CHAPTER II

2.0 HISTORICAL DEVELOPMENT OF MINORITY RIGHTS

2.1 Introduction

Globally minorities are the integral part of any democratic society. In Western academic discourse the ‘minority rights’ debate was conducted largely in the context of the idea of multiculturalism and it referred to immigrants, indigenous people, racial and ethno-religious sects.\(^\text{67}\) In Western democracies, the minority rights usually referred to cultural rights of the minorities which lays their emphasis on the basis of their ethnic, racial and religio-cultural or national identity\(^\text{68}\). The basic reason for such approach seems to be that in the West nation state was formed on linguistic and cultural basis but the religion was Christianity. In India, there are all kinds of minorities - religious, linguistic, cultural and ethnic but pluralism has been our way of life and our society has tried to remain plural. It has been a beautiful mosaic and richly woven social tapestry.\(^\text{69}\) In medieval time, we do not find any documented record of religious, ethnic or linguistic minority persecution. In fact, though there was a concept of “otherness” in those days but there was no concept of minority\(^\text{70}\). During medieval times these diverse religious, linguistic and cultural groups were living together in harmony with each other. To a large extent, each group practiced religious tolerance towards others.\(^\text{71}\) This religious tolerance led to increasing socio-cultural interaction between the Hindus and Muslims - the two largest religious groups in India.\(^\text{72}\) This chapter has been designed to trace the evolution of minority rights in India. For the purpose of convenience the chapter has been divided into the following subheads-

1. From Tradition of Tolerance to ‘Divide and Rule’
2. Journey through Separate Electorate to Partition
3. Evolution of minority rights prior to Constituent Assembly
4. Synthesis of minority cultural and educational rights during Constituent Assembly Debates
5. Concluding observations

\(^{68}\) Ibid.
\(^{69}\) Id. at 29.
\(^{70}\) Ibid.
\(^{72}\) Ibid.
2.2 From Tradition of Tolerance to ‘Divide and Rule’

India has been a land of diversities, a tradition of tolerance and mutual respect for each other. On the question of tolerance, Dr. Rajendra Prasad, the first President of India, in his book, “India Divided” wrote “The attitude of the Muslim conquerors had, on the whole, been one of the toleration, and in spite of the fanaticism manifested by some of them at times, it may be safely asserted that there had had been a continuous attempt from the earliest days to deal with the Hindus fairly.”73

In fact during Akbar’s time, the percentage of Hindu Officer in Akbar’s army was higher than the percentage of Indian officers holding the King’s Commission in the army in India before the World War II. Akbar employed a large number of Hindus into imperial service and elevated some of them to the highest position like Raja Man Singh as Prime Minister and Raja Todar Mal as celebrated Finance and Revenue Minister, Aurangzeb’s Finance Minister, Raghu Nath, was also a Hindu.74

The concept of minority and majority with particular reference to Muslim question became an important issue when the East India Company was establishing British Rule in India. Its policy was frankly based on the age old maxim of divide and rule and consisted in taking the side of one Indian Prince against another and preventing their combination against the foreign company.75 By the end of the first quarter of the nineteenth century, almost all the independent provinces had been subjugated and Mughal emperor had become a powerless puppet at Delhi.76

The Hindu-Muslim problem became more acute after 1857 rebellion in which Hindus and Muslims both joined and rallied round the old emperor at Delhi. Until then religious identity was not the principal identity as it was not a political category. In fact, the people belonging to the upper castes were more proud of their upper caste status then religious status and caste identities rather than religious identities - were more sharply defined77 and there was greater solidarity among people of upper castes and higher social status across religious divides than among people of the same religion.

The war of 1857 shocked the British rule in India. Though the rebellion failed and Mughal empire was brought to an end and the sovereignty of India passed to Queen

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74 *Id.* at 97.
77 *Supra* note 67 at 30.
of England, with the intention to break the solidarity of people of India, the British had given free play to “Divide and Rule” policy.

In this context, H.V. Hudson remarked, “The British could not have divided and ruled unless the ruled were ready to be divided and that the emergence of the problem was a necessary consequence of the difference in religion, culture, history, tradition, political, economic history, and interest of the different communities, more particularly of Hindus and Muslims.”

Under the myth of the “Martial Race” the policy of “Divide and Rule” was first tried on Indian Army and it was re-organized on tribal sectarian and caste basis so that groups retained their tribal and communal loyalties, and balanced the characteristics and influence of one another.

Pandit Jawaharlal Nehru has rightly observed that:

“The policy of balance and counterpoise was deliberately furthered in the Indian Army. Various groups were so arranged as to prevent any sentiments of national unity growing up amongst them and tribal and communal loyalties and slogans were encouraged.”

After the Indian Army, the British picked up the Indian Civil Society for sharpening division between Hindus and Muslims which was already there in the first place. The first major political controversy was regarding the language of administration. During the Mughal period, Persian was the language of administration, Courts as well as of all political elites. However, after the British took over, they replaced Persian by English at higher level and wanted to introduce Hindi and Urdu at the district level.

The upper caste Hindus began to demand that Persian be replaced by Hindi written in Devnagri script whereas the Muslim elite demanded Urdu written in Persian script to be introduced as language of administration at provincial level. This controversy brought about sharp division between Hindu and Muslim elites.

The establishment of Mohammedan Anglo-Oriental College was the next step in widening the gulf between the Hindus and Muslims. Sir Syed Ahmed Khan was leader of the Muslims for nearly forty years from 1858 to 1898. In his earlier days, he was

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78 Supra note 75 at 203.
80 Supra note 75 at 120.
82 Supra note 67 at 31.
regarded as national leader by both Hindus and the Muslims. He believed that Hindu and Muslim constitute one nation. “He was rightly keen about improving the lot of Musalmans and particularly about providing educational facilities for them.”

He firmly believed that there should be no distinction between Europeans and the Indian on the ground either of race or color in matter of government employment, social intercourse and political and constitutional rights. Accordingly, he supported “Albert Bill” and established “Scientific Society” of which Hindus, Musalmans and Europeans became members.

Regarding Hindu-Muslim unity he once remarked, “India is like a beautiful bride whose two eyes are the Hindus and the Muslim and her two eyes be of equal lustre.”

Sir Syed Ahmed Khan was very keen about the English Education of Musalmans and he founded in 1875 a school which developed into Mohammedan Anglo-Oriental College and later into the Muslim University of Aligarh. Professor Theodore Beck was appointed Principal of Anglo-Oriental College of the Muslim at Aligarh in 1883. English education which had spread among Hindus, had brought with it ideas of freedom and democracy which were finding vocal expression and nationalism was growing apace. The British realized that to counteract this growing nationalism, the Muslims had to be brought under their protective wings. The British under its policy of Anglo-Muslim alliance “tried to wean Sir Syed” away from nationalism to transfer his political attachment from British liberals to the conservatives and to evoke in him enthusiasm for rapprochement between the Muslim and the Government. Professor Theodore Beck further created gulf between Bengali nationalism and the Muslim by writing editorial articles in the “Institute Gazette” which were attributed to Sir Syed Ahmed Khan. In 1893, Mohammedan Anglo-Oriental Defense Association of Upper India was founded at the instance of Mr. Beck.

In 1895, Mr. Beck delivered a lecture in the Defence Association where he pleaded that, “Anglo-Muslim unity was possible but Hindu-Muslim unity was not possible and that Parliamentary institutions were entirely unsuited to India. If they were established, the Muslims being the minority would be overpowered by the Hindus who are in majority.”

83 Supra note 75 at 121.
84 Rajendra Prasad, India Divided (Hind Kitab, Bombay ed. 1947) p.102
85 Rajendra Prasad, India Divided (Penguin Books India, New Delhi 2010) p.124
86 Ibid.
87 Id.
The contribution of the Prof. Theodore Beck was estimated by Sir Arthur Strachey, Chief Justice of Allahabad, as “one of those Englishmen who were engaged in empire-building activities in a far off land.”

The British and Sir Syed Ahmed Khan became more apprehensive when the Indian National Congress was formed in 1885 and it adopted an all inclusive policy i.e. the Congress did not became a Hindu majority party but an Indian party carrying all religious communities together; Hindu, Muslim, Parsi, Sikh and Christian. First three Presidents were also from minority communities - Mr. W.C. Bonnerjee, a Bengali in 1885, Bombay session, Mr. Dadabhai Naoroji, a Parsi in 1886 Calcutta session and Mr. Badruddin Tyabji, a Muslim in Madras session of 1887. This alarmed the British rulers as unity of all religious communities were not in their political interest.

In response to this Sir Syed Ahmed Khan, under the influence of Prof. Theodore Beck, pleaded for Anglo-Muslim alliance. In 1886, he constituted Annual Muslim Education Conference which became a platform to express Muslim political opinion. Sir Syed Ahmed in the latter half of his life not only worked for creating gulf a between Hindus and Muslims but also pleaded that Hindus and Muslims were two equal nations and the Muslim would ever remain a minority in India. He further urged the Muslims to keep away from Congress.

The partition of Bengal in 1905 by the British Administration was also directed to create gulf between Hindus and Muslims. Bengal was the earliest province to come under the rule of East India Company and English education made its first appearance in that province.

English education contributed, to a great extent to the awakening amongst the educated class of the country and produced great reformers, lawyers, scientists, public speakers, poets and writers who had drunk deep from fountain of English literature. It was Bengal which became the centre and source of Indian nationalism. In Eastern Bengal, Muslims were in majority and in the Western Bengal Hindus were in majority. By dividing Bengal, the British rulers had tried to cut the very source of nationalism and unity and put up Hindu against the Muslim despite unanimous opposition of the Hindus and great many Muslims led by Mr. A. Rasool and Khwaja Aliquallah.

In the words of Sir Henry Cotton, “the object of the measure was to shatter the unity and to disintegrate the feeling of solidarity which was established in the

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89 *Id.* at 133.
90 *Id.* at 137.
91 *Supra* note 88 at137.
province. It was no administrative reason that lay at the root of this scheme.\textsuperscript{92} In this context, Dr. R.N. Agarwal observed that, "It was a clever move to drive a wedge between the two communities, and to weaken the forces of Bengali nationalism by weaning away Muslim from the Congress."\textsuperscript{93} Ashok Mehta and Patwardhan, also remarked, "If a Muslim province was to be created why was it not created in the Punjab and the North-West, why vivisect a province united by ties of history, language, customs and traditions?"\textsuperscript{94}

Thus, these clearly demonstrate that British were primarily responsible for creating a gulf between two largest communities in India, which could not be bridged even today.

\textbf{2.3 Journey through Separate Electorate to Partition}

In the backdrop of Partition of Bengal and midst of the Swadeshi Movement,\textsuperscript{95} on November 18, 1905, Lord Minto assumed the office of the Governor General and John Morley as the Secretary of State in India. On October 1st, 1906, Aga Khan met Lord Minto at Shimla as a leader of the Muslim deputation to the Viceroy. As a result of this meeting, ‘All India Muslim League’ was established. At the Dacca Conference in December 1906, the ‘All India Muslim League’ passed a resolution supporting the partition of Bengal and opposed the boycott movement.\textsuperscript{96}

The establishment of the All India Muslim League was welcomed by the Times of London. Mr. Ramsay Macdonald in awakening of India wrote as follows: "The Muslim leaders are inspired by certain Anglo-Indian officials, and these officials have pulled wires at Shimla and in London and of malice aforethought sowed discord between Hindus and Muslim communities by showing the Muslim special favor."\textsuperscript{97}

The All India Muslim League began to meet in annual sessions and passed a resolution for separate electorate to be introduced not only for legislative council but

\begin{footnotes}
\item[92] \textit{Ibid} at 138.
\item[94] Ashok Mehta and Patwardhan, \textit{The Communal Triangle in India} (Kitabistan, Allahabad, 1942) p.64.
\item[95] The formal declaration of the Swadeshi Movement was made on the 7th August, 1905 in a meeting held at the Calcutta town hall where famous Boycott Resolution was passed urging the boycott of Manchester and Liverpool Salt.
\item[96] \textit{Supra} note 88 at 144.
\end{footnotes}
also in local bodies and demanded representation of Muslims not only in Indian Civil Service but also in the Privy Council.\textsuperscript{98}

In the meantime, the meeting of Indian National Congress was held in 1906 at Calcutta under Presidentship of Dadabhai Naoroji where a compromise resolution on the \textit{Swadeshi}, Boycott, National Education and Self-Government Demand were passed\textsuperscript{99}.

In the year 1909, Morley-Minto Reform was passed introducing separate Electorates for Muslims in imperial and provincial legislative council by the Indian Council Act of 1909. Though, Morley openly declared in British Parliament that reforms are directed to introduce Parliamentary system in India but it is submitted that the real purpose of the Morley-Minto Reforms was to divide the nationalist ranks and check the growing unity among Indians by encouraging the growth of Muslim communalism\textsuperscript{100}. The reform introduced the system of separate electorates under which Muslims could only vote for Muslim candidates in constituencies specially reserved for them. The institution of separate electorates was one of the poisonous trees which were to yield a bitter harvest in later years.\textsuperscript{101} It also encouraged the notion that economic, political and cultural interests of Hindus and Muslims were separate and not common.

After the introduction of separate electorates by \textit{Morley-Minto Reform}, some significant developments took place, which had significant bearing with respect to Hindu-Muslim relations in India. In December, 1911 at Delhi Darbar, the announcement of the annulment of the partition of Bengal was made by the King, came as a rude shock to many Musalmans and was heartbreaking for Nawab Salimullah.\textsuperscript{102} The Indians living abroad started the \textit{Ghadar Movement} against the British and back home; the Home Rule League movement was started by Lokmanya Tilak and Annie Besant.

Some of the progressive and nationalist Muslim leaders also started doubting the policy and program of the ‘All India Muslim League’. Maulvi Shibli Nomani, who had a reputation of being amongst the most learned Muslims of the time and lifelong co-workers of Sir Syed Ahmed Khan, began to doubt the wisdom of his policy and attitude

\textsuperscript{100} \textit{Ibid.} at 142.
\textsuperscript{101} \textit{Ibid.}
\textsuperscript{102} Rajendra Prasad, \textit{India Divided} (Penguin India Books, New Delhi, 2010)p.145
towards Congress. He advised the Muslims to not to be content with the role of being mere critics of the Congress but give attention to the fundamental question of the freedom of India.

In 1913, All India Muslim League Session was held at Lucknow, in which Sir Ibrahim Rahimtulla presided. In this session, the object of the league was redefined to include a system of self-government, reform in the existing system of administration by promoting national unity and fostering public spirit among the people of India. Thus the object of the league was brought in line with that of Indian National Congress and paved the way for communal unity and common action. After the commencement of the First World War in August, 1914, some of the prominent Muslim Leaders like Sheikul-Hind Maulana Mahmudul Hassan, Maulana Hussain Ahmed Nadvi, Maulvi Aziz Gul, Mohammad Ali, Shaukat Ali, Azad and Hasrat Mohani were arrested for their sympathy with Turkey and for their outspoken nationalism. The British also breached the promise held out to Indian Muslims about Khalifa, his territory and power and imposed a harsh treaty on Turkey. The Congress also extended its full support to the concerns of Muslims by providing unconditional support to Central Khilafat Committee.

The Lucknow Pact of 1916 between the Indian National Congress and All India Muslim League is also considered as one of the most important events in the trajectory of the freedom movement and majority-minority relationship. The significance of the Lucknow Pact lies in the fact that it was the first time that the Congress reached an agreement with an organization which was explicitly, a “communal” one, while the league founded to counter the Congress claim to represent the whole of India. The significant scheme of the pact was a joint scheme of constitutional reforms comprising of an expansion of the representative assemblies, both at all India and Provincial levels, and appointment of Indians to the executive council of the Viceroy and the Provincial Governor. More importantly, the Congress for the first time openly conceded the principles of communal representation by accepting separate electorate

103 Ibid at 146.
104 Id. at 147.
105 Id.
106 Id. at 149.
108 Ibid.
for Muslims. Moreover, the Muslims were granted a fixed proportion of seats both in the all India and the provincial legislature.\textsuperscript{109}

In context of the Lucknow Pact, R. Coupland remarked:

“In the colonial period, it was an important landmark in the development of Indian nationalism and an instance of political cooperation between the two important religious communities.”\textsuperscript{110}

Bimal Prasad expressed his view regarding the pact by saying that-

“The Congress compromised its position as the representative organization of all Indians by accepting the representative character of the League”.\textsuperscript{111}

B.R. Ambedkar had earlier opined that-

“Despite the concessions on the part of Hindus, the pact did not produce any rapprochement between the two communities”\textsuperscript{112}

On the other hand, the British continued with their policy of “Carrot and Stick” in the form of separate electorates and the electorate was split into 10 communal class by Montague-Chelmsford Reforms of 1919 and into 17 communal and other functional group by the Government of India Act, 1935.\textsuperscript{113}

Reservation in Government Service was accorded by the British in favor of Muslim in 1925 and extended to other communities on communal consideration by the Government of India Act, 1935.\textsuperscript{114}

Thus in a nutshell, reservation in legislature, quotas in government employment, reservation in cabinet and creation of an administrative machinery to ensure the protection of minority rights was one important variable which created religious division and accentuated minority consciousness through political maneuvers.\textsuperscript{115}

\textsuperscript{109} Id.
\textsuperscript{111} Bimal Prasad, Pathway to India’s Partition: A Nation within the Nation (Manohar Publication Ltd, New Delhi 2009) p.151.
\textsuperscript{112} Dr. B.R. Ambedkar, Pakistan or the Partition of India (Thacker’s and Comp. Bombay, 1946) p.299.
\textsuperscript{113} A.C. Banerjee, Indian Constitutional Documents (A. Mukherjee and Comp., Calcutta, 1\textsuperscript{st} ed , Vol. III1948) p.209.
\textsuperscript{114} Rochana Bajpai, “Constituent Assembly Debate and Minority Rights” (EPW, 2000) p.1843.
Dr. Rajendra Prasad, the first President of India, in his book *India Divided* also remarked, “The present seemingly irreconcilable differences between the Hindus and Muslims are in no small measure the result of a deliberate application of the policy of divide and rule.”

Thus, the British ruler was primarily responsible for widening the angle of difference between Hindu and Muslim, throughout the British rule in India and nearly all our major problems are the parting gifts from the British.

Syed S. Pirzada in his book *Evolution of Pakistan* has rightly summarized the history of British Rule in India in the following words:

“Clive to Canning, Curzon to Cripps, Minto to Mountbatten, Shimla Deputation to Shimla Conference, Partition of Bengal to Partition of India, Fourteen Points to Fourteen August….are the headlines of the march of events from Plassey to Pakistan.”

2.4 Evolution of Minority Rights prior to Constituent Assembly Debate

The problem of minorities, which has dominated Indian politics for long now is unfortunate. It was in fact this single factor, above all others, that held up the progress of the country towards freedom and independence. Since, the problem of minorities had assumed the political rather than religious connotation; the Indian National Congress was of the view that the only solution to the problem of minorities in India was to incorporate a detailed list of constitutional rights applicable to all citizens irrespective of their affiliation to any particular linguistic or religious creed.

The first non-official attempt at drafting a Constitution of India was made by the Constitution of India Bill, 1895 most probably under the inspiration of Lokmanya Bal Gangadhar Tilak as described by Mrs. Annie Besant as the Home Rule Bill for India.

The idea to frame the Constitution of India formulated in a discussion in the “1921 Club” Madras on the initiative of Mrs. Annie Besant followed by National Convention in February, 1924 and it drafted the Common wealth of India Bill, 1925 to...

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incorporate detailed list of Fundamental Rights for the citizens of India emphasizing on equality before law, free speech and free elementary education etc.

The Nehru report of 1928 was the most significant steps towards the development of the constitutional rights of the people of India. In the backdrop of Simon Commission constituted in 1927, where none of the Indians were included and challenge thrown by Lord Birkenhead, the Secretary of India, in the House of Lords in which he challenged the Indian leaders to draft a Constitution that would be acceptable to all communities in India, the Madras Congress in 1927, passed a resolution to convene ‘All Parties Conference’ to draft Swaraj Constitution for India.

The All Parties Conference was convened in 1928 and it appointed a Committee under the Chairmanship of Motilal Nehru to suggest an acceptable solution to difficulties of communalism and establish a fully responsible government on the principles of parliamentary democracy. The representatives of all groups and religious communities were given representation in the Committee and on 10th August, 1928, the Committee submitted its report which is commonly known as “Nehru Report”.

The salient features of the Nehru Report in context of the Fundamental Rights and educational rights were as follows:

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1. India would be given Dominion Status to be Secular State with no State religion. The State shall not either directly or indirectly endow any religion or given any preference or impose any disability on account of religious beliefs or religious status.

(iv) The right of free expression of opinion, as well as the right to assemble peacefully and without arms, and to form associations or unions, is hereby guaranteed for purposes not opposed to public order or morality.

(v) All citizens in the Common wealth of India have the right to free elementary education without any distinction of caste or creed in the matter of admission into any educational institutions, maintained or aided by the state and such right shall be enforceable as soon as due arrangements shall have been made by competent authority.

(vi) All citizens are equal before the law and possess equal civil rights.

(vii) There shall be no penal laws whether substantive or procedural of a discriminative nature.

(viii) No person shall be punished for any act which was not punishable under the law at the time it was committed.

(ix) No corporal punishment or other punishment involving torture of any kind shall be lawful.

(x) Every citizen shall have right to a writ of Habeas Corpus. Such right may be suspended in case of war or rebellion by an Act of the central legislature or, if the legislature is not in session by the Governor-General in Council, and in such case he shall report the suspension to the legislature at the earliest possible opportunity for such action as it may deem fit.

(xi) There shall be no state religion for the Common wealth of India or for any province in the Common wealth nor shall the state directly or indirectly endow any religion or give any preference or impose any disability on account of religious belief or religious status.

(xii) No person attending any school receiving aid or other public money shall be compelled to attend the religious instructions that may be given in the school.

(xiii) No person shall by reason of his religion, caste or creed is prejudiced in any way in regard to public employment, office of power or honor and the exercise of any trade or calling.

(xiv) All citizens have an equal right of access to, and use of, public roads, public wells and all other places of public resort.

(xv) Freedom of combination and association for the maintenance and improvement of labor and economic conditions is guaranteed to everyone and of all occupations. All agreement and measures tending to restrict or obstruct such freedom are illegal.

(xvi) No breach of contract of service or abetment thereof shall be made a criminal offence.

(xvii) Parliament shall make suitable laws for the maintenance of health and fitness for work of all citizens, securing of a living wages for every worker, the protection of motherhood, welfare of children and the economic consequences of old age, infirmity and unemployment.

(xviii) Every citizen shall have the right to keep and bear arms in accordance with regulations made in that behalf.


In respect of the Communal Representation, the Nehru Report of 1928 proposed the followings:

I. “There shall be joint mixed electorate throughout India for the House of Representatives and Provincial Legislatures.

II. There shall be no representation of seats for the House of Representatives except for Muslims in provinces where they are in a minority and non-Muslims in N.W.F. Province. Such reservations will be in strict proportion to the Muslim population in every province where they are in minority and in proportion to the non-Muslim population in N.W.F. Province. The Muslims or non-Muslims where reservation is allowed to them shall have the right to contest additional seats.

III. In the provinces (a) there shall be no reservation of seats for any community in the Punjab and Bengal (b) in provinces other than the Punjab and Bengal there will be reservation of seats for Muslim minorities on population basis with the right to contest additional seats. (c) In the N.W.F. Province, there shall be similar reservation of seats for non-Muslims with the right to contest other seats.

IV. Reservation of seats where allowed shall be for a fixed period of ten years.”
2. The report considered the country as an organic whole and not one composed of heterogeneous and independent elements such as the princes, linguistic or religious minorities.

3. The report proposed to abolish separate electorates and suggested joint electorates with reservation of seats for Muslims where they are in minority and for non-Muslims in North West Frontier Province. It repudiated separate electorates for Muslim majorities in Bengal and Punjab.

4. It incorporated detailed list of Fundamental Rights which guaranteed among others equality before law, freedom of speech and expression, freedom from illegal arrest and detention, freedom of conscience and the free profession and practice of religion etc.

5. Regarding educational rights, the report suggested that, all citizen shall have the right to free elementary education without any distinction of caste or creed in the matter of admission into any educational institution, maintained or aided by the state and such right shall be enforceable as soon as due arrangements have been made by the competent authority.

The Nehru Report was discussed and adopted with modification at the meeting of the All Parties Conference at Lucknow and ultimately accepted by All Parties Convention held in Calcutta in December 1928. The report was an act of great statesmanship and was acclaimed by constitutional historians as “not only an answer to the challenge that Indian Nationalism was unconstructive” but the “highest attempt yet made by India to face squarely the difficulties of communalism.”

In this context, Dr. Lal Bahadur Shastri also remarked:

“The Nehru Report was the practical side of the Indian agitation and was projected to serve as a fitting reply to the racial arrogance of Lord Birkenhead, the then Secretary of State.”

However, soon after Calcutta session of Indian National Congress in December, 1928, the differences had arisen with representatives of the All India Muslim League on the issue of Muslim representation and separate electorate for Muslims in Legislature. Mr. Jinnah tried to bring reconciliation between the Muslim League and the Muslim All

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Parties Conference and after consultation prepared his fourteen points as necessary for safeguarding the rights and interest of the Muslims.

There were differences between the nationalist Muslims and the Muslim All Parties Conference on the question of acceptance of Nehru Report. The former holding that the report should be accepted. But at the same time, the Jinnah’s fourteen points became demand of the Muslims outside the Nationalist group. These fourteen points have an importance of their own as they were adopted practically in their entirety by the Macdonald’s Communal Award.

In May 1930, the Report of the Simon Commission was made public and it completely “ignored meticulously drafted Nehru Report of 1928 and went to the extent of advocating the continuation of system of separate electorates on the basis of the so called “agreed pact” among the different political parties.” As a consequence, the Sikh and depressed classes demanded separate electorates.

After witnessing the country’s hostile reaction to Simon Commission Report, the British Government, convened the First Round Table Conference to frame a

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Mr. Jinnah Fourteen Point may be summarized here as:

1. “The form of the future Constitution should be federal with the residuary power vested in the Province.
2. A Uniform measure of autonomy for Provinces.
3. All legislatures and other elected bodies should be considered on the definite principle of adequate and effective representation of minorities in every province without reducing the majority in any province to a minority or even equality.
4. In the Central legislature, Muslim representation shall not be less than one third.
5. Representation of communal groups to be by separate electorate provided that it shall be open to any community at any time to abandon its separate electorate in favor of joint electorate.
6. Any territorial redistribution not in any way to affect the Muslim majority in the Punjab, Bengal and the N.W.F. Province.
7. Full liberty of belief, worship and observance, propaganda, association and education shall be guaranteed to all communities.
8. No Bill or Resolution or any part thereof shall be passed in any legislature or any other elected bodies if three fourth of the members of any community in that body opposed it as being injurious to the interest of that community.
9. Sind to be separated from the Bombay Presidency.
10. Reforms to be introduced in the Frontier Province and Baluchistan as in other Provinces.
11. Adequate share of Muslims to be provided in the Constitution in all services, subject to requirements of efficiency.
12. Adequate safeguards for the protection and promotion of Muslim culture, education, language, religion, personal laws and charitable institutions and for their due share in the grants-in-aid.
13. No cabinet either Central or Provincial be formed without at least one third of the ministers being Muslims.
14. No change of the Constitution by the Central Legislature except with the concurrence of the States constituting the Indian Federation.” (Dr. Rajendra Prasad, India Divided (Penguin India Books Ltd., New Delhi 2010)p.164-165.

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127 Mr. Jinnah Fourteen Point may be summarized here as:
128 Dr. Rajendra Prasad, India Divided (Penguin India Books, New Delhi 2010)p.64
129 Id. at 166.
130 Id. at 165.
131 M L Sahare, Dr Bhimrao Ambedkar, His Life And Work (NCERT, New Delhi 1987) p.38.
Constitution of India with the object of pacifying growing upsurge against the British rulers. Fifty three Indians representing different shades of public opinion and twenty rulers of Indian Princely States were invited to attend First Round Table Conference. Indian National Congress did not attend the First Round Table Conference.

During the First Round Table Conference, the Declaration on Fundamental Right was drafted by Dr. B. R. Ambedkar for protecting the cultural, religious and economic rights of the depressed classes in the future independent India. The most positive point of First Round Table Conference was the evolution of a concept of free, united and independent India in spite of determined efforts by the Muslim delegates for separate electorate for Muslim along with reservation of seats. After Gandhi-Irwin Pact in 1931, the Congress agreed to participate in Second Round Table Conference but the same was concluded without any final decision on the question of minorities.

The Karachi Resolution of 1931 was memorable for its resolution on Fundamental Rights. The resolution guaranteed the basic civil rights of free speech, free press, free assembly and freedom of association, equality before law irrespective of caste, creed or sex, neutrality of state in regard to all religions, elections on the basis of universal adult franchise and free and compulsory primary education.

Sir Tej Bahadur Sapru Committee proposal of 1945 was another attempt for solution of the constitutional and communal problem in India. The Committee proposed that a Comprehensive Declaration of Fundamental Rights should be incorporated in the Constitution comprising of the followings:

(a) Liberties of Individual.

(b) Freedom of Press and Association.

(c) Equality of Rights of citizenship of all nationals.

(d) Full religious tolerance.

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132 Ibid. at 40. (Among those invited were thirteen eminent Hindu Liberals Leaders including Sir Tej Bahadur Sapru, M. R. Jayaker, Sir Chimanlal Setalvad, Right Hon. Srinivas Sastri, Shri C. Y. Chintamani, For Muslim, His Highness The Aga Khan, Mohammed Ali Jinnah, Fazlul Haque and Mohammad Shafi were invited. Sardar Ujjawal Singh were asked to represent Sikh, Dr. V. S. Munje to represent Hindu Mahasabha and Shri T. K. Paul, The Indian Christian. Dr. B. R. Ambedkar and Rao Bahadur Srinivasan were invited to represent the Depressed Classes.).

133 Id. at 42.

(e) Protection of language and culture of all communities and abolishing all
disabilities imposed by tradition or customs on schedule castes and
safeguarding religious customs like wearing of Kirpans by Sikhs.\textsuperscript{135}

On the issue of minorities, the Sapru Committee proposed that an independent
Minorities Commission at the centre and in the provinces to be established to keep a
constant watch over the interest of the minority communities. The Commission shall
review periodically the policy pursued for the implementation of non-justiciable
Fundamental Rights and to submit its report to the Prime Minister. Further, the
recommendation of the Commission was to be considered by the Cabinet and report to
be placed before the legislature. The merit of the Sapru Committee proposal was that
it rejected the Muslim League’s proposal of division of India but it gives to Muslims
parity with caste Hindus in Constitution making, Legislature and the Cabinet.\textsuperscript{136}

The Sapru Committee Scheme was criticized by Dr. Rajendra Prasad as, “What
is considered to be a defect by one group of critics is regarded as merit of another
group and so many of the criticisms cancel one another.”\textsuperscript{137}

Mohamed Ali Jinnah in his initial days was highly westernized and constitutional
in his approach. He wanted to safeguard the rights of religious minorities and thus
proper representation in the legislatures rather than creation of country on the basis
of religion.\textsuperscript{138} But he pursued the policy of Sir Syed Ahmed Khan in his Presidential
address of Lahore Session of the Muslim League on 23\textsuperscript{rd} March, 1940, where he
advocated for separate homeland for Muslims and argued that, the Hindus and Muslims
constitute two separate nations.\textsuperscript{139}

Gandhi, throughout his public life made the sincere efforts to create solidarity
and brotherhood among the various communities in India, particularly, for Hindu-
Muslim unity. For resolving the Hindu-Muslim estrangement, Mahatma Gandhi, even
suggested that “it could only be resolved by goodwill and generosity of the majority
group and so he was prepared to agree to everything that the Muslims might
demand.”\textsuperscript{140}

\textsuperscript{135} Dr. Rajendra Prasad, \textit{India Divided} (Penguin Book India, New Delhi 2010) p.486.
\textsuperscript{136} \textit{Ibid.} at 487.
\textsuperscript{137} \textit{Id.}
\textsuperscript{138} Asghar Ali Engineer, “Muslim Minority, their Rights and Status in India”, in Joseph Benjamin (ed.),
The nationalist demand for a Constituent Assembly was, for the first time conceded by the British Government through its “August Offer”\(^{141}\) on 8\(^{th}\) August, 1940, which was rejected by the Congress Party. In 1942, the “Cripps Offer” was made by the British Government, where it clearly conceded that the making of new Constitution for India was to rest solely and not primarily in Indian hands\(^{142}\). The Congress Working Committee also rejected the “Cripps Offer” on the ground that it did not meet the Indian demand for complete independence and rest on future contingencies i.e. upon the cessation of hostilities. The Congress Working Committee also noted that Cripps mission proposal which granted the right of secession to the provinces and the Indian States but were unacceptable to Congress being against the very concept of Indian unity and to the Muslim League, since, no provision for separate Constituent Assembly was made.

The Cabinet Mission Plan on May 16, 1946, announced its recommendation on three important matters - the demand for partition, the basic form of the Government and the machinery for Constitution making, while, rejecting the demand for partition it proposed for weak centre with considerable provincial autonomy. It also provided for inclusion in the Constitution, a bill of rights, as partial answer to the question of minority rights, the specific nature of which was a matter for the Constituent Assembly to decide. The Mission suggested for a Constituent Assembly and proposed an advisory committee on the rights of citizen, minorities, tribal and excluded areas\(^{143}\). The Cabinet Mission clearly stipulated that “The cessation of sovereignty to the Indian people on the basis of a Constitution framed by the assembly would be conditional on adequate provisions being made for the protection of minorities.”\(^{144}\)

In accordance with the terms of the Cabinet Mission statement of May 16, 1946, the election to the Constituent Assembly were held in July 1946 and the members of three communities - Muslim, Sikh and the Hindus elected their representatives separately by the ‘single transferable vote’ system of proportional representation.\(^{145}\)

As, the Cabinet Mission had made no provisions for minorities other than Sikh and Muslim, the members of the Constituent Assembly was elected by provincial assembly, the franchise is being restricted to tax, educational and property

\(^{142}\) B. Shiva Rao, Select Documents (Universal Law Publishing Corp. 1966) p.126.
\(^{144}\) Ibid. at 746.
qualification specified in Government of India Act 1935. However, it was largely through the support of the Congress, that the members of Parsis, Anglo Indians, Indian Christians, Schedule Caste, Schedule Tribes and Women were brought into the Assembly.

2.5 Synthesis of Minority Cultural and Educational Rights during the Constituent Assembly Debate

In accordance with the proposal of the Cabinet Mission of May 16, 1946 the Election to the Constituent Assembly were held in July 1946 and the Assembly was finally convened on December 9, 1946 with the Muslim League boycotting its session. In the Constituent Assembly Session the issues of minorities comprised of the claims of three kinds of minorities namely religious minorities, backward class and tribal’s for whom political safeguards were instituted by the British Government during the colonial period.

The problem of safeguarding the interest of minorities was an important and controversial issues, almost throughout the period for which the assembly met and continued to engage the attention of the members till the Constituent Assembly completed the draft of the entire Constitution.

On the question of minorities, the Congress had to secure the consensus of the minorities while still satisfying the right wing intellectuals of the majority. As a matter of recognition of the rights, interests and aspirations of the minority community, the Congress kept before it the ideal of national unity as basic premises. The Congress had to balance national unity with the problem of minority interest. To this end the “Objective Resolution” was moved by Jawaharlal Nehru on December 13, 1946. For the proposed Constitution, two of its clauses, which are relevant for our purpose, were declared as:

(5) “Wherein shall be guaranteed and secured to all the people of India justice, social, economic and political; equality of status, of opportunity, and before the law; freedom of thought, expression, belief, faith, worship, vocation, association and action, subject to law and public morality.”

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146 Ibid at 1843.
147 Ibid. (The representation of the various minorities in the Constituent Assembly was as follows: Muslims 31, Schedule Caste 33, Schedule Tribes 5, Christian 7, Anglo-Indians 3, Parsis 3, Sikhs 5, Nepali 1)
148 The Muslim League started participation in assignment of the Constituent Assembly from its Fourth Session in July 1946, after the decision of partition of country was announced.
150 Ibid. at 4.
(6) “Wherein adequate safeguard, shall be provided for minorities, backward and tribal areas, and depressed and other backward classes.”\textsuperscript{151}

As Pandit Jawaharlal Nehru himself stated, the Resolution was in the nature of a pledge, a statement of policy, an expression of the underlying policy of the proposed Constitution.\textsuperscript{152}

In accordance with the terms of the Cabinet Mission Statement, an Advisory Committee on Fundamental Rights and Minorities etc was set up by the Constituent Assembly on Jan 24, 1947 with Sardar Vallab Bhai Patel as the Chairman.

For the setting up of Advisory Committee on the subject of Fundamental Rights of minorities, Gobind Ballabh Pant remarked:

“A satisfactory solution of the question pertaining to minorities will ensure the health, vitality and strength of the Free State of India... so far; the minorities have been incited and have been influenced in a manner which has hampered the growth of cohesion and unity. But now it is necessary that a new chapter should start and we should all realize our responsibility. Unless the minorities are fully satisfied, we cannot make progress; we cannot even make peace in an undisturbed manner.”\textsuperscript{153}

As per resolution of the Constituent Assembly on January 24, 1947, the Advisory Committee was to consist of only 50 members but President was authorized to

\textsuperscript{151} Id. Text of the Objective Resolution:

1. “This Constituent Assembly declares its firm and solemn resolve to proclaim India as the Independent Sovereign Republic and to draw up for the future governance and Constitution.
2. Wherein the territories that now comprises British India, the territories that now form the Indian states, and such other parts of India as are outside British India and the States as well as such other territories as are willing to be constituted into the Independent Sovereign India, shall be a Union of them all;
3. Wherein the said territories, whether with their present boundaries or with such others as may be determined by the Constituent Assembly and thereafter according to the law of the Constitution shall possess and retain the status of autonomous units, together with residuary powers, and exercise all powers and functions of government and administration, save and except such powers and functions as are vested in or assigned to the union or as are inherent or implied in the union or resulting therefore;
4. Wherein all powers and authority of the Sovereign Independent India, its constituent parts and organs of government, are derived from the people;
5. Wherein shall be guaranteed and secured to all the people of India, justice, social, economic and political; equality of status, of opportunity, and before the law; freedom of thought, expression, belief, faith, worship, vocation, association and action, subject to law and public morality;
6. Wherein adequate safeguard shall be provided for minorities, backward and tribal areas, and depressed and other backward classes.
7. Whereby shall be maintained the integrity of the territory of the Republic and its sovereign rights on land, sea and air according to justice and the law of civilized nations and
8. This ancient land, attains its rightful and honored place in the world and make its full and willing contribution to the promotion of the world peace and the welfare of the mankind.”

\textsuperscript{152} B. Shiva Rao, \textit{Select Documents} (Universal Law Publishing Corp. 1966)p.5

\textsuperscript{153} \textit{C.A.D Official Reports} Vol. II at 310-11.
nominate to the Committee 22 more members.\textsuperscript{154} In the initial committee, the minorities were given representation given in the table below:

<table>
<thead>
<tr>
<th>Sr.No.</th>
<th>Region / Religion / Category</th>
<th>No. of Representatives</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>The Hindus of Bengal, Punjab, N.W.F.P., Baluchistan and Sind</td>
<td>7</td>
</tr>
<tr>
<td>2.</td>
<td>The Muslim of U.P., Bihar, I.P., Bombay, Madras, Orissa, Assam</td>
<td>7</td>
</tr>
<tr>
<td>3.</td>
<td>The Schedule Caste</td>
<td>7</td>
</tr>
<tr>
<td>4.</td>
<td>The Sikhs</td>
<td>6</td>
</tr>
<tr>
<td>5.</td>
<td>The Indian Christian</td>
<td>4</td>
</tr>
<tr>
<td>6.</td>
<td>Parsees</td>
<td>3</td>
</tr>
<tr>
<td>7.</td>
<td>Anglo-Indian</td>
<td>3</td>
</tr>
<tr>
<td>8.</td>
<td>The Tribal and Excluded Areas</td>
<td>13</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>50</td>
</tr>
</tbody>
</table>

\textit{Table 1: Representation in the Constituents Assembly on the basis of Region, Religion etc.}

On February, 27 1947, the Advisory Committee in its first meeting appointed five sub-committees as follows.\textsuperscript{155}

(a) Fundamental Right Sub-Committee.

(b) Minorities Sub-Committee.

(c) North East Frontier Tribal Areas and Assam Excluded and Partially Excluded Areas Sub-Committee.

(d) North West Frontier Tribal Areas Sub-Committee.

(e) Excluded and Partially Excluded Areas Sub-Committee.

These Committees held a number of meetings, where several draft proposals were considered before being finalized. The Sub-Committee on Fundamental Rights had its first meeting in March 1947, in which a number of drafts were submitted by different members, including drafts regarding the rights of minorities. For instance,


Harnam Singh’s draft\textsuperscript{156} submitted on March 18\textsuperscript{th}, 1947 in its clause (15), (16), (18), (19) and (20) suggested the following rights for religious minorities.

Clause (15) “Religious minorities in the country shall have right to establish autonomous institutions for preservation and development of their culture and to maintain special organization with power to levy taxes for the maintenance and welfare of such Institutions.”\textsuperscript{157}

Clause (16) “The State shall protect the culture, language and script of various communities and linguistic areas in India.”\textsuperscript{158}

Clause (18), (19) and (20) respectively provided for “establishment of the minority school, non-discriminatory state aid and free elementary education at primary level with instruction in mother tongue to the children of religious minorities.”\textsuperscript{159}

The Sub-Committee on Minorities under the Chairmanship of Dr. H.C. Mookherjee met on February 27, 1947 itself. The Sub-Committee finding its task difficult formulated a questionnaire and wanted to ascertain the views of the members.\textsuperscript{160} A questionnaire was presented by Sh. K.M Munshi that contained six questions. The following questions are relevant for our purpose:

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

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

(6) How is it proposed that the safeguards should be eliminated, in what time and under what circumstances”?

The answer received in response to fourth question are noteworthy because these help us to know and appreciate as to what was in the minds of the framers while including minority rights in our Constitution.

\textsuperscript{156} Ibid Vol. II at 81.
\textsuperscript{157} Ibid Vol. II at 82.
\textsuperscript{158} Ibid Vol. II at 82.
\textsuperscript{159} Ibid Vol. II at 82.
\textsuperscript{160} Ibid Vol. II at 391.
For instance, M. Ruthnaswamy’s 161 answer received on March 31st, 1947 is very helpful in understanding the nature and scope of educational and cultural right of the minorities. He made a clear cut division between two kinds of minorities:

(1) Political Minorities.

(2) National or Religious Minorities.

Political minorities are non-permanent in nature but the national or religious minorities are permanent. According to him both need protection, but at different levels. He says:

“Either kind of minorities require safeguard for the defense and preservation of its rights and liberties because the majorities in a democracy like the monarch in a monarchical or an oligarchy in an oligarchical state always tends to abuse its power. It is not the fault of democracy or of a monarchy or of an oligarchy. It is the fault of power. Only, the safeguard required by a political minority need not be as many or as heavily fortified as those required by a national or religious minority - just because the political minority has that important safeguard that it can as a result of elections be seated in its turn in the seats of authority. Therefore, the safeguards required by minorities will vary in number and in strength according to the nature and character of the minorities.” 162

M. Ruthnaswamy while specially pleading the case of national, religious and cultural minority specifically asserted:

“As these are permanent minorities special and peculiar safeguards for the defense and protection of their rights and interests are required in addition to the safeguard for political minorities. Such minorities in India are Muslims, Sikhs, Indian Christians, and Anglo-Indians... It is a permanent minority never able or hoping to be able to influence and carry the government of any day, that they require certain rights to be asserted and safeguarded. It is true that many of these rights will be concerned with the claim in regard to their nationality or religion or culture. But it is as a permanent minority, where right on behalf of religion or culture or nationality may be ignored or denied by the majority (as has happened elsewhere e.g. in Central and Eastern Europe...) that they require special treatment in the Constitution.” 163

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Therefore, based on these arguments and rationale, Mr. Ruthnaswamy’s made a number of suggestions which also included the following:

(1) “The right of each of these minorities to have the promotion of their religion and secular culture suitably and adequately provided for. The state budget should provide for cultural advancement of these minorities by:

   a. Grants-in-aid to school and other educational institutions maintained by these religious communities and in which their religion is taught;

   b. Special grants for the promotion of the education in all grades and kinds of education (including University and Technical) if educationally backward minorities - such aids shall continue till these minorities came up to the general level of educational progress in the country;

   c. School for minorities, where their religion and culture would be cultivated, should be maintained by the government in areas where the majority of the population belongs to a cultural or religious minority.”\textsuperscript{164}

Shri K.M. Munshi, on behalf of the Sub-Committee on Fundamental Rights Committee also submitted a list of certain rights for the protection of minorities to the Sub-Committee on Minorities for its consideration including the followings:

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

2. Citizens belonging to national minorities in a state whether based on religion or language, have equal rights with other citizens in forming, controlling and administering at their own expenses, charitable, religious and social institutions, school and other educational establishment with the free use for their religion;

3. [........]

\textsuperscript{164} \textit{Ibid} at 315.
4. It shall be duty of every unit to provide in the public educational system in town and district in which a considerable proportion of citizen of other than the language of the units are residents, adequate facilities for ensuring that in primary school the instruction shall be given to the children of such citizens through the medium of their own language.

5. No legislation providing state aid for school shall discriminate against schools under the management of minorities whether based on religion or language;”

S.P. Mookerjee in his memorandum submitted on April 17th, 1947 recommended the following special rights in the areas of education for the minorities:

(1) “The culture, language and script of the minorities and of the different linguistic areas shall be protected.

a. All minorities shall have equal right to establish, manage and control at their own expense charitable and religious institutions and start educational schools and colleges with freedom to use their own language and to practice their own religion therein.

b. If in any village or in a group of contiguous village or town a demand is made on behalf of a prescribed number of children of a minority community for a separate educational institution for them, the authorities concerned shall set up such an institution for suitable instruction through the language and script of the community.

c. No children attending any school receiving state aid shall be compelled to attend religious institution imparted in that school or participate in religious observance, other than his own that may be practiced in that school;

(2) (a) All schools, colleges, technical and other institutions established by the minorities shall be entitled to the same assistance from the

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166 Ibid at 336.
state and local funds as similar institutions for the general public or the majority community;

(b) Any racial, religious or linguistic minorities in any province may demand and secure the establishment of a separate authority or separate authorities for the primary, secondary and higher education of its members. In that case, the Government shall provide to such authority or authorities financial aid which shall bear the same proportion to the total government expenditure for primary, secondary or higher education, as the case may be, as the proportion of the numerical strength of the minority to the population of the province concerned (Article 121 of the Soviet Constitution).”

Based upon all the above recommendations and suggestions from the members of the sub-committee on minorities, Dr. H.C. Mukherjee, Chairman of the Committee submitted an interim report on April 19th, 1947 to the Advisory Committee on Fundamental Rights and Minorities etc. comprises of the following:

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 laws or regulation that may act oppressively or prejudicially in this respect.

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

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

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168 Ibid at 207.
(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 institution 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 admissions to educational institutions save and except that this shall not prevent the establishment of separate educational institutions for boys and girls.”

The report submitted by the Sub-Committee on Minorities was considered by the Advisory Committee on Fundamental Rights and Minorities etc on April 22nd, 1947. Initially, Shri G.B. Pant was of the view that these minority rights recommended by the Sub-Committee could more appropriately be placed under the Chapter of Directive Principle of State Policies as non-justiciable rights but Sh. K.M. Munshi opposed it by saying that the right would lose their efficiency if they were made non-justiciable. Alladi Krishnaswami Aiyar objected to the Clause (1) seeking to protect mother tongue as unnecessary since according to him mother tongue was a matter, no body otherwise also could interfere with. Sh. K.M. Munshi tried to justify the inclusion of Clause (1) by saying that this was taken from the minorities rights in the Polish Treaty which was later incorporated in the Polish Constitution. He said that attempts were made in Europe and other places to prevent the minorities from using their own language or studying in their own language. K.M. Munshi also termed it as “Classical Rights of Minorities”. In spite of solid justification of K.M. Munshi the Clause (1) was dropped. Clause (2) and (3) of the Sub-Committee on Minorities was accepted by the Advisory Committee with modification. However, there was lot of discussion on Clause (4) concerning with minorities rights to establish and administer educational institutions and right to state aid. Raj Kumari Amrit Kaur opposed the Clause (4) by saying that such rights

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170 B. Shiva Rao, Select Documents (Universal Law Publishing Corp. Vol. II 1966) p.273 (Ruthnaswamy and Sardar Ujjawal Singh also stated that Pant’s proposal would not be acceptable to minorities).
would perpetuate communal institutions and the State should not give any aid to such institution.\textsuperscript{173}

Dr. B.R. Ambedkar remarked that two propositions appear from the Clause (4).

Firstly, whether every minority, religious, communal or linguistic should have liberty to establish an educational institution and secondly, whether, if the State decided to give any grant, it should treat all such institutions equally. He was of the opinion that we stop with the word ‘choice’ and reframe it as, “where the state decide to give grants to such institutions, it shall treat them equally without discrimination”.\textsuperscript{174} However, the Advisory Committee decided to modify Clause (4) by majority and Clause (1) (5) and (6) were deleted as redundant or out of place.\textsuperscript{175}

The Advisory Committee ultimately recommended the following which became Clause 18 of the draft Constitution.

18  
(i) “Minorities in every unit shall be protected in respect of their language, script and culture and no laws or regulations may be enacted that may operate oppressively or prejudicially in this respect.

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

(iii) (a) All Minorities whether based on religion, community or language shall be free in any unit to establish and administer educational institution of their choice;

(b) The state shall not while providing state aid to school discriminates against school under the management of minorities whether based on religion, community or language.”\textsuperscript{176}

The recommendations of the Advisory Committee were deliberated by the Constituent Assembly on May 1, 1947. On the suggestion of Sh. K.M. Munshi and Dr. B. Shiva Rao, Select Documents (Universal Law Publishing Corp. Vol. II 1966) p.281.
B.R. Ambedkar, sub-clause (2) to clause 18 was referred back to Advisory Committee for classifying its scope in respect of state aided institutions.\textsuperscript{177}

On August 30, 1947, the Constituent Assembly considered redrafted Sub-Clause (2) to Article 18. At that point of time three amendments were moved. Ahmed Ibrahim suggested that “the clause should not apply to state aided institutions maintained primarily for the benefit of particular community or section of the people.”\textsuperscript{178}

Mrs. Purnima Banerjee was of the opinion that “the state aided institutions should be included so it will be obligatory on such institutions to not discriminate against any minority in the matter of admission.”\textsuperscript{179} Mrs. Banerjee view was supported by Hriday Nath Kunzru and Hussain Iman and it was emphasized that “while there was no bar to any community maintaining its own educational institution, but if it seek state aid it must throw open its door to member of all classes of person irrespective of their religion, community or language.”\textsuperscript{180}

Sh. K.M. Munshi tried to justify that the sub-clause (2) is being restricted only to educational institutions maintained by the State and expressed his apprehension that if state aided institutions are also included as suggested by Mrs. Purnima Banerjee, it might result in closing down of large number of institutions run by private charity.\textsuperscript{181}

Finally, Sub-Clause (2) was adopted by the Constituent Assembly without any modification after Vallabh Bhai Patel pointed out that this was “a simple non-discriminatory clause against the minorities in the matter of admission to school which are maintained by the State” and question of state aided institutions to be left to future Parliament.\textsuperscript{182}

After Clause 18(2) was adopted by the Constituent Assembly it was referred to the Constituent Drafting Committee which was considered by it on November 1\textsuperscript{st} and 3\textsuperscript{rd}, 1947. The drafting committee revised its text twice and for the word, “Minority”

\textsuperscript{178} \textit{Ibid} Vol.V at 274.
\textsuperscript{179} \textit{Id.}
\textsuperscript{180} \textit{Ibid.}
\textsuperscript{181} \textit{Ibid.} at274
in Clause 18(1). The words, “any section of the citizens” was added which later sparked off a heated and prolonged controversy in the Constituent Assembly.\(^\text{183}\)

The clause as it appeared in Article 23 of the draft Constitution reads as follows:

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

2. No minority whether based on religion, community or language shall be discriminated against in regard to the admission of any person belonging to such minority into any educational institutions 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 institution on the ground that it is under the management of a minority, whether based on religion, community or language.”\(^\text{184}\)

After submission of the above report to the Constituent Assembly a debate took place on December 7\(^\text{th}\) and 8\(^\text{th}\), 1948. In fact discussion took place in two parts. In part one, the discussion was confined on Clause (1) and (2) and in part two it was on Clause 3(a) and 3(b) of draft Article 23. In the course of debate a number of important principles were deliberated by the members of the Constituent Assembly, which are significant for ascertaining the nature and scope of Article 30 of our Constitution. For instance, the principle of ‘Unity in Diversity’ or ‘pluralism in togetherness’ was accepted fully in debate. An observation made by one of members of the Constituent Assembly, Loknath Mishra in this regard is worth noting. He remarked:

“It is a fact and it has been rightly recognized in Article 23 (presently, Articles 29 and 30 of our Constitution) that we have different scripts, different languages and even different cultures in the territory of India and they have been


\(^{184}\) *Ibid* at 275.
recognized and preserved and they must flourish..... all these cultures, all these languages and all these scripts must be taken as a means to a common end, which the State must recognize, nourish and protect. In fact, it has been our desire and it has been the very soul of the birth of our freedom and resurgence that we must go towards unity in spite of all the diversity that has divided us. I, therefore, submit to the House that although we have many language, many cultures, many scripts, many religions, it may not yet be impossible for us to find out if there is something common for India. Sir, this Article 23 which is an Article recognizing diversity must find out a way for our unity."

The debate took into account various aspects concerning the serious issue related to the rights of the minorities. For instance, one of the members of the Constituent Assembly, Sh. Damodar Swarup Singh favored every minority based on language but not on ‘religion’ and ‘community’. His argument was:

"Recognition of minority based on religion or community is the very negation of secularism. Beside Sir, if these minorities are recognized and granted the right to establish and administer institutions of their own, it will not only block the ways of national unity, so essential for the country of different faiths as India is but will also promote communalism and narrow anti-national outlook as was the case hitherto with disastrous results."

K. T. Shah was of the opinion that merely to provide for the right to conserve one’s language, script or culture would not be sufficient but the right to develop the same should also be provided for.

Interestingly, the debate in the Constituent Assembly concentrated more on the rights of the linguistic minorities and less on those of cultural and religious minorities. From the text of the Constituent Assembly debates, it seems that there were more members who were opposing but with less logical arguments. There were also members like Pandit Hriday Nath Kunzru, who was really concerned in safeguarding the rights of the various linguistic and cultural minorities.

In fact, Pandit Kunzru’s observation was very clear. He said:

"We are dealing with Fundamental Rights. We have tried to approach in such a way as to ensure the people in general and the members of various classes and communities in particular that their

basic rights will be fully safeguarded by the State. One of the most important rights that any community can claim relates to the language and culture. I am not surprised therefore that Clause 23 has led to a prolonged discussion. The Article as it is giving such minority as have a distinct language, script and culture, the right to conserve the same.\textsuperscript{188}

Mr. Z. H. Lari, proposed that “any minority having a distinct language and script should be entitled to have primary education imparted to its children through the medium of that language and script provided that substantial number of such students being available.”\textsuperscript{189}

Shri H.L. Chattopadhyay termed Article 23 as a great Charter of Rights for the linguistic minority in India.\textsuperscript{190}

However, Shri G.B. Pant, while intervening in the debate emphasized that in case primary education is being universal, it would cost heavily and it is necessary that the maximum possible use of the limited resources to be made to extend the primary education to the vast number of illiterate person in the country.\textsuperscript{191}

Pant further remarked, “If every school should have two or three sets of teachers...we would not be able to introduce universal primary education - not to talk of compulsory primary education - till doomsday.”\textsuperscript{192}

But, Shri H.N. Kunzru, the other influential members of the Constituent Assembly was totally unconvinced of Shri G.B. Pant reasoning and pleaded for “serious and sympathetic” consideration of Mr. Lari’s amendment seeking right to educate its children through their own language. He argued that, “it was one of the most important rights of the minorities to have primary education through the medium of their own language in areas where they formed a substantial proportion of the population.”\textsuperscript{193}

As for Clause (1) and (2) (which were later numbers as 23A in the debate) Dr. B.R. Ambedkar made the position very clear by saying:

“The Article intends to have protection in the matter of culture, language and script not only to a minority technically but also to a minority in the wider

\textsuperscript{190} Ibid. at 278.
\textsuperscript{191} Id. at 279.
\textsuperscript{192} Id. Vol. V at 279.
\textsuperscript{193} Id. Vol. V at 279 – 280.
sense of the term as I have explained just now. That is the reason why we dropped the word, “Minority” because the word might be interpreted in the narrow sense of the term.....The word minority in a much wider sense, so as to give.....protection to those who are technically not minority but minority nonetheless. It was felt that this protection was necessary for the simple reason that the 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 which they have migrated but they keep their connections...the only limitation that is imposed by Article 23 is that there is cultural minority which wants to preserve its language, its script and its culture. The State shall not by law impose upon it any other culture, which may be local or otherwise.”

Finally, Article 23(2) as originally recommended by the Minority Sub-Committee and approved by the Advisory Committee, Thakurdas Bhargava suggested three amendments to Article 23(2) (at present Article 29(2)).

First, it put ‘Citizen’ for the word ‘Minority’.

Second, not only the institutions which are maintained by the State will be included in it but also such “institutions as are receiving aid out of State funds”.

Third, the word, “religion, community or language” should be substituted by the word, “religion, race, caste, language or any of them”.

Further, Mr. Bhargava pointed out that the object of the first change was to put the majority and minority on an equal status. The second change seeks to include such other institutions as are aided by the state funds. There are a very large number of such institutions and in future, by these amendments the rights of the minority have been broadened and the rights of the majority have been secured. He called these amendments as, “Nation Building Amendments”. For the third change, he said the word, ‘community ought to be removed from these provisions because ‘community’ has no meaning and that it ought to be substituted by ‘race or caste’. So this provision is so broadened that on the score of caste, race, language or religion, no discrimination can be allowed.”

Sh. Thakur Das Bhargava further pointed out, “In educational matters from the nationalist point of view, how any discrimination can be justified between the majority or the minority, their amendment is intended to bring the majority and the minority at the same level and there will be no discrimination

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between any member of the majority or minority so far it relates to admission in educational institutions. This article is a charter of the liberties for the student-world of the minority and majorities equally.”

Thus, the Constituent Assembly replaced the term, “Minority” with “No Citizen” and “Script and Culture” with “Script or Culture” and Clause (1) and (2) were also given new number and made a separate Article. It was adopted and forms a part of Article 29 in our present Constitution. It provides:

Article 29 (1) : “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.

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

Based upon arguments put forth during the debate and considering the amendment suggested to sub-clause (a) and (b) Clause (3) of Article 23, the following amendment Clause were proposed for the approval of the Constituent Assembly:

(a) “Linguistic minorities shall have the right to establish, manage and control educational institutions for the promotion of the study and knowledge and literature, as well as for imparting general education to their children at primary and pre-primary stage through the medium of their own language.”

The motion was vetoed.

Thereafter, the following amendment Clause was proposed:

“Provided that no part of the expenditure in connection with such institution shall fall upon or be defrayed from the public purse and provided further that no such institution nor the education and training given therein shall be recognized, unless it complies with the course of instruction, standard of attainments, methods of education and training, equipments and other conditions laid down in the national system of education.”

196 Ibid.
197 Ibid. at 924.
The motion was again vetoed.198

Subsequently, after a long debate in the Constituent Assembly two Clause (1) and (2) of the Article 30 of the present Constitution was adopted, this read as:

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

Article 30(2): The State shall not, in granting aid to educational institutions, discriminate against any educational institutions on the ground that it is under the management of a minority, whether based on religion or language.”199

The next development relating to Article 30 took place when through the Constitution’s (44th Amendment) Act 1978. Clause (1A) was added to it which reads as:

“In making of any law providing for compulsory acquisition of any property of an educational institution established and administered by a minority referred to in Clause (1) the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property in such would not restrict or abrogate the right guaranteed under that clause.”200

This amendment to Article 30 gives another fundamental right i.e. right to compensation to a minority educational institutions in case of compulsory acquisition of its property by the State.201

2.6 Concluding Observation

Minorities are an important component of Indian democracy. Elsewhere in the world the ‘minority rights’ are mainly oriented to multiculturalism referred to migrants, aboriginal people or racial groups. In India, there are religious, linguistic, cultural and ethnic minorities with a tradition of pluralism. Before British period there has not been a disturbing gap between people to show minority issues. Among the diverse groups there was more togetherness than conflict. The conflict in Indian social groups has emerged only with the divide and rule policy of the British who divided

199 Constitution of India.
200 Constitution (44th Amendment) Act 1978.
Bengal squarely on communal lines. There came up a strong case for separate electorate which fabricated the society into uncompromising groups culminating into the partition of the country. There the considerations came up more of political focus than welfare or peaceful coexistence. Later, in its sanity, the Constituent Assembly of our country considered the questions about future of the nation at length and evolved a constitutional scheme to give an appropriate position to all the people of the country belonging to different identities. In given scheme all the linguistic, racial and religious groups can preserve their cultural identities, language, script and faith while being an important entity of the whole. The scheme has worked well with only limited friction which is being managed without disturbing the main understanding of one nation and citizenship with diverse cultural identities. This can be preserved through institution building also as guaranteed by the constitution under fundamental rights.