CHAPTER- 2

HISTORICAL BACKGROUND
Historical Background

(i) Protection of rights of minorities before commencement of the constitution.

Minority issue was one of the most unambiguous issues going up against before the Constituent Assembly. The issue of minority-majority uncertainty was at the surface even at the time well known Nehru Report of 1928 and it assumed a crucial part in the development of essential rights. The issue of minority was intense; however, there was contention with respect to the reasons empowering minority awareness. The tale of giving protected safeguards for the different minorities in India can be followed back to the discussion over the rationality of the Constitution which occurred in the Constituent Assembly. It started from the primary determination concerning points and protests of the Constitution, drawn up for future administration. It was moved by Jawaharlal Nehru on Thirteenth December, 1946 only four days after the initial meeting of the Assembly expressing that it should be ensured and secured to all individuals of India justice, cultural, financial and political justice of status, of chance what's more, under the watchful eye of the law; flexibility of thought, articulation, conviction, confidence, venerate, occupation, affiliation and activity, subject of law and open profound quality; and sufficient safeguards might be provided for minorities, in backward and ancestral zones, and discouraged and other in backward classes.\(^1\)

This Objective and Resolution at last discovered articulation in the 'Preamble' of the Constitution which declares in unequivocal terms justice, liberty, equality and fraternity as the unavoidable rights of man. Offering thanks to this determination M.R. Masani- the delegate of the Parsi people group stated-

“While welcoming the clause in this Resolution which promises adequate safeguards for the minorities, I would say that it is a good thing that we have this judiciary and constitutional safeguards.”\(^2\)

Again the majority of noticeable Assembly membera imagined that title of minority issue was altogether a making of the British Government following from

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2. *Ibid. 91*
the presentation of isolated collective electorates, as an individual from the gap and lead approach, in the expressions of Dr. K. M. Munshi-

“The most important task before the Constituent Assembly is to secure political consolidation of the Nation. Its basis has been destroyed by the British by statutorily fragmenting political idea into religious communities under the guise of protecting the minorities.”

To others, minority based troublesome inclination was generally the aftereffect of an essential hostility between the Hindu against Muslim societies. The Muslim minority was, obviously, an extraordinary danger which rose as the detailing of new nation viz. Pakistan yet Muslims were not the single minority gathering. There were minority bunches other than Muslims, the Scheduled Castes, the Sikhs, the Indian Christians, the Anglo-Indians and the Parsees. Throughout the open deliberations, the endeavors of patriot pioneers were to motivate a sentiment of expansive mindedness and shared certainty among all areas of the Indian culture. Calling attention to the uselessness of the paper safeguards given to Eastern European nations, Pandit Govind Ballabh Pant spoke to the individuals at the season of moving the determination for the race of the Advisory Committee:

“Let not the lesson of history is lost. It is a lesson which should be burnt deep in the hearts and minds of all minorities that they can find their protection only from the people in whose midst they live and it is on the establishment of communal goodwill, communal trust, cordiality and amity that the rights and interests not only of the majorities but also of the minorities depend. This lesson of history, I hope, will not be forgotten.”

Such interests in light of national combination were not without importance. A few individuals from minority groups valued the soul behind it and were prepared to forfeit bias identifying with the assurance of their communities; but the greatest individuals from minority groups guaranteed safeguards over the above crucial rights. The Advisory Committee named by the Constituent Assembly comprised of individuals drawn from Muslims, Sikhs, Anglo-Indians, Parsees, Scheduled Castes and delegates of Tribal Areas.

5. Supra note 3 at 201
The protection proclaimed by minorities fell into various classes and there was astounding strain to guarantee straight out established safeguards for them.\(^6\)

Under unavoidable and convincing conditions Assembly needed to surrender certain protections for minorities by endeavouring to limit, beyond what many would consider possible, the adverse impact of minority cognizance. When Nehru remarked-

“So far as India is concerned, we have very clearly stated that both as Government and otherwise that we cannot think of any State which might be called a communal or religious State. We can only think of a secular, non-communal, democratic State, in which every individual to whatever religion he may belong has equal rights and opportunities.”\(^7\)

This was a confirmation given to the minorities the entire level-headed discussion in the Constituent Assembly on Article 23 of the Draft Constitution which later expected the state of the present Articles 29 and 30, revolved around this issue.

What rights could or ought to be surrendered to minorities? At long last, the protection of minorities took two structures. To start with was the consideration of non-oppressive treatment,\(^8\) a flexibility of religion\(^9\) and exceptional arrangements identifying with cultural and instructive rights of minorities\(^10\) in the form of Fundamental Rights. The second mode to ensure minority intrigue was the incorporation of specific arrangements in the Constitution yet not inside the Fundamental Rights. Such arrangements included sufficient minority representation in Parliament\(^11\) and State legislatures,\(^12\) Civil Services\(^13\) and so forth. I might be presented that the authors yielded minority rights, as it was basic in the cultural and national premium, however, their sincere want was that the established protections will empower the majority and minorities to consolidate sometime into one. To cite Dr. B.R. Ambedkar,

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6. Ibid. 240
7. After Partition, Modern India Series - 7 (1948)
8. The Constitution of India - Articles 14, 15 and 16.
9. Ibid. Articles 25 to 28
10. Ibid. Articles 29 and 30
11. Ibid. Articles 330 and 331
12. Ibid. Articles 332 and 333
13. Ibid. Articles 335 and 336
“Speaking for myself, I have no doubt that the Constituent Assembly has done wisely in providing such safeguards for minorities as it has done. 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. A solution must be found which will serve a double purpose. It must recognize the existence of minorities to start with. It must also be such that it will enable majorities and minorities to merge someday into one.”

As indicated by the terms of the Cabinet Mission's announcement of May 16, 1946, the decision to the Constituent Assembly was held in the mid-year of 1946 and the Assembly was at last gathered on December 9 that year. Practically all through the period for which Assembly met the subject of protection of minorities remained an essential and disputable issue and kept on connecting with the consideration of the individuals till the Assembly had finished the draft of the whole constitution in November 1949.

So far as the minority question was concerned, the meeting of the Assembly had placed the Congress at an exceptionally fragile position. It needed to secure the agreement of minorities while as yet fulfilling the greater part. All through the period amid which the Congress party had battled for recognition of rights and protection of interests, it had kept before it the perfect of Indian national unity as a fundamental premise. Hence, in securing the assertions of minorities in the event that it yielded excessively for assurance of minority interests, it would serve to sustain the awareness of particular personalities among the minorities. However, in the event that it produced too little, it would open itself to the difference in having practically no concerns for minority’s interests. For a very long while in the past, it had been a potent weapon in the hands of the Muslim League.

They upheld that minority interests were not protected in the hands of ‘brute’ Hindu majority and the English ruler had always remembered to attest that they had an uncommon commitment to secure the minorities. The Congress...

excessively had reliably pronounced in the past that it was its essential obligation as well as its principal strategy to ensure the religious, linguistic, cultural and different rights of minorities to guarantee for them in any plan of government to which Congress would be a gathering. The most extensive degree for their advancement and their full investment in the political financial and cultural existence of the country would be ensured. Congress was in this way put on trial and had needed to show its greater purpose.

The Advisory Committee met on February 27, 1947, under the chairmanship of Sardar Patel and separated 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-boards that the issues of defending the minorities were bit by bit settled.

The Sub-Committee on Minorities was named on 27 February 1947 alongside Fundamental Rights Sub-Committee. The Sub Committee on Minorities under the chairmanship of H.C. Mukherjee, a Christian pioneer from West Bengal met that day it was made i.e. on February 27, 1947. It held an aggregate of three sittings. At its initially sitting on Feb 27 and 28, 1947 after the race of H.C Mukherjee as Chairman, it talked about a general proportion of work and methodology. With a specific end goal to find out the perspectives of its individuals, the Sub Committee additionally received a poll arranged by K.M. Munshi.

At its second sitting on April 17-19, 1947, the Sub Committee discussed a report of the Sub Committee on Fundamental Rights and considered how far its proposal required correction or enhancement for the particular motivation behind ensuring minority rights. At its third sitting on July 21-27, the significant focuses emerging out of answers to the survey and the notice and memoranda received from members and others were considered. At its second sitting on April 17-19, 1947, the Sub Committee talked about a report of the Sub Committee on Fundamental Rights and considered how far its proposal required revision or enhancement for the particular motivation behind securing minority rights. At its third sitting on

18. The remaining two sub-committees were on tribal and excluded areas.
19. Select Documents, 391 Vol. II.
July 21-27, the real indications emerging out of answers to the survey and the notice and memoranda received from individuals and others were considered. The survey which was received and flowed to individuals to get their perspectives was in the accompanying terms.20

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;
   (b) 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?

Other than answers to this survey from individuals the Sub-Committee got memoranda and notes from specific minorities association. Memoranda were submitted in the interest of the Scheduled Castes, Scheduled Tribes, Sikhs and Anglo Indians requesting protected safeguards. No particular common protections were requested for the benefit of Indian Christians and Parsees. Likewise, no memorandum was exhibited in the interest of the Muslim League as it was as yet not taking an interest in the procedures of the Assembly.21

In this regard, the most point by point note originated from Dr. B.R. Ambedkar who submitted it for the Scheduled Castes.22 As a pioneer of the Scheduled Castes, he was fundamentally worried about the political and cultural protections for the Scheduled Castes, and with guaranteeing that the new constitution gave satisfactorily for their upliftment. By the method for political safeguards, he

22. Ibid 7-8
recommended the foundation of non-parliamentary irremovable administrators both in the Union and in the units. He recommended that the Scheduled Castes ought to have a base representation as indicated by their population proportion in the law-making bodies, services, in municipalities and local boards. These agents were to be chosen through partitioned common electorates. In the services of the Union and of the units the delegates of the Scheduled Castes and different minorities were to be chosen by the individuals from the legislature having a place with every minority group by the strategy for relative representation by methods for the single transferable vote. Ambedkar proposed facilitate that the Planned Castes ought to have a base offer of the posts in the different open services in proportion to their population and that this reservation ought to be made up and down the line - in the Union services, the services of the units and in the services of municipalities, local boards and other local authorities. On each open administration commission and other determination boards, the Scheduled Castes were to have no less than one representative.²³

On the cultural side, Ambedkar was extraordinarily worried about what he called cultural blacklist, which he depicted as a “Sword of Damocles”. Just the untouchables recognized what a frightful weapon this could be. He along these lines proposed stringent discipline for cultural blacklist and for advancing, impelling or undermining cultural boycott.²⁴

Ambedkar’s recommendations for the enhancement of the states of the Scheduled Castes included liberal arrangement of assets in the financial plans of the services of the Union and of the units for advanced education, auxiliary and school training, and for instruction abroad of individuals from this group; the settlement of Scheduled Castes in independent villages; and the setting up of a Settlement Commission for this reason. At last, to watch over the advance of these measures, he needed an Office of Administrator of Minority Affairs to be made with an indistinguishable status from the Auditor-General, whose obligation is get ready a yearly give an account of the treatment of minorities by people in general as well and also by the legislatures of the Union and the states; what’s more, on any transgressions of safeguards or miscarriage of justice emerging out of communal

²³. B. Shiva Rao 1, 748-49
²⁴. Ibid. 749
inclination by the legislatures and their officers. These reports were to be set before the Union and the state assemblies and to be talked about by them.\textsuperscript{25} Jagjivan Ram, a conspicuous pioneer of the Scheduled Castes (who was a Minister in the Central government), stressed that the assurances ought to be coordinated to the protection of racial and religious minorities (for instance, Christians and aboriginals) from “extinction” and the assimilation of minorities like the Scheduled Castes in the parent body by conveying them to a level equivalent with that of others in the group. A significant number of the safeguards could in his view be given as ‘basic rights’. The particular safeguards which he proposed 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 classifications, civil and military, and in the judiciary. He likewise encouraged extraordinary ameliorative measures; a housing Board to apportion reasonable plots and give solid houses; free instruction at all phases in every single instructive foundation; and liberal stipends for higher and particular training, both in India and abroad. Alike Ambedkar, Jagjivan Ram likewise argued for the establishment of an independent minority’s commission to manage the welfare of minorities and to analyse all instances of the encroachment of their rights, benefits, and offices. He proposed that the certification of religious and cultural flexibility to racial and religious minorities ought to be a lasting element of the constitution; however the unique arrangements with respect to Scheduled castes could be disposed of when untouchability itself was completely disposed of; when every Hindu sanctuary was available to every one of the ranks in Hindu society; when water or the nourishment of one rank was not viewed as “contaminated” by the touch of some other caste; and Hindus of all positions could partake in all religious and cultural capacities. 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.\textsuperscript{26}

Different recommendations for safeguards for Scheduled Castes were contained in a notice sent by the ‘All-India Hindu Depressed Classes Association’ and in the

\textsuperscript{25} Ibid.
\textsuperscript{26} Ibid. 749-50
answer of H.J. Khandekar, an individual from the Minorities Sub-Committee. The Depressed Classes Association planned a not insignificant rundown of measures for the inspiration of the Scheduled Castes; specifically it asserted reservation of seats in the different Legislatures in proportion to their population and questioned that either race to these saved seats ought to be through discrete electorates, or, on the off chance that the guideline of joint electorates was embraced, each competitor should, before he was pronounced chosen, secure no less than 40 percent of the votes surveyed by individuals from the Scheduled Castes. Khandekar likewise gave an extensive rundown of general and particular recommendations, principally on the lines of the proposition made by Jagjivan Ram; his fundamental claim was that Scheduled Castes being in terms of population equivalent to Muslims, the reservation of seats in the Legislatures, Ministries, judiciary and public services should not be less ideal than the representation given to Muslims. The protections gave that all concessions and benefits given to minority groups ought to be viable for a time of thirty years, after which the groups ought to be consulted as respects their modification.27

At this stage, the Muslims League was not taking an interest in the procedures of the Assembly; and no notice in the interest of the Muslim people group was exhibited. Ujjal Singh and Harnam Singh, two individuals from the Minorities Sub-Committee, displayed a presented a detailed memorandum setting out the safeguards to be provided to the Sikhs. The essential point made in this notice was that Punjab must remain the “country and heavenly place that is known for the Sikhs” despite the collective unsettling influences which were around then occurring in that area. The proposal was additionally made that Punjab ought to be isolated into two separate independent units; or if this was impractical under the Cabinet Mission's proposition of May 1946, at that point that it ought to be partitioned into two sub-territories - North-West and South-East Punjab each with its own legislature and cabinet. Affairs of joint concern were to be managed by a joint legislature containing an equivalent number of members chose by each sub-provincial legislature. The Sikhs were to be given weight in this joint legislature on indistinguishable lines from would be embraced for Muslims in the Central

27. Ibid. 750
Legislature; in like manner a 25 percent representation was to be given to Sikhs in the joint Cabinet.

The Cabinets were to be picked on the Swiss model, Legislatures, what's more, a cabinet having the same settled term of office. The notice specified the North-West Frontier Province, Baluchistan, and the United Provinces as alternate Provinces in which Sikhs were interested; and it recommended the arrangement of a Sikh part in the cabinets of the initial two and a Minister for littler minorities in the United Provinces. The reservation of posts in the services 25 percent in the Punjab and 10 percent in the United Provinces - was another proposal. The amendment approached in addition to other things for financial and cultural protects, a certification of religious rights - including the privilege to wear ‘Kirpans’, what's more, get ready and utilize ‘Jhatka meat’. The update likewise looked for a certification of the privilege to utilize the Punjabi language for the lead of authoritative and managerial business in Punjab.28

One of the demands outlined in the memorandum was that three in backward classes among the Sikhs known as Mazhabis, Ramdasias and kabirpanthis - ought to be furnished with similar unique educational facilities and reservations in people in general administration that were provided Scheduled Castes and native tribes. There were different recommendations for political protections for Sikhs at the Center. Predominantly, these were that 6 percent of the seats in the Central Legislature ought to be held for Sikhs; and Sikh ought to dependably be individual from the Central Cabinet; that 5 percent of posts in the Central Services ought to be saved for Sikhs; and that in the protection benefits the proportion of Sikhs ought not be lower than what they as of now enjoyed.29

Memoranda were likewise submitted on behalf of the smaller minorities. Two were submitted in the interest of the Anglo-Indians, one by Frank Anthony and one by S.H. Prater. The requirements of this little group, which had received western ways and ways of life, were threefold. First, they wanted a guarantee as a fundamental right of facilities to receive educational grants secured, Secondly they needed the liberal educational grants secured for Anglo-Indian and European Schools by the government of India Act, 1935, to be preceded, as well as

28. Ibid. 750-51
29. Ibid. 751
expanded in connection to their necessities. Thirdly, special provisions ought to be made in the constitution for securing for them a special claim to a level of arrangements in the Railways, in the traditions and in public services, especially in these divisions, for their reality, and any sudden bombshells would truly partiality the group's economy.

With respect to safeguards, Frank Anthony proposed that Anglo-Indians ought to be given expanded representation in the Central Legislature. They were at that point spoken to in the Legislature Assemblies of Madras, Bombay, Bengal and the United Provinces; he recommended an augmentation of such representation to Sind, Assam, and Orissa. Prater requested representation in every single Provincial Legislature. The two needed an Anglo - Indian to be incorporated into the Central Cabinet.  

R.N. Brahma, apart from Assam, needed safe-watches for those innate individuals in Assam who had left the ancestral areas and had settled down in the fields. These people talked their own vernaculars and the larger part of them took after their inborn type of religion and adore; and, as per him, they could be assembled together and given representation in the Central and common governing bodies on the population premise, and a due offer of posts in the general population services. It was additionally proposed that three seats in the Assam cabinet ought to be saved for them. These tribal’s were in backward individuals in connection to whatever is left of the population and he needed an uncommon arrangement for their instructive and cultural improvement and an exceptional hardware set up as a board or a legislature to prompt and care for the training of these ancestral individuals. Another proposition was that unique statutory arrangement ought to be made to shield them from abuse and especially the anticipation of estrangement of their territories; and reservation of adequate land for the impressive proportion of landless inborn individuals in the fields regions of Assam.  

No particular common demands were advanced in the interest of Indian Christians. Genial Mody, for the benefit of the Parsees, said that his group had never requested any uncommon benefits, yet their position was that if different minorities were agreed on extraordinary representation anyplace, the Parsees

30. Ibid. 752  
31. Ibid.
ought to likewise get treatment at any rate equivalent to that given to one of the little minorities. His view, notwithstanding caste, was that there couldn't be such an unbelievable marvel as a political protection of any an incentive for a minority; what the minorities needed was a political open door and such open door must be given by method for least representation in the assemblies and the executive.\textsuperscript{32}

Rajkumari Amrit Kaur was against protections of any sort. She said; “benefits and safeguards truly debilitate those that request them... Aphoristically there is no motivation behind why the interests of any individual or group ought not to be protected in the hands of a decent individual or people, independent of their own religion”. In perspective of the strained common air winning in India, in any case, she felt that a few stages were important to motivate trust in the minorities; the two solid proposals she made were the setting up of an extraordinary court to choose what a communal issue was; and when a collective issue emerged, a board (in which no group would have more than one vote) could vote by a larger part any measure which it felt was not for people in general good.\textsuperscript{33}

Shyama Prasad Mukherjee and Jairamdas Daulataram in their memoranda point by point time basic rights which they thought would be important for the assurance of minority rights. The previous proposed the setting up of every Province of a Minorities Commission, comprising of the delegates of minorities, to inform on the insurance concerning minorities interests. Jairamdas Daulatram favored the setting up of a ‘Minority Assurance Court’, selected by the Chief Justice of the Supreme Court, to settle on dissensions by minorities of out of line treatment. Mukherjee recommended reservation of seats in legislatures for imperative minorities, and those two looked for the consideration of agents of minority groups in the different Ministries.\textsuperscript{34}

K.T. Shah concentrated consideration on the development of religious minorities in India. The duration of particular electorates had prompted the development of political gatherings on religious lines instead of on financial or political beliefs. The rights of groups in light of religion or race would need to be characterized with some care and accuracy, so as not exclusively to meet all the fair requests for protecting their religion and culture, yet additionally to keep any mishandling of

\textsuperscript{32} Ibid.
\textsuperscript{33} Ibid. 753
\textsuperscript{34} Ibid.
the rights ensured to minorities as against whatever is left of the groups. The rights of minorities were not the commitments of the dominant part alone, yet rather the certifications of the whole community.\textsuperscript{35}

M. Ruthnaswamy contended that the inclination of a larger part is to make little of the rights and freedoms of a minority. For national religious and cultural minorities (in which class is incorporated Muslims, Sikhs, Indian Christians, and Anglo-Indians), he felt that there ought to be a two-create shield. They ought to be permitted to maintain, lecture and spread their religion; and satisfactory arrangement ought to be made for the advancement of their religious and common culture. This arrangement ought to incorporate foundations kept up by these religious groups; unique stipends for the advancement of instruction of in backward minorities; and the arrangement by the State of schools for minority groups, where their religion and culture would be educated. He additionally upheld representation of such minorities in the Central, commonplace and state Ministries and all divisions of the organisation as per population. With a specific end goal to guarantee that they ought to be put under the insurance of the government court; he imagined that by virtue of the high eminence for biasedness delighted in by official courtrooms in India, minorities like people would discover in them the best barrier of their rights and freedoms, and all together that this government justice may be effortlessly accessible and available, he recommended the across the board foundation of nearby units of the elected court in each region, substantial state and in gatherings of little states.\textsuperscript{36}

It was against the foundation of these disparate perspectives that the Minorities Sub-Committee met on April 17, 18 and 19, 1947, to think about this imperative issue. At these gatherings, the Sub-Committee considered the interval recommendations of the Fundamental Rights Sub-Committee in so far as these had an orientation on minority rights. These dialogs secured such imperative issues as the disallowance of segregation on grounds of race, religion, station and so on.; the abolishment of untouchability and the compulsory prerequisite that the authorization of any incapacity emerging out of untouchability ought to be made an offense culpable as indicated by law; opportunity of claiming, honing and

\textsuperscript{35} Ibid.
\textsuperscript{36} Ibid. 753
spreading one’s religion; the privilege to build up and keep up foundations for religious and magnanimous reason; the privilege to be administered by one’s close to home law; the privilege to utilize one’s mother tongue and set up denominational, public or language school, etc.\textsuperscript{37}

Having managed question of central rights for minorities, the Minorities Sub-Committee met again on July 21, 1947, to contemplate about the political protections for minorities and their representation in people in general services. At this point, the subject of parcel had been chosen and the Muslim association was likewise spoken to in the Sub Committee.\textsuperscript{38} The issues for the thought of the Sub - Committees were figured as takes after:-

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

Discussions on these issues proceeded till July 27. A Consistent choice couldn't become on many focuses, and in reality, the voting on a few things was close. On a few focuses the voting was equivalent and where voting was equivalent, the administrator of the Sub Committee did not think of it as important to practice his making choice since regardless these issues were to be talked about by the Advisory Committee. The report of the Sub - Committee submitted on July 27 contained just a synopsis of the conclusion provided by the panel and furthermore said the aftereffect of the vote on each issue.\textsuperscript{39}

The Sub Committee decided by an extensive majority against discrete collective electorates for decisions to the governing bodies. It was comprehended that in landing at this choice it was available to the Sub-Committee to express its inclination for any of a few types of joint electorates that could be formulated. Yet, the Sub-Committee picked not to make any such recommendation.\textsuperscript{40}

On the issue of reservation of seats for minorities in the lawmaking bodies the Sub-Committee chose, again by an extensive majority, and as a general rule, for

\textsuperscript{37} Ibid.
\textsuperscript{38} Minutes, Minorities Sub-Committee, \textit{Select Documents}, 392 Vol. 9 (ii)
\textsuperscript{39} \textit{Select Documents}, 396-400 Vol. II, 10 (i)
\textsuperscript{40} B. Shiva Rao, 1, 755
reservation of seats for the diverse perceived minorities in the different assemblies; and such reservations would at first be for a time of ten years, the position to be rethought toward the conclusion of the period.\textsuperscript{41}

The Sub-Committee at that point continued to think about what minorities and in which regions were to be given the privilege of held seats. For this reason, the “perceived” minorities were partitioned into three gatherings; Anglo-Indians, Parsees and the tribesmen living in the fields of Assam, these groups being minorities having under $\frac{1}{2}$ for every penny population in the Indian Dominion; Indian Christians and Sikhs, being minorities having a population of not more than $\frac{1}{2}$ percent; Muslims and Scheduled Castes, being minorities having a population surpassing $\frac{1}{2}$ percent.\textsuperscript{42}

The topic of representation in the Central and Provincial Legislatures for Parsees and Anglo-Indians was conceded for later thought by the Advisory Committee. The agents of the Indian Christians were set up to acknowledge reservations proportionate to their population in the Central governing body and in the Provincial Assemblies of Madras, Bombay, Assam and East Punjab, where the Indian Christians population was adequately various to give them isolate seats.\textsuperscript{43}

In alternate Provinces, they were content with looking for decision for the general seats. They were contradicted on the standard to the weight being given to any group however in the event that it was yielded to Sikhs, Muslims, and the Scheduled Castes; the Indian Christians would likewise request a similar benefit. The Christians would likewise request a similar benefit. The Christian position was acknowledged by the Sub-Committee. The Sub Committee additionally chose not to offer weight to any of the minorities. So far as the Sikhs were concerned, thought of safeguards was conceded in perspective of the unverifiable position in East Punjab at that point winning inferable from the mass removal of the population taking place.\textsuperscript{44}

The Sub-Committee chose to allude to the Advisory board of trustees a suggestion that a minority applicant remaining for decision for a held seat should survey a base number of votes of his own group before he was announced chosen. It was,

\begin{itemize}
\item \textsuperscript{41} Ibid.
\item \textsuperscript{42} Ibid.
\item \textsuperscript{43} Ibid.
\item \textsuperscript{44} Ibid.
\end{itemize}
in any case, acknowledged that an individual from a minority group which had saved seats could likewise challenge the open seats.\textsuperscript{45}

Ambedkar had an intriguing recommendation to make. The competitors had a place with a greater part group should, before being proclaimed chosen, survey a base number of votes from among the minority groups in their voting demographics. This would have added up to a minority practicing a kind of veto on the larger part groups and not accepted.\textsuperscript{46}

On the reservation of seats for minorities in the cabinets, voting was close. The Sub Committee acknowledged by eight votes to seven K.M. Munshi’s recommendation that there ought to be no statutory arrangement yet it upheld the selection of a tradition on the lines of Section 7 of the Instrument of directions issued to the governors of areas under the 1935 Act. This was to be given in a timetable to the Constitution.\textsuperscript{47}

On the reservation of spots in people in general services, it has concurred that there ought to be such booking for the Scheduled Castes, Muslims, the field’s tribesmen and the Anglo-Indians. The Indian Christians and the Parsees, notwithstanding caste, did not need any reservation. The subject of reservation in the services for posts for which focused examinations were held was independently considered. Reservation was favored for the Scheduled Castes however not for Muslims, Sikhs and the tribesmen. The Anglo-Indians did not need the reservation in services of this class, nor the Parsees and Indian Christians, who looked for no reservation in any services, regardless of whether by rivalry or something else. Voting occurred on a determination proposed by Ali Zaheer which gave that in making arrangements the commonplace and the Central governments should keep in see the cases of all minorities, reliably with the thought of effectiveness of the organisation. There were nine votes in support, and nine against this proposal.\textsuperscript{48}

The setting up of a skillful and fair-minded managerial structure to guarantee protection of minority right was an issue on which incredible anxiety was laid; the Sub-Committee acknowledged Ambedkar’s proposition for a free officer being

\textsuperscript{45}. Ibid.
\textsuperscript{46}. Ibid. 755-56
\textsuperscript{47}. Ibid. 756
\textsuperscript{48}. Ibid.
designated by the President at the middle and by the governors in the territories, to
answer to the Union and common Legislatures individually on the working of the
minorities' safeguards. The Committee additionally acknowledged K.M. Munshi’s
recommendation that there ought to be arrangement empowering the setting up a
commission for an occasional examination concerning the states of culturally and
instructively in backward classes.49
Rajkumari Amrit Kaur was against both the reservation and to weight for any
group. In her moment of difference she held that anything in the idea of benefits
for any extraordinary class or area of society wasn't right on a fundamental level;
and when it was given on the ground of religion, it was doubly wrong, for all
religions remained for the fellowship of man and not for dissent. Additionally,
such reservations and exceptional benefits would militate against the announced
goal of the Indian union, which was to build up an uncouth society. Extraordinary
benefits and protection, she dreaded, would prompt the discontinuity of the Indian
nation.50
Then again H. J. Khandekar, in his note of contradiction unequivocally
underscored the requirement for statutory arrangements for the reservation of
seats in the Central and common cabinets for the Scheduled Castes. The state of
different minorities was not quite the same as that of the Scheduled Castes who
merited exceptional treatment in this matter.51

**Report of the Advisory Committee**

At the point when the report of the Sub-Committee came up for thought before the
Advisory Committee in July 1947, they embraced every one of the conclusions
advanced by the Sub Committee aside from with respect to Anglo Indians for
which it selected a sub-board of trustees to cover the position of the group in
specific services and the current instructive offices for them.52

The report of the Minorities Sub-Committee was examined by the Advisory
Committee for four days, from July 28 to 31. Khaliquzzaman, a prominent
Muslim group pioneer, set forward the proposal that the subject of protections for

50.  *Ibid.* 759
52.  Anwarul Yaquin,13, 10
minorities ought to be chosen by the lower legislature of people having a place with the lion's share group approved by the Congress high order to make choices. He imagined this would be a superior technique than dialogue in a sub-advisory group. The proposition was however did not acknowledge.

The general disposition of the Advisory Committee on the subject of established protections was set out as follows in its report:

We have felt bound to dismiss a portion of the recommendations put before us halfway in light of the fact that as, on account of reservation of seats in cabinets, we felt that an unbending established arrangement would have made parliamentary vote based system unworkable and halfway since, as on account of the discretionary courses of action, we thought of it as important to orchestrate the exceptional cases of minorities with the improvement of a sound national life. We wish to influence it to clear, in any case, that our general way to deal with the entire issue of minorities is that the state ought to be run to the point that they should quit feeling abused by the unimportant certainty that they are minorities also, that, despite what might be expected, they should feel that they have as good a section to play in the national life as some other area of the group. Specifically, we think it is a principal obligation of the state to take uncommon strides to raise those minorities which are in backward to the level of the general community.\(^{53}\)

The Committee completely dismissed separate electorates of any sort, as having in the past honed common contrasts and turned out to be one of the principal hindrances to the advancement of a sound national life. All races to Central and common lawmaking bodies were to be hung on the premise of Joint Electorates. Altogether, be that as it may, that the minorities ought not to feel troubled about the arrangement of unlimited joint electorates or the quantum of their representation, the Advisory Committee prescribed when in doubt that seats for various perceived minorities ought to be held in different assemblies on the premise of their population. No weightage was to be given to any group; however, individuals from a minority group would be qualified for challenge open seats notwithstanding caste the seats saved for them. The Committee was likewise restricted to any sort of total voting or to any necessity that an individual from a minority group challenging a saved seat should survey a base number of votes of

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his own group. In their view, a mix of these two would have all the malicious impacts of partitioned electorates.\textsuperscript{54}

Managing the quantum of representation to be given to singular minority groups, the Committee suggested that Muslims and Scheduled Castes ought to get saved seats in proportion of their population; Indian Christians acknowledged reservation of seats as per the population in the inside and in Madras and Bombay; the Parsees pulled back their claim for any sort of statutory reservation; so far as the Anglo-Indians people group was worried, after much talk, the agents of this group were convinced to pull back cases for any statutory reservation of seats in the legislatures, on the under-caste that the President of the Union and the governors of Provinces would have the ability to name their delegates in the event that they neglected to secure any representation because of the general decisions. The thought of protections for the Sikh people group was put off; so was the situation of tribesmen living in the fields of Assam, pending the report of Committee on Tribal zones, the Excluded and Partially Excluded Areas of Assam.\textsuperscript{55}

On the representation of minorities in cabinets, the Committee acknowledged the perspective of the Minorities Sub-board of trustees that there ought to be no statutory arrangement for such reservation, however that a tradition on the lines of the Instrument of directions to the Governor-General under the Government of India Act, 1935, could be given in a calendar to the Constitution. The Committee likewise ruled against particular arrangements for reservation of arrangements in people in general services; and it was agreeable to a general arrangement on the lines proposed by Ali Zaheer that in the all Indian and common services, the cases of minorities ought to be kept in see reliably with the proficiency of organisation.

At the point when this issue was talked about in the Advisory Committee, Khaliquzzaman needed that reservation of arrangements in public services ought to be provided all minorities on a population premise; and Ambedkar squeezed the instance of the Scheduled Castes for a particular treatment and the reservation of

\textsuperscript{54} B. Shiva Rao, 1, 757-58

\textsuperscript{55} Ibid. 758
post for them on a population premise. Neither of these recommendations was acknowledged by the Committee.\textsuperscript{56}

The Committee chose, however, to consider the instance of the Anglo-Indians for exceptional treatment, as a result of the total reliance of the economy of the group on its position in specific services. A Sub-Board was named to consider this issue and it provided details regarding August 22, 1947.\textsuperscript{57} The entire economy of the Anglo-Indian people group was reliant on their expeditionary work in specific sorts of posts in the Railways, the Posts and Telegraphs and the Customs Departments. A review made in Bombay had demonstrated that 76 percent of the employable area of the group was needy for business on these arrangements and in the conclusion of the Sub Committee the position somewhere else was generously comparative. The extraordinary reservation given by the administration of India Act 1935, stretched out just too specific classes of posts in these divisions. On the off chance that these protections were not preceded for a few years, the Anglo-Indian people group would be subjected to a sudden financial strain which it won’t have the capacity to endure. The Sub-Committee suggested that the reservation of arrangements appreciated by the Anglo-Indians in these services ought to be preceded for the present however diminished continuously and stop to exist after ten years.\textsuperscript{58}

The Sub-Committee additionally detailed that uncommon instructive gifts totaling Four and a half million Rupees were being made to around 500 Anglo Indian schools in India. A sudden lessening in this allows would genuinely disjoin the economy of these schools. It was in this way prescribed the uncommon help given to these schools would be diminished step by step finished a time of ten years; from there on they would be dealt with in an indistinguishable way from other comparable schools.\textsuperscript{59}

The Advisory Committee acknowledged these proposals and included them in a supplementary report which was submitted to the President of the Assembly on August 25, 1947.\textsuperscript{60}

\begin{thebibliography}{9}

\bibitem{56} Ibid.
\bibitem{57} Select Documents, Vol. II 12 (ii) 419-21
\bibitem{58} B. Shiva Rao, 1, 758-59
\bibitem{59} Ibid. 759
\bibitem{60} Select Documents, Vol. II 12 (iii) 421-22
\end{thebibliography}
The Advisory Committee arrived at the conclusion that the best apparatus for guaranteeing the utilisation of the certifications and safeguards provided the minorities in the constitution was for the inside and each of the units to delegate an exceptional Minority Officer accused of the obligation of enquiring into assertions of encroachment of protections and of answering to Parliament or the concerned legislature.\textsuperscript{61}

The Committee likewise acknowledged the suggestions of the Minorities Subcommittee for an arrangement to set up a statutory commission, the proportion of whose request would be considerably more extensive than the safeguards of the perceived minorities. The Advisory Committee felt that it was the essential obligation of the state to find a way to raise those segments of minorities which were at backward level in comparison to the general group. The commission proposed to explore into the states of all “culturally and instructively in backward classes”, to think about the troubles under which they toiled and prescribe the means to wipe out these challenges and the funds to be provided the purpose.\textsuperscript{62}

The reports of the Advisory Committee on minority rights and on Anglo-Indians were considered by the Constituent Assembly on August 27 and 28. Presenting the provided details regarding the minority rights, Vallabhbhai Patel depicted the report as “the aftereffect of a general accord between the minorities themselves and the majority.”\textsuperscript{63}

The Assembly embraced every one of the proposals of the Committee without any change. The dialogue predominantly focused around the issue of joint or separate electorates. B. Pocker, a Muslim Leaguer from South India, moved an alteration for proceeding with partitioned electorates for the Muslim people group with the help of Khaliquzzaman, which was unequivocally opposed by Govind Vallabh Pant naming the proposition as self-destructive for the minorities themselves. He cautioned them.

“On the off chance that you have isolate electorate for the minorities, the unavoidable outcome is that the dominant part ends up noticeably disconnected

\textsuperscript{61} B. Shiva Rao, 1, 759
\textsuperscript{62} Ibid.
\textsuperscript{63} Constituent Assembly Debates, 212 Vol. V also Iqbal A. Ansari (ed.) Readings on Minorities, 275 (I.O.S., New Delhi 1996).
from the minorities, and being in this way cut off from the minorities, it can ride roughshod upon them.”64

Remarking on the state of mind of the Muslim League Vallabhbhai Patel, the Chairman of the Advisory Committee, stated:

“When I consented to the reservation on the population premise, I suspected that our companions of the Muslim League would see sensibility of our disposition and adjust to the changed conditions after the detachment of the nation. Be that as it may, I now discover those embracing similar techniques which were received when isolate electorates were first presented in this nation and notwithstanding caste plentiful sweetness in the language utilized there is a full measurement of a toxic substance in the strategy adopted.”65

The change for the continuation of particular electorates was dismissed by the Assembly. The Constituent Assembly was meeting when the impact of the Radcliffe’s stand on the population structure of the Provinces of East Punjab and West Bengal couldn't be precisely gaged, on account of an extensive scale movement of populations occurring over the frontiers of East Punjab and West Bengal. The Assembly is chosen to put off the thought of minority rights in the political field to be given in the constitution to the Sikhs and different minorities in East Punjab. The Assembly likewise consented to the recommendation of the delegates of West Bengal to postpone thought of the Proposal that individuals from minority groups in that area would have the privilege to challenge general seats notwithstanding caste the seats held for them on their population strength.66

The Scheduled Castes were constantly thought to be that area of the Hindu people group which was liable to certain cultural handicaps like untouchability and K.M. Munshi moved an amendment which portrayed the Scheduled Castes as an “area of the Hindu people group”. This was acknowledged yet subsequently changed as certain Sikh people group was additionally included as Scheduled Castes.67

Another endeavor was made amid the exchange of the answer to present the rule of discrete public voting. S. Nagappa for the benefit of the Scheduled Castes moved a change that an applicant from that group should, before being proclaimed

64. Constituent Assembly Debates, 244 Vol. V
65. Ibid. 296
66. B. Shiva Rao, 1, 760
67. Ibid.
chosen to a save seat, be required to survey 35 for every penny of the voters surveyed by the community;\(^{68}\) and a comparable alteration was moved in regard of all minorities by K.T.M. Ibrahim.\(^{69}\) Vallabhbhai Patel was seriously condemning of this recommendation; he found in the alteration a further endeavor at sowing the seeds of communal interruption and completely declined to acknowledge the revision. The change was dismissed by the Assembly.\(^{70}\)

These choices of the Constituent Assembly were consolidated in the Draft Constitution arranged by the Constitutional Advisor. In the interim the North-East Frontier (Assam) Tribal and Excluded Areas Sub - Committee presented it give an account of July 25, 1947, while the Excluded and Partially Excluded Areas (other than Assam) Sub-Committee presented a time bound investigation August 18 and a moment writes about September 25.\(^{71}\) By their terms of reference these two Sub-Committees were required to draw up plans of organisation for the innate regions and in addition for the avoided and somewhat prohibited territories. As they continued with their works, the two Sub-Committees found that an impressive proportion of the innate and native population lived outside these regions. Along these lines in Assam the aggregate ancestral population as per the statistics of 1941 was around 2 & 1/2 million, yet of these 64 percent lived in the plains.\(^{72}\)

Similarly, the Sub-Committee on rejected and somewhat prohibited zones in territories other than Assam additionally found a significant proportion of the innate population possessing locales outside these zones. The issue of the ancestral and barred territories, all things considered, did not sufficiently cover the backwardness of the innate individuals and the assignment of the two boards of trustees turned out to be to some degree confounded in the result. The Assam Sub-Committee prescribed that the zones where the tribes prevailed ought to be separated into independent regions and municipalities and impressive regulatory and judicial forces given to nearby committees set up in these regions. Be that as it may, aside from the proposals for the organisation of these territories, the Committee had important recommendations to make with respect to the

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68. *Constituent Assembly Debates*, 284 Vol. V  
71. *Select Documents*, 681-82 Vol. III  
72. B. Shiva Rao, 1, 761
inspiration of the political existence of the Province and the nation. It proposed that the avoided zones in Assam (other than the Boondocks Tracts) ought to be emancipated on the premise of Adult Suffrage. Joint electorates were prescribed, yet the voting demographics were to be bound to the self-governing regions, and people other than those having a place with the slope tribes were to be suspended from remaining for the race from these voting public. Weight was not viewed as essential, but rather the slope regions could be spoken to in a proportion at the very least what was expected on the premise of the population, regardless of whether this included a specific weight in adjusting off. For the inmate population in the field’s locale, the proposal was that they ought to for all handy design be dealt with as a minority.  

Assam Sub-Committee additionally suggested that representation for the slopes in the Ministry ought to be ensured by statutory arrangement is conceivable. The slope zones contained close to a million people and the Sub-Committee felt that it would be savvy for any Ministry to try having no less than one partner from the slope zones. On the off chance that particular arrangement in the constitution was unrealistic the Sub-board of trustees proposed a reasonable guideline be given in the instrument of directions to the senator. The Sub-Committee watched that since the improvement of the slope zones was an issue requiring extraordinary consideration, the legislator ought to be in a position to choose an uncommon priest if vital from among the slope people.

The Sub-Committee additionally accentuated the requirement for partnering the slope individuals with the organisation and proposed enlistment of a due proportion of slope individuals to people in general services. At long last, the Sub-Committee made exceptional suggestions for the improvement of the slope regions.

It recommended that the shortfall in the normal organisation of these regions ought to be made great by the middle on the premise of the yearly normal deficiency for as far back as three years, and likewise the cost of advancement plans ought to be met from the Central exchequer.

73. Ibid. 761-62
74. Ibid. 762
75. Select Documents, 683-733 Vol. III
The Sub-Committee’s accrual of the obligation for considering the rejected and mostly barred territories outside Assam had an alternate arrangement. It recommended the setting up of ancestral Legislatures to exhort on issues identifying with the organisation of these zones, which were to be called Scheduled Areas. In any case, moreover, the Committee recommended that the tribal have concurred extraordinary representation in the law-making bodies, withheld seats in proportion to their population in an indistinguishable way from the Scheduled Castes, through joint electorates. The Sub-Committee additionally proposed reservation of arrangements in people in general services.\textsuperscript{76}

Considerably more vital maybe were the two suggestions made by the Sub-Committee for securing constant thoughtfulness regarding inspiring the native population, both in the booked regions and outside territory. In its view, the arrangement of streets, schools, medicinal offices and other “critical needs” would include an overwhelming cost of assets and subsequently help from the inside would be inescapable. The Sub-Committee hence recommended that statutory arrangement ought to be made offering power to the Central government to require the Provincial governments to draw up plans for the welfare and advancement of in backward tribal regions; and that the inside ought to contribute the assets for the execution of such plans. As an essential end product to this capacity, the Sub-Committee additionally prescribed to the Central government to establish whenever an exceptional commission to inquire into the advance of plans of improvement and into the states of the planned regions and tribal in general.\textsuperscript{77}

At the time the reports of these two Sub Committees were recieved, the stage had just been come to the drafting of the constitution. Their proposals were consolidated in the Draft Constitution first by the sacred Advisor and from that point by Drafting Committee.

The Draft Constitution arranged by the honourable Advisor in October 1947 consolidated the choices of the Constituent Assembly on the issue of minorities; it additionally included arrangements to offer impact to the proposals of the two Sub-Committees on tribes - the sub-advisory group on ancestral and avoided and

\textsuperscript{76} B. Shiva Rao, I, 762
\textsuperscript{77} Select Documents, 733-779 Vol. III
halfway rejected and somewhat barred zone in areas other than Assam. Since these proposals identified with an assortment of issues, they were not all put together but rather figured in different parts of the draft constitution.78

The Drafting Committee detailed the different arrangements into ten Articles and put them to some degree under the title uncommon arrangements identifying with minorities.79

This piece of the Draft constitution depended on the choice of the Constituent Assembly and the proposals of the two Sub-Committees on innate individuals. Article 292 saved seats in the House of individuals for Muslims, Scheduled Castes, and Scheduled Tribes and in the province of Madras and in Bombay for Indian Christians. Article 294 made comparative arrangements for these groups in the authoritative gatherings of part I states. Article 293 approved the President to choose not more than two individuals from the Anglo-Indian group to House of the People. Article 295 contained a comparable arrangement in connection to state governing bodies. Article 296 required that reliably with the upkeep of productivity of the organisation, the claim of the minority group ought to be contemplated really taking shape of arrangements to open services. Article 297 preceded in drive the reservation of posts for the Anglo Indian in the Railways, Customs, and Posts and Transmit benefits on a similar premise quickly before August 15, 1947. The reservation was to keep going for a long time. Article 298 made an arrangement as to educational gifts for the groups. This unique concession was to keep going for a long time. Article 299 made arrangement for the arrangement of a unique officer for minorities to take care of the protections. Article 300 enabled the President to designate a commission to give an account of the organisation of planned zones and the welfare of the Scheduled Tribes. A comparable arrangement was made under Article 301 for the arrangement of a commission to examine the states of all culturally and instructively in backward classes. As the position of East Punjab and West Bengal was unverifiable by virtue of large scale movements of population following partition, the Draft Constitution did not provide for any arrangement with respect to these regions. The topic of Sikhs still stayed to be settled. For the thought of these issues, a

78. Select Documents, 22, 80-81, 95-96 and 160-174 Vol. III
79. B. Shiva Rao, 1, 764
meeting of the Advisory Committee was hung on February 24, 1948. The Committee selected a Sub Committee for this reason which favored reservation of seats for Sikhs with respect to different minorities. The Sub Committee saw no motivation behind why the course of action affirmed by the Assembly for different regions ought not to be connected in the event of West Bengal also.\(^8^0\)

An exceptional Sub-Committee comprising of Sardar Vallabhai Patel (Chairman), Pandit Jawaharlal Nehru, Dr. Rajendra Prasad, K. M. Munshi and Dr. B. R. Ambedkar (Members) was named to give an account of the minority issues influencing East Punjab and West Bengal following segment of the nation. The report of the Sub-Committee was considered by the Advisory board on December 30, 1948, yet the thought of the report was put off. At this meeting a recommendation of an exceptionally basic character was made. A portion of the individuals from the Committee felt that conditions having immensely changed since Advisory Committee made a proposal in 1947, it was never again suitable with regards to free India and of current conditions that there ought to be reservations of seats for Muslims, Christians, Sikhs or some other religious minorities. Despite the fact that the nullification of particular electorates had expelled a significant part of the toxin from the body politic, the reservation of seats for religious minorities, it was felt, “led to a specific level of nonconformity and was to that degree in opposition to the origination of common just states”. Dr. H. C. Mukherjee, Mr. Tajammul Hussain, Shri Lakshmi Kanta Maitra and certain different individuals pulled out of determination trying to prescribe to the Constituent Assembly that there ought to be no reservation of seats in the governing body for any group in India. They tried to present a determination chasing to get rid of booking for all minorities.\(^8^1\)

The Advisory Committee again met on May 11, 1949 and presented its recommendations to the Constituent Assembly. The Committee likewise put before the Assembly the perspectives communicated by a few individuals at its meeting hung on December 30, 1948, for the abrogation of a wide range of reservations. It watched that since it had made its suggestion on the reservation of

\(^8^0\). Anwarul Yaquin, n. 13, 12 -13
\(^8^1\). B. Shiva Rao, 1, 769
seats in 1947, the condition had changed and it was never again suitable with regards to free India to hold seats for any religious minority.

Despite the fact that the abrogation of a different electorate was a correct move and would expel a great part of the toxic substance from the body politic, the reservation of seats if permitted would prompt a specific level of partition between the different groups and to that degree was opposite the origination of common vote based state. The Committee watched that the individuals from different minority groups were permitted sufficient time for finding out the perspectives of the general population of their particular groups with the goal that any choice on this issue was voluntary and was not a forced choice. It detailed that the determination for annulment of reservation embraced in the meeting of Advisory Committee on Minorities hung on May 11, 1949, was passed with a lion's share. Disclosing the choice to the Assembly on May 25, 1949, Patel said that by far most of the minority groups, including Muslims had themselves understood the insidiousness of such reservation before, and thusly the voting in favor of the cancelation of common reservation was practically consistent and just a single part had voted against the proposer. 82

The Advisory Committee hence prescribed that booking for Muslims, Sikhs, Christians or some other religious group ought to be abrogated and ought to be given just to Scheduled Castes and Scheduled Tribes. The reason expressed for maintenance of reservation in the lawmaking body for these groups was that they were in backward and along these lines required a chance to effectively take an interest in the political existence of the nation. The Committee additionally prescribed for maintenance of the arrangement for designation by the President and Governors of the membera from Anglo-Indian community in perspective of the uncommon position delighted in by the group.

At the point when these suggestions were set before the Assembly, most of the speakers which included people from all groups - Muslims, Christians, Anglo-Indians, Scheduled Castes and in addition Hindus offered full help to the proposition to abrogate reservations on religious grounds. Jawaharlal Nehru was

82. *Ibid*. 771
to a great extent, moved by the new changes that he depicted the proposition as a notable hand over our destiny.\(^83\)

Illuminating up a bit the authentic foundation of the assurance of minorities, we may look toward to the start of the twentieth century to give a few motivations to the need of recognition of minorities and absence of tending to the definition and legitimately restricting rights of the minorities. It can be contended, that one reason has been among others the feebleness of the League of Nations at the season of the flare-up of the World War II to make Germany responsible for the minority insurance that influenced states to approach on the minority issue.\(^84\) It has been contended that the episode of World War II which lead additionally to the crumble of the League of the Nations\(^85\) and consequently to the foundation of the United Nations, demonstrated the importance of the minority issue and influenced it to remain as such from that point onward.

The affectability of the issue has appeared to have pushed minority rights insurance towards the approach of general use of equivalent individual rights, as opposed to protection of particularities of people and cultural assorted variety. The significance can be found in the reality, that the absence of correspondence between various gatherings was at that point comprehended when drafting the UDHR and the resulting ICCPR and ICESR prompting a proposition of including an unequivocal Article on minorities to the UDHR. Be that as it may, political contemplations exceeded the purported “compassionate optimism” and the proposed provision was avoided from the report and coordinated to ideal to religion, flexibility of articulation and other comparable rights in the UDHR which were thought to be comprehended to incorporate protection of minorities in the light of Article 2 on rule of non-discrimination.\(^86\) It was chosen that the unequivocal assurance of minorities would be exchanged to the plan of ECOSOC and the Commission of Human Rights, that were intended to draft a Convention

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83. *Constituent Assembly Debates*, 330 Vol. III
85. It has been argued that the minority rights issue was one of the factors which led to the collapse because the League was incapable to enforce minority protection and to prevent state action when Germany’s membership to the League was withdrawn just before the start of World War II. See more: *Supra note at 38*, Smith Rhona, 17-18, 40 and 332-334.
on rights of minorities close by with the ICCPR and ICESR, yet which was however pulled back as a result of the questionable issue of self-assurance. The approach of justice and non-segregation in the UDHR turned out later to be inadequate in securing the minority rights and the development of the Article 27 focused on unequivocally on minorities was in this way at last added to the ICCPR, regardless of whether cautiously.  

It was just toward the finish of 80’s with the re-development of brutality amongst ethnic and religious gatherings took after by the fall of Soviet Union and the end of cold war notwithstanding caste the quickened globalization which prompt a re-assessment of the significance of tending to the minority issue expressly and to the production of instruments and systems ensuring minority rights. Initially, non-restricting OSCE’s Copenhagen Document in 1989 gave an extensive variety of minority rights, trailed by UN General Assembly receiving a Declaration on Rights of Persons Belonging to a National or Ethnic, Religious or Linguistic Minorities in 1992 and that year Legislature of Europe embracing European Charter for Regional or Minority Languages took after by the legitimately restricting Framework Convention in Europe in 1994. The Working Group on Minorities by the Sub-Commission of the Commission on Human Rights was made in 1995 to survey the advancement and handy recognition of the Declaration and held sessions until the point when 2006 when it was supplanted by the Forum on Minority Issues in 2007, which, guided by the Independent Expert on minority issues made by command from the Commission on Human Rights in 2005, addresses the most critical parts of minority rights protection, including inside the UN improvement objective plans.

87. Ibid.
Chapter II: Historical Background

The rights of the minorities have in this manner been given some consideration in the recent decades, in any case, the absence of restricting legitimate commitments still exists and the hesitance to perceive minority groups still remains.

It appears that services fear to perceive a minority for the reason of cases for self-assurance and independence through free statehood\(^90\) regardless of whether the HRC among others has built up that the individual rights of the minorities gave by Article 27 of ICCPR ought not to be mistaken for the Article 3 on self-determination.\(^91\)

Despite the advancements in respect to the idea of minority rights, mindfulness can be distinguished towards minority issues on account of the very political undertones of issues. The sort of minority instruments; the vast majority of them being unrestricted assertions and political records, and the extended edge of prudence inside the execution of the instruments taken by the states to the legitimately restricting instruments demonstrate the hesitance to be lawfully bound in respect the issue.\(^92\) Also, the advice in the financial side and in setting up supervisory machinery for the checking the usages of instruments have been scrutinized for being avoided.\(^93\)

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\(^90\). Throughout the history minorities have been at the most at risk of gross violations such as crime against humanity, war crimes and genocide. It must be however noted that minority groups are highly diverse and divergent possessing different characteristics, status, capabilities and aims, and even though generalizations should be avoided some had to be made within this thesis in order to keep the text as clear as possible: Minorities are also not always a numerical minority compared to the majority group and for example in Nepal the power holding “majority” is smaller in number compared to sum of various minorities. For more information on different formation of minority groups, see more e.g.: Li-ann Thio, Managing Babel: The International Legal Protection of Minorities in the Twentieth Century, 1 (Leiden: Marnitus Nijhoff Publishers, 2005).

\(^91\). Human Rights Committee, General Comment No. 23: The Rights of Minorities (Art. 27). 8 April, 1994, CPR/C/21/Rev.1/Add.5, General Comment 23, para 3.1


\(^93\). \textit{Ibid.}
Human rights have as a rule been considered as rights of people; minority rights again imply that additionally, gatherings can conjure for insurance, and thus make commitments on states by uprightness of a gathering connection. It has been contended, that one reason for the circumspection may be made by this issue of minority rights considered to give something additional to the fundamental assurances for general human rights insurance, building up the entire worldwide law administration itself. Consequently, minority rights can be considered to make weight on state sway, regional respectability, and political independence.\(^{94}\)

It has therefore been contended, that it is the liberal thought of human rights and improvement forced to creating nations that do not generally fit the circumstances of non-Western cultural orders have due to the absence of recognition of a pluralistic, multiethnic-based thought of democracy.\(^{95}\) Human rights and advancement programs, of the UN, for instance, are focused on this correct thought of just express that secures justice and pluralism\(^{96}\) which enables minorities to be perceived in the political structure giving them important space to attest their rights.\(^{97}\) It has been contended that it would be precisely this minority-accommodating methodology that would spare nations from common wars regularly identified with ethnicity.\(^{98}\) Therefore, minority rights ought to be utilized as an answer as opposed to as a risk for the consistently developing multi-ethnic, multi-religious and multi-linguistic states.

\(^{94}\) Throughout the history minorities have been at the most at risk of gross violations such as crime against humanity, war crimes and genocide. It must be however noted that minority groups are highly diverse and divergent possessing different characteristics, status, capabilities and aims, and even though generalizations should be avoided some had to be made within this thesis in order to keep the text as clear as possible. Minorities are also not always a numerical minority compared to the majority group and for example in Nepal the power holding “majority” is smaller in number compared to sum of various minorities. For more information on different formation of minority groups, see more e.g.: Li-ann Thio, \textit{Managing Babel: The International Legal Protection of Minorities in the Twentieth Century} 16 (Leiden: Marnitus Nijhoff Publishers, 2005).


\(^{98}\) \textit{Ibid.}
Human rights are in fact political in their temperament, always moving issue and an aftereffect of political struggles.\textsuperscript{99} It has along these lines been contended that exactly when improvement ventures begin to move past philanthropy and advancement help to cases and rights more consideration will be given to disparities, persecution and various infringements of human rights by the states. These scopes of components may make the states hesitant to coordinate in respect to the issue. The human rights-based way to deal with improvement has been condemned for this unique reason, as it unequivocally concentrates on individuals accomplishing least conditions in accomplishing respect and uncovering underlying drivers of the powerlessness and minimization of various groups.\textsuperscript{100} Also, it has been expressed, that regardless of whether human rights structure has been scrutinized for being excessively political it isn't distinctive in the advancement field either.\textsuperscript{101} Therefore, it would be just a matter of will to incorporate greater minority rights issues into the political dialogs inside the advancement system.

(ii) Protection of rights of minorities after commencement of the constitution.

In the Constitution all provision for citizens as well as aliens but some provisions provided specifically for the citizens only like Articles 15, 16, 19, 29, & 30. These provisions give protection to the Indian citizens only; there is no discrimination on the basis of caste, creed, sex, religion, or place of birth and give the freedom to enjoy their fundamental rights peacefully. Similarly, the framers of the Constitution have given some of these provisions for the protection of the interest of minorities under Article 29 & 30 of the Constitution of India. Rather nowhere, Minorities defines in the Constitution the framers mentioned the protective rights of the minorities by which the minorities can protect themselves and enjoy their Fundamental rights constitutionally.

Article 29 provides that,

\begin{itemize}
  \item \textsuperscript{100} \textit{Ibid}.
\end{itemize}
Protection of interests of minorities.—(1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.

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

Article 30 provides that

Right of minorities to establish and administer educational institutions.—(1) all minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

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

(2) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.\textsuperscript{102}

Articles 29 and 30 guarantees cultural and educational rights. While, Article 29(1) secures to each Section of natives, dwelling in the region of India, the right to save its own particular language, script or culture, and Article 30(1) assurances to each religious or linguistic minority, the right to build up and to manage educational organisations of their decision.

The question behind Articles 29 and 30 is the recognition and protection of the distinctive sorts of individuals, with assorted languages and different beliefs, which constitute the pith of Secularism.\textsuperscript{103}

The Supreme Court in \textit{T.M.A. Pai Foundation v. State of Karnataka}\textsuperscript{104} said that, Article 29 and 30 do not more than seeking to preserve the differences that exist, and at the same time, unite the people to form one strong nation.

\textsuperscript{102} V.N. Shukla’s, \textit{Constitution of India}, by Mahendra P. Singh, (Ed. 10\textsuperscript{th} Reprint 225-226 October 2004, and 261 Ed. 11\textsuperscript{th} 2008).


\textsuperscript{104} Ibid.
Protection under Articles 29 and 30, is not a right, but is a protection to the religious or linguistic minority communities, to attain equality with other religious or linguistic groups of India.

**Clause (1) of Article 29 Rights to conserve their language, script, and culture.**

Article 29(1) isn't subjected to any sensible limitations. The right gave upon the subjects to preserve their language, script and culture are made supreme by the Constitution. In *D.A.V College Jullunder v. State of Punjab's case*, it was held that where a lawful arrangement required the Guru Nanak University for advanced investigations and research in Punjabi language and writing, and to attempt measures for the improvement of Punjabi language, writing, and culture, did not encroach Article 29(1). The Supreme Court had stressed that the reason and protest of the linguistic States, which has come to remain in India, is to give the more noteworthy office to the advancement of the general population of the region educationally, culturally and culturally in the regional language. Every State or the University each have the right to accommodate the training of the larger part in the territorial medium. This right, however, is subject to restrictions contained in Articles 25 to 30.

Advancement of the majority part language does not mean smothering of minority language and content. To do as such will be to trespass on the rights of those segments of the residents which have particular language or content which they have ideal to ration through their own particular educational institutions. The arrangement being referred to can't, along these lines be perused as requiring the minority organisations subsidiary to Guru Nanak University to instruct in Punjabi language or in any way obstruct their entitlement to ration their language, script, and culture.

The Supreme Court observation in the case was:

“The provision, as we interpret it, is for the promotion of Punjabi studies and innovative work of the Punjabi language, script, and culture which is a long way from saying that the college can under that arrangement propel the partnered...
schools especially those of the minority to give direction in the Punjabi language, or in any capacity block the right to monitor their language, script, and culture.”

The judiciary provisions of University that were tested on the ground that the schools controlled by different religious minorities, i.e., Arya Samaj, and subsidiary to the University would be constrained to consider the religious educating of Guru Nanak and such arrangements added up to infringement of major directly under Article 29(1). The Supreme Court dismissed the contention saying that there is no order in the arrangement convincing affiliated colleges either to consider the religious lessons of Guru Nanak, or to receive in any capacity the way of life of the Sikhs. On the off chance that the University makes arrangement for a scholarly and philosophical investigation and research on the life and lessons of a holy person, it can't be said that the partnered schools are being required to necessarily contemplate his life and lessons.

**Clause (2) of Article 29 Right of the citizen not to be denied admission into any State maintained or State-aided educational institution.**

The right guaranteed under this Article isn't limited to minorities yet reaches out to all residents in the case of having a place with majority or minority. In *State of Bombay v. Bombay Education Society’s Case*\(^\text{107}\) held that constraining this right just to minority gatherings will add up to holding that the subjects of the majority population have no right to be conceded into an educational organisation for the upkeep of which they contribute by the method for charges. In *Ravneet Kaur v. Christian Medical College, Ludhiana’s Case*,\(^\text{108}\) the Court held that a private organisation receiving aid from the State can't discriminate on grounds of religion, caste, race language or any of them.

**Domain of Article 29(2)**

In *State of Madras v. Champakam Dorairajan Case*,\(^\text{109}\) for the first time, the question of application of Article 29(2) was challenged. The communal Government Order of the State of Madras dispensed seats in medical and engineering colleges in the State proportionately to the few groups, viz, non-Brahmin Hindus, Backward Hindus, Brahmans, Harijans, Anglo Indians, Christians, and Muslims. A Brahmin hopeful who couldn't be admitted to an

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\(^{107}\) AIR 1954 SC 561

\(^{108}\) AIR 1998 P&H 1

\(^{109}\) AIR 1951 SC 226
engineering college challenged the Government Order as being conflicting to Article 29(2).

The Supreme Court held that the grouping in the Government order depended on religion, race, and caste which were conflicting with Article 29(2). Despite the fact that the candidate had got significantly higher marks than secured by numerous non-Brahmins who were admitted in the seats dispensed to them, he couldn't be admitted into any other institution. The main purpose of the dissent of admission to him was that he was a Brahmin and not a non-Brahmin.

In the State of Bombay v. Bombay Education Society,¹¹⁰ an order issued by the Bombay Government forbidding the admission of those whose language was not English to a school using English as a medium of the guideline was pronounced invalid under Article 29(2).

The Government had contended that the order did not debar citizens from the admission into English medium schools just on the ground of religion, race, caste, language, however on the ground that such denial would advance the progression of the national language. Dismissing the dispute the Supreme Court called attention to the contention that overlooked the distinction between the basic question of the order was excellent however and after it’s all said and done its validity must be judged by the technique for its operation and its impact on the Fundamental Rights guaranteed under Article 29(2). The prompt ground for denying admission in English schools to understudies whose mother tongue was not English was just language thus order couldn’t be maintained. In this way, discrimination in issues of admission on the basis of language was struck down by the Supreme Court under Article 29(2).

Clause (1) of Article 30, Rights of minorities to establish and administer educational institutions of their choice.

Article 30 (1) provides the linguistic or religious minorities with the following two rights:

(i) Right to establish, and

(ii) Right to administer educational Institutions of their choice.

This advantage is stretched out to just linguistic and religious minorities and to no other section of the Indian Citizens. The word ‘or’ implies that a minority may

¹¹⁰ AIR 1954 SC 561
either be linguistic or religious and that it doesn’t need to be both a religious minority and in addition linguistic minority. It is adequate for it is either or both.

While interpreting Article 30 of the Indian Constitution the subject of relative level of self-sufficiency and allowed area and proportion of regulation of minority educational institutions have been one critical issue to be settled by the judiciary the previous seven decades.

In *re Kerala Education Bill case*[^111^], the Supreme Court held that Article 30(1) covers foundations conferring general secular education. The question of Article 30(1) is to enable children of linguistic and religious minorities to go out on the planet completely prepared. Protection guaranteed to the minority under Article 30 is to protect and reinforce the trustworthiness and unity of the nation. The circle of general secular education will build up the ordinanness among the students of the nation. This is in the true spirit of liberty, equality, and fraternity through the medium of education. The minorities will feel separated and separated if they are not given the protection under Article 30.

In *Sidhrajbhai's Case*,[^112^] it was held that under Article 30(1) fundamental right proclaimed is in term outright and isn’t liable to reasonable restrictions. It is proposed to be a genuine approach for the protection of minorities in the matter of setting up of educational institutions of their choice. The right is proposed to be successful and not to be whittled around purported regulatory measures imagined in the intrigue not of the minority educational institution, but rather of public or the country overall.

The learned Judges had held that “Regulations which might be judicially be forced either by legislative or executive action as a state of receiving grant or recognition, must be coordinated to making the institution, while holding its character as a minority institution viable as an educational institution. Regulations must fulfill a dual test-the test of reasonableness, and the test that it is regulative of the educational character of the institutions and is helpful for making the institution an effective vehicle of education for the minority group or different people who turn to it.”

[^111^]: AIR 1958 SC 956
[^112^]: AIR 1963 SC 540
In *Rt. Rev Mark Netto v. State of Kerala*, the Supreme Court held that refusal of Regional Deputy Director of Public Instruction to admit girl students were violative of Article 30(1). The rule that can be reasoned from these decisions is that Article 30(1) is outright in wording and said right can't be whittled around regulatory measures imagined in the intrigue not of minority institutions but rather of public or the country all in all.

In *D. A. V. School Jullunder v. State of Punjab* the Court held that a linguistic minority with the end goal of Article 30(1) is one which has separate spoken language. It isn’t important that language ought to likewise have a separate script. India has the number of languages which don't have a script of its own yet in any case, people speaking such a language will constitute a linguistic minority to guarantee assurance of Article 30(1).

In *Ahmedabad St. Xavier’s College v. State of Gujarat*, Supreme Court has pointed out that the spirit behind Article 30(1) is the conscience of the nation that the minorities, religious as well as linguistic, are not prohibited from establishing and administrating educational institutions of their choice for the purpose of giving their children the best general education to make them complete men and women of the country.

The Hon’ble Supreme Court in *S. K. Patro v. State of Bihar* ruled that a minority claiming right under Article 30 should be minority of persons residing in India. Foreigners not residing in India do not fall within the scope of Article 30(1). Residents in India and forming the well define religious or linguistic minority fall under the protection of Article 30. Further, Article 30(1) does not expressly refer to citizenship as a qualification for the members of the minorities. The fact that funds have been obtained from outside India for setting up and developing a school is no ground for denying to it its protection under Article 30(1).

The words ‘Establish’ and ‘Administer’ in Article 30(1) have been used conjunctively. Consequently, a minority can claim a right to regulate an educational institution just in the event that it has established by it however not someone else. A religious minority can't claim the rights to administer an

113. (1979) 1 SCC 23
114. AIR 1971 SC 1737
115. AIR 1974 SC 1389
116. AIR 1970 SC 259
educational institution establish other than minorities, only on the grounds that, for reasons unknown or other, it had been administering the institution before Constitution came into existence.

In *S. Azeez Basha v. Union of India*,\(^{117}\) it was held that the Aligarh Muslim University was established by the Central legislature Act of 1920. It couldn't in this manner be said to have been set up by the Muslim community. No degree conferring institution can establish in India without a statute. In like manner, the validity of a statute regulating administrative arrangements in the University couldn't be adjudged under Article 30(1). The material factor to pull in Article 30(1) is the establishment of the institution by the minority concerned. The Article 30(1) obviously demonstrates that the minority will have the right to administer the institutions of their choice provided they have established them, but not otherwise. It involves confirmation through the generation of agreeable proof that the institution being referred to was established by the minority guaranteeing to administer it. The proof of the reality of establishment of the institution is a condition precedent for claiming the right to administer the institution. The onus lies on one who attests that an institution is a minority institution. The Courts may have to decide whether the institution is a minority institution.

In, *S. P. Mittal v. Union of India*\(^{118}\) the Supreme Court laid down that in order to claim the benefit of Article 30(1) the community must show- a) that it is a religious or linguistic minority; b) that the institution was established by it. Without satisfying these two conditions it cannot claim the guaranteed rights to administer it.

In *Yogendra Nath Singh v. State of Uttar Pradesh*,\(^ {119}\) the Government recognized the institution as a minority institution. This order was challenged in the High Court through a writ petition. Investigating the precursor history of the institution right from its origin, the Court concluded that the institution was not set up as a minority establishment, and, in this way, it couldn't be allowed minority status despite the fact that though presently it was being managed by the minority community. Under Article 30(1), the necessities of establishment and administration must be perused conjunctively. The twin prerequisites are should

\(^{117}\) AIR 1968 SC 662
\(^{118}\) AIR 1983 SC 1
\(^{119}\) AIR 1999 All 356
have been satisfied and without one, an institution can't be given minority status. The minority educational keeps on being so whether the government declares it in that capacity or not. At the point when the legislature announces the institution as a minority educational institution, it simply recognizes an authentic position that the institution was established and is administered by the minority community.

The declaration is just an open recognition of the lawful character of the institution which should essentially have existed prior to such presentation. Such a declaration is neither essential nor unequivocal of the character of the institution being referred to as a minority educational institution. The final word in such manner rests with the courts. It is at last for the court to choose whether the institution is referred to be a minority institution or not. Regardless of whether Government has recognized an institution being as minority educational institution does not inoculate the institution from judicial scrutiny of its antecedents. The government decision isn't official and it is eventually for the court to decide whether the institution is referred to be a minority institution or not.

The right of religious and linguistic minorities to administer educational institutions of their choice, however, framed in total terms, isn't free from regulations since it is vital that even the minority institutions must be subjected to some administrative control without disabling their character or autonomy as minority institutions. For the utilization of this right, minority institutions are partitioned into three classes:-

1) Institutions which neither seeks aid nor recognition from the State;
2) Institutions that seek aid from the state; and
3) Institutions which seek recognition but not aid.

While the institutions which neither look for help nor recognition from the State can't be subjected to any regulation with the exception of those emanating from the general laws that must be adhered to, for example, labour, contract or tax laws. The institutions that seek recognition just and not help could be subject to regulations or restrictions relating to the scholastic norms and better administration of the institution in light of a legitimate concern for that institution itself. Regulations and restriction for some other purpose are not permissible.

**Clause (2) of Article 30 State shall not discriminate in granting aid**
Article 30(2) bars the State while granting help to educational institutions, from discriminating any educational institution on the ground that it is under the administration of linguistic or religious minority. Article 30(2) envisages that in allowing aid to educational institutions, the state should not discriminate any educational institution on the ground that it is under the administration of a minority, regardless of whether in light of religion or language. Minority educational institutions, under Article 30 (2), can't guarantee State aid as a matter of right. Minority educational institutions are qualified to get monetary aid similarly as the educational institutions keep running by the majority community. The state will undoubtedly keep up a balance of treatment in giving aid to educational institutions. Minority institutions are not to be dealt with differently while giving financial aid.