CHAPTER III

3.0 Meaning and Concept of Minority

3.1 Introduction

Most countries today are culturally diverse. According to recent estimates, the world’s 195 independent nations contain over 600 living language groups and 5,000 ethnic groups. In a very few countries can the citizens be said to share the same language or belong to the same ethno national group.

This diversity gives rise to a series of important and potentially divisive question. In a culturally, religiously and linguistically diverse society, minority group may perceive an education system, favouring the values and ethos of majority group and thus subversive of their own education system. Beside it, minorities and majorities clash over a number of issues such as language rights, education curriculum, and setting up multicultural campus, political as well as educational representation and reservation in majority dominated school or vice-versa, choice of national anthem or public holiday etc.

In the absence of any comprehensive agenda or clear cut policy on the part of the Government, minority’s education remains at the crossroads. In view of the educational backwardness of minorities in general various issues have cropped up such as to whether the minorities are entitled to be educated at their own institutions? How are the education system and policies to be restructured to make them more responsive to the needs and aspiration of the minorities as well as responsive to their histories, life experience, cultural value system and day-to-day practical difficulties? Finding morally defensible and constitutionally viable answer to these issues is the greatest challenge facing the democracy and pluralistic society like ours in free India?

Therefore, before ascertaining as to what is actually happening in the arena of educational rights of minorities, it is imperative to ascertain certain basic issues such as, who are minorities? How the term minorities are defined in relation to their educational and cultural right and whether they have special educational rights under the national law and international instruments?

---

203 Iceland and Koreas are commonly cited as countries which are more or less culturally homogenous.
This chapter has been designed to trace the meaning and concept of minority from national and international perspective to determine who the person of inherence of Minority rights is. How the term Minority is being understood in academic sphere and international instruments. Beside it efforts is also being made to ascertain the concern of international community to safeguard the Educational Rights of Minorities. For an appropriate analysis the chapter has been based on the following subheadings-

1. Who are the persons of inherence for Minority Rights?
3. International concerns for Protection of Minorities Rights.
5. Types of Minorities: Religious and Linguistic Minorities.
6. Test for Determination of Minority Status: Judicial Approach
7. Are the Scheduled Castes and Backward Classes Minorities?
8. Are Jains a Religious Minority in India?
9. Concluding observations.

India is a world in miniature.\textsuperscript{205} India is multi-ethnic, multicultural and multi-religious society with secularism as its political creed.\textsuperscript{206} According to John Stuart Mill, India is a world placed at close quarters.\textsuperscript{207} But in reality, India has accommodated minorities since time immemorial. Minorities is integral components of the democratic set up of our country. The majority and minority communities have lived here united.\textsuperscript{208}

In the western world, the term ‘minority rights’ largely referred to the cultural rights of the minorities, which they lay claims to on the basis of their separate ethnic, racial, religious-cultural or national identities.\textsuperscript{209} The homogenizing nation state disadvantages the minorities. It attempts to unite heterogeneous groups within its territory; it emphasizes some form of national culture. This is objectified by the help of national language, national heroes, national symbols and national culture as well as purposive interpretation of history. These markers may be projected as secular or neutral but it usually reflects the culture and symbols of dominant ethno-religious or

\textsuperscript{208} Arun Kumar, Cultural and Educational Rights of the Minorities under Indian Constitution (Deep and Deep Publication, New Delhi 1986) p.7
\textsuperscript{209} Rowena Robinson (ed.) Minority Studies (Oxford University Press, New Delhi 1\textsuperscript{st}ed. 2012) p.2
ethno-linguistic community. Thus, minorities argued that the, ‘national culture of the State devalues and erodes their cultural identity. Immigrants felt that requirement to conform to ‘national norms’ discriminate against them and leads to inter-generational conflicts as the younger generation is alienated from the culture of the elder’s. Thus, in totalitarian states, the minorities are not allowed to keep their separate identities, as there is everything exists for the state. The minority in totalitarian state dissolve their distinct identity in the identity of the State.

In contrast, in democratic countries, due recognition is given to equal rights and duties for all without regard to their religious, racial, cultural or linguistic affiliations. Prof. Humayun Kabir in his book, “Minorities in Democracy” observed that, “there can be no question of minorities except in a democracy unless there is democracy the problem would not arise in that form at all.”

3.2 Who are the persons of inherence for Minority Rights?

To avoid conceptual semantics a concise-cum-precise definition of minorities is “imperative to determine who, are the persons of inherence, for minority’s rights secured by Article 29 and Article 30 of the Indian Constitution.

Laying down a definition of minority capable of universal acceptance has always been a difficult and complex task because of the fact that the minorities are social realities which are dynamic rather than static and which change under the influence of varying circumstances. Therefore, keeping in mind that the term “minorities” is full of complexities it is submitted that the expression “minorities has been derived from the Latin word “minor” and the suffix “ity” which means, “small in number”. The Oxford Dictionary defines ‘minority’ as a smaller number or part, a number or part representing less than half of the whole, a relatively small group of people differing from other in race, religion, language or political persuasion. According to Encyclopaedia Britannica ‘minorities’ mean, “groups held together by ties of common

213 Ibid at 7.
descent, language or religious faith and feeling different in these respects from the majority of inhabitants of a given political entity”.  

According to J. A. Laponce the word ‘minorities,’ may be understood, in two extreme formulations i.e. purely objective and purely subjective. A purely objective definition would be, “A minority is a group whose race, language or religion is different from that of the majority”. A purely subjective definition from minority point of view would be, “A minority is a group that thinks of itself as a minority”.  

An American scholar, Myron Weiner defined “Minority” as, “A people who do not share what they regard as central symbols of the society invariably view themselves as a minority.”  

Assessing the definition given by Myron Weiner, it is submitted that the interface between minority-majority statuses is after all a matter of self-ascription so the element of flexibility in usage of the term takes care of various hues and nuances of the minority syndrome. What is majority from one perspective is a minority from another angle. For instance Christians are in majority in Nagaland but in other states they are microscopic minority. Similarly, the Muslim is the second largest religious minority in India but they are majority in the State of Jammu and Kashmir.  

The sociological school approach to minority issue is altogether different. According to International Encyclopaedia of Sociology, minority groups are defined by their powerlessness relative to other groups in a society and majority groups are the reverse they dominate other groups.  

Anthropologists Charges Wagley and Marvin Harris in their book, *Minorities in the New World: Six Case Studies* in 1958, proposed a widely accepted definition of the minority. According to them, there are five characteristics that identify the minority groups. Firstly, they are relatively powerless compared with members of the dominant group. Secondly, along with powerlessness, they are subject to unequal treatment. Thirdly, the minorities because of their distinctive traits become self-conscious social unit. Fourthly, an established rule of descent exists, for transmitting membership in

---

217 Encyclopaedia Britannica, William Benton, 1969 (Chicago, USA)p.542  
218 J.A. Laponce, *The protection of minorities* (University of California Press, California, USA, 1960)p.3-4  
minority group across generation. Fifthly, members of minority group tend to marry within the groups.²²²

In criticism to the definition given by the sociological school, it is submitted that discrimination arises when the rights and opportunities open to one set of people are denied to another group. Article 14 of the Constitution of India guarantees, to all persons, equality before law and equal protection of laws. Articles 29 and 30 protect the cultural and educational interest of minorities. Hence, the question of denial of equal rights and opportunities in Constitutional term to minority group does not arise. It is altogether a different matter, how far certain educational and cultural rights are availed by a particular group and how far they have access to these rights and opportunities. A group which is weak in terms of educational accomplishments, power or economic sense is not likely to have access to the rights and opportunities offered under the constitutional sense. Therefore, the members of the minority group remains disadvantaged, although, there is no discrimination against them.²²³ Secondly, the members of a minority may have a sense of group solidarity, their practical experience of being subject to prejudice and discrimination usually heightens feeling of common loyalty or interest. Members of minority group often tend to see themselves as ‘a people apart’ from the majority. This is to some extent true for the minorities in India. In minority, marriage within the group itself is always preferred and promoted to keep intact their unique cultural distinctiveness. Further, the minorities tend to concentrate in certain block or pockets in rural or urban areas, so to a certain extent they get physically and socially segregated from the majority communities.

3.3 Minority and Minority Rights under International Instruments

The protection of minorities and rights of the minority group is one of the oldest concern of the international laws and focus of debates in the nation state as well as educational circles. The issues relating to as to how an education system be organised and conceptualised to make it more responsive to the culturally, religiously and linguistically diverse group have agitated the minds of the policy makers as well as intended beneficiary of such rights i.e. minorities alike.

One of the first official attempts to define ‘minority’ was undertaken by the Permanent Court of International Justice in 1930 in its advisory opinion in the Greece-Bulgarian Community case\(^{224}\) in the following words:

“The criterion to be applied to determine what is a community within the meaning of the articles of the Convention (referring to convention of 27\(^{th}\) November, 1919 between Bulgaria and Greece) is the group of persons living in a given country or locality, having a race, religion, language and traditions of their own, and united by the identity of such race, religion, language and traditions in a sentiment of solidarity with a view to preserving their traditions, maintaining their form of worship, securing the instruction and upbringing of their children in accordance with the spirit and traditions of their race, and mutually assisting one another”\(^{225}\).

The most commonly cited definition of ‘Minority’ is proposed by Francisco Capotorti, in the *Yearbook on Human Rights*, the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities in year 1979. He defined the ‘minority’ in the following words:

“Minority is a group which is numerically inferior to the rest of the population of the state and in a non-dominant position, whose members possess ethnic, religious or linguistic characteristic which differ from rest of the population of the State and who, if only implicitly, maintain a sense of solidarity directed towards preserving their culture, traditions, religion or language.”\(^{226}\)

In year 1984, the Human Right Commission requested the Sub-Commission to revisit the term ‘minority’ and the responsibility were entrusted to Jules Deschenes. He defined ‘minority’ as a group of citizens of a State, constituting a numerical minority and in a non-dominant position the State, endowed with ethnic, religious or linguistic characteristics which differ from those of the majority of the population having a sense of solidarity with another, motivated, if only implicitly, by a collective will to survive and whose aim is to achieve equality with the majority in fact and law.\(^{227}\)

---


\(^{225}\) 1930, P.C.I.J. Series B. No. 17, p..23


In assessing the definition given by PCIJ, it is submitted that it used two tests to determine the nature and scope of minority status. Firstly, the objective tests, such as the existence of facts like race, religion, language and tradition. Secondly, the subjective tests such as “sentiments of solidarity” and “the desire to preserve tradition and securing the instruction and upbringing of their children in accordance to spirit and tradition of their race”. So far the attribute of race, religion, language and tradition is concerned; it is a common feature of all people irrespective of their minority or majority ascription.

Secondly, the sense of belonging to certain locality or territory is not a fundamental requirement because the people keep moving because of their socio-economic reasons. Thirdly; the sense of solidarity is not a necessary precondition. At best, the approaches of PCIJ merely recognize the pluralistic aspects of minority and celebration of diversity of culture and traditions. The PCIJ elaboration of the definition of minority did not contain a reference to numerical factors or insist on the requirement of non-dominance.

In definition of ‘minority’ proposed by Francesco Capotorti, Special Rapporteur of Sub-Commission of the United Nations Human Rights, those groups have been declared as “minority groups’ who want to preserve their separate identity. In criticism to this, it is submitted that there can be two types of minority group, one which is adamant to maintain its separate identity and distinctive traits and hostile to assimilation with the dominant group. The second types of minority group are those which intend to dissolve their identity in the dominant group but due to economic, political or social or cultural factors they are prevented from doing so by the majority group or dominant group. The Negros of the United States and the Schedule Castes and Scheduled Tribes are the best illustrations of second types of minority. The approach adopted by Capotorti merely reaffirms the policy of accommodation which can facilitate in preserving the distinct cultural identity of the minority.

In the absence of clearly formulated definition of minority group, some of the Constitutional experts expressed serious reservation regarding the very idea of the minority and of the majority-minority framework itself.

Wilkinson launched a scathing critique of the idea of minority, which she regretted has been given credibility in the matter of policy, even though, it was non-scientific and devoid of conceptual clarity and empirical validity. As she points out

---

228 Rowena Robinson (ed.) Minority Studies (Oxford University Press, New Delhi 2012)p.5
the term bears a stigma and is steeped in negative associations. She further argues that groups defined as ‘minorities’ are seen as ‘lacking, culturally devalued or not having, political or economic power.\footnote{Ibid.} According to her, many of the characteristics used to understand minority - that they have a sense of shared identity or possess inherited status - may well be used to describe all groups including the majority. Further, the term ‘minority’ lacks historical specificity. Asserting that specificity is imperative in policy formulation, she insists on precision in ethnic and race consciousness for the policy making\footnote{Id.}

However, there is broad consensus in academics and at the national and international level that the person belonging to minority group need special rights and protection to save them from oppression and forceful assimilation at the cost of their distinctive cultural identity and special affirmative action to achieve real and substantive equality which will enable the minority to assume their appropriate place within the wider society and help them to provide best possible education to their children to maximize their individual potential and talents.

3.4 International concern for Protection of Minorities:

In multicultural and multi religious democratic societies, majority’s communities, enjoys dominant political and socio-economic position in contrast to the minority group. The minorities are often excluded from the decision making process and the power centres endangering their collective identities and their individual or group rights.\footnote{Aftab Alam, ‘Minorities Rights under International Law*’(JILI, Vol. 57:3 New Delhi 2015)p.380.} The non-dominant and inferior status subjected to the minorities is also a reality of the day.\footnote{Ibid.} In this context, Thornberry also observed that, “in many states, the culture, history and tradition of the minority group are subject to distorted representation, producing low self-esteem in the groups and negative stereotypes in the wider community”. \footnote{Ibid.}

The International Community cannot afford to be aloof of the suffering and be negligent of minority rights in general and their educational and cultural rights in particular. The protection of minorities can be traced back from Treaty of Westphalia, 1648, wherein state parties agreed to respect the right of certain religious minorities

\footnote{Patrik Thornberry, “The UN Declaration on the Rights of the Person Belonging to National or Ethnic, Religious and Linguistic Minorities: Background, Analysis observation and an updates”.

62
within their jurisdiction followed by the Congress of Vienna of 1815 and the Treaty of Berlin, 1876 which dealt with rights of minorities to certain extent.\textsuperscript{234}

The first international regime of the minority protection system was put in place within the framework of the League of Nations.\textsuperscript{235} Under the League of Nations system, there were three categories of minority treaties. The first treaty was imposed upon the defeated states of Austria, Hungary, Bulgaria and Turkey. The second treaties included the states like, Greece, Poland, Romania, Czechoslovakia and Yugoslavia, whose boundaries were altered under the self-determination principle. The third treaties dealt with special international regimes established in Aland, Danzig the Memel territory and Upper Silesia relating to minorities. Although these treaties were signed for political reason of preventing friction between the neighbouring states but it had ample reference to educational rights of minorities.\textsuperscript{236}

For instance, the treaty between the great powers and Poland contains the following provisions with respect to minority education.\textsuperscript{237}

“Article 8 provided that, Polish nationals who belong to racial, religious or linguistic minorities shall enjoy the same treatment and security in law and in fact as the other polish nationals. In particular, they shall have an equal right to establish, manage and control at their own expenses charitable, religious and social institutions, Schools and other educational establishments with the right to use their own language and to exercise their religion freely therein”.

“Article 9, provided that Poland will provide in the public education system in towns and district in which a considerable proportion of Polish nationals of other than Polish speech are residents adequate facilities for ensuring that in primary schools the instruction shall be given to the children of such Polish national through the medium of their own language. This provision shall not prevent the Polish Government from making the teaching of the Polish language obligatory in the said school”.

It further obligates the States by providing that, “In towns and districts where there are considerable proportions of polish nationals belonging to racial, religious or linguistic minorities, these minorities shall be assured an equitable share in the

\textsuperscript{237} Holley Cullen, “Education Rights or Minority Rights” (7 International J.L. & Fam. 143, 1993)p.146.
enjoyment and application of the sums which may be provided out of Public funds under the State, municipal or other budget for educational, religious or charitable purpose.”

The German Polish Convention relating to Upper Silesia provided the minute details relating to minority education rights such as, private separate education for minorities subject to minimum State Standard (Articles 98 and 101-103); Public funded separate minority language and religious education including minimum number for establishment of minority classes or Schools (Articles 106-108, 118 and 122); Funding of such institutions (Articles 109-110, 126 and 129-130); Administration of such institutions by School committee (Articles 111-112 and 125) as well as standard for teachers in minority School (Articles 113 and 123-124).238

The above provisions clearly demonstrate that the League of Nations system was first systematic and comprehensive attempt to offer legal protection to minorities. The league system is widely credited both for acknowledging that minority rights exist and for legitimizing minority protection as an area of international concern.239

However, this system had having significant limitations. Its scope was confined only to the States on which peace treaty was imposed and it was primarily directed at achieving peace rather than affording protection to minorities per se. Further, the provisions under the League of Nations System were discriminatory as the main powers like Germany and Italy, did not undertake any commitment to grant same right to their minorities.240

The United Nation succeeded the League of Nations as, new world organization immediately after the Second World War. Unlike its predecessor; however, it adopted a completely different approach to the issue of minority rights.241 The United Nations instead of further developing and strengthening, the existing system of protection of minorities, preferred to develop a Universal System of Protection of Human Rights for All. It was argued that a broad system of human rights supported by strong prohibition on discrimination based on race, ethnicity, language or religion would suffice to protect the legitimate interests of members of national minorities and no special

238 Holley Cullen, “Education Rights or Minority Rights” (7 International J.L. & Fam. 143, 1993)p.146-147
241 Ibid.
measures for the rights of minorities would be required.\textsuperscript{242} Hence, neither the United Nations Charter nor the Universal Declaration of Human Rights, 1948 specifically included the rights of minorities but the general right to education equally available to all individual everywhere in the world was sufficiently articulated by the following provisions of the Universal Declaration of Human Right as:

Article 26 provides that “Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and Professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedom. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of Peace.”

During the time of drafting of Universal Declaration of Human Rights, there was lot of dispute and discussions relating to minority education- discrimination and minority-language teaching that no formula could be agreed.\textsuperscript{243} Soon thereafter the United Nation General Assembly declared that, “The United Nation cannot remain indifferent to the fate of the minorities” and explained that agreement could not be reached because of the difficulty of adopting, “a uniform solution [to] this complex and delicate question which has special aspects in each state in which it arises.\textsuperscript{244} The General Assembly, therefore, requested the United Nation Economic and Social Council “to ask the Commission on Human Rights and Sub-Commission on the Prevention of Discrimination and Protection of Minorities to make a thorough study of the problem of minorities, in order that the United Nations may be able to take effective measures for the protection of racial, national, religious or linguistic minorities.”\textsuperscript{245}

Until mid 1970s, this Sub-Commission could not address the issue of minority in some depth, when it finally succeeded in getting a provision on minority protection


\textsuperscript{243} Holley Cullen, “Education Rights or Minority Rights” (\textit{7 International J.L. & Fam.} 143, 1993)p.147.


inserted in the draft of International Covenant on Civil and Political Rights (ICCPR) which finally became its Article 27.246

Article 27 of the ICCPR provides, “In those states in which ethnic, religious or linguistic minorities exist, persons belonging to such minority shall not be denied those rights, in community with other members of their group to enjoy their own culture, to profess and practice their own religion, or to use their own language.”247

The only legally binding text of universal nature was provided by Article 27 of ICCPR. In assessing the scope of minority rights under Article 27 of ICCPR, 1976, several elements limiting the scope of Article 27 are apparent. Firstly, by using the word, in those state in which minority exist, clearly leaves at the discretion of the state the option of declaring that they have no minority, thereby excluding its application within their territory or subject to their jurisdiction.248 Secondly, the rights under Article 27 are conferred to person belonging to ethnic, religious or linguistic minorities. It is left to the interpretation as to whether citizenship is precondition or indigenous groups are also entitled to the rights for which it provides.249 Thirdly, Article 27 is negatively phrased and instead of providing that person belonging to minorities “shall have” the right specified, it declare that, they “shall not be denied those rights”. 250 Finally, there is also an ambiguity as to who are subjects of this right individual or groups. While it obviously confers, rights on the individual members of the minority groups the phrase, “in community with the other members of their group”, suggest that a group right is also intended.251

The International Covenant on Economic Social and Cultural Rights of 1966, though, do not refers to specific rights of minority but it also recognize the general educational rights of all including all racial ethnic or religious group by Article 13. It provides:

“The State Parties to the present covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of

249 Ibid.
250 Id.
251 Id.
human personality and the sense of its dignity and shall strengthen the respect for human rights and fundamental freedom.

They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups and further the activities of the United Nations for the maintenance of peace. The State Parties to the present covenant recognize that with a view to achieving full realization of this right (a) primary education shall be compulsory and available free to all; (b) secondary education in the different form, including technical and vocational secondary education, shall be made generally available and accessible to all by all appropriate means, and in particular by the progressive introduction of free education; and (c) higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means and in particular by the progressive introduction of free education.”

The general right to education of children was proclaimed by the United Nation Declaration on the Rights of the Child adopted in 1959. It recognizes the education that will promote general culture of children through the means of education as well as rights of the parent to ensure education in keeping in mind the interest of the children.

The minorities right to education including an entitlement to transmit one's culture to one's children, the United Nations Convention on the Rights of the Child (CRC), 1989, specifically mention as objective of education, the development of respects for the child’s own cultural identity, language and values besides the general aims such as ‘development of child’s personality, talents, mental and physical abilities to their fullest extent.

The convention also recognizes, the development of respect for child’s parents, for the national values of the country in which the child is living, the country from

---

252 “Principle 7 provides that the child is entitled to receive education which shall be free and compulsory at least in the elementary stages. He shall be given an education which will promote his general culture and enable him, on the basis of equal opportunity to develop his abilities, his individual judgement and his sense of moral and social responsibility to become a useful member of the society. The best interest of the child shall be guiding principles of those responsible for his education and guidance; that the responsibility lies in the first place with his parents.”

253 Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 entry into force 2 September 1990, in accordance with Article 49.

254 Article 29 (1)(c) : “The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own”.

255 Article 29(1)(a): “The development of the child's personality, talents and mental and physical abilities to their fullest potential”.

67
which he or she may originate and for civilizations different from his or her own, the preparation of the child for responsible life in free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all people, ethnic, national and religious groups and persons of indigenous origin; and the development of respect for the natural environment.\textsuperscript{256}

The United Nations Declaration on the Rights of person belonging to National or Ethnic, Religious and Linguistic Minorities, 1992,\textsuperscript{257} without establishing any definition of the term ‘minority’ exclusively addresses the minority rights at the international levels. The declaration reflects an acknowledgement by international community of the need to recognize the rights of the minorities and provide a normative framework.\textsuperscript{258} The Declaration recognize the right of the person belonging to national minorities to enjoy their culture, profess and practice their religion, and to use their own language in private and public, freely and without interference or any form of discrimination.\textsuperscript{259}

\textsuperscript{256} Article 29(1) (d) “The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;” (e) The development of respect for the natural environment.

Article 29(2) “No part of the present Article or Article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.”

Article 30: “In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language.”

\textsuperscript{258} Aftab Alam, “Minority Rights under International Law” (\textit{JILI} 2015 New Delhi)p.385.

\textsuperscript{259} Article 1 of United Nation Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities 1992 provides that:

“(1). States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity.

(2). States shall adopt appropriate legislative and other measures to achieve those ends.

Article 2 (1): Persons belonging to national or ethnic, religious and linguistic minorities (hereinafter referred to as persons belonging to minorities) have the right to enjoy their own culture, to profess and practice their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination.

(2). Persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic and public life.

(3). Persons belonging to minorities have the right to participate effectively in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live, in a manner not incompatible with national legislation.

(4). Persons belonging to minorities have the right to establish and maintain their own associations.
The United Nations Declaration on the Rights of the Person Belonging to Minorities, 1992\textsuperscript{260} obliges States to take appropriate measures in the field of education to foster knowledge not only of language but also of the culture, history and religion of minorities existing in their territory.\textsuperscript{261} These provisions obligates the States to promote awareness and understanding of minority culture among the general population and also requires that initiative must be taken by the minorities themselves to learn their cultural heritage through education.\textsuperscript{262}

The UNESCO Convention against Discrimination in Education clearly provides for inclusion of minority education rights as an essential part of an integrated approach to the right to education. It unites all themes of minority education rights such as non-discrimination, separate school, equality of educational opportunities, gender equality, access as well as goal of education.\textsuperscript{263}

\begin{itemize}
\item Part 1: \textit{(5).} Persons belonging to minorities have the right to establish and maintain, without any discrimination, free and peaceful contacts with other members of their group and with persons belonging to other minorities, as well as contacts across frontiers with citizens of other States to whom they are related by national or ethnic, religious or linguistic ties.
\item Article 4 (1): States shall take measures where required to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law.
\item (2). States shall take measures to create favorable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs, except where specific practices are in violation of national law and contrary to international standards.
\item (3). States should take appropriate measures so that, wherever possible, persons belonging to minorities may have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue.
\item (4). States should, where appropriate, take measures in the field of education, in order to encourage knowledge of the history, traditions, language and culture of the minorities existing within their territory. Persons belonging to minorities should have adequate opportunities to gain knowledge of the society as a whole.
\item (5). States should consider appropriate measures so that persons belonging to minorities may participate fully in the economic progress and development in their country."
\end{itemize}

\textsuperscript{260} “Article 5(1): National policies and programmes shall be planned and implemented with due regard for the legitimate interests of persons belonging to minorities.
The Framework Convention on the protection of National Minorities (FCNM) of 1994 is one of the most comprehensive treaties for the protection of the rights of the people belonging to national minorities. Article 14(1) of FCNM lays down the rights of persons belonging to national minorities to learn his or her minority language while Article 14(2) requires states, in areas inhabited traditionally or in substantial number...
of minorities and if there is sufficient demand, to provide members of minorities with adequate opportunities for being taught or receiving instruction in the minority language.265

From the above provisions it is clear that without establishing any definition of minorities acceptable to all nation state, there is a clear recognition of minority educational rights with harmonious blending of preserving their distinct cultural identities as well as obligation on the part of the States to direct their education policy to provide substantive equality to minority in the matter of their education.

3.5 Minorities Rights under Indian Constitution

After discussing the meaning and concept of ‘Minority’ from the International perspective and delineating the cultural, educational and linguistic rights of the minorities in various international instruments having both persuasive as well as binding obligation, it is imperative to see how the term ‘minority’ was constructed in our constitutional scheme at the time of framing the Constitution and what are their education rights.

If we see the scheme of our constitution which came into force on 26\textsuperscript{th} January, 1950, the framers of the Constitution were not only reluctant to define “minority” but were also hesitant to use the term very often. The expression, “minority” occurs only at four places in the Constitution. One in the head note\textsuperscript{266} of Article 29 of the Constitution, second in the head note to Article 30 of the Constitution\textsuperscript{267}, another in clause (1) of Article 30 and lastly in clause (2) of Article 30 of the Constitution.

However, if we direct our attention to Constituent Assembly Debate of the framing of the Constitution of India, the problem of minorities figured prominently in the Constituent Assembly and the proceedings and debates - clearly demonstrate the intention and approach of the Constitution makers regarding the recognition of cultural and educational rights of the minorities.

\begin{enumerate}
\item Article 14 (1): The Parties undertake to recognize that every person belonging to a national minority has the right to learn his or her minority language.
\item In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if there is sufficient demand, the Parties shall endeavor to ensure, as far as possible and within the framework of their education systems, that persons belonging to those minorities have adequate opportunities for being taught the minority language or for receiving instruction in this language.
\item Paragraph 2 of this article shall be implemented without prejudice to the learning of the official language or the teaching in this language.
\end{enumerate}

\begin{enumerate}
\item Article 29, “Protection of Interest of Minorities”......
\item Article 30, “Right of Minority to ......(1) All minorities...... (2) On the ground of ...... management of minority.”
\end{enumerate}
Before the Sub-Committee on Minorities, a questionnaire was presented by Shri K.M. Munshi that consists of six questions. The following question is relevant for one purpose because these will help us know what was in the minds of the framers while including the minority rights in the Constitution as:

(4) “What should be religious, educational and cultural safeguard for a minority?

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

(6) How is it proposed that safeguard should be eliminated, in what times and under what circumstances?”

The response received by the members of the Sub-Committee on Fundamental Rights and debate in the Constituent Assembly is already discussed in details in Chapter II of the thesis. For sake of clarity and continuity the draft Articles 18 and 23 is reproduced here to understand how Articles 29 and 30 was formulated to protect the Educational and Cultural Rights of the minority.

Before the sub-committee on the Fundamental Rights Sh. K.M. Munshi asserted that these provisions were taken from the Polish Treaty forming part of Poland’s Constitution which was reaction to an attempt in Europe and elsewhere to prevent minorities from using their own language.268

The recommendations of the Sub-Committee on Minorities were as follows (draft article 18, clause as below):

(1) “All citizens are entitled to use their mother tongue and script thereof and to adopt study or use any other language and script of their choice.

(2) Minorities in every unit shall be adequately protected in respect of their language and culture and no government may enact any law or regulation that may act oppressively or prejudicially in this respect.

(3) No minorities whether religion, community or language shall be deprived of rights or discriminated against in regard to the admission into state educational institution, nor shall any religious instructions be compulsorily imposed on them.

(4) All minorities whether of religious, community or language shall be free in any unit to establish and administer educational institutions of their choice, and they shall be entitled to state aid in the same manner and measures as is given to similar state aided institutions.

(5) Notwithstanding any custom, law, decree or usage, presumption or terms of dedication, no Hindu on grounds of caste, birth or denomination shall be precluded from entering in educational institutions dedicated or intended for the use of the Hindu community or any section thereof.

(6) No disqualification shall arise on account of sex in respect of public services or profession or admission to educational institutions, save and except that this shall not prevent the establishment of separate educational institutions for boys and girls.”

During the Constituent Assembly Debate, Shri G.B. Pant, one of the members of the Constituent Assembly, was of the view that minorities cultural and educational rights to be incorporated in parts dealing with Directive Principles of State Policies as non-justiciable rights, but on intervention of Shri K.M. Munshi, those minority rights were included in the parts dealing with Fundamental Rights as justiciable rights.

In spite of Shri Alladi Krishnaswami’s objection, that clause (1) seeking to protect mother tongue as unnecessary because mother tongue was a matter no-body otherwise also could interfere with and Raj Kumari Amrit Kaur objections that such rights would perpetuate communal institutions and the state should not give any aid to such institutions, the Advisory Committee recommended the following (draft article 18, clause as below):

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

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

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

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

Further at the drafting stage, the Draft Article 18 was reformulated as Draft Article 23 with some crucial changes by Dr. Ambedkar himself by distinguishing the right of any section of the citizen to conserve its language, script or culture and the right of the minorities based on religion or language to establish and administer institutions of their choice. With distinction in view the word ‘minority’ had been replaced with the term, ‘any section of the citizen’ in the earlier part of the draft Article 23 corresponding to present Article 29(1). The Drafting Committee, however, retained the word minority in the latter part of the draft Article, which later became the present Article 30(1).

With regard to prohibition of discrimination against minorities in admission it was decided that the right should extend to state aided institutions as well by introducing necessary change in clause (2) of Article 23.

Article 23 of the draft Constitution of India runs as under:

(1) “Cultural and Educational Rights : Article 23(1) Any section of the citizen residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have right to conserve the same.

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

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

---

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

When the draft of the Constitution was being discussed in the Constituent Assembly on 16th November 1949, T.T. Krishnamachari, moved the following amendments:

“That in Part XVI of the Constitution for the word, “minorities” where it occurs, the word, “certain class” be substituted”.

When the draft Article 23 was taken up for discussion in Constitution Assembly, Shri M. Ananthasayanam Ayyangar proposed an amendment that for the word, “no minority” occurring in clause (2) of Article 23, the words, “no citizen or minority be substituted, because in his opinion all citizens should have right to enter into education institutions and it should not be confined to minorities only.

At this stage Shri Thakur Das Bhargava suggested two amendments. The first to put the words, ‘no citizen’ for the words, ‘no minority’ and secondly that not only the institutions which are maintained by the state will be included but also the institutions receiving aid out of state funds. The reason being that from reading clause (2) of a Draft Article 23 the impression is being created that as minority had been given certain definite rights by this clause, whereas the national interest require that no majority should be discriminated against in this matter.

He further argued that, in educational matters from the national point of view, how any discrimination can be justified in favour of a minority or a majority and both should be brought at the same level. There should not be any discrimination between any member of the majority or minority in admission in any educational institution.

The amendment proposed by Shri Thakur Das Bhargava was adopted by the Constitution Assembly. The word, “minority” was substituted by the word, “citizen” and for the word, “religion, community or language”, the word, “religion, race, caste,

---

278 C.A.D. Official Reports (Lok Sabha Secretariat New Delhi Vol. XI 1949 )Pp. 571 and 605 (change in made in the head note)
280 Amendment 687, “No Citizen shall be denied admission into any educational institutions maintained by the state of receiving aid out of the state funds on the grounds only of religion, race, caste, language or any of them.”
282 Ibid. p. 609.
language or any of them” were substituted because the word “community” has no definite meaning in context of the minority rights as it cover all communities.\(^{283}\)

Dr. Ambedkar also explained the reason for this change while replying in the debate with some of the amendments. He said, “The term ‘minority’ was used in the earlier draft”, not merely to indicate the minority in the technical sense of the word, it was also used to cover ‘minorities’ which are not minorities in the technical sense but which are nonetheless minorities in the cultural and linguistic sense.\(^{284}\)

Since, the word, “minority” was capable of a narrow interpretation and the intention was to provide protection in the matter of culture, language or script in a wider sense. The Drafting Committee had dropped the word, ‘minority’ and used instead the term, ‘any section of the citizen’. He pointed out that the article was an improvement on the draft article. The original provision only cast a duty upon the state to protect the culture, script and language of the minorities. It gave no fundamental right to these communities.\(^{285}\)

Dr. Ambedkar, further observed:

“It only imposed the duty and added a clause that while the state may have right to impose limitations upon these rights of language, culture and script the State shall not make any law which may be called oppressive, not that the State has no right to make a law affecting these matters, but the law shall not be oppressive... The protection granted in the original article was very insecure. It depended on the goodwill of the State. The present situations as you find it... is that we have converted that into a fundamental right, so that if a state makes any law which was inconsistent with the provision of this article, then that... law would be invalid.”\(^{286}\)

From the foregoing discussion it is clear that though the term, ‘minority’ is not specifically defined in the Constitution but the Constitution makers wanted to give definite rights to any section of the citizen, which include minority as well as majority to conserve their language, script and culture and definite rights to minority to establish and administer educational institutions of their choice for preserving their

\(^{283}\)Id. p. 610.
\(^{286}\)B. Shiva Rao, The Framing of India’s Constitution – A Study (Universal Publication Corp. New Delhi,1966) p.280.
cultural and linguistic rights as well as for providing general secular education under Articles 29 and 30 of the Constitution of India. However, it may be submitted that though expression, “minority” has been rarely used in the Constitution, but with a view to ensure proper educational development, several Articles of the Constitution adequately protect and provide safeguard to the minorities.

3.6 Types of Minorities

Legally defining minorities is complicated when different types of minority identity such as caste, religion or linguistic affiliation interact and intersect or when the lines between religions are contested. Sometimes, the Government amalgamates minorities into macro-majorities or ‘super sized’ majorities by including minorities within them through law, policies or politics. On the other hands, the Government fragments minorities through law, policies or politics that subdivide or emphasize difference within these minorities. The outcome is always problematic and has significant bearing on the person who is inherence of rights conferred by the Constitution.

Keeping in mind the fact that minority is social status which is always dynamic rather than static, the minorities may be classified in following ways.

3.6.1 Technical and Non-Technical Minorities

‘Religion’ and ‘Language’ being the criterion declared in Article 30(1) of the Constitution as a pre-conditions to claim the protection guaranteed by this article, in the matter of establishment and administration of educational institutions of their choice.

The expression ‘minority’ which appear in clause (1) of Article 30 of the Constitution may be classified as technical and non-technical minorities. Technical minorities can be identified with religious minorities who sought reservation for themselves in the legislature and service during the British Rule in India. With the Morley-Minto Reforms, separate electorate was created for Muslim and the Government of India Act of 1919 and 1935 extended the privilege of reserved seats and

---

289 Ibid.
separate electorate to other sections of the population including the Sikhs, the Indian Christians and the Depressed Classes.291

In contrast, Non-Technical minorities can be identified with linguistic minorities. It cannot be denied that a part of the majority community that is Hindus could become a linguistic minority when people from one linguistic area migrate to another area because of the compulsion of economic force or employment etc.

Dr. B.R. Ambedkar during the Constituent Assembly Debates stated that, “the term minority was used not in the technical sense of the word minority, as we have been accustomed to use it for the purpose of certain political safeguards, such as, representation in the legislature, representation in service and so on.”292 He further said, “The word ‘minority’ is also used to cover minorities which are not minorities in technical sense but which are nonetheless minorities in the cultural and linguistic sense293.”

Dr. Ambedkar cited the following examples to substantiate his arguments:

“For instance, for the purpose of this Article 23, if a certain number of people from Madras came and settled in Bombay for certain purposes, they would be, although not a minority in the technical sense, cultural minorities. Similarly, if a certain number of Maharashtrians went from Maharashtra and settled in Bengal although they may not be minorities in technical true sense, they would be cultural and linguistic minorities in Bengal294.”

The articles intend to give protection in the matter of culture, language and script not only to minorities technically but also to a minority in the wider sense of the term. Thus, the word, minority was used in wider sense, so as to give cultural protection to those who are technically not minorities but minorities themselves.

3.6.2 Linguistic Minorities

India being a highly heterogeneous society, language contributes in the crystallization of collective identity and group solidarity. But if the language gives

---

293 Ibid.
people identity and solidarity; it is also source of conflict. Person who is majority in one area can becomes a minority in another area of the country.

Professor Humayun Kabir has rightly remarked in his book, "Minorities in Democracy" that, “Language group is there are there is no use trying to deny them. They will be there. Any attempts to suppress a language will, in fact create a violent revulsion and may be cause for fissiparous tendencies.

The framers of the Constitution were aware that language issue is a delicate matter. Dr. Rajendra Prasad, as the President of the Constituent Assembly during discussion on language pointed out:

“There is no other item in the whole Constitution of the country which will be required to be implemented from day to day, from hour to hour. I might even say from minute to minute in actual practice....therefore, when any member rises to speak on this language question, I would request him most earnestly to remember that he should not let fall in a single word or expression which might hurt or cause offence. Whatever has to be said should be said in moderate language so that it might appeal to reason and there should be no appeal to feelings or passion in a matter like this.”

Because of the precise term in which Articles 29 and 30 of the Constitution of India are couched and its judicial interpretation of the term, there is no need for us to take the assistance of international law or of sociology to identify linguistic minorities. What we are concerned with are Educational Rights of the minorities in India - minorities having distinct language, script, culture or religion.

Accordingly, linguistic minorities can be described as those minorities residing in the territory of India having distinct, language, script or culture of their own. A group will be declared a linguistic minority if its mother tongue is different from the principal language of the country and at the state level different from the principal language of the state.

In the pre-1947 period, George Grierson, who undertook the Linguistic Survey of India, reported 723 major languages and dialects were spoken in India. The other

296 Prof. Humayun Kabir, Minorities in Democracy (Firma K.L. Mukhopadhyay, Calcutta 1968) p.16; Arun Kumar, Cultural and Educational Rights of the Minorities under Indian Constitution (Deep and Deep Publishing House, New Delhi, 1985) p.47
benchmark is 1931 census report, which listed more than 2000 language / dialects spoken as mother tongues in India. However, the enumeration of mother tongue of independent India showed varied results. For instance, in 1951 census the number was 782 and in 1961 and 1971 it was 1652 and 1019 respectively. Nevertheless the languages and dialects spoken in India belong to four languages families: Indo-Aryan language is spoken by nearly 73% of population, Dravidian by 25%, Austro-Asiatic by 1.5% and Tibeto-Chinese by little over 0.5% of population.

According to Linguistic Survey of India, there are 179 languages and 544 dialects. Article 343 of the Constitution recognizes Hindi in Devnagari Script as official language of the Union and 22 other language in Eight Schedule as languages of India. It means, all the 22 languages are being taken care by official Languages Commission of India and state is supposed to take care for the development of these languages. The rest of the languages face dominance of one or more of these 22 languages in terms of language used in everyday life, in education as well as in administrative correspondence.

The Government of India reorganised the states on the basis of language in accordance with the recommendation of the State Reorganization Commission in 1956. The reorganization of the states, though brought together people speaking a common

---


300 “Article 343 of the Indian Constitution read as: Official language of the Union. (1) The official language of the Union shall be Hindi in Devanagari script. The form of numerals to be used for the official purposes of the Union shall be the international form of Indian numerals.

(2) Notwithstanding anything in clause (1), for a period of fifteen years from the commencement of this Constitution, the English language shall continue to be used for all the official purposes of the Union for which it was being used immediately before such commencement: Provided that the President may, during the said period, by order authorise the use of the Hindi language in addition to the English language and of the Devanagari form of numerals in addition to the international form of Indian numerals for any of the official purposes of the Union.

(3) Notwithstanding anything in this article, Parliament may by law provide for the use, after the said period of fifteen years, of-

(a) the English language, or

(b) the Devanagari form of numerals, for such purposes as may be specified in the law.”

The Eight Schedule of the Constitution includes the following language: Hindi, Bengali, Telugu, Marathi, Tamil, Urdu, Gujarati, Kannada, Malayalam, Oriya, Punjabi, Assamese, Sindhi, Nepali, Konkani, Manipuri, Kashmiri, Sanskrit, Dogri, Santhali, Maithili and Bodo.
language and thus to the extent reduced the linguistic minorities, but it did not completely solve the problems.

Article 343 - 351 and Eighth Schedule deals with language of the country, but it is submitted conservation of language of minorities, tribal and aboriginal is not the prime concern of the State. Article 351 mandates the state to promote the spread of Hindi language to develop it so that it may serve as medium of expression for all the elements of the composite culture of India.”

Article 343(2) of the Constitution provide for the use of English for all official purpose for the period of 15 years. However, in 1965 because of widespread riots in South India and fears of domination of Hindi, it was declared by the Government of India to continue with English as associated official language.

Article 350A further declares as aspirational obligation on every state in India to provide educational facilities to linguistic minorities in the mother tongue at the primary stage of education.

Further, under Article 350B to safeguard the interest of linguistic minorities a special officer is appointed to investigate all matters relating to Constitutional Rights of the minorities.

301 Article 351 read as: “Directive for Development of the Hindi Language – It shall be the duty of the Union to promote the spread of the Hindi language to develop it so that it may serve as a medium of expression for all the elements of the composite culture of India and to secure its enrichment by assimilating without interfering with its genius, the forms, style and expression used in Hindustani and in the other language of India specified in the Eighth Schedule and by drawing wherever necessary or desirable for its vocabulary, primarily on Sanskrit and secondarily on other languages.”

302 Article 343(2):- Provides, “notwithstanding anything in clause (1) for a period of fifteen years from the commencement of this constitution. The English language shall continue to be used for all the official purposes of the Union for which it was being used immediately before such commencement. Provided that the President may during the said period, by order authorize the use of the Hindi language in addition to the English language and of the Devnagari form of numerals in addition to the international form of Indian numerals for any of the official purposes of the Union.”

303 Article 350 A read as: “Facilities for instruction in mother tongue at primary stage: It shall be the endeavor of every state and of every local authority within the state to provide adequate facilities for instruction in the mother-tongue at the primary stage of education to children belonging to linguistic minority groups; and the President may issue such direction to any state as he considers necessary or proper for securing the provision of such facilities.”

304 Article 350B read as: “Special Officer for Linguistic minorities: (1) there shall be special officer to be appointed by the President. (2) It shall be duty of the special officer to investigate all matters relating to the safeguard provided for linguistic minorities under this constitution and report to the President upon those matters at such intervals as the President may direct and the President shall cause all such reports to be laid before each house of Parliament and sent to the Government of State concerned.”
Despite the above-mentioned elaborate constitutional provisions, “the very existence of minority language is threatened and makes it detrimental to the survival of minority language.

The following table gives the Comparative Strength of the Schedule Languages:

<table>
<thead>
<tr>
<th>S.No.</th>
<th>Language</th>
<th>Percentage of Total Population who have written the language as their mother tongue</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Hindi</td>
<td>38.04</td>
</tr>
<tr>
<td>2</td>
<td>Bengali</td>
<td>8.17</td>
</tr>
<tr>
<td>3</td>
<td>Telugu</td>
<td>8.16</td>
</tr>
<tr>
<td>4</td>
<td>Marathi</td>
<td>7.62</td>
</tr>
<tr>
<td>5</td>
<td>Tamil</td>
<td>6.88</td>
</tr>
<tr>
<td>6</td>
<td>Urdu</td>
<td>5.22</td>
</tr>
<tr>
<td>7</td>
<td>Gujarati</td>
<td>4.72</td>
</tr>
<tr>
<td>8</td>
<td>Kannada</td>
<td>3.96</td>
</tr>
<tr>
<td>9</td>
<td>Malayalam</td>
<td>4.00</td>
</tr>
<tr>
<td>10</td>
<td>Oriya</td>
<td>3.62</td>
</tr>
<tr>
<td>11</td>
<td>Punjabi</td>
<td>2.57</td>
</tr>
<tr>
<td>12</td>
<td>Assamese</td>
<td>1.63</td>
</tr>
<tr>
<td>13</td>
<td>Sindhi</td>
<td>0.31</td>
</tr>
<tr>
<td>14</td>
<td>Nepali</td>
<td>0.26</td>
</tr>
<tr>
<td>15</td>
<td>Konkani</td>
<td>0.28</td>
</tr>
<tr>
<td>16</td>
<td>Manipuri</td>
<td>0.14</td>
</tr>
<tr>
<td>17</td>
<td>Kashmiri</td>
<td>0.46</td>
</tr>
<tr>
<td>18</td>
<td>Sanskrit</td>
<td>Negligible</td>
</tr>
<tr>
<td>19</td>
<td>Dogri</td>
<td>NA</td>
</tr>
<tr>
<td>20</td>
<td>Santhali</td>
<td>NA</td>
</tr>
<tr>
<td>21</td>
<td>Maithili</td>
<td>NA</td>
</tr>
<tr>
<td>22</td>
<td>Bodo</td>
<td>NA</td>
</tr>
</tbody>
</table>

Table 2: Population statistics on language basis.

3.6.3 Religious Minorities

India is a mosaic of different religious, cultural and linguistic minorities. It is home of all major religion of the world. “Religion returns in Indian census provide a wonderful kaleidoscope of the country’s rich social composition, as many religions

---


306 Nepali, Manipuri and Konkani is added in Eighth Schedule by the Constitution (Seventy First amendment) Act, 1991.

307 Bodo, Maithili, Dogri and Santhali was added in Eighth Schedule of the Constitution by the Constitution (Ninety Second Amendments) Act, 2003.
have originated in the country and few religions of foreign origin have also flourished here. India has the distinction of being the land from where important religions namely Hinduism, Buddhism, Sikhism and Jainism have originated. At the same time the country is home to several indigenous faiths tribal religions which have survived the influence of major religions for centuries and are holding the ground firmly Regional coexistence of diverse religious groups in the country makes it really unique and the epithet unity in diversity is brought out clearly in the Indian Census. According to census of India, 2011, Hindu are 79.80%, Muslim 14.23%, Christian 2.30%, Sikh 1.72%, Buddhist 0.70%, Jain 0.37% and person of other religions comprised of 0.66%”.

308 “At the census 2001, out of 1028 million population, little over 827 million (80.5%) have returned themselves as followers of Hindu religion, 138 million (13.4%) as Muslims or the followers of Islam, 24 million (2.3%) as Christians, 19 million (1.9%) as Sikh, 8 million (0.80%) as Buddhists and 4 million (0.4%) are Jain. In addition, over 6 million have reported professing other religions and faiths including tribal religions, different from the six main religions.

Hinduism is professed by the majority of population in India. The Hindus are most numerous in 27 states/UTs except in Manipur, Arunachal Pradesh, Mizoram, Lakshadweep, Nagaland, Meghalaya, Jammu & Kashmir and Punjab.

The Muslims professing Islam are in majority in Lakshadweep and Jammu & Kashmir. The percentage of Muslims is sizeable in Assam (30.9%), West Bengal (25.2%), Kerala (24.7%), Uttar Pradesh (18.5%) and Bihar (16.5%).

Christianity has emerged as the major religion in three North-eastern states, namely, Nagaland, Mizoram, and Meghalaya. Among other states/UTs, Manipur (34.0%), Goa (26.7%), Andaman & Nicobar Islands (21.7%), Kerala (19.0%), and Arunachal Pradesh (18.7%) have considerable percentage of Christian population to the total population of the State/UT.

Punjab is the stronghold of Sikhism. The Sikh population of Punjab accounts for more than 75 % of the total Sikh population in the country. Chandigarh (16.1%), Haryana (5.5%), Delhi (4.0%), Uttarakhand (2.5%) and Jammu & Kashmir (2.0%) are other important States/UTs, having Sikh population. These six states/UTs, together account for nearly 90 percent Sikh population in the country.

The largest concentration of Buddhism is in Maharashtra (58.3%), where (73.4%) of the total Buddhists in India reside. Karnataka (3.9 lakh), Uttar Pradesh (3.0 lakh), West Bengal (2.4 lakh) and Madhya Pradesh (2.0 lakh) are other states having large Buddhist population. Sikkim (28.1%), Arunachal Pradesh (13.0%) and Mizoram (7.9 %) have emerged as top three states in terms of having maximum percentage of Buddhist population.

Maharashtra, Rajasthan, Madhya Pradesh, Gujarat, Karnataka, Uttar Pradesh and Delhi have reported major Jain population. These states /UTs, together account for nearly 90 percent of the total Jain population in the country. The percentage of Jain population to the total population is maximum in Maharashtra (1.3%), Rajasthan (1.2%), Delhi (1.1%) and Gujarat (1.0%). Rest part of the country their proportion in negligible.”

Religion is a sensitive matter. It has worked as a unifying force and has also caused severe division between man and man, group and group, nation and nation.\(^{309}\) Dr. B.R. Ambedkar, during debate in the constituent assembly remarked:

“The religious conceptions of this country are so vast that they cover every aspects of life from birth to death. There is nothing which is not religion.”\(^{310}\)

In India, Hinduism is the religion of majority. This does not mean, however, that Hindus can never be religious minority in India for instance, in state of Jammu and Kashmir; they easily are minority in as much as it is dominated by Muslims. Sikh, Buddhist and Jain, who are, for the purpose of application of personal law categorized as Hindus, for the purpose of Article 30 different religious groups. Except for Sikh in Punjab all these are easily religious minorities in India.

For the purpose of protection of Article 30, it is not necessary that the attributes of both linguistic and religious minorities must co-exist in the same group. Being a linguistic minority alone is enough to secure right under Article 30, so also is the case with religious minorities as well.\(^{311}\)

In *D.A.V. College, Jallandhar v. State of Punjab*,\(^{312}\) it was held that it is unnecessary to consider whether Arya Samajis are linguistic minority because if they can be considered as religious minorities they will be entitled to invoke the protection of Article 30(1).

At the same time it was also held that, in effect, that denomination of particular religion are not separate religion entitled to the protection of Article 30(1) of the Constitution. The reason being, that if every sect/section of a majority of a religion is to be recognized as minority then no group would remain a majority group. And if there is no majority the question of minority obviously would not arise at all.\(^{313}\)

---

\(^{311}\) (1971) 2 SCC 269.
\(^{312}\) Ibid.
\(^{313}\) Id.
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Hinduism</td>
<td>84.1%</td>
<td>83.45%</td>
<td>82.73%</td>
<td>82.80%</td>
<td>81.53%</td>
<td>80.46%</td>
<td>79.80%</td>
</tr>
<tr>
<td>2</td>
<td>Islam</td>
<td>9.8%</td>
<td>10.69%</td>
<td>11.21%</td>
<td>11.75%</td>
<td>12.61%</td>
<td>13.43%</td>
<td>14.23%</td>
</tr>
<tr>
<td>3</td>
<td>Christianity</td>
<td>2.3%</td>
<td>2.44%</td>
<td>2.60%</td>
<td>2.44%</td>
<td>2.32%</td>
<td>2.34%</td>
<td>2.30%</td>
</tr>
<tr>
<td>4</td>
<td>Sikhism</td>
<td>1.79%</td>
<td>1.79%</td>
<td>1.89%</td>
<td>1.92%</td>
<td>1.94%</td>
<td>1.87%</td>
<td>1.72%</td>
</tr>
<tr>
<td>5</td>
<td>Buddhism</td>
<td>0.74%</td>
<td>0.74%</td>
<td>0.70%</td>
<td>0.70%</td>
<td>0.77%</td>
<td>0.77%</td>
<td>0.70%</td>
</tr>
<tr>
<td>6</td>
<td>Jainism</td>
<td>0.46%</td>
<td>0.46%</td>
<td>0.48%</td>
<td>0.47%</td>
<td>0.40%</td>
<td>0.41%</td>
<td>0.37%</td>
</tr>
<tr>
<td>7</td>
<td>Zoroastrianism</td>
<td>0.13%</td>
<td>0.09%</td>
<td>0.09%</td>
<td>0.09%</td>
<td>0.08%</td>
<td>0.06%</td>
<td>NA</td>
</tr>
</tbody>
</table>

*Table 3: Population trends for major religious groups in India (1951 - 2011)*
3.7 Test for Determination of Minority Status

India is a country of many ethnic or religious and linguistic groups. When the Constitution of India was being framed it was decided that India would be Union of states and Constitution to be adopted would be federal in nature.

The question arises as to whether the minority status of a given group of person has to be ascertained in relation to the whole of the population of India or the population of the state, where the social group or the person reside?

If we see the approach of the framers of the Constitution, Shri K.M. Munshi, one of the members of the Constituent Assembly in his note and draft article on topic of ‘Right to Religious and Cultural Freedom’ referred to minorities as national minorities.

The said draft Article VI(3) runs as under:

(3) “Citizens belonging to national minorities in a state whether based on religion or languages have equal right with other citizen in forming, controlling and administering at their own expense, charitable, religious and social institutions, schools and other educational establishments with the free use of their language and practice of their religions.”

On the other hand, Dr. B.R. Ambedkar, was of the view that the term ‘minorities’ was used in Draft Article 23 not in the technical sense of the word as we have accustomed to use for purpose of certain political safeguards like representation in the legislature, service etc. According to him, the term ‘minorities’ have been used in wider sense to cover cultural and linguistic minorities also. The reason being, that people who go from one province to another and settle there, do not settle there permanently. They do not uproot themselves from the province from where they have migrated, but keep their connection and go back to the province for various purposes and if the protection is not given then local legislature may deny them opportunity of conserving their culture and get assimilated to the original population to which they belong.

Thus, the draft Article and Constituent Assembly in unambiguous terms shows that minority status to be determined on the bases of the population of the State.

---

Further a perusal of Article 350A\textsuperscript{316} and Article 350B\textsuperscript{317} which were inserted by the Constitution (Seventh Amendment) Act, 1956 indicates that the status of linguistic minorities has to be determined as state wise linguistic minority groups. Thus, the intention of the framer of the Constitution and subsequent amendment in the Constitution does indicates that the protection was conferred not only to religious minorities but also to linguistic minorities on the basis of their number in the state where the he intends to establish and educational institution of their choice. If the status of linguistic minority has to be determined on the basis of the population of the country the benefit of the Article 30 has to be extended to those who are in majority in their own states.

The view that “in a state where group of person having distinct language is numerically less than 50\% of the population of the state, has to be treated as linguistic minority” was accepted by the Government of India and the same is evident from the views expressed before the Special Rapporteur in his report, “Study on the Rights of Person Belonging to Ethnic, Religious and Linguistic Minorities” published by the Centre For Human Rights, Geneva states on the interpretation of the term ‘minority’ thus:

“For the purpose of the study, an ethnic, religious or linguistic minority is a group numerically smaller than the rest of the population of the state to which it belongs and possessing cultural, physical or historical characteristics, religion or a language different from those of the rest of the population.”\textsuperscript{318}

Also, ‘Minorities’ for the purpose of Article 30(1) are the minorities as qualified therein namely linguistic or religious minorities. Minorities of any other description are not relevant for the purpose of Article 30 of the Constitution.

\textsuperscript{316} Article 350 A read as: “Facilities for instruction in mother tongue at primary stage: It shall be the endeavor of every state and of every local authority within the state to provide adequate facilities for instruction in the mother-tongue at the primary stage of education to children belonging to linguistic minority groups; and the President may issue such directions to any state as he considers necessary or proper for securing the provision of such facilities.”

\textsuperscript{317} Article 350B read as: “Special Officer for Linguistic minorities: (1) there shall be special officer to be appointed by the President.
(2) It shall be duty of the special officer to investigate all matters relating to the safeguard provided for linguistic minorities under this constitution and report to the President upon those matters at such intervals as the President may direct and the President shall cause all such reports to be laid before each house of Parliament and sent to the Government of State concerned.”

3.7.1 Judicial Determination of Minority Status

The basis of determination as to whether a group claiming the right under Article 30(1) is or is not a minority as defined therein came up for consideration before the Supreme Court in large number of cases.

Perhaps, the first time the Supreme Court attempted to determine the status of minority in its advisory opinion, in re-Kerala Education Bill, 1957. The state of Kerala contended that, “the minority status to be determined in relation to the particular region in which educational institution in question is or is intended to be situated. Further Anglo Indian or Christian or Muslim of that locality taken as unit will not be minority within meaning of that article and will not therefore be entitled to establish and maintain educational institution of their choice in that locality but if some of the members belonging to Anglo Indian or Christian Community happens to reside in another ward of the same municipality and their number be less than that of the member of other communities residing there, then those member of Anglo Indian or Christian Community will be minority within the meaning of Article 30 and will be entitled to establish and administer educational institution of their choice in that locality”.

Repelling the arguments, S.R. Das C.J. pointed out as follows:

“It is easily to say that minority means a community which is numerically less than 50%, the important question is 50% of what? Should it be of the entire population of India or of the state or part thereof”? It is possible that a community may be majority in a state but in a minority in whole of India. A community may be concentrated in part of a state and may thus be a majority there, though it may be in minority in the state as a whole if part of the state is taken, then the question is where to draw the line and what unit is taken into consideration- a district, town, a municipality or its wards?”

Although, no final opinion on this issue was expressed by the court but it was said, “Since Kerala Education Bill extends to the whole of the state of Kerala and consequently the minority must be determined by reference to the entire population

319 AIR 1958 SC 956.
320 Ibid at 975.
321 Id. at 974.
322 Id. at 975.
Thus, the term, “minority” would constitute groups comprising less than 50% of the total population of a state.

In A.M. Patroni v. E.S. Kesavan, the Kerala High Court observed that the word, ‘Minority’ is not defined in the Constitution and in the absence of any special definition we must hold that any community religious or linguistic which is numerically less than 50% of the population of the state is entitled to the fundamental rights guaranteed by the article.

However, in D.A.V. College, Jallandhar v. State of Punjab, there was a faint attempt to decide the minority status in relation to the population of the whole country. While dealing with the said arguments, Jaganmohan Reddy J. observed:

“Though there was a faint attempt to canvas the position that religious or linguistic minorities should be minority in relation to the entire population of the country, in our view, they are to be determined only in relation to the particular legislation which is sought to be infringed, that if it is the state legislature, these minorities have to be determined in relation to population of the state.”

Again, in D.A.V. Bhatinda v. State of Punjab it was reiterated by Jaganmohan Reddy, J. that “What constitute a linguistic or religious minorities must be judged in relation to the state inasmuch as the impugned Act was a State Act and not in relation to the whole of India.

Thus from the aforesaid discussion it is apparent that the legislative source based determination of minority status was made by the Supreme Court starting from In re-Kerala Education Bill, 1957 to D.A.V. College case 1971 and it was consistently held that with respect to state law, the unit for determination of the religious or linguistic minorities can only be state law.

By the Constitution (Forty Second Amendment) Act, 1976, the ‘Education’ is transferred from E-11 of List II to E-25 of L-III i.e. concurrent list, thereby giving both the central and state government legislative competence to legislate in matters of Education. Hence, the question arises as to whether this would in any way change the

---

323 Id. at 976.
324 AIR 1965 Ker. 75
325 (1971) 2 SCC 269 at 274.
326 Ibid.
327 (1971) 2 SCC 261.
328 Ibid.
position with regard to determination of ‘linguistic’ or religious’ minorities under Article 30 of the Constitution?

In *T.M.P. Pai Foundation v. State of Karnataka*, 329 B. N. Kirpal, C.J. speaking on behalf of the majority opinion held that, “the minority status of a group of person is to be determined on the basis of the population of the state or union territory concerned and not the whole of India.

He further said, “The minority for the purpose of Article 30 cannot have different meaning depending upon who is legislating. Language, being the basis of establishment of different states. For the purpose of Article 30, linguistic minority will have to be determined in relation to the state in which educational institution is sought to be established. The position in regard to religious minority is similar since both religious and linguistic minorities have been put at par under Article 30. 330

Justice Khare, in his concurring opinion laid down the following postulates for the determination of minority status for the purpose of Article 30 of the Constitution:

1. “The intention of the framers of the Constitution and subsequent amendments in the Constitution indicates that protection was coerred not only to religious minorities but also to linguistic minorities on the basis of their number in a state or union territory, when they establish an educational institution of their choice. It was not contemplated that the status of linguistic minorities has to be judged on the basis of the population of the entire Country.”331

2. “The function of entries in three lists of the Seventh Schedule is to demarcate the area over which the appropriate legislature can enact laws but do not confer power either on Parliament or State legislature to enact laws. So by transfer of entries, the character of entry is not lost or destroyed.”332

3. In view of the transfer of contents of Entry 11 of L-II to L to E-25 of L-III has not denuded the power of State legislature to enact law on the subject of Education. Therefore, the meaning assigned to linguistic or religious minorities would not be different when the subject Education has been transferred to the concurrent list from the state list.”333

330 Ibid at 553 (Para 81).
331 Ibid at 594.
332 Id. at 597 (Para 183)
333 Id.
Hence, the test as to who are linguistic or religious minorities within the meaning of Article 30 would be one and the same whether it is state legislation or central legislation. If we give different meaning to the expression ‘minority’ under Article 30 in relation to central legislation, the very purpose for which the protection has been given to the minorities would disappear. There cannot be two tests, one in relation to a central legislation and other in relation to a state legislation.\textsuperscript{334}

Thus, the person or persons establishing an educational institution who belong to either religious or linguistic group who are less than 50% of total population of the state in which educational institution is established would be linguistic or religious minorities.\textsuperscript{335}

Justice Ruma Pal took divergent view on this issue. In her opinion, the question whether a group is a minority or not must be determined in relation to the source and the territory application of the particular legislation against which the protection is sought.\textsuperscript{336}

Her whole reasoning may be extracted as follows:-

“If the source of the infringing action is the state, then the protection must be given against the state and the status of the individual or group claiming the protection must be determined with reference to the territorial limit of the state. If, however, the protection is limited to state action, it will leave the group which is otherwise a majority for the purpose of state legislation, vulnerable to Union legislation which operates on national basis. When the entire nation is sought to be affected, surely the question of minority status must be determined with reference to the Country as a whole.”\textsuperscript{337}

For her exposition, Justice Ruma Pal, draws support from the express provision of Article 29(1) which contains within itself an indication of the unit - any section of the citizen, residing in the territory of India or any part thereof - having distinct language, script or culture, of its own shall have the right to conserve the same.”\textsuperscript{338}

\textsuperscript{334} Id.
\textsuperscript{335} Id. at 598 (Para 184)
\textsuperscript{336} Id. at 648.
\textsuperscript{337} Id.
\textsuperscript{338} Id. at 649.
In the light of the express language she cogently argues, “merely because a person having a distinct language, script or culture are residing within the political or geographical limit of the state within which they may be in majority, would not taken them out of the phrase, “section of citizen residing in the territory of India.”

Thus, the approach implies that “minority” character need not be construed merely with reference to a state boundary. In an appropriate case; it may have reference to the whole of India if it involved the consideration of a central legislation.

It is respectfully submitted that the conception of minority need to be construed in relation to, not the territorial jurisdiction but the prime purpose or object that is sought to be achieved by the Constitution. Such a perspective flows from the conjoint consideration of Articles 29 and 30 which together grouped under the Sub-heading of Cultural and Educational Rights.

Thus, the conception of minority is to be conceived and constructed by keeping in mind the welfare of the minority so that if any section of citizen residing in the territory of India or any part thereof having distinct language, script or culture, they must have right to conserve the same.

Therefore, it is suggested that we should always keep in mind as to what is sought to be protected here is not the only interest of minorities as against the majorities but the interest of the cultural and linguistic group against Governmental action. If any educational institution was established by majority or person of minority community for purpose of conserving and promoting their distinct language script or culture the emphasis should therefore be on legislative source based determination that is all section of the people have the right to conserve their language script or culture.

But when the educational institution is established by the minority community to impart general secular education including professional education, then the state as a unit may be taken into consideration and there must be same real positive index associating the educational institution with the minority community and at the same time to protect the members of minority community against invasion of their constitutionally protected right by the majorities. We should always keep in mind that the products of such institutions are not only going to serve the minorities but also the majority community.
3.8 Are Scheduled Castes and Backward Classes Minorities?

The Constitution of India abolished untouchability and discrimination on the basis of caste. In reality caste discrimination persists and legally recognized in order to implement affirmative programme of the government which includes quotas in government jobs, university admission as well as in legislative bodies.\textsuperscript{339}

The Schedule Castes category emerged in the late colonial era, to promote the rights of these groups in an era of constitutional reforms and incipient independence. The British Colonial Government officially recognized the untouchable castes by listing them in 1936 as the Schedule Castes to implement the mandate of the Government of India Act, 1935 to give special electoral representation to various minority groups.\textsuperscript{340} The 1936, Government of India (Schedule Castes) Order made it clear that “no Indian Christian…should be deemed a member of Schedule Caste”.

The issue of inclusion of the Schedule Castes in the list of minority also invited attention of the members of the Constituent Assembly. S Nagappa one of the members of the Constituent Assembly pleaded the case of backward classes for their recognition as minorities.”\textsuperscript{341}

On the other hand, Mr. V.I. Muniswami Pillai pleaded that “the untouchable who forms one-sixth of the population of this sub-continent are a minority community, because their social, political and educational advancement is in a very low state.\textsuperscript{342}

As a follow-up action a list of the minority communities was prepared and was submitted to Constituent Assembly. It was agreed that Schedule Castes community as one of the minorities.

But towards the penultimate stage of discussion, an amendment was moved by K.M. Munshi of Bombay and Shibban Lal Saxena of United Provinces. It was concerned with the Hindu Status of the Schedule Castes and was accepted by the House without much discussion.

K.M. Munshi remarked, the Harijans generally known as the Schedule Castes are neither a racial minority nor a linguistic minority. The Harijans are part and parcel of Hindu Community. He felt that the extension of the term to refer to the Schedule

\textsuperscript{340} Ibid. at 97.
Castes as Sir Samuel Hoare, the then Secretary to Government of India did in Government of India Act, 1935, was “mischievous extension of the term”.  

He further remarked that the safeguards given to the Schedule Castes are meant to protect their rights only till they are completely absorbed in the Hindu Community. He further explained, “Any safeguard so far as the Schedule Castes are concerned is illogical and will possibly prevent their complete absorption in the Hindu folds.”

Seth Gobind Das, during the Constituent Assembly Debate also remarked, “so far as minorities are concerned, there is many minorities which in fact cannot be called as such. For instance, take the case of Harijans, they are in fact, Hindus, they are not a minority like Muslim or Christians.”

Surprisingly neither Dr. B.R. Ambedkar, nor other members of the Schedule Castes objected to the above explanation. The members of other minorities were silent. The amendment was moved and adopted without much ado.

Thus, the Scheduled Castes and backward classes are distinct and separate from religious and linguistic minority and they are part of the majority community, who because of the circumstances are stigmatised and victimized by the dominant majorities.

A Presidential Order in 1950 restricted Scheduled Castes reservation to Hindu Scheduled Castes but later amended to include Sikh Scheduled Castes in 1956 and Buddhist Scheduled Castes in 1990.

Although, Muslim and Christianity stress equity and their religious doctrine do not recognize caste, it is contended that some Muslim and Christian groups face caste like stratification and discrimination and disadvantages akin to Hindu Scheduled Castes and they too be included in list of Scheduled Castes for differential and preferential treatments. However, the Government of India has accorded other backward class (OBCs) status to some of the groups (castes) of Muslim for taking admission into educational institutions as well as for implementing other welfare measures of the State.

345 Ibid. at 241.
3.9 Are Jains a Religious Minority in India?

One of the issues, which have agitated the minds of the Court, is to whether Jain is religious minority in India or is part of the broad definition of Hinduism as a macro-majority along with Sikhism and Buddhism?

The reasons being that if one cannot be recognized as a religious minority because of being defined as part of the majority, the minority rights enshrined in Articles 29 and 30 would not come into play. This situation has cropped up in case of Jain community because they are legally recognized as minority in several states such as Maharashtra, Madhya Pradesh, Uttar Pradesh, West Bengal, Uttarakhand as well as Chhattisgarh, but they were denied the status of minority on all India level.

But, before ascertaining whether Jain is religious minority in India or part of Hinduism, it would be appropriate to decipher the meaning of Hindu religion first.

So far as Hindu religion is concerned, it can be understood in two different contexts i.e. in the context of doctrine or philosophy and other in context of its applicability to personal law. In the context of doctrine, the Hindu religion is different from Sikhism, Buddhism, and Jain religion. However, in context of application of personal laws it is the same for Jain, Buddhist or Sikhs. The reason being that Sikhism, Buddhism or Jainism as protestant religion have emerged out of Hindu religion and the Hindu personal laws such as Hindu Marriage Act, Hindu Succession Act, Hindu Adoption and Maintenance Act and other laws of pre and post Constitutional period continue to apply to them, even as they have separated from Hindu religion.

If we examine Jainism on the basis of Articles 25 and 26 of the Constitution, then Jain are not Hindus, it means philosophically Jain religion is different from Hindu religion and it cannot be considered as religious denomination of Hindu religion.

---

347 Article 25 of the Constitution provides: “Freedom of conscience and free profession, practice and propagation of religion (1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.
The Jain Community filed a petition before the Bombay High Court for issuance of writ to the Union Government to notify Jain as religious minority under Section 2(c) of the National Commission of Minorities Act, 1992.\textsuperscript{348}

The Bombay High Court by an impugned order disposed of the petition on the ground that the claims of various communities to the status of “minority” for the purpose of seeking Constitutional guarantee is one of the main issues pending before the Supreme Court in \textit{T M A Pai Foundation}\textsuperscript{349} Case. Then the Jain Organization approached the Supreme Court by way of appeal for according it minority status under section 2(c) of the National Commission of Minorities Act, 1992. The claim of Jain organization was considered by the Supreme Court in \textit{Bal Patil v. Union of India}.\textsuperscript{350}

“In this case after \textit{T M A Pai Foundation}\textsuperscript{351} judgement the Union Government took a stand that it is for the state government to decide as to whether the Jain community should be treated as minority community in their respective states after the taking into account their circumstances / conditions in that State.\textsuperscript{352}

On the other hand, it was contended on behalf of the petitioner that for the purpose of notifying a community at the national level, the central government is empowered to consider the claim of a particular community for being notified as such under section 2(c) of the National Commission of Minorities Act, 1992 cannot shrink its statutory responsibility.

It was further contended that, even, after the legal position post \textit{T M A Pai Foundation} that the State Government can determine the minority status in states formed on linguistic basis, does not render the power of the Central Government under Section 2(c) of 1992 Act, redundant.

\textbf{Explanation I} : “The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion.”

\textbf{Explanation II} “In sub clause (b) of clause reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jain or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.”

\textsuperscript{348} Section 2(c) of the National Commission of Minorities Act, 1992 define “Minority” as “Minority for the purpose of this Act, means a community notified as such by the Central Government”.

\textsuperscript{349} (2002) 8 SCC 481.

\textsuperscript{350} (2005) 6 SCC 690.

\textsuperscript{351} (2002) 8 SCC 481.

\textsuperscript{352} \textit{Ibid} at 696.
It was held by the Lordship of the Supreme Court that the minority status is not to be determined by their numerical strength at the national levels but rather at the state level and remarked as follows:

“(1) Henceforth, before the Central Government takes decision on claims of Jain as a ‘minority’ under section 2(c) of the National Commission of Minorities Act, 1992, identification has to be done on a ‘state wise’ basis.

(2) The power of the Central Government has to be exercised not merely on the advice and recommendation of the commission but on consideration of the social, cultural and religious conditions of the Jain community in each State.

(3) Statistical data produced to show that a community is numerically a minority cannot be the sole criterion. If it is found that a majority of the member of the community belongs to the affluent class of industrialist, businessman, professionals and propertied class, it may not be necessary to notify them under the Act as such and extend any special treatment or protection to them as a minority. The provisions contained in the group of Articles 25 to 30 are a protective umbrella against possible deprivation of fundamental right of religious freedoms of religious and linguistic minorities.”353

Thus, it is most respectfully submitted that in addition to transferring the responsibility on the issue of determination of minority status to State, the Court imposed socio-economic criteria for determination of religious minority status. It means even if a community or organization is philosophically or religiously distinct but if the majority of the members of that minority is performing exceedingly well on socio-economic and educational achievement, the official minority status would be meaningless or superfluous.

Apart from this, the Court also attempted to supersize the Hinduism as a macro-majority, at the expense of distinct religious identity of Jainism by observing that:

“The so called minority community like Sikhs and Jains were not treated as national minority at the time of framing of the Constitution. Sikhs and Jains, in fact,
have throughout been treated as part of the wider Hindu community which has different sects, sub-sects, faith, modes of worship and religious philosophies. In various codified customary law like Hindu Marriage Act, Hindu Succession Act, Hindu Adoption and Maintenance Act and other laws of the pre and post Constitution periods, definition of ‘Hindu’ includes all sects and sub-sects of Hindu religions including Sikhs and Jains”. The word ‘Hindu’ conveys the image of diverse groups of communities in India.” 

In addition to this the Court also questioned the very existence of Jainism as a separate religion by observing as follows:

“Hinduism” can be called a general religion and common faith in India, whereas “Jainism” is a special religion formed on the basis of quintessence of Hindu religion. Jainism places greater emphasis on non-violence (Ahimsa) and Compassion (“Karuna”). Their only difference from Hindus is that Jains do not believe in any creator like God but worship only the perfect human being whom they called Tirthankara. The Tirthankara are embodiment of perfect human being who have achieved human excellence at mental and physical levels. In a philosophical sense, Jainism is a reformist movement amongst Hindus like Brahmasamajis, Aryasamajis and Lingayats.”

The Court while examining the role of ‘Minority Commission” remarked as follows:

“(1) The Minority Commission Act, 1992, instead of defining “minority” only provide for notifying certain communities as, “minorities” who might regulate special treatment and protection of their religious, cultural and educational rights.

(2) The definition of ‘minority’ given under section 2(c) of the National Commission of Minorities Act, 1992 is in fact not a definition as such but only a provision enabling the Central Government to identify a community as a minority which in the considered opinion of the Central Government deserves to be notified for the purpose of protecting and monitoring its progress and development through the Commission.”

(3) The statement of objects and reasons for enactment further provides that-

---

354 Ibid at 699.
355 Id. at 702 (Para 31)
(a) “The Minority Commission was set up for providing an institutional arrangement for evaluating the safeguards provided in the Constitution for the protection of the minorities and to make recommendation for ensuring implementation of the safeguards and the laws.

(b) The Minority Commission with statutory status would infuse confidence among the minorities about working and effectiveness of the Commission. It would also carry more weight with state governments/union territory administration and the ministers/departments and other organizations of the Central Government.

(c) It has, therefore, been decided to give statutory status to the Minorities Commission by the proposed legislation.

(d) The National Commission for Minorities will consist of a Chairperson and Six members.

(4) The main task of the Commission shall be to evaluate the progress of the development of minorities, monitor their working of the safeguards provided in the Constitution for the protection of the interest of minorities and in laws enacted by the Central or State Governments, besides looking into specific complaints regarding deprivation of rights and safeguards of the minorities.

(5) The Minority Commission shall cause studies, research and analysis to be undertaken on the issues relating to socio-economic and educational development of the minorities and make recommendations for the effective implementation of the safeguard for the protection of interests of minorities by the Central Government or State Governments.

(6) It may also suggest appropriate measures in respect of any minority to be undertaken by the Central Government or State Governments”. 356

After examining the functions of the Commission, the Court held that under Section 9 of the Minority Commission Act, 1992, the functions entrusted are for ensuring progress and development of minorities and protecting their religious,

356 Id. at 697 – 698.
cultural and educational rights. There are no specific functions conferred under Section 9 on the commission to identify any community as minority and recommend to the Central Government that it is to be notified under Section 2(c) of the 1992 Act. Moreover, the functions of the Commission is mere advisory and under section 2(c) of the 1992 Act, the power vests in the Central Government which alone, on its own assessment, has to accept or reject the claims of status of minority by a community.

The most interesting features of this judgement is that, the Supreme Court asked the Minority Commission to suggest ways and means to help to create social conditions where the list of notified minorities is gradually reduced and done away with altogether.

Justice Dharmadhikari speaking (on behalf of himself and R.C. Lahoti, C.J. and P.K. Balasubramanyam, J.) for the Court observed as follows:

“If only on the basis of a different religious thought or less numerical strength or lack of health, wealth, education, power on social rights, a claim of a section of Indian society to the status of “minority” is considered and conceded, there would be no end to such claims in a society as multi-religious and multilingual as India is. A claim by one group of citizen would lead to similar claim by another group of citizens and conflict and strife would ensue. As such Hindu society being based on caste is itself divided into various minority groups. Each caste claims to be separate from the other. In a caste ridden Indian society, no section or distinct group of people can claim to be in majority. All are minorities amongst Hindus. Many of them claim such status because of their small number and expect protection from the state on the ground that they are backward. If each minority groups feels afraid of other groups, an atmosphere of mutual fear and distrust would be created posing serious threat to the integrity of our nation. That would sow seeds of multi-nationalism in India. It is, therefore, necessary that the Minorities Commission should act in a manner so as to prevent generating feeling of multi-nationalism in various sections of people of Bharat.”

On the basis of aforesaid discussion, it is concluded that in context of doctrine, Jains, is separate religious group having distinct identity as well as religious persuasion but for the purpose of personal law, Jains are treated as part of Hindu religion. In Bal Patil case, the Supreme Court categorically denied the minority status to Jainism, by

357 Id at 703-704.
saying that, apart from numerical strength, the community’s, socio-economic conditions should also be considered as criterion for according minority status. The Court also called on the Minority Commission to do away with minority categories it was designed to protect.

In regard to the observations of the Court, the following is submitted:

(1) The religious and linguistic minorities in India have been accorded the special rights and protection under Articles 29 and 30 of the Constitution to allay apprehension and fears in their minds, that the protection of their religious, cultural and linguistic rights are no more dependent on the sweet will of the majorities in democratic society but as part of their sacrosanct rights under Articles 29 and 30 of the Constitution.

(2) Article 30 of the Constitution is recognized as articles of faith by the Supreme Court, but in this case, the Court adopted the extreme position by asserting that numerical strength cannot be sole criterion and socio-economic and educational factors have to be taken into consideration for determination of minority status. Such approach was never adopted in the history of the Supreme Court of India and it runs contrary to laws laid down since in re-Kerala Education Bill till T M A Pai Foundation case.

(3) Further, the call for the Minority Commission to gradually eliminate minorities and majorities’ classes is undesirable, because Minority Commission is created primarily for ensuring socio-economic and educational development of the minority. If the group cannot gain minority status, the rights to which they may be eligible under Article 29 and 30 of the Constitution would get defeated.

(4) Further, the Court attempted to project Hinduism as macro-majority and at the same time disintegrated it into multiple majorities and ultimately diminished the very concept of majority and minority by arguing that, “all are minorities amongst Hindus”.

In view of the above, the Supreme Court approach in Bal Patil require review by the larger Bench. Fortunately, for Jainism, the Government of India accorded “Minority Status” under Section 2(c) of the National Commission for Minorities Act,

3.10 Concluding Observation

Minorities are integral components of the democratic set up of our country. Though the term minority is not defined in our Constitution but due recognition is given to equal rights and duties for all without regard to their religious, racial, cultural or linguistic affiliations. Because of legal significance attached to the term Minority in national and international jurisprudence, there is broad consensus in academics and at the national and international level that the person belonging to minority group need special rights and protection to save them from oppression and forceful assimilation at the cost of their distinctive cultural identity and special affirmative action to achieve real and substantive equality which will enable the minority to assume their appropriate place within the wider society and help them to provide best possible education to their children to maximize their individual potential and talents. There is a clear recognition of minority educational rights with harmonious blending of preserving their distinct cultural identities as well as obligation on the part of the States to direct their education policy to provide substantive equality to minority in the matter of their education.

Constituent Assembly Debate of the framing of the Constitution of India also substantiate the arguments that the problem of minorities figured prominently in the Constituent Assembly and the proceedings and debates clearly demonstrate the intention and approach of the Constitution makers regarding the recognition of cultural and educational rights of the minorities. The judiciary has also shown special solicitude towards ‘minority’ to upheld and broadened the rights to any section of the citizen, which include minority as well as majority to conserve their language, script and culture and definite rights to minority to establish and administer educational institutions of their choice for preserving their cultural and linguistic rights as well as for providing general secular education under Articles 29 and 30 of the Constitution of India. The Court has consistently adopted the approach that the minority status of a group of person is to be determined on the basis of the population of the state or union territory concerned and not the whole of India.