

The second exception to this article is in favour of the Backward Classes of citizens which includes the Scheduled Castes and the Scheduled Tribes and Other Backward Classes. Clause 4 permits the State Governments to make reservation of appointments or posts for certain sections of society who are backward. This limitation is more or less in line with Clause 4 of Art. 15, the wisdom of which has already been discussed at length in the preceding

56 Art. 10 of the Draft Constitution of India.
pages. Defending the idea underlying the clauses, Dr. Ambedkar said in the Assembly, "Although theoretically it is good to have the principle that there shall be equality of opportunity, there must at the same time be a provision made for the entry of certain communities which have so far been outside the administration ... it is a generic principle." 57

The third exception is devised in Clause 5 of the article that permits laws requiring 'the incumbent of an office, in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination'. This exception is self-explanatory and reasonable. For example, the Commissioner and all of his subordinates in the Madras Hindu Religious Endowments Department are Hindus.

There is another exception, though not mentioned under this article yet is in consonance with this provision. Art. 336 of the Constitution permits special provision for the Anglo-Indian community in certain services. Since this community had for long been enjoying special privileges in lieu of certain political considerations at the hands of British Government in India, it was thought to be unjust to withdraw these concessions suddenly. "This attitude was inspired not by logic, not by strict reasonableness, not by academic theories but by an attempt to understand the real feelings and psychology of the minority mind," 58 Frank Anthony observed in the Assembly.

Article 17
Abolition of Untouchability

"Untouchability" is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of "Untouchability" shall be an offence punishable in accordance with Law.

58 Ibid., Vol. VIII, p. 327.
The law to punish such offences took five years to arrive. The Untouchability (Offences) Act, 1955 came into force on 1.6.1955 and after a lapse of 17 years it was amended and renamed as the Protection of Civil Rights Act, 1955 in 1976 by making the punishments under this Act more stringent and offences non-compoundable. The machinery for the enforcement of this Act has been suitably strengthened by the setting up of special cells, special courts, mobile squads, provision of legal aid etc.

One of the innovations of the Act is that every year the Central Government will place on the table of each house of the Parliament, a report on the measures taken by itself and by the State Governments in pursuance of the mandate contained in Sec. 15. Such reports have been laid on the table of both the houses. Though the prevalence of untouchability is on the decline, yet its prevalence is still reported, in one form or the other in some parts of the country. Over the years, the cases registered under the Act have been declining as will be seen from the following table:

<table>
<thead>
<tr>
<th>Year</th>
<th>Cases</th>
</tr>
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<tbody>
<tr>
<td>1992</td>
<td>...... 3148</td>
</tr>
<tr>
<td>1993</td>
<td>...... 2681</td>
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<td>1994</td>
<td>...... 1794</td>
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<td>1995</td>
<td>...... 1599</td>
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<td>1996</td>
<td>...... 1489</td>
</tr>
<tr>
<td>1997</td>
<td>...... 1304</td>
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</tbody>
</table>

One of the important requirements for the effective enforcement of any penal law is that the crime should normally be accompanied by punishment. Crime divorced from punishment is an invitation to licence the offenders. If the percentage of convictions and acquittals to total cases disposed of by the courts and the ratio of convictions to acquittals in the country is analysed, it will be seen that not only has the proportion of convictions never exceeded half of the acquittals but compared to the earlier years, the proportion of convictions has flagged and fallen in subsequent years. The results achieved in
some states show that other states could have done better in the matter of convictions and improved the all-India performance. The enforcement of the PCR Act in terms of cases registered, disposed of at different stages and levels from the police to the court and convictions, is not adequate. Very few states have taken seriously the establishment of Special Courts as per clause (iii) of see 15A (2), preferably Mobile special courts. Delay for want of quick trials through exclusive special and mobile courts results in the State, unintentionally though but not unwittingly, promoting acquittals, leaving enough time for complainants and witnesses to be reduced to silence.59

Article 23
Prohibition of Traffic in Human Beings and Forced Labour

(1) Traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

(2) Nothing, in this article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them.60

Article 25
Freedom of Conscience and Free Profession, Practice and Propagation of Religion

60 The Bonded Labour System (Abolition) Act, 1976 was enacted with a view to abolishing this evil practice and making the offences under this Act punishable. Under a Centrally Sponsored Programme grant-in-aid is provided to the State Government/U.T. Administration for identification, liberation and rehabilitation of the bonded labourer but the progress of this scheme has not been found satisfactory.
(1) Subject to public order, morality and health and to other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.

(2) Nothing in this article shall affect the operation of any existing law or prevent the state from making any law

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice,

(b) providing for social welfare and reform or the throwing open of Hindu religious institution of a public character to all classes and section of Hindu.

Explanation I: The wearing and carrying of Kirpan shall be deemed to be included in the profession of Sikh religion.

Explanation II: In sub-clause (b) of clause (2), the reference to Hindu shall be construed as including a reference to person professing the Sikh, Jain or Buddhist religion, and the reference to Hindu religious institution shall be construed accordingly

Article 46

The Draft Constitution of India included the following article in the chapter relating to the Directive Principles of State Policy.

Promotion of Educational and Economic Interests of Scheduled Castes, Scheduled Tribe and other Weaker Sections.

The State shall promote with special care the educational and economic interests of the weaker sections of the people and, in particular, of Scheduled Castes and Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

Following essentially the policy as laid down under this article, welfare measures for ameliorating the socio-economic conditions of these
communities have been undertaken during the successive plans. The strategy for integrated development of Scheduled Tribes through the Tribal Sub-Plan concept was adopted during the Fifth Five Year Plan. The Tribal sub-plan area is divided into 195 operational units termed as Integrated Tribal Development Project (ITDP), 25 Modified Area Development Approach (MADA), and 75 Primitive Tribal Groups. In addition 79 clusters with a total population of 5000 of which 50% are Scheduled Tribes in each cluster and 75 Primitive Tribal Groups (PTGs) have been identified. In Sixth Five Year Plan a new strategy for the rapid development of Scheduled Castes has been adopted through the mechanism of Special Component Plan, Special Central Assistance and the Scheduled Caste Development Corporations. While SCP and TSP ensure flow of funds for the development of these communities from all divisible programmes under each sector of development with specific targets as to the number of families and bastis which are to be benefited from these programmes, the Special Central Assistance is an additive to the State Plan and programmes for SC & ST for income generating schemes for economic development including directly relevant back-up services, training and institutional build-up. The total no. of SC families economically assisted under SCP from 1992-93 to 1996-97 was 117,96,986.

In the case of Scheduled Tribes the SCA can be used for building infrastructure facilities also. The Scheduled Caste Development Corporations provide margin money loan to the Scheduled Caste families to benefit from the various family oriented developmental programmes, specially in the matter of securing credit. Besides this, there are a number of Centrally Sponsored Schemes which have been undertaken for the benefit of Scheduled Castes and Scheduled Tribes. Apart from these, some schemes under the non-plan sector have also been undertaken by the Central and the State Governments for the advancement of these communities.61

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Special Provisions Relating To Certain Classes

Article 330

Reservation of Seats for Scheduled Castes and Scheduled Tribes in the House of People

(1) Seats shall be reserved in the House of People for
(a) the Scheduled Castes;
(b) the Scheduled Tribes (except the Scheduled Tribes in the tribal areas of Assam and Nagaland); and
(c) the Scheduled Tribes in the autonomous districts of Assam.

(2) The number of seats reserved in any state (or Union Territory) for the Scheduled Castes or the Scheduled Tribes under clause (1) shall bear, as nearly as may be the same proportion to the total number of seats allotted to that state (or Union Territory) in the House of the People as the population of the Scheduled Castes in the State (or the UT) or of the Scheduled Tribes in the State or Union Territory or part of the State (or UT), as the case may be, in respect of which seats are so restricted, bears to the total population of the State (or Union Territory).

(2) The number of seats reserved in any 'State or Union Territory' for the Scheduled Castes or the Scheduled Tribes under clause (1) shall bear, as nearly as may be, the same proportion to the total number of seats allotted to that State or Union Territory in the House of the People as the population of the Scheduled Castes in the State or Union territory or of the Scheduled Tribes in the State or Union territory or part of the State or Union Territory as the case may be, in respect of which seats are so reserved, bears to the total population of the State or Union territory.

(3) Notwithstanding anything contained in clause (2), the number of seats reserved in the House of the People for the Scheduled Tribes in the autonomous districts of Assam shall bear to the total number of seats allotted
to that State a proportion not less than the population of the Scheduled Tribes in the said autonomous districts bears to the total population of the State.

Explanation: In this Article and in Article 332, the expression “population” means the population as ascertained at the last preceding census of which the relevant figures have been published.

Provided that the reference in this Explanation to the last preceding census of which the relevant figures have been published shall, until the relevant figures for the first census taken after the year 2000 have been published, be construed as reference to the 1971 census.

Article 332

Reservation of Seats for Scheduled Castes and Scheduled Tribes in the Legislature Assemblies of the States

(1) Seats shall be reserved for the Scheduled Castes and the Scheduled Tribes (except Scheduled Tribes in the tribal areas of Assam and in the Nagaland), in the Legislative Assembly of every State.

(2) Seats shall be reserved also for the autonomous districts in the Legislative Assembly of the State of Assam.

(3) The number of seats reserved for the Scheduled Castes or the Scheduled Tribes in the Legislative Assembly of any State under clause (1) shall bear, as nearly as may be, the same proportion to the total number of seats in the Assembly as the population of the Scheduled Castes in the state or the Scheduled Tribes in the state or part of the state, as the case may be, in respect of which seats are so reserved, bears to the population of the state.

(4) The number of seats reserved for an autonomous district in the Legislative Assembly of the State of Assam shall bear to the total number of

62 The reservation of seats provided under Art. 332 cannot be challenged on the ground of denial of right guaranteed under Art. 14.
seats in that Assembly a proportion not less than the population of the district bears to the total population of the state.

(5) The constituencies for the seats reserved for any autonomous district of Assam shall not be any area outside that district. (6) No person who is not a member of a Scheduled Tribe of any autonomous district of the state of Assam shall be eligible for election to the Legislative Assembly of the state from any constituency of that district.

Article 334
Reservation of Seats and Special Representation to Cease after Thirty Years

Notwithstanding anything in the foregoing provisions of this Part, the provisions of this Constitution relating to-

(a) the reservation of seats for Scheduled Castes and Scheduled Tribes in the House of People and in the Legislative Assembly of the States; and

(b) the representation of the Anglo-Indian community in the House of People and in the Legislative Assemblies of the States by nomination shall cease to have affect on the expiration of a period of thirty years from the commencement of this Constitution;

Provided that nothing in this article shall affect any representation in the House of the People or in the Legislative Assembly of a State until the dissolution of the then existing House or Assembly as the case may be.

Article 335
Claims of Scheduled Castes and Scheduled Tribes to Services and Posts

The claim of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of
efficiency of administration, in the making of appointments to the services and posts in connection with the affairs of the Union or of a State.

It is the constitutional duty of the State to take into consideration the claims of the members of the Scheduled Castes and Scheduled Tribes in the matter of appointment (subject, of course, to the consideration of the efficiency of the administration). This duty is to be exercised in keeping with the Directive Principles laid down in Art. 46 to promote with special care the educational and economic interests of the Scheduled Castes and Scheduled Tribes, and to protect them from social injustice and all forms of exploitation.

Article 338

National Commission for Scheduled Castes and Scheduled Tribes

(1) There shall be a Commission for the Scheduled Castes and Scheduled Tribes to be known as the National Commission for the Scheduled Castes and Scheduled Tribes.

(2) Subject to the provisions of any law made in this behalf by Parliament, the Commission shall consist of a Chairperson, Vice-Chairperson and five other Members and the conditions of service and tenure of office of the Chairperson, Vice-Chairperson and other Members shall be such as the President may by rule determine.

(3) The Chairperson, Vice-Chairperson and other Members of the Commission shall be appointed by the President by warrant under his hand and seal.

(4) The Commission shall have the power to regulate its own procedure.

(5) It shall be duty of the Commission:

(a) to investigate and monitor all matters relating to the safeguards provided for the Scheduled Castes and Scheduled Tribes under this Constitution or under any other law for the time being in force or under any order
of the Government and to evaluate the working of such safeguards;

(b) to inquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Castes and Scheduled Tribes;

(c) to participate and advice on the planning process of socio-economic development of the Scheduled Castes and Scheduled Tribes and to evaluate the progress of their development under the Union and any State;

(d) to present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards;

(e) to make in such reports recommendations as to the measures that should be taken by the Union or any State for the effective implementing of those safeguards and other measures for the protection, welfare and socio-economic development of the Scheduled Castes and Scheduled Tribes; and

(f) to discharge such other functions in relation to the protection, welfare and development and advancement of the Scheduled Castes and Scheduled Tribes as the President may, subject to the provisions of any law made by Parliament, by rule specify.

(6) The President shall cause all such reports to be laid before each House of Parliament along with a memorandum explaining the action taken or proposed to be taken on the recommendations.

(7) Where any such reports, or any part thereof, relates to any matter with which any State Government is concerned, a copy of such report shall be forwarded to the Governor of the State who shall cause it to be laid before the Legislature of the State along with a memorandum explaining the
action taken or proposed to be taken on the recommendations relating to the State and the reasons for the non-acceptance, if any, of such recommendations.

(8) The Commission shall, while investigating any matter referred to in sub-clause (a) or inquiring into any sub-clause (b) of clause (5), have all the powers of a civil court trying a suit and in particular in respect of the following matters, namely:

(a) summoning and enforcing the attendance of any person from any part of India and examining him on oath,
(b) requiring the discovery and production of any document;
(c) receiving evidence on affidavits;
(d) requisitioning any public record or copy thereof from any court or office;
(e) issuing commissions for the examination of witnesses and documents;
(f) any other matter which the President may, by rule, determine

(9) The Union and every State Government shall consult the Commission on all major policy matters affecting Scheduled Castes and Scheduled Tribes.

(10) In this article, references to the Scheduled Castes and Scheduled Tribes shall be construed as including references to such other backward classes as the President may, on receipt of the report of a Commission appointed under clause (1) of article 340, by order specify and also to the Anglo-Indian community.

Substituted by the Constitution (65th Amendment) Act, 1990. Originally article 338 of the Constitution provided for a Special Officer for the Scheduled Castes and Scheduled Tribes to investigate all matters relating to the safeguards provided for the Scheduled Castes and Scheduled Tribes under the Constitution and to report to the President on their working. It was felt that
a high level five-member Commission under Art. 338 will be a more effective arrangement in respect of the constitutional safeguards for Scheduled Castes and Scheduled Tribes than a single Special Officer. It was also felt that it was necessary to elaborate the functions of the said Commission so as to cover measures that should be taken by the Union or any State for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the Scheduled Castes and Scheduled Tribes and to entrust to the Commission such other functions in relation to the protection, welfare and development and advancement of the Scheduled Castes and Scheduled Tribes as the President may decide, subject to any law made by Parliament and the Legislature of the States. The first incumbent to the post of Special Officer designated as the Commissioner for Scheduled Castes and Scheduled Tribes was Late L.M. Shrikant, appointed on 18th November, 1950 with 17 regional offices all over the country. The last incumbent to the post of Special Officer was Dr. B.D. Sharma. The National Commission for Scheduled Castes and Scheduled Tribes was first constituted by the Ministry of Home Affairs by an executive order in 1978 under the chairmanship of Late Bhola Paswan, M.P. For quite some time both the Commissioner for Scheduled Castes and Scheduled Tribes as well as the National Commission for Scheduled Castes and Scheduled Tribes continued to function simultaneously though the statutory power under Article 338 remained with the former. This arrangement continued till 1990 when Article 338 was amended and Special Officer (designated as Commissioner for Scheduled Castes and Scheduled Tribes) was substituted by the National Commission for Scheduled Castes and Scheduled Tribes. The present Chairman of the Commission is Dalip Singh Bhuria.
Article 341

Scheduled Castes

(1) The President may, with respect to any State or Union territory, and where it is a State ... after consultation with the Governor... thereof, by public notification, specify the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to the State or Union territory, as the case may be.

(2) Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under clause (1) any caste, race or tribe, or part of or group within any caste, race or tribe, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

The various rulings of the Supreme Court of India and various High Courts in this regard have been taken up in the chapter on ‘Mandal Commission Report and its Impact’.