CHAPTER-1

MINORITY SAFEGUARDS IN INDIA

The problem of minorities is a universal phenomenon. In the present day context there is no state in the world has free from some kind of minorities. Although the existence of minorities is universal, the nature of minority problem is not always and everywhere the same. It assumes different forms and intensity in various parts of the world at different times and has taxed the brains of statesman, thinkers and social scientists. A number of national and international treaties and agreements have been concluded for the protection of minorities at different intervals of history.

Since the rise of democracy in the 18 century, the problem of minorities has become a serious political question and has played a great role in national and international affairs. The first criterien to solve this problem in a democratic country is the recognition of equal rights and duties for all, irrespective of religion, race, caste or language. So it is only democracy that recognizes different minorities and provides them equal treatment. It is also often stated that the efficiency of democracy lies in giving fair treatment to minorities. On the other hand, minorities have no place in a totalitarian regime, where everything exists for the state. So the minorities cannot keep their separate identities therein. They have submerged themselves in the state itself. So the problem of minorities as such is essentially a problem of democracy.

2 Kamelesh Kumar Wadhwa, Minority Safeguards in India, Delhi, 1975, p.1.
4 D.N. Sen, The Problem of Minorities, New York, 1971, p. XXVI.
6 Minorities and Secularism, National Conference Theme Paper, Trivandrum, April 1989, pp. 22-23.
1.1. Definition of Minority:

The term ‘Minority’ is the compound of the Latin word ‘minor’ and the suffix ‘ity’ meaning interlaid the smaller in number of two aggregates that together, constitute a whole.\textsuperscript{7}

But the concept of minority in social context is intricate. To define minority is to assign limits. A concept remains vague as long as it is undefined. But to define the concepts of social and political life is harder than to give the derivation of the terms. So a great difficulty has been experienced in defining the term minority at different levels\textsuperscript{8}. The earliest edition of Encyclopedia Britannica, contained a detailed article on minorities, appeared in 1953. It defines minorities as ‘groups held together by ties of common descent, language or religious faith and feeling themselves in different in these respects from the majority of the inhabitants of a given political entity.\textsuperscript{9}

Another point of view is that a minority is a group whose race, language or religion is different from that of the majority.\textsuperscript{10} The report of the united nations sub-commission on prevention of discrimination and protection of minorities furnishes the term minority includes only those non-dominant groups in a population which posses and wish to preserve stable ethnic, religious or linguistic traditions or characteristics markedly different from those of the rest of the population.\textsuperscript{11} There is no single definition of the term minority as acceptable to all, and free from criticism. One view does not find favor with the other and the difficulty is greatly enhanced by the fact that those who write about it are not always thinking of the same thing liking\textsuperscript{12}.

\textsuperscript{7} J.A. Laponce, \textit{The Protection of Minorities}, New York, 1961, p.3.
\textsuperscript{10} J. A. Laponce, \textit{op. cit.}, pp. 3-4.
\textsuperscript{12} \textit{Ibid.}
1.2. Problem of Defining Minorities in India:

The difficulties experienced elsewhere in arriving at a satisfactory definition of the concept of ‘Minority’ were also experienced while framing the constitution of India.\textsuperscript{13} Inspite of the fact that the problem of minorities in India figured prominently in the constituent Assembly and the founding fathers bestowed much thought and attention to it in all its facts, yet no attempt was made on any occasion to define the term in precise words.\textsuperscript{14} When the draft of the constitution was under discussion in the Assembly on 16 November, 1949 T.T. Krishnamachari moved one amendment “that in part XVI of the constitution for the word minorities wherever it occurs, the words certain classes be substituted.” This amendment was adopted unanimously and even without any discussion.\textsuperscript{15}

Not only the use of the term in the constitution is very rare, but also no group is mentioned explicitly as minority therein the term does occur in two articles of the constitution, but not for definitional purposes.\textsuperscript{16} In one of the article it is used only in the sub-heading of the article and not in the text of the article. However, apart from the two articles, various other provisions which indirectly provide safeguards to the minorities regarding their socio–economic, political and other interests occur in the constitution at a number of places.\textsuperscript{17}

Since the commencement of the constitution, a number of seminars have been held by different centers and institutions to evaluate the different provisions concerning minorities as given in the constitution, yet it is a matter of disappointment that while relevant provisions were critically examined by

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\textsuperscript{13} & Monishankar, \textit{Politics of Minorities}, Delhi, 1980, p.1. \\
\textsuperscript{14} & T. N. Madan, \textit{Modern Myths, Locked Minds Secularism and Fundamentalism in India}, New Delhi ,1997, p.3. \\
\textsuperscript{15} & Constituent Assembly Debates vol. XI, New Delhi, 1949, pp. 57, 605. \\
\textsuperscript{16} & Mohd. Imam, \textit{Minorities and the Law}, Bombay, 1972, p. XXVII. \\
\textsuperscript{17} & Annual Report, Minorities Commission, New Delhi, 1978, p.29. \\
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\end{footnotesize}
the participants, no agreed definition of the term could be arrived.\textsuperscript{18} Then the term minority was posed in the Kerala Education Bill. The court commented that minority is a term which of Kerala government is not defined in the constitution and in the absence of any precise definition at must be held that a minority community means a community which is numerically less than 50\% percent but the question is not fully answered, for part of the question has yet to be answered, namely 50 percent of the entire population of India or 50 percent of the population of a state forming part of the union.\textsuperscript{19} The government of Kerala contended that the minority must numerically be a minority in the particular region in which the educational institution was situated in order to claim the fundamental rights of the minorities.\textsuperscript{20}

According to this definition, one possibility is that the population in a state may be so heterogeneous that no single community may constitute more than 50 percent of the state population. Thus all groups may claim the title of minority community. The second difficulty about this definition is that there might be certain communities which are in majority in case of states but in minority in case of the union. Thus such communities shall be having double states of being in majority at one and the same time and minority in different context.\textsuperscript{21}

To conclude, the term ‘Minority’ in India is a relative term. It is primarily a political and not merely a numerical concept. This fact finds further confirmation in the debates of the Constituent Assembly of India. The word ‘minority' is used not merely to indicate the minority in the technical sense of

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\textsuperscript{18} Kamalesh Kumar Wadhwa, \textit{op. cit.}, p.5.
\textsuperscript{19} Kerala Education Bill, Legislative Assembly of Kerala, 2 September 1957, p. 141.
\textsuperscript{21} Sharma (Jafadish saran), \textit{Indian Minorities A Bibliographical Study}, Bombay, 1975, p.16.
\end{flushright}
the word but which are none-the-less, minorities in the cultural and linguistic sense.\textsuperscript{22}

\textbf{1.3. Minorities in India:}

There are only two specific Articles, Article 29 and 30, in the entire constitution of India, that explicitly stand guarantee to the protection of the interests of minorities in India.\textsuperscript{23} Article 29 states; Any section of the citizens residing the territory of India or any part thereof, having a distinct language, script or culture of its own, shall have the right to conserve the same.\textsuperscript{24} Article 30 states; the right of the minorities based on religion or language, to establish and administer educational institutions of their choice.\textsuperscript{25} Thus reference has been made in these articles to three different kinds of minorities, namely, Linguistic, Religious and Cultural.\textsuperscript{26}

Difference on the grounds of language or religion is understandable, but it is difficult to define the word culture.\textsuperscript{27} A number of definitions stress the idea that culture is a collective name for the material, social, religious and artistic achievements of human groups, including traditions, customs and behavior patterns, all of which are unified by common beliefs and values. Values provide the essential part of a culture and give it its distinctive quality and tone.\textsuperscript{28} There is so much cultural variety that it is difficult to determine culturally who is in minority and who is in majority. Each community or religious group also had a culture of its own and adhered to a different religion.

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\item \textsuperscript{22} Constituent Assembly Debates, Vol. VII, New Delhi, 1949, p.926.
\item \textsuperscript{23} Ajit Roy, \textit{Political Power in India}, Calcutta, 1975, p.7.
\item \textsuperscript{24} The Indian Constitution, Seventh Amendment Act, for the Original Clause (2) 1956.
\item \textsuperscript{25} The Indian Constitution, Forth Amendment Act, for the Original Clause (2) 1956.
\item \textsuperscript{26} V.N Chawla, \textit{Fundamental Rights- A Re-interpretation}, Jullundur, 1977, p. 22.
\item \textsuperscript{28} Constituent Assembly Debates, Vol. VII, New Delhi, 1949, p. 896.
\end{itemize}
centric manner of life. So the very concept of all India culture is controversial.29

But language and religion are two such things as to go a long way in determining the cultural entity of a community. So to be more precise and scientific it is appropriate to comment that Indian constitution recognizes only two types of minorities based on language, and religion and also those based on both in combination.30

1.4. Religious Minorities:

Not only in India but throughout the world, religion has through the ages played two distinct roles in society. On the one hand, it had the effect of unifying large sections of people who would otherwise have remained fragmented and fractured in to pretty tribes and principalities. On the other hand, religion has also led to sharp and serve divisions between man and man, group and group, nation and nation.31 In the Constituent Assembly on the effect of religion on Indian life, remarked the religious conceptions in this country are so vast that they cover very aspect of life, from birth to death.32

In India, Hinduism is the religion of the majority and Muslims, Christians, Sikhs, Parsees are the major religious minorities.33 According to the census of 1971, the percentage of the different important religious groups is Hindus 82.72%, Muslims 11.21%, Christians 2.60% and Sikhs 1.89%. Except Hindus all others are minorities in India.34

33 Donald Engene Smith, *India as a Secular State*, Princeton, 1963, p. 84.
34 *Census of India*, New Delhi, 1971, p. 65.
1.5. Linguistic Minorities:

Language is an indispensable tool for all human existence. It is the means of expressing our intricate and complex thoughts, and it is, perhaps, the most important mark of group identification. Language is the greatest possession of man. All human civilizations have developed through the development of language. Language is an instrument of development in almost all fields of scientific information and education. Languages can also spread, but here also the experience of history shows that linguistic boundaries are one of the most rigid things in the world.

India has a complex problem of many languages. India is the seventh largest and the second most populous country in the world. Its geographical position is such that it has served in a meeting ground for the people of diverse racial and cultural stocks and it is hardly to be wondered at that there should be a great multiplicity and variety in the forms of speech in the country. According to the linguistic survey of India, there are 179 languages and 544 dialects, and philologists have classified these into four distinct family groups – Indo-Aryan, Dravidian, Austro-Asiatic and Tibet-Chinese. Although the number of languages and dialects enlisted for census purpose runs into several hundreds, the principal languages to be reckoned in the language problem of India are only about a dozen- the regional languages prevalent in fairly large compact areas of the country.

Another main feature of the contemporary Indian linguistic scene is that here a linguistic group does not generally correspond to a religious group. For example in Bengal, Bengali is the language of the Hindus, the Muslims and

35 G.S. Ghurye, Social Tensions in India, New York, 1992, p.44.
37 Ibid., p.9.
38 G.S. Ghurle, op. cit., p.44.
39 Ibid., p.45.
Christians alike. These groups have identical linguistic interesting definite areas despite their religious differences. So to say, if religion divides India vertically, language divides it horizontally. Further, these divisions very often overlap one another.\(^{40}\)

The Constitution of India recognizes 18 official regional languages, as given in its Eighth Schedule, and Hindi as the National/Official language. In most of the States in India the regional languages are used for the purposes of administration. For example, Malayalam is used in Kerala, Tamil in Tamil-Nadu, Telugu in Andhra Pradesh, Kannada in Karnataka, Marathi in Maharashtra, Gujarati in Gujarat, Oriya in Orissa, Bengali in West Bengal, Assamese in Assam, Punjabi in Punjab, Hindi in Rajasthan, Haryana, Utter Pradesh, Bihar, Madhya Pradesh and Himachel Pradesh and Urdu in Jammu and Kashmir. Since most of these languages have been recognized as State languages, it has created linguistic minorities in each State.\(^{41}\)

To explain the term ‘Linguistic Minorities’, ‘Linguistic Minorities are minorities, residing in the territory of India, or any part thereof, having a distinct language or script of their own.\(^{42}\) The languages of the minority group need not be one of the fourteen languages mentioned in the Eighth schedule to the constitution. In other words, a ‘Linguistic Minority’ at the state level means any group of people whose mother-tongue is different from the principal language of the state, and at the district and taluk levels, different from the principal language of the district or the taluk.\(^{43}\)

From this enunciation it appears that the meaning and scope of the term ‘Linguistic Minorities’ is wide and comprehensive. The problem of linguistic

\(^{40}\) H. Kabir, \textit{op. cit.}, p.11.

\(^{41}\) Article 343 of the Indian Constitution, New Delhi, 1950, p. 31.


\(^{43}\) Report of the Commissioner for Linguistic Minorities, First Report, New Delhi, 1956, p. 44.
Minorities is nothing new to this world but in the history of our country it is comparatively new and of recent origin. Before the adoption of the Constitution, rather during the British regime, the map of India was not shaped by any rational or scientific planning but by the military, political or administrative exigencies or convenience of the moment.\(^44\) So at the time of framing the Constitution practically every State was multilingual, and it was presumed that any move for the reorganization of the boundaries of the States must be on the basis of linguistic and cultural homogeneity of the people in an area. M.L. Chattopadhyay asserted in the Constituent Assembly: The demand which is being heard from various quarters about realignment of provinces or rather redistribution of provinces on linguistic basis, will be satisfied to a large extent.\(^45\)

On 22 December 1953, the Prime Minister made a statement in Parliament to the effect that a Commission would be appointed to examine objectively and dispassionately the question of reorganization of the States of the Indian Union. This led to the appointment of the States Reorganization Commission of 29 December 1953. In 1955 the Commission submitted its report in which it recommended the redrawing of state boundaries largely on a linguistic basis in 1956, a number of uni-lingual states were carved out in India. But even this operation could not solve the acuteness of the linguistic problem. And this fact was also acknowledged by the Commission itself. The Scheme of redistribution of State territories which we have recommended will result in many cases in bringing together people speaking a common language. To that extent, it will reduce the number of linguistic minorities. It is, however, quite evident that even if the linguistic principle were applied very rigidly, the problem of linguistic minorities will, by no means, be solved.\(^46\)

\(^{44}\) Report on Indian Constitutional Reforms Act, New Delhi, 1948, p.39.
It, therefore, made a number of important proposals, including a constitutional amendment, for the protection of the linguistic minorities, such as Constitutional recognition should be given to the right of linguistic minorities to have instruction in their mother-tongues at the primary school stage, subject to a sufficient number of students being available.\(^{47}\)

The founding fathers of Indian Constitution had also envisaged the problem of linguistic minorities and provided certain safeguards, via, Articles 29, 30, 347, and 350. But after the reorganization of the States they were found to be inadequate and, on the recommendations of the States. Reorganization Commission, the Constitution (Seventh Amendment Act) inserted Articles 350 A and 350 B exclusively to protect the interests of the linguistic minorities\(^{48}\).

1.6. Commissioner for Linguistic Minorities:

B. Malik was appointed for the first time by the President of India in 1957 to investigate matters reacting to the safeguards provided for the linguistic minorities under the Constitution. He came to the conclusion: The division of the States on linguistic basis has given rise to the inevitable result that the regional language should gain prominence and should in course of time become the official language of the State.\(^{49}\) The other languages which are the mother-tongue of the minority communities living in the state naturally do not get equal prominence or status. The result is that those whose mother-tongue is the minority language has not only a sentimental grievance but certain practical difficulties and inconveniences from which they suffer.\(^{50}\)


\(^{49}\) Report of the Commissioner for Linguistic Minorities, New Delhi, 1956, p.44.

\(^{50}\) Report of the Commissioner for Linguistic Minorities, New Delhi, 1956, p.45.
1.7. Minority Problem in Constitution-making:

The minority problem was one of the most important and controversial issues before the framers of the Constitution of India. An agreed formula for its solution could be arrived at only after holding series of meetings of the Constituent Assembly at different levels.\(^{51}\) At all levels, heated discussions and long deliberations took place to analyse the problem in all its perspective. And the representatives of the minority communities in the Constituent Assembly participated actively and fearlessly in its debates and their views were not only heard patiently but also respected by the majority community in the assembly.\(^{52}\)

1.8. Setting up of An Advisory Committee on Fundamental Rights for Minorities:

Constitution making is a very complex affair. The framers of the Indian Constitution, like legislative bodies all over the world, made use of the committee system in order to save time and promote legislative efficiency. A number of constitutional committees were set up to deal with different problems facing the Constituent Assembly.\(^{53}\) The Advisory Committee was one of the most important constitutional committees set up by the assembly. The Cabinet Mission Plan which was the instrument of the setting up of the Constituent Assembly had also suggested for ‘an Advisory Committee to deal the fundamental rights of minorities in the tribal and excluded areas.’\(^{54}\)

So the first task which engaged the attention of the assembly after the adoption of the Objectives Resolution was the composition of an Advisory Committee on the subject of fundamental right, minorities, etc. Consequently, the assembly resolved that an Advisory Committee be constituted consisting of


\(^{53}\) Gwyer and Appadorai, *op. cit.*, p.583.

not more than 72 members who may include persons who are not members of the Assembly.\textsuperscript{55}

Since the scope of the Advisory Committee was multifarious, therefore, to facilitate the work of the Advisory Committee it decided to appoint a Minorities Sub-Committee. The Minorities Sub-Committee consisted of 26 members. It included representatives of almost all the minorities’ interests.\textsuperscript{56}

The Sub-Committee proposed that provision shall also be made for the setting up of a Statutory Commission to investigate into the conditions of socially and educationally backward classes, to study the difficulties under which they labour. It would also recommend to the Union or the Unit-Government, as the case may be, the steps that should be taken to eliminate the difficulties and the financial grants that should be given and the conditions that should be prescribed for such grants.\textsuperscript{57}

The report of minority Rights was discussed in the Constituent Assembly and though the main recommendations were adopted without any modifications and alterations, a lively discussion took place inside and outside the assembly. The representatives belonging to different communities expressed their comments without any fear or prejudice.\textsuperscript{58}

**1.8.1. Constitutional Safeguarding for Linguistic Minorities:**

The Indian constitution has made certain specific provisions to safeguard the rights and interests of Linguistic Minorities. a) Right to Official Recognition b) Right to Teach and To Be Taught and c) Right to Be Understood.\textsuperscript{59}

\textsuperscript{57} Constituent Assembly Debates, Vol. III, New Delhi, 1949, p.213.
\textsuperscript{58} Constituent Assembly Debates, Vol. III, New Delhi, 1949, p.213.
1.8.2. Right to Official Recognition:

Article 347 of the Constitution says, On a demand being made in that behalf, the president may, if he is satisfied that a substantial proportion of a state desire the use of any language spoken by them recognized by the state, direct that such language shall also be officially recognized throughout the state or any part there of, for such purpose as he may specify.\(^{60}\) It provides a guarantee to the use of minority languages in the administration. It authorizes the President to issue directive to a state government for the recognition of minority language as official languages in the administration.\(^{61}\) The linguistic minority groups do but have adequate knowledge of the official language of the state; some safeguards should be evolved in order that they (may) understand the purpose and implication of state administrative measures affecting them.\(^{62}\) Important laws, government notices, rules and regulations correspondence with government offices must be in a language intelligible to the linguistic minority groups.\(^{63}\) Otherwise it will create undue hardships to them in their dealings with the administration and in understanding the laws, rules and regulations in force for the time. So the article enables the president to direct in appropriate cases the use of minority languages in the administration.\(^{64}\)

It may be noted in this connection that the reference here in the article is to any language spoken by them and not merely to the 15 language enlisted in the Eighth Schedule to the Constitution. So in the light of this phraseology used in the article the scope of this provision becomes wide enough, because the number of languages spoken and written in India runs into some hundreds. The importance of this provision as enunciated in the article becomes all the more

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62 Ibid., p. 108.
64 Rajni Kothari, *Politicsm India*, Delhi, 1996, p. 333.
great when we find that on an average, about 18 percent of a State population has as its mother-tongue a language other than the official State language.\footnote{Ibid, p. 341.}

This power in the hands of the Centre will help to curb any tendency towards linguistic fanaticism and the domination of a majority over linguistic minorities in different States.

Article 350 says, every person shall be entitled to submit a representation for the redress of any grievance to any officer or authority of the Union or a State in any of the languages used in the Union or State would suggest that the language of the petition need not be limited to the official language of the Union or states, as the case may be, but could be in the other languages in vogue in the state.\footnote{Granville Austin, \textit{Working a Democratic Constitution The Indian Experience}, New Delhi, 1999, pp. 450-451.} The purpose of this provision would seem to be that a person should not be hampered by the lack of knowledge of the official language of the union or of the state for voicing in grievances before the administrative hierarchy.\footnote{Report of the Commissioner for Linguistic Minorities, New Delhi, 1956, p. 46.} This point was made sufficiently clear by the first commissioner for linguistic minorities in its initial report. So this finds that the right of linguistic minorities to official recognition is considerably comprehensive and important.

\textbf{1.8.3. Right to Teach and to Be Taught:}

The recognition of minorities language for the official purpose is not enough unless there are positive provisions for its instructions made by the state. But the makers of the constitution of India failed to incorporate any such safeguard in the constitution of as originally framed. This was the lacuna in the constitutional provision.\footnote{G.S. Chabra, \textit{The Indian Constitutional System}, Jullundur, 1973, p. 17.} The States Reorganization Commission examined this problem in detail and suggested some recommendations. As an equal to the
Commission’s recommendations, the constitution was amended, incorporating Articles 350-A and 350-B.\textsuperscript{69}

According to article 350-A: 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\textsuperscript{70} and the President may issue such directions to any state as he considers necessary or proper for securing the provision of such facilities. Despite the fact that the scope of this article is limited to primary stage of education, even then it is no less important in a country where free and compulsory primary education is still a cherished ambition.

Some criticisms have raised an objection on the use of the words ‘adequate facilities and Endeavour’ in the article as weak expressions. Ram Gopal pointed out in this connection: the article no doubt empowers the President to ‘issue such directions to State as he considers necessary or proper for securing the provision of such facilities’, but it does not give him power to define or lay down a limit to the terms like ‘adequate facilities’ and in his discretion, he cannot interpret ‘Endeavour’ as duty. But doubtlessly both the terms are ambiguous and subjective in character. There is ample scope for interpreting these terms with discretion. Language inevitably plays an important part in education.\textsuperscript{71} As a medium of communication at enters almost iniquitously all process of importing knowledge of whatever subject it may be. Apart from this, a good deal of formal education has naturally to consist of the imparting of knowledge of the language itself as a tool of expression.\textsuperscript{72}

\textsuperscript{69} Indian Constitution, Seventh Amendment Act, New Delhi, 1956, p. 721.
\textsuperscript{70} State Reorganization Committee Report, New Delhi, 1956, pp. 757 - 758.
\textsuperscript{71} State Reorganization Committee Report, New Delhi, 1956, pp. 757 - 776.
\textsuperscript{72} Indian Constitution, Seventh Amendment Act, New Delhi, 1956, p.703.
1.8.4. Right to Be Understood:

The right to be understood is a necessary corollary right to the right to speak. Article 19 of the constitution guarantee the use of any language is possible in the private domain; it can be regulated only in the public domain and only by law. The constitution of India has also provided certain safeguards to this effect. Article 120 of the constitution provide that: business in parliament shall be transacted in Hindi or English. The Constitution provides that the chairman of the council of states or speaker of the house of the people, or person acting as such, as the case may be, permit any member who cannot adequately express himself in Hindi or English to address the House in the Mother-tongue Similarly, the corresponding provisions for the state legislatures are provided in Article 210.

Since the Constitution does not prescribe any linguistic standard as a qualification for candidature and members of these bodies, who come in their capacity as authorized representatives of their respective constituencies must be enabled to express their views before the house, whether they are not familiar with the prescribed languages or language of the particular legislative body, under this article these members may be allowed to express themselves in the languages they know. This provision is in consonance with the democratic principles of equal opportunities to all.

This provision of the Constitution is in line with the Government of India Act 1935, it reads: “All proceedings in the Federal Legislature shall be conducted in the English language: Provided that the rules of procedure of each Chamber and the rules with respect to joint sittings shall provide for enabling persons unacquainted, or not sufficiently acquainted, with the English language

73 Ram Gopal, *Linguistic Affairs of India*, Delhi, 1985, p. 117.
75 Ram, Dharshan Pandey, *Fundamental Rights and Constitutional Amendment*, Delhi, 1985, p. 130.
to use another language.”76 would like to have certain safeguards. When the Constitution came into force, many States had legislations to prescribe a high standard of proficiency in official language of the State for entry into State services or by making this language the medium of various competitive examinations for state services. This practice tends to keep the state services a virtual monopoly of the dominant language group and the linguistic minorities in the State are at the gross disadvantageous position. It is needless to remark that the public servants of a State should know the official language or the languages of the State concerned. But the point involved herein an initial advantage over those of the other language groups in matters of services.77

The States Reorganization Commission considered the issue and recommended that for State services, apart from the main language of the state, the candidates should have the option to elect, as the medium of examination the Union language, English or Hindi, or the language of a minority constituting about 15 to 20 per cent or more of the population of the State. A test of proficiency in the State language is held, in that event, after selection and before the end of the period of probation.78 The Government of India accepted this recommendation and advised the State Governments that candidates should have the option to select English or Hindi or the population of a State as the medium of examination, in any examination conducted for recruitment to the State.79

1.8.5. Appointment of Special Officer for Linguistic Minorities:

In 1956 when the problem of the linguistic minorities came to limelight as a sequent to the recognition of status mainly on the basis of language, the constitution was amended to provide for the appointment of a commissioner for

linguistic minorities at the centre.\textsuperscript{80} Article 350 B was inserted by the constitution (Seventh Amendment) Act, 1956 to this effect.\textsuperscript{81} The provisions of the article says: (1) there shall be a special officer for linguistic minorities to be appointed by the president.\textsuperscript{82} (2) It shall be the duty of the special officer to investigate all matters relating to the safeguards 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 hear of parliament and sent to the government of states concerned.\textsuperscript{83}

Thus the constitution provides for the appointment of a special officer for linguistic minorities whose duty is to investigate all matters relating to the safeguards provided for linguistic minorities under the constitution and report to the President within the specified time. The President is required to cause all such reports to be laid before each House of Parliament and to be sent to the governments of the States\textsuperscript{84}.

It will not be out of place to mention here that the report of the States Reorganization Commission had examined various suggestions for creating a suitable agency to enforce the rights of the linguistic minorities. The Report reads: One suggestion that has been made to us is the creation of a Central Ministry for Minority Affairs should be appointed. When the Constitution was framed, the position of the Governors was examined against this background and there was a considerable body of opinion against the grant of special powers to a nominated Governor. The Constitution has therefore, recognized

\textsuperscript{80} Report of the State Reorganization Commission, New Delhi, 1956, p. 212.
\textsuperscript{81} Report of the State Reorganization Commission, New Delhi, 1956, p. 212.
\textsuperscript{82} Krishna Kodesia, \textit{The Problems of Linguistic States in India}, Bombay, 1978, p. 79.
\textsuperscript{83} Report of the State Reorganization Commission, New Delhi, 1956, pp. 214-216.
\textsuperscript{84} Report of the State Reorganization Commission, New Delhi, 1956, pp. 216-217.
the Governor as a purely constitutional head, without any discretionary function.  

As a result of the said amendment a commissioner for Linguistic Minorities (Special officer) was appointed at the Union under the Ministry of Home Affairs and he took over charge on 30 July 1957. The commissioner submits his report annually which is laid before each House of Parliament. The report is sent to the State Government also. The first Commissioner, Mr. Malik has interpreted the scope of Article 350 B (2). It can, however, be so interpreted as to include therein infringement of general safeguards in the constitution meant for all including the linguistic minorities, which affects adversely the linguistic minorities as such. Hence the scope of enquiry of the Commissioner for Linguistic Minorities is wide enough and meaningful. The Twelfth Report of the commissioner for Linguistic Minorities in India concludes, by the very nature of the functions as envisaged under Article 350 B of the constitution, the commissioner has not and cannot possibly be saddled with the executive responsibility also. The government of India would like to establish at the centre to oversee and supervise the progress of the implementation of the safeguards for linguistic minorities in the State/Union territories is a matter which the government of India may like to consider.

1.9. Linguistic and Cultural Rights:

Article 29(1) of the constitution guarantees the right to the cultural minorities to preserves its own language and culture; the state would not by law impose upon it any other culture, belonging to the majority or the locality. This

88 Report of the Commissioner for Linguistic Minorities, New Delhi, 1956, pp. 4-5.
provision, thus gives protection not only to cultural minorities but also to linguistic minorities.\textsuperscript{90}

1.10. No Discrimination in State Educational Institutions:

Article 29 (2) guarantees, No citizen shall be denied admission into any educational institution maintained by the state or receiving state aid, on grounds only of religion, race, caste, language or any of them. This means that there shall be no discrimination against any citizen on the ground of religion, race, caste or language, in the matter of admission into educational institution maintained or aided by the state.\textsuperscript{91} It is a very wide provision intended for the protection not only of the religious minorities but also of local or linguistic minorities and the provision is attracted as soon as the discrimination is immediately based only on the ground of religion, race, caste, language or any of them.\textsuperscript{92}

1.10.1. No Discrimination in State Aid to Educational Institutions:

Article 30 (2) guarantees the state shall not in granting aid to educational institutions, discriminate against any educational institution on the ground, it is under the management of a minority whether based on religion or language.\textsuperscript{93} Again the article guarantees,

(a) Every minority has the right not only to establish its own educational institutions but also impart instruction to the children of its own community in its own language.\textsuperscript{94}

\textsuperscript{90} Report of the Commissioner for Linguistic Minorities, New Delhi, 1956, p. 78.
\textsuperscript{91} Report of the Commissioner for Linguistic Minorities, New Delhi, 1956, p. 78.
\textsuperscript{94} \textit{Ibid.}, p. 193.
(b) In making primary education compulsory (Article 45), the state cannot compel that such education must take place only in the schools owned, aided or recognized by the state so as to defeat the guarantee that a person belonging to a linguistic minority has the right to attend institutions, run by the community, to the exclusion of any other school.95

(c) Even though there is no constitutional right to receive state aid if the state does not in fact grant aid to educational institutions, it cannot impose such conditions upon the right to receive such aid as would virtually drive the members of the religious or linguistic community of their right under Article 30(1).96 While the state has reasonable conditions, it cannot impose such conditions as will substantially deprive the minority community of its rights guaranteed by Article 30(1). Surrender of fundamental rights cannot be exacted as the price of aid doled out by the state. Thus, the state cannot prescribe that if an institution, including one entitled to the protection of Article 30(1), seeks to receive state aid, it must subject itself to the condition that the state may take over the management of the institution or to acquire it on its subjective satisfaction as of certain matters for such condition would completely destroy the right of the community to administer the institution.97

(d) Similarly, in the matter of the right to establish an institution in relation to recognition by the state, though there is no constitutional or other right for an institution to receive state recognition and though the state is entitled to impose reasonable conditions for receiving state recognition, i.e., as to

96 Ibid., p. 114.
qualifications the acceptance of which would deprive minority community of their right guarantee by Article 30 (1).98

(e) Minority institutions protected under Article 30 (1) are, however subject to regulation by the educational authorities of the state to prevent mal administration and to ensure a proper standard of education. But such regulation cannot go to the extent of virtually annihilating the right guaranteed by Article 30 (1).99

1.11. Safeguards Afforded to the Linguistic Minorities in Madras State:

The States Re-organization Commission in its report to the government of India suggested to providing safeguards for linguistic groups which would become minorities in different states after the recognition of states. To examine the suggestions, a committee was constituted with the members of Madras, Mysore, Kerala and Andhra Pradesh. This committee is called Zonal Ministerial Committee on safeguards for linguistic minorities. On the basis of this report the Tamil Nadu government put forward some safeguards to the linguistic minorities in Tamil Nadu.100

1.11.1. Recognition of Minority Languages for Various Official Purposes:

The Municipal town and non-municipal area of a taluk where twenty percent or more of the population of that area speak language different from the majority language of the state via, Tamil should be treated as a ‘local area’ and steps are taken for the purpose of uniting minority languages there for certain purposes.101

98 Ibid., p.658.
99 Ibid., p.659.
101 G.O.No.115, Public Department, Madras, Dated 29 January 1965.
(i) All important government notices and rules, and electoral rolls should be published in the minority language or languages.

(ii) Forms, etc., to be used by the public should be printed both in the regional language and minority language.

(iii) Facilities for registration of documents in the minority languages should be provided.

(iv) Correspondence with government offices in the minority language should be permitted.\(^{102}\)

(v) Permission should be given to file documents in the minority languages in the courts in the area.

(vi) An endeavour should be made to secure, in so far as this may be found practicable with due regard to administrative conveniences that the officers posted to work in such local areas are persons who possess adequate knowledge of the minority languages.\(^{103}\)

1.11.2. Safeguards Afforded to the Linguistic Minorities in Education:

Provisions of facilities for instruction to linguistic minorities in the medium of their mother tongue in the primary stage of education.

1.11.3. Primary Stage of Education:

According to the rules for recognition of elementary schools the medium of instruction in these schools should be the mother tongue of the pupils. If the mother tongue of pupils is different from the regional language (viz., Tamil) facilities should be provided for teaching the non Tamil and pupils in their own mother tongue provided the number of such pupils in such class was not less

\(^{102}\) G.O.No.445, Public Department, Madras, Dated 14 March 1961.

\(^{103}\) G.O.No.445, Public Department, Madras, Dated 14 March 1961.
than 10 and the total number of pupils in the school not less than 30.\textsuperscript{104} All primary schools have to maintain a register of applications from parents belonging to linguistic of three months ending a fortnight before the commencement of the school year. So that the strength of pupils of the various linguistic minority groups may be ascertained wherever necessary. The deputy aspect of schools concerned is competent to make inter-school adjustments of admission of the pupils belonging to any linguistic minority, that no applicant is refused admission for the reason that of such pupils in any school is insufficient on the basis of 10 as for each class or 30 pupils for the school as a whole. Any creations issued by the Deputy Inspector of Schools should be immediate complied with by the managements concerned.\textsuperscript{105}

**1.11.4. Educational Facilities for Linguistic Minorities in the Secondary Stage of Education:**

The Government accepts the recommendations regarding the provisions necessary for the study of the mother tongue by the linguistic minorities at the secondary stage of education without deviations form the three language formula. This would mean that a student in this state can study only three languages in standards VI to XII and if a student belonging to the linguistic minority wants to study both Tamil and his mother tongue he can do so by giving up Hindi.\textsuperscript{106}

The Government agrees with the Ministerial committee of the Southern Zonal Council and direct as follows:-

(1) The Facilities that existed on first November 1956 in respect of separate secondary schools for linguistic minorities as well as separate sections for such minorities in these schools with particular references to pupil

\textsuperscript{104} G.O.Ms.No.341, Education and Public Health Department, Madras, Dated 14 February 1961.

\textsuperscript{105} G.O.No.266, Education, Madras, Dated 7 February 1957.

\textsuperscript{106} G.O.No.2125, Education, Madras, Dated 2 July 1957.
strength and to teachers competent to teach in minority languages should be ascertained and continued without change.\textsuperscript{107}

The Director of Public Instruction should collect the statistics and facilities as on first November 1956 and first October 1960 and send a report to Government on or before 31 January 1961. The director of Public Instruction should submit thereafter an annual report on the adequacy of the facilities so as to reach the Government on the 31 March every year.\textsuperscript{108}

(2) The number of pupils belonging to the linguistic minority groups in any secondary school decreases to such an extent as to justify a reduction may be made but no reduction should be made in any individual cases except under the specific orders of the Government applicable to that particular case.

(3) If the number of pupils belonging to linguistic minority groups increases in any secondary school, addition teachers should be appointed in schools proportionate to the increase in strength without contravening the rules generally applicable to schools.\textsuperscript{109}

(4) For the purpose of providing facilities for instruction in the minority languages in secondary schools where such facilities do not now exist.

(a) There should be a rotation of 10 such students in each class in standards VI and VII or 20 students for both the standards in the aggregate.

(b) There should be minimum strength of 15 students in each of the standards VIII to XI of the Higher Secondary occurs 60 students in

\begin{footnotesize}
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\item[\textsuperscript{107}] G.O.No.1036, Education, Madras, Dated 19 April 1957.
\item[\textsuperscript{108}] Letter form the Director of Public Instruction, Ref.No.1299, KS/60, Dated 10 August 1960.
\item[\textsuperscript{109}] op. cit., p. 8.
\end{itemize}
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all the four standards in the aggregate. The figure 60 for all the standards and 15 for each standard should be computed separately for each one of the divisions and for the academic courses separately for each such group of optional subjects.\textsuperscript{110}

(5) Provisions of facilities for instruction of linguistic minority pupils with English as the medium in the secondary stage of education. The Government accepted the recommendation

(i) That the position as existed on first July 1958 in respect of facilities for intention in the English medium in separate sections of secondary schools should be ascertained and continued without change.\textsuperscript{111}

(ii) That children of linguistic minority groups should be assured of the availability of places in the English Medium sections, in numbers not telling short of the facilities that existed on first July 1958 and the Government will be under no obligation to increase the facilities for instruction in English medium in secondary schools in excess of the position that existed on first July 1958 except in case where the need for additional facilities arises as a result of future increase in the number of children of migratory parents (whether these belong to the linguistic minority groups or linguistic minority groups or linguistic majority groups).\textsuperscript{112}

1.11.5. University Education:

At the collegiate stage there are species safeguards provided for students belonging to the linguistic minorities. The medium of instruction in the

\textsuperscript{110} Ibid.
\textsuperscript{111} Report of the Ministerial Committee of the Southern Zonal Council for Linguistic Minorities, New Delhi, Dated 10 May 1960, p. 16.
\textsuperscript{112} Ibid., p. 17.
collegiate stage in their state is English and such students who belong to the linguistic minorities could take their mother tongue (if it is provided in the college concerned) or Tamil or Hindi under part I of the Pro-University course and the degree course. So far as Government colleges are concerned Government would endeavour to provide for the study of any of the minority languages in colleges where there may be demand for the study of such languages from the students on the local area.113

1.11.6. Agency for Enforcing Safeguards:

The chief minister is in charge of the subject relating to ‘Safeguards for Linguistic Minority’. At the Government Level, the Chief Secretary to Government assisted by the Deputy Secretary to Government, Public (Elections) Department designated as the linguistic minority officer, will co-ordinate the work in the Secretariat connected with safeguards for Linguistic Minority Officers, will be in over all charge of the work relating to safeguards for linguistic minorities, within their jurisdiction. They will take active internet in the welfare of the linguistic minorities, in their districts and implement the policy of the Government with the sympathy and care it deserves. They will dispose of the representation from the linguistic minorities in the diastole in consultation, if necessary. With the other concerned district authorities and refer to Government cases where the orders of Government are considered necessary.114

Further, the provisions, as adopted in the Indian constitution for the safeguards of the interest of the linguistic minorities, are not only sufficient and detailed but also, to a large extent, unique. In the light of the above observations, it may be concluded that the problem of adequate protection of linguistic minorities in India has been dealt with through the formal provision in the constitution quite in detail and with no parallel. The spirit of

these measures is in accordance with Article 19 of the Universal Declaration of Human Rights, which states, “Every one has the right to freedom of opinion and expression, this right includes freedom to hold opinions without interference and to seek, receive and import information and ideas through any media and regardless of frontiers.”