CHAPTER I

BACKGROUND OF THE STUDY

Overview

In this chapter an attempt has been made to analyse the concept of minority, problem of defining ‘minorities’ in India, minority rights, constitutional provisions to protect the minorities in India and discriminatory policy of the Government.

Concept of Minority

Grammatically speaking, the term ‘minority’ is compound of the Latin word ‘minor’ and the suffix ‘ity’ meaning, inter alia, ‘the smaller in number of the two aggregates that together constitute a whole.’

But the concept of minority in social context, like is problem, is intricate. To define means to assign limits. A concept remain vague as long as it is undefined. But to define the concepts of social and political life is harder than to given the derivation of the terms. So a great difficulty has been experienced in defining the term ‘minority’ at different levels. “Before World War I, American as well as European dictionaries defined ‘minority’ only in its legal, arithmetical and political meanings.¹ In the middle twenties the Encyclopaedia Britannica had no article on ‘minorities’.” More so, neither the Versailles treaties nor the League of Nations,² ever
gave an exact definition of a ‘minority’. They either mentioned by name the minority
they intended to protect or simply referred to ‘inhabitants of a country who differ
from the majority of the population in race, language and religion’. The problem of
determining and defining the term was not easily resolved even by the United
Nations; however, it gave an agreed definition only in 1950, and that we shall
examine later on.

The term ‘minority’ had its recognition, for the first time, at the
Minority Treaties and Declarations made under the auspices of the League of Nations
after World War I. since then, the term has been a subject of much discussion from
various platforms and has appeared in the constitutions and the laws of nearly all big
and small states and in international documents. Let us examine a few very important
propositions. The earliest edition of Encyclopaedia Britannica, containing 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
different in these respects from the majority of the inhabitants of a given political
entity.’

It will be noted that in the above definition the stress is on the word
‘feeling’. Groups of people having common ties and feeling themselves different from
the majority are stated as minorities. Now the question arises: if these groups do not
have such a feeling, would they be treated as minorities? Moreover, ‘feeling’ itself is
to a large extent a subjective thing. This test is more psychological in nature than
scientific. In this context the views of J.A. Laponce are also noteworthy. He gives two definitions of the term-one purely objective and the other purely subjective. A purely objective definition would be: “A minority is a group whose race, language, or religion is different from that of the minority.” A purely subjective definition would be: “A minority is a group that thinks of itself as a minority.” Obviously this definition given in Encyclopaedia Britannica is not a very satisfying one. It is only subjective in character and does not include the objective factors which are more evident and relevant.

The report of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities furnishes the following definition: “The term minority includes only those non-dominant groups in a population which possess and wish to preserve stable ethnic, religious or linguistic traditions or characteristics markedly different from those of the rest of the population.” The main point in this definition is that minorities are those groups of people who want to preserve their separate identities and are not willing to be assimilated with the rest of the population. The shortcoming of this definition is that it is based exclusively on the experience of Europe where minorities like nationalities are largely minorities by will. Religious and linguistic and or cultural minorities fall in this category. These-types of minorities are anxious to maintain their distinctive character vis-à-vis the majority population and often express their attitudes which are inimical to assimilation with dominant groups. But there is another type of minority also prevalent in a number of countries based on race, caste, etc. Those, for example, are the Negroes in the United States,
and Scheduled Castes and Scheduled Tribes in India. These are not minorities either by choice or will; but they are minorities by force. They do not wish to preserve their characteristics which are markedly different from those of the rest of the population, rather they like to be assimilated with the majority, but are prevented from doing so by the opposition from within the ranks of the majority.

Thus a fundamental distinction may be drawn between minorities whose members desire equality with dominant groups in the sense of non-discrimination alone, and whose members desire equality with dominant groups in the sense of non-discrimination plus the recognition of certain special rights and the rendering of certain positive services. So even the attempt of United Nations to define the term ‘minority’ is not free from fault.

What, then, is to be understood by ‘minority’? At the World Congress of Sociology held in Switzerland in 1950, Prof. Louis Wirth emphasized on the inferior status of minorities by defining them as ‘groups distinguished from the rest of society by racial or cultural characteristics become the objectives of differential and inferior treatment and develop a consciousness of their inferior status.’ The ideas of recognizing inferior status and giving inferior treatment to minorities are old ones. They go against the spirit of democracy and concept of equality and morality. The Universal Declaration of Human Rights Asserts: “All are equal before the law and are entitled without any discrimination to equal protection of the law.” So to talk of
inferiority and superiority vis-à-vis the minority and majority is not a very sound argument.

Thus there is no such single definition of the term minority as acceptable to all, and free from criticism. One view does not find favour 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. As we have seen above, the term ‘minority’ has been defined in a more subjective way, which can never be scientific and free from personal liking or disliking.

**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. In spite of the fact that the problem of minorities in India figured prominently in the Constituent Assembly and the founding fathers bestowed much though and attention to it in all its facets, yet no attempt was made on any occasion to define the term in precise words. Rather one can say after going through the debates of the Constituent Assembly, the founding fathers of the Constitution had grown allergic to the repeated use of the term in the Constitution. This attitude might be due to the fact that the country was partitioned on the sole ground on the communal question, which would be evident from the following fact. When the draft of the Constitution was under discussion in the Assembly on 16 November, 1949,
T.T.Krishnamachari moved the following amendment: “That is 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.\(^9\)

Not only the use of the term in the Constitution is very rare, but also no group is mentioned explicitly as minority therein. No doubt the term does occur in two articles,\(^10\) of the Constitution, but not for definitional purposes. In one of the articles it is used only in the sub-heading of the article and not in the text of the article. However, apart from these 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.\(^11\)

Since the commencement of the Constitution, a number of seminars have been held by different centres 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 the participants, no agreed definition of the term could be arrived at. For example, from 31 March to 3 April, 1970, a seminar was organized on ‘Minorities in Nation Building: International Experience’ by the India International Centre, New Delhi. As proceedings of the seminar read “The afternoon session started off with an attempt at defining minority. It was a free-for-all, running from serious academic to half humorous suggestions.”\(^12\)
In another seminar, which was held about one year after this at the Indian Law Institute, New Delhi, it was urged by the Inaugurator in his address: “This seminar may consider the question of how the expression ‘Minority’ should be defined for the purposes of the Constitution and other laws.” In this seminar most of the participants confined themselves to the definition of the term as given by the Supreme Court of India in one of its judgements. The question what is a ‘Minority’ was posed in the Kerala Education Bill.

The Court commented that minority is a term which is not defined in the Constitution, and in the absence of any precise definition it must be held that ‘a minority community means a community which is numerically less than 50 per cent, but then the question is not fully answered, for part of the question has yet to be answered, namely 50 per cent of what? It is 50 per cent of the entire population of India or 50 per cent of the population of a State forming part of the Union? The Government of Kerala contended that the minority must numerically be a minority in the particular region in which the education institution was situated in order to claim the fundamental rights of the minorities. And in support of its contention it made a reference to the case of Assam High Court Ramani Kanta Bose v. Gauhati Municipality. The Supreme Court found this test as fallacious, and raised the question: If a part of the State is to be taken, then the problem is where to draw the line and what is the unit to be taken into consideration? “Are we to take as our unit a district or a sub-division or a Taluk or a town or its suburbs or a Municipality or its wards? The Court said in an answer to the question raised by it? that when a Bill is
passed by a State Legislature, which extends to the whole of the State, the minority must be determined by reference to the entire population of the State. It follows, therefore, that if the question arises in connection with an Act of the Union Parliament, the term ‘Minority’ must be determined by reference to the entire population of the Republic.

The definition was also followed by the High Court of Kerala in another case A.M. Patrom’v. Kesavan. In this case the question was whether Roman Catholics living in the State of Kerala constituted a minority within the meaning of the Constitution. The Court held that ‘as the Christians at the 1961 census amounted only to 21.22 per cent of the population of the State of Kerala, the Roman Catholics who formed a section of that community were a minority within the meaning of Article 30(1) of the Constitution.’

The formulation as given by the Supreme Court of India is rather simple and arithmetical. There are certain snags in it. One possibility is that the population in a State may be so heterogeneous that no single community may constitute more than 50 per cent of the State population. Thus all groups may claim the title of minority community. The second difficulty about the definitions is that there might be certain communities which are in majority in case of States but in minority in the case of the Union. Thus such communities shall be having double status of being in majority at one and the same time and in minority in different contexts. For example, Muslims, Sikhs and Christians are more than 50 per cent in
Jammu and Kashmir, Punjab and Nagaland respectively, but are in minority in all-India context.

To conclude, we can say that the ‘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 Chief draftsman of the Constitution of India, Dr. B.R. Ambedkar, explained this term in the Assembly in this way: “The word is used not merely to indicate the minority in the technical sense of the word, it is also used to cover minorities which are not minorities in the technical sense, but which are, none-the-less, minorities in the cultural and linguistic sense. Since the meaning of the term ‘Minority’ was to be taken in a particular sense so far as the Constitution of India was concerned, as stated above, the amendment of Z.H. Lari, that after the word ‘any’ the word ‘minority’ be substituted in place of the words ‘Section of citizens’ was negatived, when the Article 23 of the Draft Constitution was under discussion. It later on took the final shape of Article 29 and 30. Having failed to find an exact definition of the term ‘minority’ in the Constitution of India, and elsewhere, we may examine the proposition, “who constitute the minorities in India?” This approach may lead us to derive a working definition of the term to proceed on the study of the subject and to serve as the starting point for the investigation of the problem.

As explained earlier, there are only two specific articles, Articles 29 and 30, in the entire Constitution of India, that explicitly stand guarantee to the
protection of the interests of minorities in India. The first article states “Any section of the citizens residing in the territory of India or any part thereof, having a distinct language, script or culture of its own, shall have the right to conserve the same,” and the second acknowledges the right of minorities ‘based on religion or language, to establish and administer educational institutions of their choice.’ If we put both these articles together, it would mean that in the Indian Constitution the interests of three different categories of minorities are protected and they are minorities based on language, religion and culture.

Minority Rights

Groups who find themselves marginalized within states such as, indigenous peoples, territorially-based national minorities, and other non-territorially based minority groups have increasingly advanced claims for rights and equality. Given these claims, political theorists have highlighted the need to theorize the links between group identity and democratic politics. These so-called "group claims" are diverse and exist on a continuum: from general cultural rights at one end, to political claims for self-determination at the other. Although these claims are lobbied against the nation-states in which these groups find themselves, the responsibility to respond to these claims is of growing international importance. Given the diversity that exists in both the types of groups and the forms of claims that they advance, it is not surprising that there has been a lack of consensus on the rights of minorities within
international law. Although the League of Nations developed treaties for the protection of minorities following World War I, the United Nations Charter that was adopted following World War II did not include an explicit concept of minority rights. Codifying "human rights" was the central principle guiding the UN Charter, and the protection of individual rights was considered sufficient protection for those belonging to minorities. Currently, there is some codification of the rights of indigenous groups in international law, however, there is no general consensus on the rights of substate national groups. In response to this general ambiguity in international law, the past decade has witnessed political theorists taking up the challenge to clarify the principles underlying the claims of minority groups. In his seminal work, Multicultural Citizenship, Kymlicka provides a liberal theory in favour of minority rights. Specifically, he argues that liberal democracies must accommodate differences in a morally defensible way and that protecting group-specific rights requires elaborating a concept of "group-differentiated" citizenship. This differentiated citizenship is premised on the argument that specific representation is required for oppressed groups as the privileged groups are already adequately represented. Distinguishing between national minorities (small territorially concentrated nations within states) and ethnic groups (groups that are the result of migration), Kymlicka argues that national minorities are entitled to a wider range of group-differentiated rights... most notably self-government rights than ethnic groups. In this work, Kymlicka has successfully established a connection between
individual and collective rights, made a compelling defense of differentiated citizenship, and disrupted a belief in the state as ethnoculturally neutral. More recent multicultural theorists have, however, critiqued Kymlicka on a number of important points. Shachar highlights the simplistic use of "culture" by Kymlicka and emphasizes that "culture" as a concept also has strategic political implications, while O'Neill suggests that Kymlicka's argument falls apart when he is not dealing with explicitly liberal groups. Murphy argues that Kymlicka obscures an important connection between democratic legitimacy and cultural rights and Young contests the sharp distinction Kymlicka makes between national minorities and ethnic groups, arguing that these categories are best viewed along a continuum. Parekh additionally contests Kymlicka's "hierarchy of rights" that favours national minorities above all other groups. Importantly, a number of authors emphasize that Kymlicka's theories do not represent a "view from nowhere" but are a characteristically Canadian approach to multiculturalism and one that may not be applicable in different contexts. These critiques of Kymlicka one of the few theorists to make a systematic attempt to develop a general theory of minority rights highlight the difficulties inherent to developing normative political theory across diverse cultural and political contexts. Once context is prioritized, Shachar suggests it is unlikely that anyone will come up with as elegant a theory as Kymlicka's. Despite these differing interpretations, all recent theorists of multiculturalism do agree that there is an important link between the rights of national minorities and the pursuit of a just society. Where these theorists differ, however, is in how precisely to do so. Given the difficulties political theorists have encountered in attempting to elaborate a general political theory of
minority rights, it is perhaps not surprising that codifying minority rights within international law has also been a challenge. Despite these challenges, the impetus remains to develop international laws and policies for minorities. Although national minorities remain under the jurisdiction of nation-states, an increase in intrastate conflict worldwide has prioritized the need for the international protection of minority groups. Toward this end, there is an increasing perception of the rights of national minorities as "democratic" rights.\textsuperscript{37} In everyday political struggles, minority groups themselves have increasingly framed their claims as democratic ones. In particular, given this tacit link between minority rights and democratic legitimacy, national minorities have strategically lobbied their claims beyond state borders to international bodies, such as the UN, to increase their influence. Although national Supreme Courts have jurisdiction over minority rights, many minorities view these as the "courts of their conquerors" and argue that international bodies should oversee their enforcement.\textsuperscript{38} These national minorities are engaging the decline in sovereignty of the nation-state resulting from globalization to recast the debate over which groups or minorities are legitimately entitled to self-determination.\textsuperscript{39}

**Constitutional Provisions to Protect the Minorities in India**

The Constitution has made provisions to protect the minorities in India. In the following pages an attempt has been made to explain the various provisions of Indian Constitution extended to protect the minorities in India.
It has rightly been pointed out that India is a country of vast distances, inhabited by peoples belonging to different races and religions and speaking different languages. Since the rights and interests of the divergent population could be adequately safeguarded by provisions guaranteeing their rights in the Constitution, so Articles 29 and 30 of the Constitution of India provide protection exclusively to cultural and educational rights of the minorities. The marginal note to these articles reads as ‘protection of interests of minorities’. It would, therefore, be obvious that these articles are intended to protect the special position of linguistic, religious and cultural minorities. These provisions connote three things right to conserve, right to freedom of education and right to state aid.

Article 29(1) says “Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.” From the text of the article we infer that the stress is on the word ‘conserve’. It intends to preserve the special traditions and characteristics of the minority which distinguish it from the dominant group. The love for one’s language and religion is eternal and universal. Since every minority would like to jealously retain and protect its particular features, so the right of conservation is of primary importance for the health and growth of every minority. The term ‘conservation’ has been given a wide connotation in the Constitution. It is not limited to the literal meaning ‘to retain or to preserve’. It includes both positive and negative aspects. In this reference, D.K.Sen remarks “The right of conservation includes the following rights the right to profess, practise and preach its own religion, if it is a
religious minority; the right to follow its own social, moral and intellectual ways of life; the right to impart instruction in its tradition and culture; the right to perform any other lawful act or to adopt any other lawful measure for the purpose of preserving its culture.\textsuperscript{40} Similarly, the Judiciary in India has interpreted this word very liberally. In a case, Jagat Singh v. Pratap Singh, the Supreme Court expressed the view that ‘the right to conserve the language of the citizens includes the right to agitate for the protection of the language.’\textsuperscript{41} The court also stated that ‘like Article 19 (1) of the Constitution Article 29(1) is not subject to any reasonable restrictions.’\textsuperscript{42} In spite of the fact that no fundamental rights are absolute, and certain limitations are implicit in every ordered society of a democratic character, yet this right, as stated in Article 29(1) to ‘conserve’, is absolute, unqualified and positive.

Another important thing to be noted in this article is the application of the term ‘any section of society’. It has been applied in a much wider sense. Generally, minorities are recognized in the world on the basis of religion, race and language but Article 29(1) in addition included script and culture in its domain. Further, both are very comprehensive terms. The minority provision in the peace treaties after the World War I did not acknowledge cultural minorities as such and most of them, in fact, did not use the word ‘culture’ or ‘script’ in the text, e.g. the model Polish Treaty in Article 7 stipulates that ‘all Polish nationals shall be equal before the law and shall enjoy the same civil and political rights without distinction as to race, language or religion.’
Similarly, a number of constitutions have also used only race, religion and language. For example Article 29 of the Constitution of Burma (1948) provides “No minority, religious, racial or linguistic, shall be discriminated against in regard to admission into State educational institutions.” Article 2 of the Universal Declaration of Human Rights also postulates “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” This trilogy ‘race’, ‘religion’ and ‘language’ is to be found largely and popularly as a basis to explain different factors of discrimination in the world. To conclude, we can say that in the light of the facts as given above the scope of the article to conserve seems to be extraordinarily wide and meaningful for the minorities in India. It gives an assurance to the minorities that their language, religion and culture will be guarded, and they will be able not only to conserve the same but a definite development also can be made by them.

Since the right to conserve the language and culture includes the right to develop the same, one important method of conservation of a language, script or culture is through educational institutions. In the words of J.A. Laponse, “The school is to a language what the church is to a religion – the condition of survival.” Hence the great importance is attached by linguistic minorities to the freedom of education.”

Article 30 of the Constitution of India states all minorities, whether based on religious or language, shall have the right to establish and administer
educational institutions of their choice; and the State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority whether based on religion or language. This article protects the rights of minorities in matter of having their own educational institutions. In this connection the role of the State is doubled. The first may be analyzed from the point of view of the State as a negative guarantee giving the minority the right to have its own schools without interference from the government. The second involves a positive action. Not content with a passive attitude, the minority wants the government to assume the financial burden of teaching its language in the State’s schools, or at least to subsidize the schools of the minority. Both these rights are incorporated and guaranteed in Article 30 in Clauses 1 and 2 respectively.

Further, this article is counterpart to Article 26. While the latter assures the minorities the right to maintain religious and charitable institutions, the former guarantees the right to establish its own educational institutions. And this right is a corollary of the right under Article 29 according to which ‘all sections of the citizens have been guaranteed the right to conserve their own language, script or culture’. But unlike under Article 29, citizenship is not a necessary qualification.

Clause 1 of the Article 30 guarantees to minorities the right “to establish and administer educational institutions of their choice”. It gives to the minorities two rights, viz., the right to establish and the right to administer,
educational institutions of their choice. This right is conferred on a linguistic or a
religious minority. The word ‘establish’ in this article means ‘to bring into existence’
but when an educational institution has been established by the Government, it cannot
be held to be established by a minority merely because it has been established as a
result of the efforts of such a minority. This point was examined and clarified by the
judiciary in a case Azeez Basha v. Union of India.\textsuperscript{44} The issue involved was about the
character of Aligarh Muslim University. The University came into existence in 1920
by a Central Legislature the Aligarh Muslim University Act, 1920. Though the Act
was passed as a result of the efforts of the Muslim minority, it does not mean that this
University was established by the Muslim minority.

The right to ‘administer’ an educational institution means the right to
‘manage’ the institution. It is an essential element of freedom of education guaranteed
to the minorities. This right, no doubt, is unlike the one that is provided in Article
19(1), not subject to any power to impose ‘reasonable restrictions.’ But the right to
administer cannot obviously include the right to maladminister. The State is
empowered to make regulations in the true interests of efficiency of instruction,
discipline, health and morality, etc. In the opinion of D.V. Chitaley: “Such regulations
are not restrictions on the substance of the right guaranteed under the Article.”\textsuperscript{45}

Another important phrase in the article is ‘of its choice’. It makes the
scope of this article still wider, unqualified and unlimited. It follows that it is open to
the choice of the minority to establish an educational institution not necessarily for the
teaching of religion or language of the minority community only, but also for the purpose of imparting general education. The import of the words ‘of its choice’ in Article 30 was considered in a Gujarat case. The High Court asserted a minority has a right to establish educational institutions of its choice without the State having a right to impose upon it any particular mode or method of administering them. If that were so, the minorities would cease to administer educational institution ‘of their choice’. It will be no longer a ‘choice’ but an ‘imposition’.

Further, under Article 30(1), the right provided is for religious and linguistic minorities. It is not necessary for the protection of Article 30(1) that the minority should be both a religious and linguistic minority. It is sufficient if it is one or the other or both. Still further, although an educational institution may be established by a minority as per the right conferred by this article, admission to such institution cannot be refused to students who do not belong to the minority community, where the institution is maintained or aided out of state funds. It is also not necessary that the majority of the school managed by a religious minority must belong to the religious faith of the minority.

Clause 2 of the Article 30 says “The State shall not, in granting and to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority whether based on religion or language.” This implies that not only can religious or linguistic minorities have their own educational institutions, but they can also claim state aid for such institutions like all
other educational institutions. Since, in modern times it is impossible to run an educational institution without state aid, so the right of a minority community under Article 30(1) to establish and administer educational institutions of its choice indirectly carries with it a right to receive state aid. Under Clause 2 of the article, the state is thereby enjoined not to discriminate in granting aid to educational institution on the ground that the management of the institution is in the hand of a minority. D.K.Sen has opined in this respect that this provision has a two-fold objective. “In the first place, it implies that an educational institution belonging to a minority is entitled to ask for aid from the state. Secondly, it also means that the conditions under which grant-in-aid should be available to minority educational institutions must be the same as for all other educational institutions.”

So to conclude, if we put both these Article 29 and 30 together we come to the point that they are complementary to each other. One without the other is incomplete and insignificant. The right to conserve in the absence of the right to promote is the negations of the term. Both the provisions enjoined together not only provide the mere existence of different minorities in India possible, but also make adequate provisions for their healthy and smooth growth. These are reveal and comprehensive, positive and adequate safeguards ever enacted in any constitution of the world. And M.L. Chattopadhyay said in the Assembly “It is a definite guarantee to the minorities that their language, culture and script will be protected in every way.”
Since the inception of the Constitution, Supreme Court of India has expressed its opinion in a number of cases on the adequacy of these provisions, but the tributes paid by Chief Justice S.R. Das in the Kerala Educational Bill Case was most significant “We the people of India have given unto ourselves the Constitution which is not for any particular community or section but for all. Its provisions are intended to protect all, minority as well as majority communities. There can be no manner of doubt that our Constitution has guaranteed certain cherished rights of the minorities concerning their language, culture and religion. These concessions must have been made to them for good and valid reasons…. So long as the Constitution stands as it is and is not altered, it is, we conceive, the duty of this Court to uphold the fundamental rights and thereby honour the sacred obligations to the minority communities who are of our own.”

The importance of these provisions, as embodied in the Indian Constitution, becomes all the more great when we do not find an exact parallel to these provisions in a number of other constitutions of the world. Let us examine a few analogies. Article 7(5) of the Basic Law of the Federal Republic of Germany reads “A private elementary school shall be admitted only if the educational authority finds that it serves a special pedagogic interest or if, on the application of persons entitled to bring up children, it is to be established as an interdenominational or denominational or ideological school and a state or municipal elementary school of this type does not exist in the Community.” Article 23 of Japanese Constitution simply says “Academic freedom is guaranteed.” Article 121 of the Soviet Constitution states “Citizens of the
U.S.S.R. have the right to education… by free education in all schools; by a system of state scholarship grants; by instruction in schools in the native language.” Section 44 of Ireland Constitution read “legislation providing State aid for schools shall not discriminate between schools under the management of different religious denominations, not be such as to affect prejudicially the right of any child to attend a school receiving public money without attending religious instruction at that school.” Section 93 of Canada’s Constitution read “In and for each Province the Legislature may exclusively make laws in relation to education, subject and according to the following period of service: Nothing in any such law shall prejudicially affect any right to privilege with respect to denominational schools which any class of persons have by law in the Province at the union.” It may be seen from the provisions mentioned above from some of the democratic constitutions of the world, that is comparison, the provisions as embodied in Indian Constitution for the protection of religious and linguistic minorities are far superior and definite, meaningful and useful.

Anglo-Indians constitute a religious, racial as well as linguistic minority. While the Constitution of India declares that religion, race and language shall be no qualification for political and other rights, the Constitution made an exception in the case of this community. The community had for long been enjoying special privileges of various kinds including economic and cultural, because of its affinity with the rulers. Consequently, the founding fathers of the Indian Constitution incorporated a number of articles in the Constitution to provide political and economic safeguards to the community.
Article 331 of the Constitution read “Notwithstanding anything in Article 81, the President may, if he is of opinion that the Anglo-Indian community is not adequately represented in the House of the People, nominate not more than two members of that community to the House of the People.” The identical provision for the representation of the community in the Legislative Assemblies of States is provided in Article 333.

Before the Constitution (Twenty Third Amendment) Act, 1969, the Governor could appoint as many members of the Anglo-Indian community to the State Assembly as he thought desirable to give this community an adequate representation. Now, only one member of the community can be nominated by the Governor. These provisions were necessary for the Anglo Indians being numerically an extremely small community spread all over India. It is not entitled even to one seat in Parliament or State Legislature on the basis of the population. This concession shown to the Anglo-Indians by Articles 331 and 333 was initially for the period of 10 years from the commencement of the Constitution. But this time limit has been extended twice by amendments to the Constitution. Now it will come to an end on 25 January, 1980.53

The object behind this concession was lucidly explained by Sardar Patel in the Constituent Assembly as “It is a small community of a lakh of people or more, but very substantially small, spread all over India and not located in a particular Province. It is difficult for them to get seats in a general election. Therefore, if they
fail in getting representation by the normal process of would like to have certain safeguards. When the Constitution came into force, many States had legislation 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 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 is that the members of the linguistically dominant class shall be having an initial advantage over those of the other language groups in matters of services. The State 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 of Hindi, or the language of a minority constituting about 15 to 20 per cent of more of the population of the State. A test of proficiency in the State language be held, in that event, after selection and before the end of the period of probation. The Government of India accepted this recommendation and advised the State Governments that candidates should have the opinion to elect English or Hindi, or the language of a minority constituting about 15 to 20 per cent, or more of the population of a State as the medium of examination, in any examination conducted for recruitment to the State.
A survey of constitutional safeguards to deal with the problems of the linguistic minorities shows that these measures are quite adequate, ample, wide, reasonable and sound. In the words of Dr. Krishna Kodesia “On the constitutional side there is nothing wanting for safeguarding the legal and reasonable rights of any linguistic minority.” And Dr. R.N. Mathur comments “it may be concluded that the problem of adequate protection of linguistic minorities in the context of national integration has been sought to be tackled through formal provisions in the Constitution.” Prof. Alic Jacop also speaks in the same tone on the adequacy of these provisions “The safeguards are reasonable and sound.”

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. We do not find similar references in other constitutions having multi-lingual character. Although Switzerland gives her linguistic minorities model treatment but she does not do so through her Constitution. Article 116 of the Federal Constitution of the Swiss Confederation simply says ‘German, French, Italian and Romanche are the national languages of Switzerland. German, French and Italian are declared to be the official languages of the Confederation. “The Constitution of Yugoslavia is even more ambiguous than the Swiss Constitution. Its Article 42 reads “The languages of the peoples of Yugoslavia and their scripts shall be equal…”
Closely comparable to India in linguistic problem is the U.S.S.R. with about 200 languages and dialects. So much so, the Indian Official Language Commission had sent its Secretary, S.G. Barve, to the Soviet Union to study, how issues similar to those that had arisen for consideration in India and been tackled in that country. No doubt the national policy of the Soviet Government, with reference to the linguistic minorities, has been very liberal and progressive. But the Constitution of the U.S.S.R. does not specifically provide any adequate measure to safeguard the interest of linguistic minorities in the Constitution except that under Article 40 “Laws passed by the Supreme Soviet of the U.S.S.R. are published in the language of the Union Republics over the signatures of the President and Secretary of the Presidium of the Supreme Soviet of the U.S.S.R.”

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 provisions 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 “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”

The so called ‘Backward Classes’ comprise three sections of Indian society the Scheduled Castes, the Scheduled Tribes and other Backward Classes. The
framers of the Indian Constitution tried to solve the centuries old problem of these classes through legislation. The Backward Classes are now guaranteed not only their fundamental rights, along with other communities, but are also entitled to some special concessions and privileges so that they can attain equality with the rest of the society. Part XVI of the Constitution specifically deals with special provisions of political and economic interests relating to these classes.

Article 330 states ‘Seats shall be reserved in the House of the people for the Scheduled Castes, the Scheduled Tribes and the Scheduled Tribes in the autonomous districts of Assam, the number of seats reserved in any State or Union territory for the Scheduled Castes or the Scheduled Tribes under Clause 1 shall bear, as nearly as may be, the same proportion to the total number of seats allotted to that State or Union Territory in the House of the people as the population of the Scheduled Castes in the State or Union Territory or of the Scheduled Tribes in the States or Union Territory or part of the State or Union Territory, as the case may be, in respect of which seats are so reserved, bears to the total population of the State or Union Territory.” And similarly Article 332 provides identical provision for reservation for the Scheduled Castes and Scheduled Tribes in the Legislative Assembly of every State.

A community which is economically and socially backward will remain politically backward too in political democracy. Therefore, the framers of the Indian constitution provided reservation of seats for the Scheduled Castes and
Scheduled Tribes in the Lok Sabha and the State Legislative Assemblies on population basis under the articles cited above. But an important point in this direction is that any member of the Scheduled Caste and Scheduled Tribes is not debarred from contesting any seat other than the reserved one. It means they have a right to contest as many additional seats as they choose to do, both at the Centre and the State level.

Although these provisions seem to be totally inconsistent with the principle of secularism, their legitimacy becomes evident when one sees them in the context of Indian social reality. They are essentially a product of the humanistic and liberal philosophy which is the underlying inspiration of the Indian Constitution. Further, the concession of reservation in favour of the Scheduled Castes and the Scheduled Tribes was made as a transitory provision. Under Article 334 the reservation of seats shall cease to have effect on the expiration of a period of 30 years from the commencement of this Constitution. Although a 10 year period was thought to be sufficient in the beginning but after the expiry of that period when it was found that the Backward Classes needed the reservation for a longer period, it was extended to 20 years and afterwards to 30 years.

The provisions, as discussed above for the safeguard of the political interests of the Backward Classes, were appreciated by the representatives of the classes in the Constituent Assembly. V.I. Muniswami Pillai expressed his gratitude in this way “It is a good augury on the part of the Advisory Committee to come with this important recommendation that all the minority communities besides their having the
reservation in the various provincial legislatures, will also have the right to contest seats in the unreserved seats.”

Further, it may be noted that the Scheduled Castes and the Scheduled Tribes were given guaranteed representation not because they were minorities in the technical sense but more so on the ground that they had been suffering social handicaps from time immemorial. They could not compete with the advanced sections of the society on a footing of equality. So it was out of a desire to assure social justice as enshrined in the ‘Preamble’ of the Constitution of India that these provisions were made.

It is generally believed that only economic uplift will ultimately ensure perceptible improvement in the life of the Backward Classes. Any other type of safeguard in the absence of economic one is a fiction. The economic backwardness of the Scheduled Castes and the Scheduled Tribes, no doubt, is due to the injustice, exploitation and oppression they suffered from other castes for centuries in the past. Since society did not look after their wellbeing, this resulted in widening the gulf between the ‘haves’ and ‘have-nots’ and led to the internal instability of the country.

Since economic amelioration of the Backward Classes deserves special mention in any plan for the welfare of Backward Classes, the makers of the Indian Constitution provided under Article 335 “The claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with
the maintenance to efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State.” There is a controversy regarding the interpretation of this article. The point involved is whether the provision under Article 335 is mandatory or otherwise. “The Ministry of Home Affairs obtained the opinion of the Ministry of Law and stated that the provisions of Article 335 of the Constitution were not mandatory.”

It is difficult to agree with the view that the provisions of Article 335 are not mandatory. In this matter the Commissioner in his report 1969-70 states “Article 335 occurs in Part XVI of the Constitution, regarding the special part of the Constitution will show that the language used in the various articles therein is exactly similar. For example, Article 330 says, ‘Seats shall be reserved in the House of People’ for the Scheduled Castes and Scheduled Tribes. Article 332 says, that ‘seats shall be reserved for the Scheduled Castes and Scheduled Tribes in the Legislative Assemblies of the States’; Article 338 says that ‘there shall be a special officer for the Scheduled Castes and Scheduled Tribes’ and Article 335 says that ‘the claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration’, etc. The word ‘shall occurs in almost all other articles in this part of the Constitution. Therefore, if Article 335 is not mandatory in nature it would follow that Articles 330, 332 and 338 also and for that matter, other articles wherein the word ‘shall’ has been used in this part, could not also be treated as mandatory in nature… And yet we know that this is not the position, as reservation for Scheduled Castes and Scheduled Tribes in Parliament and State legislatures has to be made and a special
officer for Scheduled Castes and Scheduled Tribes also must be appointed. It is, therefore, rather difficult to image that when those other articles have been held mandatory, why Article 335 alone should be regarded not mandatory.”

It will be observed from the above that while Article 335 of the Constitution provides that the claims of the members of the Scheduled Castes and Scheduled Tribes should be taken into consideration in making appointments to the posts and services under the Central Government as well as the State Governments, the Article 16(4) permits reservation in favour of Backward Classes who are not adequately represented in services. From this statement two important things emerged. First, there is no fixation of a percentage of jobs in the Constitution of these communities and secondly, there is also no fixed period for the continuing of this preferential treatment. It means both these things have been left to the discretion of the Government.

Another important point to be observed in this connection is that the reservation in services is not only a phenomenon of the present Constitution but was also in practice before the commencement of the Constitution during British Government. Partly as a measure of State polity and partly as a result of public demand for a greater share in the administration, the British rulers conceded the recruitment of Indians to the civil services. But they followed the principle of reservation of communal lines. A certain percentage of appointments in favour of minority communities like the Muslims, Christians, Sikhs and the Scheduled Castes
was accepted and given effect to. With the introduction of new Constitution the reservation for minorities other than Backward Classes was withdrawn.

The policy of reservation in the services was much criticised on the grounds of equality and efficiency. There cannot be two opinions that the reservations of posts on the basis of community/caste/class consideration is bound to result in a lowering of standard. When a person who is more or less assured of a position because he belongs to a particular case/tribe, he is naturally inclined to put in less than his best. Moreover, a candidate who is abler and more efficient is often by-passed because he does not belong to the right caste. This not only leads to decline in standard but is also against the principle of social justice.

The fact that the efficiency factor should be given preference is not disputed by any authorities concerned. But Article 335, that makes provisions for reservation in services, particularly emphasises on the phrase ‘consistently with the maintenance of efficiency of administration.’ Prof. S.K. Agrawala remarked “The efficiency is likely to be affected only by an excessive representation in total, and not by any number recruited during any one year. It is also presumed that whatever be the number of seats filled by members of such communities, they will satisfy a certain minimum of qualification.”

In this respect the views of Kaka Kalelkar are also illuminating and noteworthy. He says “I am definitely against reservation in Government Services for
any community for the simple reason that the services are not meant for the servants but for the society as a whole. Administration must have the service of the best men available in the land and these may be found in all communities. Reservation of posts for certain backward communities would be as strange as reservation of patients for particular doctors. The patients are not meant to supply adequate or proportionate clientele to all the doctors, whatever their qualification. The best policy that could be recommended is that given the same or almost the same qualifications, candidates or aspirants from the backward classes should be given a decided preference.”

Further, the Constitution of India does not say that the state must discriminate in favour of the Scheduled Castes, the Scheduled Tribes and the Backward Classes. There is no fundamental right to protective discrimination.

And Dr. Ratna opines “Though Article 335 makes provisions for reservation in services, emphasis has been laid on ‘efficiency’. Articles 15(4), 16(4) and 29(2) are not mandatory but only enabling provisions of the Constitution.” Government in India today is the biggest employer Government employment provides not only security of services, but also gives a certain status and prestige in the society, all have combined to make Government services highly attractive and consequently greatly desired. Inaugurating a Seminar in New Delhi on the 30th of January 1964, under the auspices of the Planning Commission on the employment of Scheduled Castes and Scheduled Tribes, G.L. Nanda, the then Minister of Home Affairs, echoed the same sentiments, saying “I believe now under the changing conditions it is
employment which is going to determine more and more the social status also and
will make a very big impact on the social condition particularly of the Scheduled
Castes.”

B.S. Murthy, a former Central Minister, supported the cause of
Backward Classes in the services in this way “Merely declaring that the State is
secular and as such various communities could not be treated as separate entities and
that only competition should decide the eligibility would not cut much ice.
Competition to be justified should be between equals, not between the privileged and
the under-privileged.” In its first years, this programme was challenged in the courts
and the Indian Constitution, at first based on the premise of recognition of equality of
all citizens before the law, was duly amended to give the government power to
practise some inequality in reverse in order to give these lower groups a chance to rise
more rapidly.

The importance of education in the transformation of Backward
Classes is well known. In a welfare state education is the birthright of every citizen. In
the opinion of Dr. Rain “It is only through education that the Backward Classes could
be made to realize their rights and privileges and the role they have to play in the
national life of the country. The future of these sections depends on their progress in
the field of education. Education is they only means to place them along a clear-cut
path to realize their aspiration of life.” So, just as food is essential for physical
survival, education is the condition of social survival for any community. Hence, great importance is attached for the Backward Classes to the question of education.

The schools in ancient times were located in temples, and the absence of the right to enter the temples due to acute untouchability practised in those days, deprived these people of educational facilities. “In some of the States in olden days, the society considered education of backward class children as a social offence. Even in Manusmriti it is stated that the Shudras should not hear the sacred rituals, and if they hear, the melted lead should be poured into their ears and if they utter anything about the sacred literature their tongue should be cut. As a result, education of the unfortunate Scheduled Castes or otherwise called the depressed class people was denied and they remained illiterate and backward throughout these years.” So much so, no serious attempt was made by the British Government in the matter of education for these communities.

The importance of education was greatly realized by the founding fathers of the Indian Constitution. For the Backward Classes, they provided specific provisions. Article 45 states “The State shall endeavour to provide, within a period of 10 years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of 14 years.” Article 46 supplements further “The State shall promote with special care the educational and economic interests of the weaker sections of the people, and in particular, of the
Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.”

No doubt Article 15 of the Constitution forbids discrimination by the state on grounds of religion, race, caste, sex or place of birth but in consonance with Article 46, Article 15 is qualified by Clause 4 which provides that the state may make ‘special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.’ It is under this provision that seats are reserved for the Scheduled Castes; Scheduled Tribes and other Backward Classes in educational and technical institutions.

The Constitution has also provided safeguards to protect the interests of the Backward Classes against any injustice in the matter of establishment and admission to educational institutions and financial grants from state funds. Article 29(2) of the Constitution reads “No citizen shall be denied admission into any educational institution, maintained by the State, or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.” Again Article 30(1) “All minorities, whether based on religion or language shall have the right to establish and administer educational institutions of their choice.” The underlying spirit of all these constitutional safeguards is that the Scheduled Castes and other Backward Class communities who suffer social injustice and are also socially, economically and educationally backward, shall be brought to the level of the rest of the advanced communities.
Thus, reservation, although it contravenes the principles of equality and democracy is necessitated by circumstances prevailing in the country from time immemorial. It is found inevitable and the only way out for enhancing the importance of education among the Backward Classes to enable them to catch up with those who are ahead of them. It also holds good even from the point of view of social justice, which is the cornerstone of our national policy and the theme of ‘Universal Declaration of Human Rights.’

These constitutional provisions are criticised on the grounds that Articles 45 and 46 are placed in the Chapter of Directive Principles of State Policy, which are considered only fundamental in the governance of the country and are not enforceable in a court of law. Therefore, an infringement of such provisions cannot be justified. “Directive Principles?.” Explained Prof. K.T. Shah, “It looks to me like a cheque on a bank payable when able, viz., only if the resources of the Bank permit.”

But if we analyze the intention of the framers in drafting and providing Directive Principles of State Policy, we find great importance of these provisions in the Constitution. D.V. Chitaley remarked “The Directive Principles are like the constitutional conventions in England, (i.e. Though non enforceable in a court of law, yet, are of great importance).”

Dr. M.V. Pylee also holds the same view and asserts: “The real importance of the Directive Principles is that they contain the positive obligations of the State towards its citizens. No one can say that these obligations are of an insignificant type, or that even if they are fulfilled, the pattern of society in India will still remain more or less the same.”
In a welfare state education is primarily the responsibility of the Government. The provisions as enshrined in the Indian Constitution in the field of education for the Backward Classes are salutary and meaningful. No investment is better or greater than investment in education. As stated by M.C. Chagla, Former Education Minister “It is truism to say that the best investment a country can make is investment in human resources. We spend crores of rupees in putting up steel mills, hydro-electric plants and various other monuments to the scientific age. But we are sometimes apt to forget that the best monument, the most paying investment even from the financial and economic point of view, is investment in human resources. If, therefore, we have to eliminate poverty, we can do to only through a vast qualitative scheme of education which is oriented to the removal of poverty.”

The Backward Classes and more particularly the Scheduled Castes suffer the greatest social disability in the name of untouchability. In the words of Harold R. Issacs “Untouchability goes back into the far dimness of the Hindu past. Like so much else in Hindu history and practice, origins remain vague or unknown interpretations contradictory, and opinions controversial. But there is nothing vague about caste or about untouchability itself. This system for elevating and debasing human beings in rigidly separated compartments developed as the actuality of Hindu life.” It is a basic and unique feature of the Hindu social system. It is not a separate institution by itself it is a corollary of the institution of the caste system – warp and woof of Hindu society. According to Dr.Ratna “Untouchability, the greatest social disability of the Scheduled Castes, is a blot on Hinduism. In the name of
untouchability gross injustice was done to myriads of our unfortunate brethren, who were reduced more or less to a bestial position in society.”

Untouchability is practised on such a wide scale and in such a variety of ways and forms that it is impossible to define it in precise terms. Here it is not to be understood in its literal or grammatical meaning. From barber’s shop to burning ghat, from tea shop to temple, there are innumerable ways of shunning an untouchable. B.S. Murthy penportraits the meaning of untouchability very beautifully “What is untouchability? Can we attempt a definition? Untouchability is an iniquity. It fosters festering inequality and spreads the contagion of incurable ill-will. It petrifies the heart and panegyrizes sepulchral orthodoxy. It destroys all vestiges of decency and courtesy. It creeps in like a snake, sucks like a leech, spreads like a wild-fire and devastates like a thunderbolt. It is the ugliest of human institutions.”

The eradiction of untouchability has been one of the basic objectives of the socio-religious movements in general and of political movements in particular of the nineteenth and twentieth centuries. With the adoption of Indian Constitution, the eradication of untouchability has been made a constitutional guarantee. Article 17 of the Constitution formally and specifically deals with the abolition of untouchability. It reads “‘Untouchability’ is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of ‘Untouchability’ shall be an offence punishable in accordance with law.” Since the Article 17 doest not define the word untouchability, and the term was to be understood in a historical and particular
meaning, so the word untouchability was put purposely within inverted commas by the framers of the Constitution. The Constitution not only abolishes the legal status of untouchability but also goes on to declare the enforcement of it an offence punishable with law. Further to provide uniformity in law the Constitution under Article 35 empowers Parliament only and not legislatures of States to make laws in this respect.

Still further, it may be stated that in the Article 17 the words ‘in accordance with law’ includes all valid laws before or after the Constitution came into force. Before the inception of the Constitution a number of States/Provinces had legislative measures for removal of untouchability in their Statute Books. All these pre-Constitution laws are not nullified under Article 17. The provision of Article 35(b) keeps alive all such ‘laws in force’ until altered or to define the nature of the duties to be performed by it and its organization and procedure.”

The framers of the Indian Constitution have borrowed the inherent idea of setting up such an institution from the Government of India Act, 1935. Section 135 of the Act has provided for an inter-Provincial Council for this object.

After discussing the nature and composition of different bodies to examine the operation of the safeguards, as provided for different kinds of minorities in Indian Constitution, one can safety say that there is nothing wanting in this respect.
Not only safeguards are extensive but also machinery to examine the working of the safeguards is detailed and definite.

In spite of the protection extended to the minorities based on religion, Indian Muslims feel that they are systematically and increasingly marginalized in their own homeland.

**Discriminatory Policy of the Government**

Since the dawn of independence, the Government of India dominated by the Aryan Brahmins, adopted discriminatory measures against the Muslims. The Constitution of India, drafted by Dr. B.R. Ambedkar, guarantees fundamental rights to all communities of India. Article 15(1) says, “The State shall not discriminate against any citizen on grounds only religion, race, caste, sex, place of birth or any of them.”

The records of the Central and State Governments during the last half of century of independence aptly prove that the constitutional provisions have been honoured more by their violation than by their observance. That the Hindu leaders were not sincere in giving fundamental rights to the non-Hindus was evident from the fact that no sooner had these and other rights been given than checks and obstacles were created through the Directive Principle added to the Constitution. The Directive Principles says that Government will strive for ‘National Integration’ and for which a common Civil Code will be adopted. This Civil Code meant only Hindu Code as it became evident from various acts of the Government. In other word, to the non-Hindu Communities, the
Common Civil Code meant only a measure for Hinduisation of all the citizens of the country.

It is a well-known fact that the Indian Muslims are being systematically and increasingly marginalized in their own homeland. Soon after the independence, various states and territories were reorganized splitting the minority dominated areas in parts and absorbing them in different states with a view to reducing their influence and making it difficult for them to win in any election. In an effort to further reduce their political strength, the names of Muslims are sometime deleted from the electoral rolls. The names of 138,000 Muslim voters, for example, were deleted from the electoral rolls prepared in Hyderabad and Sekanderabad for the election of December, 1994. Deliberate and concerted efforts are being made to change the composition of population in areas where non-Hindus, especially Muslims, are in majority. As a result of this policy, the Sikhs in the Punjab have been relegated from absolute to a simple majority status only with a slight margin (52 percent of the total population). In Jammu and Kashmir, the only state where Muslims are in majority, there has been a continuous fall in the Muslim population and simultaneous rise at the non-Muslim population. The percentage of Muslims in that State fell from 70 in 1951 to 62 in 1991. If this trend continues for a few decades more, the Muslims of the State of Jammu and Kashmir may be reduced to a minority community.
India is a vocal advocate of secularism but nowhere else in the world secularism was so blatantly betrayed. It was expected that in an independent India, Hindu fanaticism will completely evaporate. Long before independence, Moulana Azad said, “I firmly hold that it will disappear when India assumes the responsibility of her own destiny.”88 In so-called secular India, Azad’s hope was not only belied but Hindu fanaticism gained enormous strength and that also under the direct patronage of the government. The Congress party, which ruled India for over four decades, instead of making any effort to contain Hindu fundamentalism, did everything for its nourishment. Just after becoming the first President of independent India, Dr. Rajendra Prasad removed from the Rashtrapati Bhavan all the Muslims who were working there. There are thousands of examples which show how secularism is being betrayed in India. Secularism was betrayed by the federal government by covertly becoming a party to the demolition of the Babari Masjid. Secularism was betrayed by the Bombay police by openly participating in the killing of thousands of Muslims in the aftermath of the demolition of the Babari Masjid. The jails of Bombay are still packed with scores of innocent Muslims rounded up in the wake of the blast but not a single brute involved in the massacre of the Muslims was brought to book. Those who are held under the notorious Terrorist and Disruptive Activities Act are 90 percent Muslims, although the Muslims constitute only over 12 percent of the total population of the country. The instances of how the Muslims have been made target of all kinds of discrimination and subject of perennial persecution are endless. These all have resulted in a process whereby the Indian Muslims are fast moving towards ruination culturally, educationally, economically, socially and politically.
The socio-economic conditions of the Muslim community of India present a dismal picture. The Muslims are deprived of due representation in public employment even at the lowest level. The Public Service Commission has fixed 200 marks for the viva test. The Muslim candidates who qualify the written tests lose badly in viva. In the Indian Administrative Service examination of 1993, for instance, only 20 out of 789 Muslim candidates were successful. This comes to only 2.5 percent of the total number of candidates who qualified in the examination.\textsuperscript{89} In this way, the representation of the Muslims in various Ministries is approaching to zero. The number of Muslims in class I and II jobs in various Ministries of the Central Government was 677 as against a total of 39,375 on 31 March 1971.\textsuperscript{90} This comes to only 1.7 percent, although the Muslims constitute 12 per cent of the population of the country. The representation of the Muslims in the Parliament showed a downward trend. While their representation in the Parliament was 9.26 percent (73 among a total of 788) in 1982 election, it came down to 6.20 per cent (49 among a total of 790) in 1991 election. Moreover, the number of states with zero Muslim representation increased from 10 in 1982 to 14 in 1991.\textsuperscript{91}

Muslims are also denied equal opportunity in the private sector. Their representation is indeed very poor in the law and order machinery, whether state police, armed constabulary or central para-military and armed forces. Minority educational institution, especially those run by the Muslims, are facing various types of constraints and impediments. Minority concentration areas are neglected by the Government in respect of establishing educational institutions. As a result, the literacy
level of the Muslim community is much below the average level of India (among men 18 per cent against the country’s average of 51 per cent and among women less than 8 percent). The school enrolment level of the Muslim children is also very low. Because of the hurdles at the lower level of education, the share of Muslim students at higher and professional level is also much below the national level of India.

In ‘secular’ India, schools and other educational institutions are being systematically Hinduised. Hindu culture incorporating glorification of idol-worship and stories of Hindu mythological characters from part of the syllabus pursued at various schools. References to Hindu gods and goddesses about in the text books. Books prescribed by the Education Boards contain lessons giving false stories of Muslim atrocities on Hindu women, kidnapping, forced conversion, etc. children are taught to worship Hindu gods and idols. Recently, the BJP Government of Delhi has issued instructions to the schools to begin daily activity with collective singing of Vande Matram of Bankim Chaterjee. Singing this song is tantamount to worshipping the motherland and therefore against the basic tenets of Islam. In the name of promoting common culture, the government is pursuing a policy of instilling Hindu idolatry and paganism among the children irrespective of their religion. The Muslims are discouraged and sometime denied to observe their religious duty. The government has recently decided not to allow the Muslim soldiers an hour’s absence for observing Friday prayer.
The Muslims have established some educational institutions in an effort to keep their children away from idolatry and paganism. But a condition is imposed on these institutions that 50 percent of the total intake in them shall be permitted to be filled by candidates selected by the agencies of the State Government on the basis of a competitive examination. Urdu is the language of about 62 per cent of the Indian Muslims and has the richest Islamic literature among Indian language in all fields of learning. As a part of their efforts to obliterate the cultural entity of the Muslims, both the Central Government and the Governments of the States seems to do whatever is possible to strangle this language and deny it all opportunities of existence and growth. It is virtually banished from all the schools run by the Government.

The decennial censuses or the national sample surveys do not generally address themselves to the living conditions of the Muslims. The socio-economic plight of the Indian Muslims therefore remain clouded in mystery. It is, however, never disputed that the Muslims are not better than the Dalits or the OBC. As V.T. Rajasekar observes, the Muslims of India “are in many ways worse than Untouchables and in recent years they are facing dangers of mass annihilation.” The National Sample Survey Report of 1988, presents some data about the socio-economic conditions of the Indian Muslims.

1. 52.3 percent of Muslims live below poverty line with a monthly income of Indian Rupees 150 (US $ 5) of less.
2. 50.5 percent of illiterate.

3. Only 4 percent of Indians who receive education up to high school are Muslims.

4. Only 1.6 percent of Indian college graduates are Muslims.

5. Only 4.4 percent of Indians in government jobs are Muslims.

6. Only 3.7 percent of Indians who receive financial assistance from the government for starting business are Muslims.

7. Only 5 percent of Indians who receive loan from government owned banks are Muslims.

8. Only 2 percent of Indians who receive institutional loans from the government are Muslims.

Awqaf properties worth millions of dollars, dedicated by the Muslim philanthropists for some specific purposes and objectives, are now given to the Waqf Boards which are constituted by the Governments of the States and the Central Government. The members of these boards are nominated on the basis of political consideration. A large portion of these properties is misused by the members and officials of the Boards. Moreover, very significant portion of these properties is allowed to be misappropriated and occupied by the Hindus. The Muslims are not only deprived of their legitimate rights in all spheres, whatever they could build up to sustain their lives is also destroyed and plundered during the riots which take place now and then as per the long term plan of the Hindu communal organizations working for annihilation of the Muslim entity in India.
The above analysis clearly indicates that Muslim minorities are not properly taken care of in spite of various constitutional protections extended to them. They think that Indian Muslims are deprived of their democratic rights and social justice, make their own efforts to improve their living conditions but they are often frustrated in these attempts by the hostile forces of Hindu fanaticism, who always want to see that Muslims do not cross the barrier of economic and social backwardness. Government machinery, instead of assisting them in their attempts to attain economic progress, often puts snags on their way. The residential houses and commercial establishments built by the Muslims are demolished either by the communal forces or by the government machinery in the name of enforcing law. Obviously the purpose of all these is to retard their progress and development. An example of such a nefarious and cruel action was the demolition of 20 multi-storeyed commercial complexes in Miralam at the outskirts of Hyderabad. The buildings constructed by the local Muslims after attaining proper permission from the municipality were reduced to rubble using heavy duty bulldozers even without issuing any notice to their owners. The action was reportedly taken by the municipality on the instruction of the State Government in line with its policy of uprooting the new Muslim settlements in the area. Hindu fundamentalism is increasingly widening its influence everywhere and has already established for itself a firm base in every sector of the Indian society including bureaucracy, media, educational institutions and the like. The hate campaign unleashed by the fundamentalist forces is keeping the Muslims wholly preoccupied with defending their basic human rights and cultural identity, leaving little time for them to work for upliftment of their social status and
improvement of their standard of living. Under these circumstances, their social and economic conditions are deteriorating day by day.

The Muslims of India, over 120 million, constitute about 12 percent of the total population and are the second largest religious community in the country. They are about 10 percent of the total Muslim population of the world and are nearly one third of the total Muslim minority population in the world. India has the largest concentration of the Muslims outside the member countries of the Organization of the Islamic Conference and the second largest in the world. Unless the problems of Muslims are solved, a peaceful society cannot be established in India. Under these circumstances the researcher thought that a research study on minority politics with reference to Malappuram District could help to provide solutions to settle the problems of Muslim minority. Therefore, the researcher thought it proper to take up a research study on minority politics with reference to Malappuram District.
End Notes:

1 J.A. Laponce, The Protection of Minorities, p.3.
2 It May be noted that the Lithuanian Delegate Wanted from the League A Precise Definition of a Minority for the Purposes of Protection, Quoted by D.N. Sen, A Comparative Study on the Indian Constitution, p.167.
3 Arts, 86 and 93 of the Treaty of Versailles, Quoted by C.A. Macartney, National States and National Minorities, p.4.
5 J.A. Laponce, op.cit., pp.3-4.
8 Article 7 of Universal Declaration of Human Rights.
9 Constituent Assembly Debates Vol.XI, pp.571 and 605.
10 Articles 29 and 30. For text, see Appendix IX.
11 See Appendix IV.
12 Programmes of First Day of the Seminar, p.4.
14 Kerala Education Bill, 1957. After the Kerala Education Bill was passed on 2 September, 1957 by the Legislative Assembly of Kerala, it was, under Article 200, reserved by the Government of Kerala for the consideration of the President. The Bill contains many provisions imposing considerable State control over the management of the educational institutions in the State, aided or recognized. Since the width of the power of control thus sought to be assumed by the State appeared to the President to be calculated to raise doubts as to the constitutional validity of some of the clauses of the said Bill on the ground of apprehended infringement of some of the fundamental rights guaranteed to the minority communities by the Constitution, the President in exercise of the powers vested in him by Article 143 (1) referred the Bill to the Supreme Court for consideration.
15 AIR 1958 SC 976.
16 AIR 1951 Assam 163.
17 Loc. Cit.977.
18 AIR 1958 SC 977.
19 AIR 1965, Kerala 75.
20 According to 1971 census, the population of Muslims was 65.85% in Jammu and Kashmir, Sikhs 60.22% in Punjab and Christians 66.76% Nagaland.
21 CAD VII, p.922.
22 CAD VII, p.926.
41 AIR 1965, SC 183.
42 Ibid.,
First, the Constitution (English Amendment Act, 1959 extended the term till 1970 and second, the Constitution (Twenty-Third Amendment) Act, 1969 extended the period of further r10 years.
Article 26(1) Everyone has the right to education.

CAD VII, p.479.


M.V. Pylee, Constitutional Government in India, p.320.

Report of the Committee on Untouchability, p.184.

H.R. Issacs, India’s Ex-Untouchables, p.25.


Please refer to CAD III, p.413.


Muslim India, March, 1994.


News from India, 25 July, 1994

Indian Muslim Relief Committee, Victims of Indian Secularism London, 1981, p.61

Ausaf Ahmad, op.cit., pp.27-29.

A Muslim worships Allah and only Allah, his Creator and Sustainer, Worshipping anything else takes him beyond the limits set by Islam.


V.T. Rajshekar, Indian Muslim Problem, Bangalore, 1993, p.ii.


Indian Muslim Relief Committee, op.cit., p.80.