

# A STUDY OF MINORITY RIGHTS IN INDIA: PROSPECTS AND CHALLENGES IN SPECIAL REFERENCE TO CANADA

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## ABSTRACT

*“In fact, one may well compare our nation to a big Jumbo jet flying through turbulent weather to a golden destination. For this flight, every section of the people must be galvanized together firmly as the various parts of the frame. The strength of the frame is equal only to the strength of the weakest section of the frame. One little crack, i.e. a disgruntled minority, would force the jet to the ground till the crack is repaired.”*

*- Former Chief Justice S. M. Sikri.<sup>i</sup>*

India a well-known country of ethnic society whereby sharing a common and distinct culture, religion, language or like presents endless varieties of physical pattern and social behaviour. Being a biggest democracy in the world, the representation of every group of people irrespective of religion, race, caste and sex have been ensured by the Indian constitution. As earlier mentioned, the term 'Democracy' understood as a way of government of the people which is ruled by the people. This implies that the participation of every citizen for the formulation and enactment of rules and regulation through their representative, they (representative) reflects the voice of each and every people. Therefore for the participation of minority groups in public affairs and in all domain of social, cultural and political activities require to preserve their identity and protect them from the social exclusion. Hence, it is pertinent to adopt a mechanism ensuring that the diversity of society with regard to minority group is reflected in such institution such as national parliament by means effective and meaningful participation. amine the Historical background and Legislative development of minority group by the method of comparative study in between Canada and Indian perspective.

**Keywords:** Minority, Democracy, Representation, Public Affair, Indian Constitution,

## INTRODUCTION

The term minority has been the lexicon of sociology for at least half a century. Like many other social science concepts, it has moved into popular discourse over the years but usage has never been bound by dictionary definitions.<sup>ii</sup> A minority group is referred as such group of people who share a common set of cultural or physical characteristics that marks them as different from the dominant group. The term minority hereby referred to a certain group which religion, culture and language is so different as normally profess, speak by the mostly people. The members of these groups share some sort of physical and cultural characteristics, which distinguish them from dominant group and experienced unequal treatment. The basic characteristics of these minority groups is strong sense of solidarity, live in separate geographical indication.

Protection of minorities has been one of the oldest concerns, yet the word “minority” is tricky enough to be defined as the problem of defining “the minorities (is not) as susceptible of solution as those of physics and mathematics”<sup>iii</sup>. Some attempts have been made to define the term. First of all, discuss the historical development of minorities, the problem of defining them and their definition will be discussed so that we could know whose rights we are discussing about.

“Who is minority? Who defines minority? Who are the beneficiaries of minority rights?”<sup>iv</sup> It is very difficult to answer these questions. Thus, there is not any legal binding and generally accepted definition of minority until present. It appears paradoxical to discuss about the rights of such people who cannot be identified. D. Schutter says that one obstacle to the protection of minorities rights, both at international and regional level, may reside in the absence of a generally agreed upon definition of minorities.<sup>v</sup>

Despite the difficulties many a definition of “minorities or national minorities” have been proposed within the international organizations.<sup>vi</sup> Francesco Capotorti<sup>vii</sup>, formulated a definition and the same definition recognized in the united nation sub-commission report. According to him, minority is some sort of group numerically inferior to the rest of the population of a State, and formed themselves as a non-dominant position, where members

belonging from the nationals of the shows and possess the different ethnic, religious or linguistic characteristics from the rest of the population, and showed a sense of solidarity, directed towards preserving their culture, traditions, religion or language”.<sup>viii</sup>

There are a number of factors behind the difficulty to identifying the minority some peoples, who are minority, may live in one geographical area separated from the rest of the population, while others may live scattered in different parts of the State. Some minorities may have, more or less, autonomy while others may not have it at all. Some minorities may have a strong ‘sense of solidarity directed toward preserving their distinct identity’ while in other minorities this sense of solidarity may be weaker. Some minorities may live in one State, while other may have existence trans-border, in more than one States.

The Indian socio-economic fabric is very complex. It is very much affected by caste, religion and regional or linguistic differential. Therefore for the promotion and protection of the rights of the minority group, it requires particular attention to be paid to issues such as the recognition of the minority existence, so that an efforts can be made to guaranteed to provide the inalienable rights like equality and non-discriminatory, ensure their education and participation at national and local level. Indian Population is composed of various groups with different ethnic, racial, religious and socio-cultural background. For a while, these groups arrived in this land from different areas at different points of time. During the long period of their association, which spread over thousands of years, there has been a veritable mixture in the common habitat. Some of the groups underwent sub-divisions and fragmentations and some other groups retained their distinct identity, maintaining a certain measure of their traditional exclusiveness, mainly through cultural institutions religious ideologies. Indian Minorities belong to the latter category.

Besides International perspective, India society is well known for ethnic society whereby sharing a common and distinct culture, religion, language or like presents endless varieties of physical pattern and social behavior. Due to such complexity and series of people need, beliefs, and various social systems, it is essential to adopt and enforce mechanism for the welfare of every class and sections of people. Being a biggest democracy in the world, the representation of every group of people irrespective of religion, race, caste and sex have been ensured by the Indian Constitution.

The Indian society is pluralistic in character from the religious and other points of view. Since a very long-time people belonging to various religious communities has been living together in this country. By virtue of their numerical strength, the Hindus constitute the majority while the rest of the religious communities come under what is known as religious minorities. Regarding the concept of minority in the Indian context, it can be said that the term has not been properly defined anywhere in the Indian Constitution. The Indian legal system is not adequately dealt with this regard and their inalienable rights are not properly defined. Therefore there was a growing need to study the concept of minorities in India. The minority question has been posed within a broader narrative of society and social changes in India. In fact, it is truth that any discussion on minorities in isolation or without paying attention by the larger political system and social system would be vacuous.

## CONCEPT OF MINORITIES

The major difficulty in arriving at a widely acceptable definition lies in the variety of situation in which minorities' lives. Some live together in well-defined area apart from the dominant part of the population. Others are scattered throughout the country. Some minorities have strong sense of collective identities and recorded history; while other retains only a notion of common heritage.

Europe's engagement with the minority question was conditioned by the imperatives of the fall of communism, conflicts between the states, and mass migration from formerly communist states of Europe. Though the end of World War II (WW II) followed by the decolonization of Asian and African states brought a significant number of migrants to Europe, the latter had not approached these migrant groups from within a legal multicultural framework. The large wave of migrants to European countries have often represented as refugees and asylum seeker. In the beginning, Europe was not very responsive to the needs of its minorities or minorities elsewhere.

Kymlicka (2008) believes that minority rights were virtually unknown in Europe and that the sudden interest in minority affairs was the result of three reasons: humanitarianism, self-interest and ideology, which resulted in the internationalization of minority rights.

The conference held in Copenhagen, Europe declared that “the participating states note the efforts undertaken to protect and create conditions for the promotion of the ethnic, cultural, linguistic, and religious identity of certain national minorities by establishing appropriate local or autonomous administration.”<sup>ix</sup>

India response to minority rights through a secular policy was the product of post-independence and post-partition conditions. Prime minister Nehru had imagined an India which is progressive, modern, scientific, and secular by breaking away from an idea of India that is predicated on the favor of dominant group cultural nationalism. Against the wishes of K.M. Munshi and Sardar Patel, Nehru was determined to send a clear signal to India’s minorities that their culture and religion would not only be protected, but also to be promoted which would produce an idea of India. Similarly, the linguistic division of India into states created in its trail large chunks of linguistic minorities living in other language states.

In order to figure out the speech of minority, we should look at the position of minority International Law and Indian Law.

### ***Minorities under International Law***

According to a definition offered in 1977 by Francesco Capotorti<sup>x</sup> a minority is:

“A group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members being the nationals of the State who possess ethnic, religious or linguistic characteristics differing from the rest of the population and shows a sense of solidarity, directed towards preserving their culture, traditions, religion or language.”<sup>xi</sup>

Further, the United Nation passed a Declaration of Minority, which is adopted on 18 December 1992, promulgated that the definition of minority as based on national or ethnic, cultural, religious and linguistic identity and provides that states should protect and promote their existence.<sup>xii</sup>

The declaration made by united nation shows his prominence to safeguard the rights and interest of minority whether they are belonging from religious or ethnic or linguistic categories. Moreover, this kind of declaration at an international level reflects that the world is full of



different peoples, different culture or religion or language etc. we cannot tear him from becoming a part of development.

In respect of the Minority Declaration of United Nation, The National Commission of Minorities has been observing the 18<sup>th</sup> December as a Minority Rights every year.

There is no internationally agreed definition as to which group constitutes minority, thus the question regarding the existence of a minority is a question of facts and ,therefore, any definition of minority must include both objective factor ( such as the existence of a shared ethnicity, language or religion ) and subjective factors ( including the individual must identify himself as a member of minority).

Therefore, the minority usually refers to national or ethnic, religious and linguistic minorities as mentioned earlier in the United Nation Minority Declaration, 1992. While within the states the criterion of minority as defined in United Nation Minority Declaration has often been challenged, thus the requirement to be in a non-dominant position remains important. In most of the instances, the minority group determined in the form of numerical sense.

All states have more than one minorities group basically characterised by their own religious, linguistic or with the ethnic identities live in particular sphere of the territories which is totally differs from that of the majority populations.

### ***Minorities under the Indian Law***

The Indian Constitution having a written constitution, yet there is difficulty in knowing who are reckoned as minorities. Though by not defining the term “minority”, the provisions of article 29 read with article 30 provides specially applicable on the section of citizens of India whose residence is India or any part of the territory of India and having possess a distinct religion, language, script or culture of their own are minorities guaranteed as a fundamental right to conserve their own religion, language , script or culture. In Indian Constitution used the word ‘minority’ under Articles 29 to 30 and 350A to 350B.

The Article 29 mainly focused upon the citizen of any section who is living within the territory India or any part of India which possess or having a special characteristic likewise distinct

language, script or culture, shall have the rights to conserve the same is guaranteed by the Indian constitution.<sup>xiii</sup>

From the above provisions, it become clear that the intention of constitutional maker is to merely secure the interest of any section of citizens possess distinct language, script or culture. If we look at the purpose of an enacting law the benefited provisions clearly mentioned the scope and limitation of an application of such act shall apply upon such people for whom the provisions be benefited that is what reflect in our constitution; but the discretionary power is vested in the Parliament of India may formed a commission in regard of determination of minority and their rights.

Historically the dominant group discourse in India play a great deal of ambiguities towards the religious minorities. Needless to say, the minority self-definition and the majority discourse between the two is crucial for the comprehension of minority question in India.

Let me here make clear firstly, the minority question cannot be understood within a rigid and binary grid of majority-minority relation in India. Secondly, it is important to remember that discourse on minorities are necessarily layered and multifaceted for the simple reason that they are articulated and reproduced in varied locations and informed by conflicting interests and visions.

Thus, it is important to understanding the concept of minorities in India is not about capturing the pure particularism of minorities. Thirdly, it is also vital to see how through the operation of government policies and technologies the category of minority is questioned and how it changes over a period.

Thus, due to absence of any substantive definition, the Union Government established the National Commission for Minority viz., set up by the Act of National Commission for Minority Act, 1992 for identifying the minority among the diverse community. In addition to above, National commission of Minority does not have a constitutional status which if would be given then it recognized as autonomous body and carry their function very effectively.

Moreover, recently the national commission of minority declared that the power to define the term minority is not comes within their jurisdiction as power conferred under the National commission of Minorities Act, 1992.

The main function of this Commissions, inter-alia, are to safeguard the rights and protect the interest of minorities provided in the Constitution and laws enacted by the Parliament and State Legislatures. Moreover, the aggrieved persons by any such act or omission belonging to the specifically declared as minority communities may approach the Concerned State Minorities Commission for the redressal of grievances.

Regarding the questions of minority in India, the scholars<sup>xiv</sup> of Indian Democracy tend to agree that the last two decades of the 20<sup>th</sup> century witnessed a great deal of social churning in the country. A large number of people belonging to the marginal sections of the Indian society finally arrived to stake their claims and asserts their rights in the polity.

The current scenario of minority population in India mainly considered five religious communities, i.e., muslims, christians, sikhs, buddhists and parsi's (zoroastrians) as minority and have been notified as minority communities by the Union Government. Further, Jains<sup>xv</sup> have also been notified as minority community.<sup>xvi</sup>

If we trace the concept of minority is a western concept and developed in the language of political science with the rise of nationalism in Europe during the nineteenth century. In 1932 American sociologist Donald young adopted the term to encompass the groups in the United States distinguished by either biological features or national traits. By the 1960s women were included as minority.

In Indian context, there is no doubt that the religions and religious groups should be treated as equality and with respect to their equality there will be no interfering with their individual rights of faith and worship. Integrity and unity of India by gradually eliminating the minority and majority classes is the constitutional goal. The sense of mutual fear and distrust can create threat to the integrity of the country and sow seeds of multi-nationalism. The Constitution of India has accepted one common citizenship for every Indian.<sup>xvii</sup>

It encouraging the concept of minorities on the basis of religion, for getting special protection, privileges and treatment would be serious jolt to the secular structure of the democracy.

That the idea of giving and safeguard by providing some special rights to the minorities does not implies to have any special kind of a privileged or pampered section of the population of a state or measure in the sense of any special status over the same matter-in-issue but it is fundamentally to give to the minorities a sense of security and a feeling of confidence. The said



rights were designed to create inequality or any type of discrimination on the ground of minority do not belong between us or deserved this.<sup>xviii</sup>

## **HISTORICAL DEVELOPMENT OF THE RELIGIOUS MINORITY GROUPS IN INDIA**

The terms minority if we study in respect of historical sense generally refer to communities whose members have a distinct language and/or culture or religion of their own. Very often, they became minorities as a consequence of a crossing of borders and their settlement area changing from the one land to another; or they are ethnic groups which, for a variety of reasons, did not achieve statehood of their own and instead form part of a larger states or several states.<sup>xix</sup>

Louis Wirth<sup>xx</sup>, who study the minority problems and offered a definition of minority, and define minority as a group of people who because of physical or cultural characteristics, are singled out from the others in the society in which they live for differential and unequal treatment and who therefore regards themselves as objects of collective discrimination. Moreover, minority status carries with it an exclusion from full participation in the life of the society.<sup>xxi</sup>

J.A. Laponce<sup>xxii</sup> in his book<sup>xxiii</sup> categories minority class as a certain group of persons possess certain type of race language or religion rather than that of the majority inhabitants.

According to Encyclopaedia Britannica refer the term minority community refers as group rather than the majority of the inhabitant of a particular territory having held together by ties of common descent, language or religious faith and feeling different.

In the yearbook on Human Rights minority has been described as non-dominant groups having different religion or linguistic traditions than the majority population.<sup>xxiv</sup>

The minorities proved themselves as an Asset, as they broadened and enriched Indian culture and civilization, and in general played a significant role in the development of the Indian society as a whole. They are scattered along the length and breadth of the country from the great Himalayas to the Indian Ocean and from Arabian Sea to the eastern frontiers.

### ***Evolution of Minority Groups in India***

In India, however, the concept of minority rights has a long past, reaching back to colonial times. During the colonial period the ‘depressed classes’ were referred as minority but they are no longer described so after independence. Partition in 1947 did play a crucial role in shaping the discourse on the minority- majority question. Thus the Majority-Minority distinction has over the years has come to be identified with religion. As per the National Minority Commission: Muslims, Christians, Buddhist, Sikhs and Parsi have been notified as religious minority.<sup>xxv</sup>

Let me at this point outline some of the context of religious minority with the help of census,1951. If we analyze the population census of 1951 religious wise, it will be inappropriate to consider only the topper of the list while excluding others.

**Population trends for major religious groups in India (1951)<sup>xxvi</sup>**

Religious group	Population % 1951
Hindu	84.1%
Muslim	9.8%
Christian	2.3%
Sikh	1.89%
Buddhist	0.74%
Animist, others	0.43%
Jain	0.46%

As you can see the above mentioned chart referred the population of religious group, every religion have its own script, culture or language, hence from this point of view it is pertinent to preserve and promote the interest of minority group to consider such religion too who supposed to live within a particular area or territory or such group too who by virtue of identity is necessary to look into.

Analysis of census data reveals that the population of Hindu was so high as other religion. The Muslim community stands with 10% of the whole population. However, the population gradually increased in the same proportion succeeding years. Whereas, the Christians population is one fourth in comparatively to Muslims but has gradually increased in subsequent years. Sikh population showed gradual increase from 1961 to 1991 but has declined thereafter.<sup>xxvii</sup> Buddhist population has grown from 1961 to 1991 but has not shown growth after 1991. It has remained stable.<sup>xxviii</sup>

It is now cleared that in the course of progress population among various community also inclined. Two groups, i.e. Sikhism and Buddhist, has originated and prospered from India. The remaining three viz. Muslims, Christian and Parsis have their roots beyond India.

In this Chapter, the researcher will indulge with the historical development of religious minorities in India.

### **Origin and Growth of Islam in India**

Islam<sup>xxix</sup> is the second-largest religion in India, with 14.2% of the country's population or approx. 200 million people identifying as adherents of Islam.<sup>xxx</sup> The majority of Indian Muslims belong to the Sunni sect of Islam, while the Shia form a sizeable minority. The Cheraman Juma Mosque in Methala, Kerala and Barwada mosque in Ghogha, Gujarat are thought to be the first mosques in India, built before 623 CE by Arab merchants.<sup>xxxi</sup>

Islam mainly arrived in North India and Bengal in the 12th century via the Turkic conquests and has since become a part of India's religious and cultural heritage, with the Delhi Sultanate and Mughal Empire having ruled most of India and the Bengal Sultanate and Deccan sultanates having played major economic and political roles.<sup>xxxii</sup> The peak of the Islamic rule in India was marked under the sharia reign of emperor Aurangzeb, the world's largest economy, upon the compilation and establishment of the Fatawa Alamgiri.<sup>xxxiii</sup> The introduction of further Islamic policies by Mysore King Tipu Sultan contributed to the South Indian culture.<sup>xxxiv</sup>

Trade relations existed between Arabia and the Indian Sub-Continent from ancient times. Even in the pre-Islamic era, Arab traders used to visit the Malabar region, which linked them with the parts of south East Asia. Newly Islamic Arabs were Islam's first contact with India. According to historians, the first ship bearing Muslim travelers was seen on the Indian coast as

early as 630 AD. It is claimed that first Arab Muslims settled on the Indian Coast in the last part of 7th Century AD. It was with the advent of Islam that Arabs became a prominent cultural force in the world. The Arab merchants and traders became carriers of the new religion and they propagated it wherever they went. The first mosque was built in 629 A.D., in Kodumgallur, Kerala. In Malabar, the Mappilas was the first community to convert to Islam as they were close to Arabs.<sup>xxxv</sup>

Although Islam does not recognize any castes, Muslim communities in South Asia apply a system of social stratification.<sup>xxxvi</sup> Muslims in India also follow the caste system, which developed as a result of the concept of *Kafa'a*<sup>xxxvii</sup>. Those who are referred to as *Ashrafs* are presumed to have a superior status derived from their foreign Arab ancestry, while the *Ajlafs* are assumed to be converts from Hinduism and have a lower status. Actual Muslim social practice, points to existence of sharp social hierarchies. Muslims of Arab origin namely *Sayyeds and Shaikhs* are considered superior to non-arab or *Ajami* Muslims.

In general, the Muslims of India like the Muslim world is divided into two main sects, Sunni and Shia. Each sect has many different schools. There are also Muslims who claim to be the descendants from the daughter of Prophet Muhammad and the men in this community add the title Syed before their names, other claim to be the descendants of the first Muslims and add the title Shaikh.

However, Islam came to India in the early of 7th Century with the advent of Arab traders it started to become major religion during the Muslim conquest in the Indian Sub-Continent. Islam spread in India under Delhi Sultanate (1206- 1526) and Mughal Empire (1526-1858).

### ***Evolution of Christians in India***

Christianity is the third largest religion with approximately 24 million followers, constituting 2.3% of India's population.<sup>xxxviii</sup> Christianity originated in Israel. The first Christians were Jews and, in the beginning, Christianity was seen as a Jewish Cult. Most of the Apostles confined their evangelical work to Europe.

The Christian faith was introduced to India by Thomas the Apostle, who supposedly reached the Malabar Coast (Kerala) in 52 AD.<sup>xxxix</sup> It was Apostle St. Thomas who arrived to India in 1st Century. Christianity was introduced in India in 1st Century by St. Thomas, one of the twelve apostles of Jesus Christ.

Christianity is the first foreign religion in India, which was introduced to natives after been initially introduced to the Jewish Diasporas in Kerala. Christianity in India has different denominations, like Roman Catholic, Oriental Orthodox and Protestants.

There are about 30 million Christians in India.<sup>xl</sup> The major centers of Christianity in India are Kerala, Tamil Nadu, Goa, Manipur and Mizoram. There is also a big community of Christians in Mumbai.

The major two sects of Christians in India are Roman Catholics and Protestants. Roman Catholic is a denomination practiced by over 17.3 million people in India, which represents less than 2% of the total population. Most Catholics reside in South India. Goa is home to Roman Catholics. Christianity was introduced to Indians twice, in the 1st Century by St. Thomas and by Europeans in the 13th Century. British and American Missionaries brought Protestantism to India in 18th Century. There is an Anglo-Indian community in India who too follow Christianity.

### ***Evolution of Sikhism<sup>xli</sup>***

The Sikh religion originated in Punjab (northern India). This is where the highest population of Sikhs can be found today, living within towns and villages. Punjab has many holy 'Gurdwaras' (temples), which sees many people from the community coming together to pray daily. These 'Gurdwaras' all have significance and are related to the ten gurus. There currently is 25.8 million Sikhs worldwide, with 75% of these living in the Punjab.

Guru Nanak Dev (1469-1539) was the founder of Sikhism. About 2% of total India's populations are Sikhs. Traditionally, the people belonging from this community maintain the hair and their beard or moustache too. These people wearing turban on the head while gather the hair.



Sikhism is comparatively new religion in India. The Sikh religion was created by the Guru Nanak Dev ji. Since childhood he loves to travel, learn and further preached themselves to humanity. In those days people gave the title of *Guruji*, this term was used for those person who taught and preach. Thus his followers came to be known as Sikh – a word that means learner.

Guru Nanak's teaching included belief and teaching, which were expanded on by the following Gurus at such time period, against the two dominant religions in the Punjab region, that is to say, Hinduism and Islam were mostly prevailed in major part of India. Later on, Guru Nanak Dev ji wanted to establish a religion that would spread the good ideas in the society and establish a prosperous society and further included the same beliefs of these two religions.<sup>xlii</sup>

The Sikh scripture opens with '*Ik Onkar*' is Mul Mantar and fundamental prayer about One Supreme Being (God). Sikhs believe that there is only one God and he is the creator of life and death. They believe that god exists throughout our daily lives although he may not be visible; he is with us in spirit everywhere we go.<sup>xliii</sup>

Sikh population in India is mere 1.87 percent of the total population of the country. Despite of low population it is interesting to note that Sikhs are found all over the country.<sup>xliv</sup>

### ***Evolution of Buddhism in India<sup>xlv</sup>***

Buddhism is the fifth-largest religion in India, with 0.7% of the population identifying themselves as Buddhists that accounts for 8.44 million Buddhists in India.<sup>xlvi</sup>

Buddhism is an Indian religion, which arose in and around the ancient Kingdom of Magadha (now in Bihar, India), and is based on the teachings of the Buddha who was deemed a "Buddha" (Sanskrit term means "Awakened One"). Buddhism spread outside of Magadha starting in the Buddha's lifetime.<sup>xlvii</sup>

Buddhism is a world religion, which arose in and around ancient Magadha, India (Modern Bihar). It is based on the teaching of Siddhartha Gautama, known as the Buddha. Buddha lived and taught in the north eastern Indian Subcontinent sometime between the 6th and 4th centuries BC. He is recognized as an awakened and enlightened teacher who shared his insights to help

sentient beings end ignorance (*avidya*) of dependent origination, thus escaping what is seen as cycle of suffering and rebirth.

The Buddha taught that the goal of life is to escaping the cycle of birth and death by achieving a state of spiritual understanding called nirvana. Buddhists believe they must follow an eight-step path to achieve Nirvana. Nirvana is the highest state that someone can attain, a state of enlightenment, meaning a person's individual desires and suffering go away.

It spread outside of Magadha starting in Buddha's lifetime, and with the reign of the Buddhist Mauryan Emperor Asoka, spread across India and became the dominant religion.

The practice of Buddhism as a distinct and organised religion declined from the Indian land of its origin in around 13th century. The declination of Buddhism has been attributed to many factors such as the regionalization of India after the end of Gupta Empire (320–650 CE)<sup>xlvi</sup> led to the loss of patronage of Indian dynasty, invasion by various groups Huns, Turco-Mongols and Persians and subsequent destruction of Buddhist institution such as Nalanda and religious preachers as well.

Although the declination and further invasion over Buddhism worship and preacher places but never leaving her significant impact. Buddhist practice is common in Himalayan areas like Ladakh, Arunachal Pradesh and Sikkim, Buddhism has been re-emerging in India since the past century, due to adoption by many Indian intellectuals, the migration of Buddhist Tibetan exiles, and the mass conversion of hundreds of thousands of Hindu Dalits.<sup>xlix</sup>

The revival of Buddhism in India can be observed in the year of 1951 when Dr. Bhim Rao Ambedkar pioneered the Dalit Buddhist movement in India. It underwent a major change when after publishing a series of books and articles arguing that the Buddhism was the only way for untouchable to gain equality. Ambedkar publicly converted on October 14, 1956 in Nagpur and then after mass conversion for over three lacs were organized.<sup>1</sup>

In 1959, Tenzin Gyatso, the 14th Dalai Lama escaped from Tibet to India and set up the government of Tibet in Exile in Dharamsala, India, which is often referred to as "Little Lhasa," after the Tibetan capital city.<sup>li</sup> Tibetan exiles numbering several thousand have since settled in the town. Most of these exiles live in upper Dharamsala, or McLeod Ganj, where they established monasteries, temples and schools. "Little Lhasa" has become one of the centres of Buddhism in the world.

The Buddhist population in the modern era nation of India grew at a decadal rate of 22.5% between 1901 and 1981, due to birth rates and conversions, or about the same rate as Hinduism, Jainism and Sikhism, but faster than Christianity (16.8%), and slower than Islam (30.7%). There has not been any remarkable growth in Buddhist population in the last decades.<sup>lii</sup>

If we analyse the process of development of religious minorities in India, it is undoubtedly that most of them have their roots outside from Indian sub-continent. The religion come with the invaders from time to time. Few communities has been established by the leaders for the sake of protect their script, culture and language.

By the leader hereby refer a person whose speech affected people and reflected the way to protect your ethics, values must be united. As a result, people join him for the making a better world. Basically, leader utters word as believed by the common people it is not merely the statement of such person but the word of god. Preacher word just like the leaders, follower interpreted his statement in own senses and derive the said statement justify his personal needs and satisfaction.

Preacher interpretate himself as the messenger of God, and thus it is the duty of his follower to follow the path and obey the order as shown by God, pressured them to preach their religion, and made everyone to join their fleet.

## **LEGISLATIVE DEVELOPMENT OF THE RELIGIOUS MINORITY GROUP IN INDIA**

Let us trace the Legislative development of minority groups, India has been ruled by the Britishers for over 200 years. Prior to the British empire, Mughal emperors ruled was carried over the undivided India during the Ancient era. Interesting fact is that the Hindu community who is now considered as central point of politics been considered as minority under the regime of Mughals.

Although with the entering of britishers initially came for the purpose of trading and commerce took the advantage of loopholes between the rulers and lack of understanding within the rulers went become the hands of puppet. Further, India became chief commercial center of the britishers and hence, they make sure that no one will ever be stand against his interest. For the

purpose of tighten his grip imposed the british laws and regulation and make things more complicated. Therefore, it is necessary to understand the britishers response against the idea of protect the minority community.

### ***Colonial Response against the Protection of Minority***

The colonial response rather than defining the term minority, the colonist merely intend to make sure that the provision of separate electorates, and special reservation of seats was, therefore, ensured representation for every minority community in proportion to the respective populations and gradually the enrolment as minority people were broader.

In the beginning the colonial state considered the minority status on the basis of religious classification that referred specifically to the Muslim religion as subjects of beneficiaries of such special privileges.<sup>liii</sup>

From the above circumstances it is quite clear that there were not any serious efforts made by colonist to give a specific provision regarding the concept of minority, though they merely recognised Muslim religion as a minority community and gave them an adequate representation. But fails to consider and define the term minority on the basis of cultural, language or script.

If we talk about the legislative enactment in the welfare of minority community, it is the Government of India Act of 1919 which accorded Sikhs religion as the same status as Muslim community were enjoyed.

Further, subsequent intervention makes sure the inclusion of many classes or groups or communities as minority. As a result, the Government of India Act of 1935 promised the guaranteed representation to the minority communities in the elected bodies as well as public services on the equivalent proportion of the total population.<sup>liv</sup>

Minorities in official parlance now represented with various identities that often cut across and overlapped the various boundaries of the racial, religious, and ethnic and caste. Apart from colonial response, the minority question was also being framed in the emerging of anti - colonial movement.

As early as in 1927, the All Indian Congress Committee (AICC) in its Madras session demand a series of political, religious and other rights for minority groups. The resolution favored joint

electorates with reservation of seats to ensure proportionate reservation to communities operational in the central and provincial legislature. In addition to this, the same resolution supported 'Liberty of Conscience' that include freedom of religious observances, associations and freedom to carry on religious propaganda.<sup>lv</sup>

The Motilal Nehru Committee on Minorities appointed by the All Parties Conference<sup>lvi</sup> viewed separate electorates as counter-productive to the minority interest, since they made 'the majority wholly independent of the minority and its votes and usually hostile to it'. The committee recommended the abolition of separate electorates and conceded reserved seats in joint electorates to Muslim in the provinces in which they were in a minority and to non-Muslims in the NWFP. The category minority include caste communities such as depressed classes and non-brahmins along with the religious minorities, namely Sikhs, Christians, Jains and Muslims. The congress scheme for the settlement of minority question<sup>lvii</sup> concentrated on cultural realm, assuring protection for language, scripts, religious practices and personal laws in joint electorate. This same assurance reiterated in Jawaharlal Nehru's reply to the 14-point minority charter of Jinnah.

The Tej Bahadur Sapru Committee (1945), appointed against the backdrop of an impending partition, recommended proportional representation in all public offices, legislative bodies and services of the state. This Recommendation featuring the establishment of what Lijphart terms "Consociational democracy"<sup>lviii</sup>. Moreover, the minorities could also secure special rights such as grant-in-aid for minority institution, elementary education for minorities in their mother tongue etc.

Sardar Patel who was the head of the advisory committee of minority, contended that it was no longer appropriate on the ground of religious minorities be assured of reservation of seats in the legislature and offices of public services otherwise it would be seems as the measurement of a certain degree of separatism.<sup>lix</sup>

At the time of final drafting of an Indian Constitution, Sardar Patel after seeing the hoax sentiment among the minority community due to not so worthy constitutional provision for their welfare, made remarkable statement and advised the minorities to the trust the goodness of the majority:



*If they (minorities) really have come honestly to the conclusion that in the changed conditions of this country, it is in the interest of all to lay down real and genuine foundation of a secular state, then nothing is better for the minorities than to trust the good-sense and sense of fairness of the majority, and to place confidence in them<sup>lx</sup>.*

### ***Constitutional Debate regarding Minority Rights***

Now it has been well-established principle at an international level that the question of minority will be resolved by form of identification of language, script, religion or culture. India is known as land of diversity where people of different sectors, caste and religion live together, in other term well known country of multiculturalism as different groups of people co-operate with each other to live in a single society.

Therefore, after the independence of India, it is pertinent to know what was the actual approach of constituent maker regarding inclusion of minority rights under the part of Fundamental Right as to in what manner our constitution will secure the interest and identification of minority groups.

When the question came up before the Sub-committee on Fundamental Rights on March 27, 1947, it was felt that guarantees of this kind more appropriately fell within the scope of the minorities Sub-committee.<sup>lxi</sup>

The latter considered this matter by the sub-committee on April 19, 1947, and recommended the following for incorporation among the fundamental rights in the constitution:

- (I) The citizens of India are entitled to use their mother tongue and the script thereof, and to adopt, study or use any other language and script of their choice accordingly.
- (II) The minority community of every unit shall be adequately protected in respect of their language and culture, and no government by enactment of any laws or regulations that may possibly act as oppressively or prejudicially in this respect.
- (III) That no minority, whether it is religious or linguistic or community based, shall be deprived of its rights or discriminated against in regard to the admission into state educational institution, and nor shall give any kinds of religious instruction be compulsory imposed on them.

(IV) That the minority people, whatever religion, community or language, shall be free to establish and administer educational institution of their will, and they shall be entitled to state aid in the same manner and measure as is given to similar state-aid institution.

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

(VI) No disqualification shall arise on account of sex in respect of appointment of public services or professions or admissions to educational institution save and except that this shall not prevent for the establishment of separate educational institution for boys and girls.<sup>lxii</sup>

Munshi said in the advisory committee on April 22, 1947 that if we traced the genesis of this clause guaranteeing every citizen the right to use own mother tongue, many attempts had been made in Europe and other nations provided the right to use one's language which is to be regarded as their classical right. Though this was based on minorities right contained in the Polish Treaty which later came to form part of the Constitution of Poland.

Govind Ballabh Pant suggested that it could be more appropriate the right recommended by the sub-committee incorporated as directive principle which would be kept in view by the legislature but would not be enforceable by the court of law. But, finally the clauses (ii), (iii) and (IV) with slightly modified were adopted and incorporated as *clause 18* in its interim report.

Clause 18. (1) The minorities of every unit shall be protected in respect of their language, script and culture, and no laws or regulations may be enacted that may operate oppressively or pre-judicially in this respect.

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

(3) (a) the non- dominant group whatever religion, community or language shall be free to establish and administer educational institutions.

(b) The State shall not, while providing the aid, discriminate against schools under the management of minorities whether based on religion, community or language.<sup>lxiii</sup>

On May 1, 1947, Vallabhbhai Patel moved the above-mentioned clauses for the acceptance of the Constituent Assembly. Many members raised the concern regarding this clause, few contention is that it sought to perpetuate communal institution, and whether by the said clause this country to be partitioned and other hand, many members appealing that the rights of minorities should be absolute rights and not subject to any consideration as to what another party might like to do to minorities within its own jurisdiction.

When on August 30, the Constituent Assembly took up for consideration with several amendments. The few proposed amendments are suggested that the following clauses should not be apply to only on the State aided Educational Institution maintained as it will understand in the benefit of a particular committee or section of the people, and no state should be given to the institution for the purpose of any religious education unless the syllabus of such education duly approved by the concerned state, and also it must include the state aid institution within the purview of the clause (2) make obligatory on state not to discriminate against any minority in the matter of admission.

Further, Munshi justified the sub-clause (2) being restricted to educational institution maintained by the state that there was a large number of private school exclusively run by particular community i.e., Hindu or Muslim or Christian with small grant from the state. So, the question of discrimination in institution could best be dealt with by the state Government and legislatures through administrative action.<sup>lxiv</sup>

All the three amendments were rejected by the Assembly and sub-clause (2) without any modification, after Vallabhbhai Patel had pointed out that this was “a simple non-discriminatory clause against the minorities in the matter of admission to schools which are maintained by the State” and the question of extending the principle to State-aided institutions could be left to the future legislatures, to be adopted wherever the conditions were suitable.<sup>lxv</sup>

The same clause was adopted by the Assembly, was incorporated by the Constituent Adviser in his Draft Constitution as clause 24 with some drafting changes. Commenting on the use of the term “minorities” in the provision, he pointed out that the term had not been defined anywhere in the constitution and that the existing position was so vague that even the

declaration of a particular language as the national language could be said to prejudice the interest of the minorities whose mother tongue happened to be different.

A comprehensive definition of “minorities” was difficult to frame. They might be based on religion, community or language; but to leave a vague justiciable right to undefined minorities was also quite unsatisfactory. B.N. Rau, therefore, suggested for consideration whether the cultural and educational rights conferred by this provision should at all be made justiciable.<sup>lxvi</sup>

The Drafting Committee itself suggested that the words “Language, Script or Culture” be substituted by the word “language, Script and Culture”. The amendment, B.N.Rau pointed out in his notes, was necessary because there were sections of people with a separate language and script but who had no separate culture, and others who had a separate culture but no separate script or language.

For instance, The Muslims in West Bengal did not differ from the Hindus there in respect of their language and script but had a distinct culture of their own; and the Andhra’s people in Orissa had a language and script of their own but not a culture different from that of the majority community. Pattabhi Sitaramayya and others suggested that after the word “religion” the words “caste, creed” be inserted. This contention is also rejected by B.N. Rau further observed that the term “community” was wide enough to include “caste” and the term “religion” covered “creed”.<sup>lxvii</sup>

The Constitutional Debates mainly placed on the point that in what manner the minority, instead of defining it can be protected and what are the grounds should we adopt so that they can assure the inalienable right necessary for the protection of their identity.

From the conclusion of above Constitutional Debate, the dispute regarding the inclusion of minority on the basis of language, script and culture has now by insertion of Article 29 and 30 respectively been ended.

These articles reflect the intention of constituent maker his prominence to safeguard the interest of minority group by virtue of guaranteeing his right under Part III of Fundamental Right of The Constitution of India. Hence if their rights, in future, are violated by the authority they can for the redresses by moving a Supreme Court or High Court under Article 32 and 226 of The Constitution of India.

During the era of colonism the britishers prominence by accorded few religions as minority reflects his intention for welfare of minority community. The Government of India Act, 1909 securing the separate electorate so that an adequate representation would be secured, but it fails to explain the term minority on the basis of cultural, language and script.

This act mainly considered the Muslim as a minority community. Further, The Government of India Act, 1919 categories the Sikh religion as minority community and the later Government of India Act of 1935 affirmed the guaranteed representation in the elected bodies for the people specifically belonging to the whether religious based of Muslim people or Sikhs people or Anglo-Indians groups or Indian Christians community or untouchable class of persons.

To resolve the identical issue of minority groups in India, the sub-committee has been incorporated and proposed various fundamental rights such as entitlement to use their own mother tongue, no minorities whatever the religion or community and every unit of minorities shall be protected. However, later on, during the debate instead of inserting the term 'minority' used any section of citizen as proposed by the Dr. Bhimrao Ambedkar.

## **WHETHER FEDERAL STRUCTURE USEFULLY ADDRESS THE QUESTION OF MINORITY RIGHTS**

Federalism offers the best hope of creating a more stable and harmonious polity, especially in society which are deeply divided along on ethnic lines. To adapt a quotation from the great American Jurists, Felix Frankfurter, "Federalism involves hardship – the hardship of the unceasing responsibility of every citizen."

One of the most urgent problems in the world today is to preserve diversities either they are worth for preserving even if they are not desirable, and at the same time to introduce such a measure of unity as facilitate co-operation. Federalism is the only one to reconcile these ends.

In its broadest terms, federalism can best be described as "an ideology which holds that the ideal organisation of human affairs is best reflected in the celebration of diversity through unity."<sup>lxviii</sup> This has been considered as the best method of power sharing in a democracy. The federalist philosophy has particularly influenced the architect of deeply divided, post-colonial



society as a means of containing ethnically based centrifugal forces, which are an inherent feature of such society.

Federal states are sometimes organised around territorially concentrated minorities. Especially when minorities are not territorially concentrated, some scholar favours “consociational” government structure in which different groups are guaranteed representation in the national government.<sup>lxi</sup>

It is generally assumed that most federal governments are liberal democracies, because the nature of federalism involves the politics of accommodation; however this view has been contrasted by many commentators. Generally speaking, it would be true to say that federalism requires a high degree of co-operation, compromise and mutual toleration on the part of its practitioners – attributes which are more likely to be found in democracies than in totalitarian regimes.<sup>lxx</sup>

Further examining the process of fundamental rights of minorities by virtue of constitutional debate, it is therefore necessary to look into as what is the relationship between federal decision-making structures for the protection of minority rights and substantive provision directly protecting minority group for e.g., guarantee language and educational rights. Are there particular characteristics of minorities that can be protected though federal structures?

### ***Indian Federal Structure***

The Constitution of India uses the term 'Minority' without defining it. The question “what is minority” was posed in *re Kerala Education Bill* case.<sup>lxxi</sup>

The dispute was referred to the courts to address the issue of the defining the term minority. Here the development and disproportionate access of power, has become the recourse to determine the minority status.

The ruling came in first time in the year of 1951 from the Assam High Court by held that the institution wished to be minority status must be targeted on the basis of religion wise of where the concerned community was considerable as a numerical minority.<sup>lxxii</sup>

The Supreme Court commented that “minority” is a term though does not defined in the Constitution of India and hence, in the absence of any statutory definition, it must be held that

the minority community implies such community which is in terms of numerical less than the 50% of concerned state, but the question is not fully answered and yet to be answered, that is to say, what will be the parameters to determine the 50%? whether it would be the 50% of the entire population of India or whether consider the state as a drowning part of the union would be the 50% of the population of a state?<sup>lxxiii</sup>

However, In Re: Kerala Education Bill, the Supreme Court relied on the numerical criterion – the less than 50 per cent benchmark to determine the minority status of a given community. The geographical region in which the community required to be enumerated – whether a province, a district or a taluk – so as to honour its minority claims was, however, left imprecise. Instead, it argued for a context- specific application of the demographic criterion:

Now the question is arise, whether the existence of a minority community should be estimate on the grounds of the population of the whole India ,or the other view is that the whether it should be calculated of the population of a concerned locality where the law is under attack. And if the above states suggestion is extended to the whole of state of kerala then, consequently the minority should be determined by the entire population of the particular state. By allowing this test the following religion such as christians, muslims and Anglo-Indians will certainly be considered as the minority in the State of Kerala.<sup>lxxiv</sup>

The Government of Kerala contended that the minority must be a minority in the terms of numerically, the particular region in which educational institution was situated in order to claim the fundamental right of the minorities. And, in support of its contention it made reference to Assam High Court ruling wherein it was held that the persons who are wishes to be considered as minority must be, in actual sense, being a minority over the concerned region in which the institution is involved is situated.<sup>lxxv</sup>

The Supreme Court found this test as unsatisfactory and raised the question, if we take the state as a unit then what is the unit to be taken considered. Whether we take district as a unit or its municipality or wards? The court did not express any final opinion as to the criterion for determination of minority, that is

- (a) Whether it should determine on the basis of population of the whole state in all circumstances for purpose of laws, or

- (b) Whether it should be determined on the basis of considering the state as the unit where the validity of such law is in question, or
- (c) Whether the determination should be based on the population of a particular locality where the law under attack is applied to concerned locality.

In the present case, since the bill extended to the whole of the state of Kerala, the court considered the whole of the state population for determination of minority.<sup>lxxvi</sup>

If we examine from this point of view, the use of the word 'minorities' in the marginal note of Article 29(1) is somewhat misleading because that might suggest that it is confined to a section of the citizens who constitute a numerical minority in the state in relation to a State law.<sup>lxxvii</sup>

But the text of Art.29(1) says that it would refer to *any section* of the citizens who may possess a distinct language, script or culture which is totally different from the majority community, even though they may not belong to a 'minority' community in the sense of Art.30(1). This was made clear in the D.A.V. College Case.<sup>lxxviii</sup>

“ the scope of Article 29(1) is wider than the Article 30(1), in that, while any section of the citizens, *including* the minorities , can invoke the rights guaranteed under article 29(1), the rights guaranteed under article 30(1) are only available to the minorities *based in religion or language*.....the two articles are *not inter-linked* nor does it permit of their being always read together.”<sup>lxxix</sup>

The nebulous notion of minority has remained as a re-revised theme that has been many times concluded in various judgments and yet it leads to the paradoxical conclusions. A Bench of the Supreme Court once recognized the people belonging from the Arya Samaj community, a reformist sect among Hindus, recognised and give the status of minority to the arya samaj particularly in the region of Punjab, as they characterizes by having a distinct script or culture, specifically Devanagari.<sup>lxxx</sup>

In another instance such decree the court once while passing the decree, declared the hindus a religious minority within the regional Punjab .

The indecisiveness in definition leads the Allahabad High Court also further concluded that the Muslim community in Uttar Pradesh, demographically showed that from the census of 2001, about 18.6 per cent of the total population, had ceased to be a minority status as owing with

respect to their concentration in certain districts of the Uttar Pradesh. In the wisdom of judge's asserted the fact that the hindus in reality sense so divided as they were into multiple sects and castes, constituted minority status in the state of Uttar Pradesh.

Meanwhile the Hindu society too being based on caste (varna) system, is itself divided into various sectors and classes which constituted them as minority groups amongst the hindus. Moreover, the court expressed its concerned with the idea of minority per se that currently observed as 'serious threat to the integrity of the nation'.<sup>lxxxix</sup>

Later on, the definition issue was ,upto some extent, settled by the Supreme Court verdict in the case of T.M.A. Pai Foundation v. the State of Karnataka, wherein a minority, irrespective of religious or linguistic basis, is constructed to be the such constitution of groups which is less than the one-half of the population of particular state. Since the early stage of state formation in india, the states were created on the linguistic basis and thus it was followed in the court's opinion is that the communities who is not speaking the language of the state were considered to be the minority, albeit linguistic.

In determining the definitional issue of religious minorities, however, the 11-judge Bench applied the same condition:

The states have been carved out on the basis of the language of the majority of the persons of that region....therefore the state has to be regarded as the unit for determining 'linguistic minority' vis-à-vis Article 30, then with 'religious minority' being on the same footing, it is the state in relation to which the majority or minority status will have to be determined.<sup>lxxxix</sup>

It is submitted that the idea of minority was also evident in the judgment it becomes quite easy to help and create social conditions so that the list of notified minority can be reduced in paper and done away with altogether. In addition to, the establishment of National Commission of minorities will also help to reduced the problems by means of various suggestions and ways as sufficient to protect and safeguards the minorities.

The court finally adopted the doctrine to promote and encouraging multi-nationalism culture in India and further making claims of recognition as a minority group.<sup>lxxxix</sup>

Lets consider that if following community considered as the minority on the basis of a different religious thought or whether in terms of less in numerical strength or lack of by means of health, or wealth, or education, or power or social rights, will be considered while giving the status of

‘minority’ to any section of citizens in Indian society, then it would be very difficult to suppose that there would be any possible end of such claims in such diverse society as multi-religious and multi-linguistic as Indian is.

A claim made by one group or class of citizens would lead to a same claim made by another class or group of citizens, thus, would lead to a similar claim by another group of citizens and conflict and strife would ensure.

Moreover, with in the hindu society also being based on caste, is itself divided into various minority group. Unless the caste ridden Indian society will be existed, thus no section or distinct group of people are liable to be claimed to declare the majority. All are minorities amongst hindus sections or classes, if each such groups felt afraid with the other groups. Indeed this kind of an atmosphere will create mutual fear and distrust among the member of society be seriously posing threat to the integrity of our nation, which is the sow seeds of multi-nationalism in India.

Articles 29 and 30 are the only two Articles in The Constitution of India which explicitly conferred certain fundamental rights on minorities. The two articles confer the following rights:

- (1) that the citizen of any section have right to conserve its own language, script or culture. (as guaranteed under Article 29(1));
- (2) that the citizen of any section shall have the right to establish and administer educational institution of their choice (as enshrined under Article 30(1));
- (3) that the educational institution not to be discriminated against in the matter of State-aid on the ground that it is under management of a minority (as provided under Article 30(2));
- (4) Right of a citizen that the no one shall be denied to admission into state-maintained institution or state aided educational institution on ground only of religion, race, caste or language. (as mentioned under Article 29(2))

The rights of minority group have been well addressed under Article 29 and 30 of The Constitution of India. Clause (1) of Article 29 addressed the interest of any section of the citizens within its territory while Clause (1) of Article 30 provides the establishment and



administration of educational institution of minorities. Now the question is what the original scope of article 29 and 30 is.

There is some overlapping between Arts. 29(1) and 30(1). The Article 29(1) applied to any section of citizens having a distinct language, while Art 30(1) protects a *minority 'based on language'*. It specifically dealt with Linguistic minority. The linguistic minority for the purpose of article 30(1) is one which has a separate spoken language. It is not necessary that the language should also have separate script. There are number of languages which have no script of their own language, but nonetheless people speaking such a language will constitute a linguistic minority to claim protection of Art. 30.

However Apart from the Indian Constitution, we may see a better perspective for the protection of Minorities people rights as mentioned in the Canada Constitution.

### ***Canada Federal Structure***

Minority Rights have had a long and difficult history in Canada. If we trace the history, in the year of 1600 European began to explore their settlement for e.g., industry, trade, business, specifically by French.

If we look into the history of formation of states in Canada it was the France who established the Quebec City in 1608 and further in 1642 the Montreal city was formed, and declared as a French colony in 1663. Later on, Britain acquired these territories from the French government as a succession of military victories between 1759 and 1763.

Finally in the year of 1867, Canada become independent country and further comprised of federal bonding of ten provinces and three territories in accordance with the principle of British constitution but further she developed his own federal principle with the passage of time.<sup>lxxxiv</sup>

It, therefore, can be observed that due to Canada volatile history has created a necessary step to protect minority rights so that Canada can retain its identity as a fair and tolerant democracy. Canada Constitution recognizes the minority group on the basis of linguistic; the official minority language groups in Canada are French, English and Inuktitut speaking Canadians.

By declaring the English and French language as official language have equality of status and equal rights and privileges as to their use in all institutions of Parliament and government of

Canada.<sup>lxxxv</sup> Everyone has the right to use English or French language in any debates and other institutions too.<sup>lxxxvi</sup>

Linguistic minority educational rights reflects two purposes, firstly education in native language provides an important way to preserve and promote the minority groups language and culture, and secondly, there is also a strong remedial component-designed to protect the French and English minorities from assimilation and to give recognition and encouragement to the two official language groups in Canada.<sup>lxxxvii</sup>

Whereas under Canada Constitution, *Title 8 of The Constitution Of Canada* under the marginal note of “*Minority Language Educational Rights*” specifically dealt with the educational language of the citizens of Canada. The people whose language is English or French considered as linguistic minority population of the concerned province, have the constitutional guarantee to provide their children receive primary and secondary school to be instructed in that language of concern province.<sup>lxxxviii</sup>

It’s an inalienable right vested in the citizens of Canada have the rights to provide the children as to receive instruction in the same language in concerned primary and secondary school.<sup>lxxxix</sup>

Moreover, The rights of citizen of Canada conferred under sub-section (1) and (2) guaranteed their children to receive the instruction in the language of English or French language in the concerned primary and secondary school of the province, and if such right is sufficient, then it is necessary to warrant out of public funds for the minority language instructions; and include also such children who eagerly pursuing and receive the instruction in minority language educational facilities provided from the public funds.<sup>xc</sup>

In Canada it has been seen that the rights has been guaranteeing under Canadian Constitution which justified their interest in view of confirming their language rights, aboriginal rights and reflects the well versed of the multicultural character of Canada. In other words, it mainly dealt with the collective right of the Canadian people so that the French speaking community to enrolled their children in French - Language programme.

Moreover, the charter of Canada considers only the linguistic right<sup>xc<sup>i</sup></sup>, are included ensuring minority educational rights to French speaking Canadian people who living outside of the Quebec city and English speaking citizens within Quebec city too .<sup>xc<sup>ii</sup></sup>

The situation in Quebec is prior to the year of 1974 merely recognizes French language as the official language of the province. Further it offers the more or less recognition of English language. Finally, in 1982 recognizes the rights of the English-speaking minority in Quebec.

It is hereby submitted that in Canada people belonging from minority became centralized on the grounds of linguistic. Therefore, it becomes easier for the respected government to provide the education of minority community by establishing the linguistic based minority institution so that they can understand the very purpose of their culture and script as well. On the other hand, India having a highest population in the world it can be observed that there is no point to centralise the community merely on the basis of language.

Thus to resolve these complexity, the Federal Government of India has established the commission in the name of “National Commission for Minority” and “State Minorities Commission” in the respective sphere, the chief purpose of these commission is to identify the non-dominant group within the respective spheres.<sup>xciii</sup> So that the welfare scheme launched by the government such as scholarship scheme etc., will directly provide benefited to such non-dominant group.

Moreover, for the better outlook of non-dominant group the commission has been established which was composed of seven members headed by Rajinder Sachar, former Chief Justice of the Delhi High Court ( this commission is also known as Sachar Report) made an approach of the contemporary status of Muslim as a minority in India by contending that the status of Muslims is abysmal and made a recommendation known as “15 Point Programme for Minorities”<sup>xciv</sup> which is still highlighted in the main priority of the Ministry of Minority Affairs, Government of India.

## CHALLENGES IN MINORITY RIGHTS

The present federal structure of both the country reflect a different perspective in regard to identify of minority community and protection thereof. This is become possible because of the Canada minority people is centralized on the basis of linguistic form whereas in Indian federal structure we find difficulty to categorise the minority in concise way, because of the differences in socio-culture practices, history and background of the of the minority community lived within specified boundaries and follow their tradition and culture in a different way.

The problem regarding minority community in India is of the problem of identification, problem of security the reason behind to saying this different identities and their small number relative to the rest of the society develop feeling of insecurity this sense of insecurity may get accentuated at times when relation between the majority and the minority communities in a society are strained. Recently with the enactment of the Citizenship Amendment Act, 2019 sparks the debate as to whom the government wishes to include under the purview of the minority status. Indeed, this enactment particularly concerned with the religiously persecuted minority community belonging from the Afghanistan, Bangladesh and Pakistan. But there can be no doubt to ignore the interest of other persecuted minority community too. Thus, Harmonious Construction must be draw to rightly address the problems regarding identification and their protection as well.

Communication is an important way to transfer, receive and propagates your opinion so that a better understanding and interchangeably feelings supposed to happens between two people. Thus, language can be seen as a communication system reflects following person identity and also of their culture, tradition and script as well.

It is true that as we know from the anthropological research, Primitive people speak primitive language that is to say no primitive people on earth today. Indeed, it may true that the “Neanderthals” were the last truly primitive people. It ensured by the by the framer of Canada Constitution for the purpose of safeguarding their ethnicity well sufficed provision regarding the native tongue has been adopted.

The Canada charter provides an opportunity to minority community to learn and speak, and understand their native tongue so that the rights of minority can be preserved and promote it is necessary to know the backgrounds of your culture, tradition and their historical evolution. But

what concerned me mostly is why we fail, in practicality, to adopt these steps of said nation in our country, it is hereby noted that we borrowed the worthwhile provisions of various nation and adopted and well defined in our Constitution of India, then what is the bothering to adopt such helpful provisions.

## CONCLUSION

The constitutional discourse emerging from Article 29 and 30 reduces the concept of minority to a solely cultural entity specifically endowed in terms of rights to preserve religious and cultural practices through the establishment of educational institutions through the medium of vested constitutional guarantee.

Though the questions of minority protection should not aim to establish uniform rules in all areas of public life and valid for any contexts. The nature and scope of the arrangements to accommodate minority claims and protection will necessarily vary from case to case, and cannot be settled a priori and on a theoretical level as armchair speculations.

Minority claims must be the object of negotiations among the groups concerned. If it is true that in some cases ethnicity or faith are non-negotiable in substance, the means and ways in which ethnicity is preserved or religion is practiced can be subject to various practical arrangements, on which the parties concerned may compromise.

On issues where there can be no consensus between majority and minority communities or between host and migrant communities, the purpose of deliberation will be not to agree on universal principles, but to recognise the differences and similarities of the respective communities in order that some form of agreement can be reached, which accommodates the differences in appropriate institutions and similarities in shared ones.

The non-dominant group which is presently disputable issue in Indian history whether we fail to identify or prejudice opinion or discrimination or stereotype thinking. Thus, the identical problem with the minority in term of their rights, the state and the other dominant arena of public opinion which is also the part of universe of shared ideas and beliefs strongly structured by the deep-seated nationalist prejudice against the concept of minority per se.



Therefore, the problems of providing protection, communal tension and riots and lack of representation in civil services and public field can be observed in the sense of less participation minority community occur.

The lack of clarity in defining the terminology leads to a variance in Supreme Court's ruling on similar matters. Every case begins with an attempt by the bench of judges to interpret and defines the term 'minority' based on definition provided by international organization and in previous cases. The interpretation of term determines the judgement of such cases.

Minorities communities are merely left upon the provided political rights guaranteed and ensured representation in elected bodies and public offices as guaranteed during the British era. However, our Constitution merely guaranteed under Part III of Fundamental Rights is to every citizen irrespective of their religious denominations has been extended among others such as right to equality, equality of opportunity in matter of public employment and freedoms to manage religious affairs. Further it ensured by our constituent maker that the prohibition of discrimination on grounds of religion, race, caste, sex or place of birth has been expressly provided and barred everyone to observed the same community in such terminology.

After more than six decades of working of our constitution, the question arises time to time whether our government have been able to fulfill the constitutional duty that was put on to ensure equal progress of all, irrespective of their religious identity. If we look at the 2001 census figure, it is seen that 18.4% of our population comprise religious minority, in other word, in terms of numerical, this was a huge population. Therefore, it must be ensured by our institutions every effort to ensure a feeling of unity among all our citizens.

The essential basis of the Constitution of India was that all citizen were equal and thus every citizen has to promote the spirit of harmony and brotherhood. It was observed that the matters, which were purely religious, were left personal to the individuals and the secular part was taken charge by the State on the ground of public interest and general welfare.

According to Sachhar committee report one- fourth of the muslim children in the age group of 6-14 years have either never attended school or are drops-out for children above the age of 17 years, the educational attainment of Muslims at matriculation is 17%, as against national average at 26%. Only 50% of Muslims who complete middle school are likely to complete secondary education, compared to 62% at national level. This report also drawn attention on

the low level of education attainment among muslim women, muslim in rural area as well as in technical and higher education. The high-level committee has also been made for the improvement of educational status among muslim communities.

The Sachhar committee also suggested to pre-emptive measurement require to implement and ensure their cultural and religious safeguard norms are as follows:-

- To monitor the minority related schemes/programs being implemented by the Ministry of Human Resource Development;
- To monitor the pre-matric scholarship scheme provided to the minority students and its effective implementation;
- To setting up the model school specifically for the minority students;
- To implement the scheme so that infrastructure development of private aided/ Unaided Minority Institution be ensured;
- Quality enhancement Education in Madrasas;
- To suggest modifications, if required, in the schemes of the Ministry of Human Resource Development with a view to cater to the specific needs and requirements of the minority community;
- To study report of previous Committees which have gone into the issues of minority education and welfare and suggest ways and means to implement the recommendations/conclusions of those Committees;
- To advise the Committee on setting up a monitoring mechanism for minority related schemes/programs being run by the Ministry of Human Resource Department;
- The establishment of National council for minority education, and
- Any other issues relating to minority education which the Committee may want to bring to the notice of the Government and National Monitoring Committee for Minority Education.

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## ENDNOTES

- <sup>i</sup> Welcome speech delivered by Justice S. M. Sikri, former Chief Justice of India at the Inaugural Session of the Seminar on Law and Minorities in India on 24<sup>th</sup> April 1971.
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- <sup>vi</sup> EU Network of Independent Experts on Fundamental Rights, Thematic Comment No. 3, The Protection of Minorities in the European Union (2005).
- <sup>vii</sup> Special Rapporteur of the United Nation Sub-Commission on the Prevention of Discrimination and Protection of Minority.
- <sup>viii</sup> Report of United Nation Human Right on Minorities under International Law (E/CN.4/Sub.2/384/Rev.1, para. 568) lastly visited on 5<sup>th</sup> October 2019.
- <sup>ix</sup> Copenhagen meeting was held on the conference on the Human Dimension of the Conference on Security and cooperation in Europe on 1990.
- <sup>x</sup> Francesco Capotorti has been appointed as the Special Rapporteur of the United Nations on Prevention of Discrimination and Protection of Minorities.
- <sup>xi</sup> Report of United Nation Human Rights on Minorities under International Law (E/CN.4/Sub.2/384/Rev.1, para. 568 lastly visited on 5<sup>th</sup> of October 2019).
- <sup>xii</sup> Charter of the United Nation declared Minority right day on 18<sup>th</sup> December 1992.
- <sup>xiii</sup> Article 29 of The Constitution of India.
- <sup>xiv</sup> Hereby scholars such as jyotirmaya Tripathy, Sudarsan Padmanabhan in his book political science published in 2014 mainly focused to dealt with the discourse of minority in India and hinted that the relationship between the religious minorities particularly the Muslim minorities and the state hit on its lowest point.
- <sup>xv</sup>, vide notification details 27<sup>th</sup> January 2014.
- <sup>xvi</sup> The list of minority community has been collected from the website <http://ncm.nic.in/> (Last Visited on 20<sup>th</sup> September 2019).
- <sup>xvii</sup> Sahil Mittal vs. State of Punjab and Ors decide on 17.12.2007
- <sup>xviii</sup> Methew, J. in Para no. 130 of the case of St. Xavier College Society judgment, it observed that the protection of minorities was protection of non-dominant groups.
- <sup>xix</sup> It is important to mention that here my objective is not to distinguish between minority is different than majority. Indeed, these categories are recognized by the dominant people, and thus it will remain considered under democratic theory. As an empirical or descriptive idea these categories is undeniable in most societies. But the question is what will be the factors to determine these non-dominant groups? In my view the minority in question in India cannot be adequately dealt under the dyanic grid of majority and minority.
- <sup>xx</sup> He was an American sociologist and the members of Chicago school of university. His central point of study includes minority group behavior etc.
- <sup>xxi</sup> J.A. Laponce, "The protection of minority" 5 (University of California publication in Political Science, 1960).
- <sup>xxii</sup> The core study of the J. A. laponce is between people and politics where he reflects the strength of the politics undermine the people rights.
- <sup>xxiii</sup> Supra note 21.
- <sup>xxiv</sup> United Nation Publication 1950 ed.
- <sup>xxv</sup> section 2(c) of the National Minority Act, 1992.
- <sup>xxvi</sup> Census of Indian Population in 1951 religion-wise has been collected from the website [https://en.wikipedia.org/wiki/1951\\_Census\\_of\\_India](https://en.wikipedia.org/wiki/1951_Census_of_India). (Last visited on 23 September 2019).
- <sup>xxvii</sup> Population data has been collected from the Census Report, 2001.
- <sup>xxviii</sup> Ibid.
- <sup>xxix</sup> Islam is an Abrahamic, monotheistic religion teaching that there is only one God (Allah), and that Muhammad is a messenger of God.
- <sup>xxx</sup> "India has 79.8% Hindus, 14.2% Muslims, says 2011 census data on religion". Firstpost, August 26 2015. Last Retrieved 28 July 2017.

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xxxix Social stratification is a kind of social differentiation whereby members of society are grouped into socioeconomic strata, based upon their occupation and income, wealth and social status, or derived power (social and political). As such, stratification is the relative social position of persons within a social group, category, geographic region, or social unit.

xxxix Kafa'ah or Kafaah is a term used in the field of Islamic jurisprudence with regard to marriage in Islam, which in Arabic, literally means, equality or equivalence.

xxxix Editorial, "India has 79.8% Hindus, 14.2% Muslims, says 2011 census data on religion". Firstpost, August 26, 2016. Last Retrieved on 14 August 2019.

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xlii

xlii The Gupta Empire was an ancient Indian empire existing from the mid-to-late 3<sup>rd</sup> century CE to 543 CE. At its zenith, from approximately 319 to 543 CE, it covered much of the Indian subcontinent. This period is considered as the Golden Age of India by some historians: - N. Jayapalan, I *History of India*, 130 (Atlantic Publishers, 2001).

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- <sup>lxxix</sup> Para 8, *Supra* note 30.
- <sup>lxxx</sup> DAV College, Jullundur v. the State of Punjab, AIR (1971) SC 1744.
- <sup>lxxxi</sup> State of U.P. v. Anjuman Madarsa Noorul Islam Dehra Kala and Others, Allahabad H.C., Special Appeal Defective No. 322 of 2007.
- <sup>lxxxii</sup> T.M.A. Pai Foundation v. the State of Karnataka, Writ petition no.(C) 317 of 1993.
- <sup>lxxxiii</sup> AIR 2005 SC 3178-9.
- <sup>lxxxiv</sup> Many territory in Canada is formed on linguistic basis. For more detail please visit on <https://minorityrights.org/country/canada/>.(Last Visited on 20<sup>th</sup> September 2019.)
- <sup>lxxxv</sup> Section 16 of Canadian Charter of Rights and Freedoms.
- <sup>lxxxvi</sup> Section 17, *ibid*.
- <sup>lxxxvii</sup> Statement made by the Chief Justice Dickson in the case of Mahe v. Alberta, [1990] 1 S.C.R. 342.
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