A STUDY OF LEGAL STATUS OF MINORITY INSTITUTIONS IN INDIA: A JUDICIAL APPROACH

A THESIS SUBMITTED TO
M. S. UNIVERSITY OF BARODA
AT VADODARA.

FOR THE AWARD DEGREE OF
DOCTOR OF PHILOSOPHY IN LAW

UNDER THE GUIDANCE OF
PROF. (DR.) SYED MASWOOD
FACULTY OF LAW
M. S. UNIVERSITY OF BARODA.
VADODARA.

RESEARCHER

DR KIRAN DENNIS GARDNER

Certificate

This is to certify that the thesis titled: '**A Study of legal Status of Minority Institutions in India: A Judicial Approach**' has been prepared by Dr (Mrs) Kiran Dennis Gardner under my supervision and guidance. The thesis is her original work completed after careful research and analysis of data available in previous work and various judicial pronouncements. The thesis is of the standard expected of a candidate for the Degree of Doctor of Philosophy in Law and I recommend that it be sent for evaluation.

Prof. (Dr) Syed Maswood
Guide
Department of Law
Faculty of Law
M. S. University of Baroda
Vadodara

Dean
Department of Law
Faculty of Law
M. S. University of Baroda
Vadodara

Acknowledgement

*I am highly grateful to My Guide **Prof. (Dr) Syed Maswood** who not only suggested the topic of the thesis but it was due to his constant encouragement that I have been able to complete this thesis Successfully.*

*I am thankful to **Dr G. A. Solanki** who insisted that I should squeeze out time to complete my research.*

*I would like to thank **Dr Rajendra Parikh** for his help and Guidance.*

*I take this opportunity to thank **Dr Namrata Solanki** for her support and for always being there to help when needed. I would like to thank **Ms Tarkeshwari Bulushu** for all the help and good wishes.*

*Help came from all quarters when I needed the most. I am thankful to noted Jurist and **Advocate M.P. Raju** [Supreme Court of India], who in response to my E- mail, couriered his book 'Minority Rights Myth or Reality' with words of inspiration and motivation.*

*Heartfelt thanks to **Mr Shailesh Lohiya and Dr Atul Bhatt**, Librarians, Institute of Law, Nirma University, who went an extra mile to procure the needed research material.*

*I would like to take this opportunity thank my daughters **Denise** and **Karin** who shouldered most of the responsibilities at home so that I could get time to complete my thesis.*

*Last but not the least, I would like to thank my husband, **Dennis Gardner,** who not only constantly reminded me of my work but readily allowed me to work for this second Doctorate studies at the cost of forgoing my company.*

Thank you all for your kind Support.

Dr Kiran Gardner
Researcher.

List of Cases

-x-x-x-x-x-x-

Abbreviations

1. AICTE.....All India Council for Technical Education
2. AMU Act.....Aligarh Muslim University Act.
3. BCI.....Bar Council of India
4. CAT..... Common Admission Test
5. CET.....Common Entrance Test
6. IAY..... Indira Awaas Yojna
7. ICDS..... The integrated Child Development Services
8. IHSDP.....Integrated Housing & Slum Development Programme
9. IIM..... Indian Institute of Management
10. ILO.....International Labour Organisation.
11. ITI..... Indian Technical Institutes
12. JNURM.....Jawaharlal Nehru Urban Renewal Mission
13. LGBT.....Lesbian, Gay, Bisexual and transgender people.
14. M.A.O. College.....Muhammadan Anglo Oriental College
15. MAEF.....Maulana Azad Educational Foundation
16. MCI.....Medical Council of India
17. NCERT.....National Council of Educational Research and Training Programme.
18. NCM, Act.....National Commission of Minority Act
19. NCMEI, Act.....National Commission Minorities Educational

20. NCMP.....National Common Minimum Programme

21. NCRLM..... National Commission for Religious and Linguistic Minorities.

22. NMDFC..... National Minority Development Finance Corporation

23. NOC.....No Objection Certificate

24. NREGP.....National Rural Employment Guarantee Programme

25. NRI.....Non Resident Indians

26. OBC.....Other Backward Classes

27. SGRY.....Sampurna Grameen Rozgar Yojna

28. SGSY.....Swarnjayanti Gram Swarojgar Yojna

29. UGC.....University Grant Commission

30. UN.....United Nations

31. UNESCO.....United Nations Educational, Scientific and Cultural Organisation.

32. UPA.....United Progressive Alliance

33. USEP.....Urban Self-Employment Programme

34. UWEP.....Urban Wage Employment Programme

-x-x-x-x-x-

Content

-x-x-x-x-x-

CHAPTER I

1.1 Introduction

"We must do more to prevent conflicts happening at all. Most conflicts happen in countries, especially those which are badly governed or where power and wealth are very unfairly distributed between ethnic or religious groups. So the best way to prevent conflict is to promote political arrangements in which all groups are fairly represented, combined with human rights, minority rights and broad based economic development."[1]

-------Kofi Annan.

India has a heterogeneous population. There is no homogeneity in Indian population. It has a form of society in which minority groups maintain independent tradition and culture. This is the result of historical and geographical phenomenon in India. Diversity in different geographical areas of the country projects the cultural, religious, linguistic, racial and ethnic differences. There are followers of Hinduism, Islam, Christianity, Parsis, Buddhists, Sikhs, Jains, etc. Each major religion comprises within itself a number of religious denominations and sects. There is a big majority Hindu community as well as minorities based on religion and language. Muslims, Christians, Sikhs, Parsis and Buddhists are recognized religious minorities in India. Division of States in the country is based on linguistic basis; there are linguistic minorities in each State as well.

India has opted for democratic form of government where decisions are made by majority opinion; therefore need to provide safeguards to minority becomes necessary. Most of the countries in the world has therefore identified minorities in their country and have tackled their problems. H. M. Seervai, an eminent Constitutional Law expert, has also expressed that special rights are conferred

[1] Statement on presenting his Millennium Report, 3 April 2000

on minorities because in a democratic country with adult universal suffrage, majorities, by virtue of their number, can protect themselves.[2] India further consists of Scheduled Castes, Scheduled Tribes and other Socially, Educationally and Economically weaker Sections of the people. These groups need protection from exploitation and as well special safeguards to overcome their backwardness.

Special protection of minorities derives legitimacy from the internationally recognized vulnerability of identity-based groups caused by their non-dominance in terms of number and power, which makes it difficult for them to achieve equality in the common nation domain, while preserving their distinct identity. The idea of their guaranteed special rights is as old as the idea of nation state. It got fully reflected in the Charter of the League of Nations and the Treaties on minorities signed under it. Under the multilateral treaties in the UN system, these rights have found more comprehensive and definitive expression in the now-binding Article 27 of the International Covenant of Civil and Political Rights (ICCPR) of 1966, and subsequently in the UN Declaration on Rights of persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992) along with the official explanations by the UN Human Rights Committee in 1994 and by Asbjorn Eide in 2001,[3] which put an obligation on the states parties, including India, to not only give minorities cultural freedom, but to create conditions favorable for the preservation and development of their identity.

The framers of the Constitution had a delicate job to perform. The constitution had to meet the needs and aspiration of all the section of society. Safeguard was assured for people who had distinct Culture, religion or language. Through the special provisions for minority they did their best to safeguard the interest

[2] Servai. H. M. *Constitutional Law of India,* Vol. 3, p1734 (1979)
[3] E/CN-4/sub2/AC51/2001/2 referred in Iqbql A. Ansari's Article:*Minority Education Rights: Supreme Court Judgment,* Economic and Political Weekly, May 10, 2003.

of the various minority groups whether based on religion, language, Culture or Socio-Economic factors so as to give them a sense of security and participation in the national growth.

It is for this reason that makers of the Constitution provided freedom to the minorities in respect to establishment and administration of their educational institutions. Originally the Draft Constitution contained it as ordinary rights with prohibition on part of the State for passing any law which could be called oppressive. But the discussions in the Assembly lead to change it as fundamental rights. The purpose for doing so was explained by Dr. B. R. Ambedkar in the following words:

"The present situation as you find is that we are converting it into a fundamental Rights, so that if a state makes any law which was inconsistent with the provisions of this Article then that much of the law would be invalid..."[4] The expression "Education" in the Articles of Constitution means and includes education at all levels from primary school level to the University level including professional education. Education in Entry 25 List III of the Seventh Schedule to the Constitution means and includes technical education, medical education and Universities, vocational and technical training of labour.[5]

Since the right to conserve the language, Script or Culture also includes its development, one of the important methods to conserve is through Education Institutions. J. A. Laponce rightly said, "The school is to a language what a church is to a religion-the condition of survival."[6] Hence the framers of the

[4] Constituent Assembly Debates, Vol. VII, pp.919-922
[5] Education has been transferred from list II to List III of VII Schedule to the Constitution by 42nd Amendment to the Constitution.
[6] Laponce J. A. *The protection of minorities,* University of California publication in Political Science Volume 1960 Pg 33

Constitution have taken great care in safeguarding Educational rights of the minorities.

Education has been used as a means of preserving the Culture and Language of the group. The Constitution of India provides safeguard for minorities to establish and administer educational institutions of their choice. In the past, education to ethnic and caste was imparted through Madrases, Pathsalas, Gurukuls, etc. which were set by mosques, temples, Maths, etc. Community played a major role in imparting education. In Pre -Independence Era Colleges and Universities like Benaras Hindu University, Aligarh Muslim University, etc were established by different communities. Liberal support of British Government promoted the proliferation of Christian Mission schools which catered to educational and cultural needs of the Christian Community.

After Independence India opted for democratic form of Government. Where majority by their number could safeguard their interest but minority needed special safeguard so that they could preserve their language and culture. Articles 29 and 30 of the Indian Constitution are cultural and educational safeguards provided to minorities. It provides minorities the right to establish and administer educational institutions of their choice. Education not only plays a major role in growth and development of any nation but also helps in breaking the vicious circle of poverty and backwardness. The Constitutional rights conferred on minority are not in anyway favour bestowed upon them, and are not meant to give some extraordinary rights or to treat them as privileged class of the population. It aims at providing a sense of security and belongingness among minority.

The framers of the Constitution had a difficult job to perform and were fully aware of the complex and complicated problem of minority rights especially at the backdrop of partition of India and Pakistan. They made efforts to incorporate in the Constitution guaranteed rights, safeguards and protective

rights. All this is done, with broader interest of national integration and to inculcate confidence among the minorities so that they may be put on equal footing with the majority and should enjoy all the opportunities to participate in the democratic functions of the country. The framers of Constitution of India need to be praised for the protection it affords to the minorities in the country. The framers of the Constitution were quite conscious of the importance of these provisions.

The minority rights are sought to be preserved through fundamental rights. Articles 25 to 30, safeguards religion and culture of minority group in India. Articles 14, 15, 16 and 29(2) seek to protect them from hostile and discriminatory State actions. In the vast country like India, where 'ghettoism' is so common, it is a tight rope walk to assimilate the minorities with rest of the people so that they may not remain separate and isolated and at the same time provide them opportunities to preserve their identity and to secure their distinctive language, script and culture.

Minority rights being fundamental rights are protected by the prohibition against their violation, and are backed by a promise of enforcement. Every legal provision or executive action must confirm to mandates implied in them. The prohibition contained in Article 13 bars the State from making any law abridging or limiting any of these provisions and provides for striking down of any law found inconsistent. The promise of enforcement is contained in Article 32 which provides for the right to move the Supreme Court by appropriate proceeding for the enforcement of Fundamental Rights. This provision imposes a duty upon the Supreme Court to afford protection against any violation and vests right in religious and linguistic minorities to seek remedy in case the rights are threatened with deprivation or infringement. A similar jurisdiction has been confirmed upon the High Courts under Article 226.

The architects of the Indian Constitution in an attempt of striking a balance to assimilate minority in the mainstream and as well providing opportunity to preserve their distinct language, script and culture provided two major Articles in the form of Article 29 and 30 in the Constitution of India. These two Articles are pillars to safeguard the cultural and educational interests of minorities. These two Articles are the result of a compromise of the contending and conflicting parties, at the time of making of the Constitution.

Supreme Court through its numerous decisions has been upholding the rights of religious and linguistic minorities in respect to, i) Declaring a community as a minority community and ii) In respect to establishing and administering minority institutions. Supreme Court has not only upheld the fundamental rights of minorities in large number of cases but has honored the sacred obligation to the minority communities. In *Re: The Kerala Education Bill, 1957 case*[7] the Chief Justice S. R. Das observed,

> "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 the 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. 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 honor our sacred obligation to the minority communities who are of our own."

Through its various judgments the Courts have firmly affirmed that minorities cannot be compelled to surrender their right to administer their educational

[7] [1959]1SCR995

institution to unconstitutional conditions attached for granting of affiliation or recognition. The Courts held that minorities have right to choose their medium of instruction, their teachers and students. It is their privilege to appoint the governing body and take disciplinary action against erring members. The State is permitted to impose only those regulations which would promote academic excellence. Though right to administer does not include right to mal administer. The minority management does have to follow law of the land, like regular tax measures, Contract laws, welfare legislation etc. Minority Educational Institutions are required to conform to norms of natural justice and fair employment policy as there is close affinity between security of tenure of teachers and academic excellence.

1.2 Rationale

Constitution of India ensures minorities' complete equality of citizenship including fundamental rights, a full sense of security in respect of life, culture, religion, property and honour through Constitutional guarantees. Minorities do have further fundamental rights to preserve their language and culture for the same they can establish and administer educational institutions of their choice.

Minorities have established many educational institutions for not only the growth and development of their own community but by and large have contributed to the educational growth of other communities as well. Article 30(1) of the Constitution of India guarantees minorities right to establish and administer educational institutions of their choice. But time and again it has been observed that the government has encroached upon this fundamental right of the minorities. In some cases it has imposed a selection committee for appointment of faculties, where as in some restriction for admission are imposed. In short to get the rights implemented they are compelled to approach the judiciary.

Supreme Court through its various judgments has upheld the Cultural and Educational rights of Minorities embodied in Articles 29 and 30. Various legislatures enacted encroaching the rights of minorities have been struck down by Supreme Court.

Upholding the cultural and educational rights of minority in *St. Xavier's College v State of Gujarat*[8] , Reddy J. observed,

> "In spite of the consistent and categorical decisions which have been held invalid certain provisions of the University Acts of some of the States as interfering with the fundamental rights of the management of minority institutions inherent in the right to establish educational institutions of their choice under Article 30(1), the State of Gujarat has incorporated similar analogous provisions to those that have been declared invalid by this Court. No doubt education is a State subject, but in the exercise of that right any transgression of the fundamental right guaranteed to the minorities will have its impact beyond the borders of that State and the minorities in the rest of the country will feel apprehensive of their rights being invaded in similar manner by other States. A kind of instability in the body politic will be created by the action of a State which will be construed as a deliberate attempt to transgress the rights of the minorities where similar earlier attempts were successfully challenged and the offending provisions held invalid."

Though Education is no more a State subject, now education being on concurrent list due to 42nd Constitutional Amendment, 1976 the encroachment of minorities' rights affects the entire minority community. The researcher has made an attempt to find out as to what are the rights of minority educational institutions? Whether the rights of minority educational institutions have been

[8] (1975) 1 SCR173

infringed? What remedies are available to the minority educational institutions?

Researcher has conducted study of various government Acts, Circular legal provisions relating to minority educational institutions enacted for promotion of rights of minority educational institutions. Researcher has made the study of various judicial pronouncements from the *State of Madras v. S. Srimati Champakam Dorairaj*[9] (1951) to *P. A. Inamdar v State of Maharashtra*[10] (2005) to ascertain the judicial trend. It is a sincere attempt to assess the legal rights of minorities and to ascertain whether they are able to enjoy the same in the independent India.

1.3 Scope of Study

International law defines 'Minority" as "A group numerically inferior to the rest of the population of the State in a non- dominant position, whose members possess ethnic, religious or linguistic characteristics differing from the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language."[11] To prevent the numerical inferiority of the minorities from turning into political and societal inferiority, legal protection of the distributive characteristics of minorities' viz. ethnic, religious or linguistic becomes imperative in a democracy. The duty of democratic State is to safeguard the rights of minorities and to protect them from all forms of discrimination.

In a country, like India, where there is a big majority community, if some safeguards or incentives are not provided, the overall development of the minority community will be at stake and stage may come when it will become

[9] AIR 1951 SC 226
[10] (2005) 6 SCC 537
[11] United Nation, Office of the High Commissioner of Human Rights, *Minorities under international law;* E/CN.4/Sub.2/384/Rev.1, para. 568. [http://www.ohchr.org/EN/Issues/Minorities/Pages/internationallaw.aspx] visited on 31 March 2012.

difficult for them even to survive. In a democratic set-up, where decisions are made by majority opinion, the need to provide safeguards to minorities becomes imperative. It is for this reason that there is no democratic country in the world which does not provide special safeguards for the minorities. Similarly, India too has provided minorities right to establish and administer educational institutions of their choice.

The researcher through this study would try to understand the problem, considering all the related aspects that affect the rights of minority educational institutions. The introspective study of past and present scenario of minorities' educational institutions position during the various eras will be conducted to understand the problem in wider perspective. The need is felt to test the efficacy of the Fundamental rights guaranteed under the Constitution. To do so, judicial pronouncements in cases related to minority educational institutions from 1951to 2005 will be studied. Minorities do feel that they are not being getting their due share and they are been deliberately sidelined. This belief has been strengthened by Sachar Commission report. An attempt to ascertain the truth will be made. Government circulars will be scrutinized to deduce whether there are any circulars infringing the constitutional rights of minorities. An overall effort will be made to determine whether the minorities do really have some rights or is it diluting out.

1.4 Statement of the Problem:

"Minority" is the concept not been adequately defined in the Constitution or in any other Act or Instrument. Researcher through various sources has made an attempt to understand the concept of Minority. After studying the Constitutional and legal provisions safeguarding the minorities' educational institutions rights, judicial approach has been critically analyzed by studying almost all the cases relating to rights of minority educational institutes from

1951 to 2005. Thus researcher intended to limit her study under the following title.

"A Study of Legal Status of Minority Institutions in India: A Judicial Approach."

1.5. Importance of the Study

In democratic system citizens freely make political decisions by majority rule. But rule of majority is not necessarily democratic. It cannot be called fair or just if 80% of the population is not sensitive to the needs of minorities. Minority due to their less number might not be able to effectively represent themselves and their needs. Therefore in a democratic society, majority rule is coupled with guarantees of citizens' fundamental rights, which in turn serve to protect the rights of minorities, whether ethnic, cultural, religious, linguistic or political. The rights of minority should in no way depend on the mercy or good will of the majority and these rights cannot be eliminated by majority vote. The constitutional and fundamental rights of minorities need to be protected because democratic laws and institutions need to protect the rights of all citizens. In such a situation legal protection of minorities becomes an obligation of a state.

Diane Ravitch, scholar, author, and a former assistant U.S. secretary of education, wrote in a paper for an educational seminar in Poland: "When a representative democracy operates in accordance with a constitution that limits the powers of the government and guarantees fundamental rights to all citizens, this form of government is a constitutional democracy. In such a society, the majority rules, and the rights of minorities are protected by law and through the institutionalization of law."

There is a feeling among minorities in India that they have been sidelined and their problems are neglected. Time and again they have approached the judiciary to get their fundamental rights implemented. In spite of the fact that more than sixty years have passed since India achieved its independence yet the minority rights are not yet defined, the law is not yet settled. Though fundamental rights are guaranteed to minority but the term minority is no where defined under the constitution. This has lead to many more claims for minority status.

The researcher intends to study and analyze the existing national and international legal provisions relating to minorities and as well critically examine the judicial trend related to minority rights especially relating to the right to establish and administer educational institutions. The study intends to make a sincere attempt, to examine as to how the conflicts can be resolved?

1.6 Objective of the Study

Article 30(1) provides minorities right to establish and administer educational institutions of their choice. Judiciary has given wide interpretation to this section.The researcher intends to conduct the research with the following objectives:

1. To evaluate the constitutional provisions relating to minority in general and minority educational institutions in particular.
2. To study the concept of minority for national and international perspective.
3. To study the various government regulations that encroach legal rights of Minority Educational Institutions.
4. To study the Impact of Rules and Regulations applicable to minority institutions

5. To analyze the rules related to affiliation, recognition and approval aspects of procedures.
6. To Study the role of Executive approaches of various bodies like State, University, etc
7. To Study the various laws related to minority Educational Institutions.
8. To Study the changing trends and interpretations by judiciary of legal rights of Minority Educational Institutions.
9. To evaluate the effectiveness of minority rights.
10. To suggest appropriate remedies.

1.7 Hypothesis of the Study

Taking into consideration the present status of minorities following hypothesis are formulated:

1. The Constitution of India consists of adequate provisions to safe guard the interest of minorities; the positive spirit is lacking in their implementation.

2. Government Rules and Regulations infringes the minority rights guaranteed under Article 30(1) to establish and administer educational institutions of their choice.

3. The Rules and Regulation of various bodies like Universities, U.G.C., State Board, etc interferes with the minority rights.

4. Acquiring affiliation, recognition or approval by minority educational institution is Herculean task.

5. There are various provisions for the benefit of the minorities but incidents of infringement by State authorities are common.

6. Judicial interpretation and trend has changed considerably with time, which at times has not been in favour of minority educational institutions

7. At the global level the term 'minority' has a wider meaning whereas in India it is limited to a few sections of the society.

8. The scope of Article 30 of the Constitution guaranteeing educational autonomy to minorities has become uncertain and diluted due to the impact of inadequate legal provisions and complicated judicial interpretations.

1.8 Research Methodology

The study is purely Doctrinal in nature. Data will be collected from Primary and secondary sources. International Instruments, Constitution and various laws related to minorities will be studied to understand the existing laws relating to Minority Education Institutions. Circulars of government, educational boards and Universities will be scrutinized to assess its impact on minority educational institutions. Role of Executive will be examined to determine their attitude towards minority educational institutions. Judicial decisions will be carefully analyzed to understand the changing judicial trends

Apex court's decision in the Landmark cases related to minorities viz,

In *State of Bombay v Bombay Education Society's Case,*[12] *Re Kerala Education Bill,* 1957[13]; *Sidhrajbhai v State of Gujarat*[14]; *Rev Father W Proost v State of Bihar*[15]; *Azeez Basha v Union of India*[16] ; *D. A. V College, Jullundur v State of*

[12] AIR 1954 SC 561
[13] AIR 1958 SC 956
[14] AIR 1963 SC 540
[15] AIR 1969 SC 465
[16]AIR 1968 SC 662

Punjab[17]; *D.A.V. College, Bhatinda, etc. v State of Punjab and Ors,*[18] *State of Kerala etc. v Very Rev. Mother Provincial*[19], *St. Xaviers College Society v State of Gujarat*[20]; *Bihar State Madarasa Education Board, Patna v. Madarasa Hanfia Arabic College Jamalia and Ors*[21]. *St. Stephan's College v University of Delhi* [22]; *A.P. Christian Medical Educational Society v Government of A.P*[23]; *T.M.A. Pai Foundation v State of Karnataka*[24] ; *All Bihar Christian Schools Association v State of Bihar*[25]; *Islamic Academy of Education v State of Karnataka*[26]; *P.A. Inamdar v State of Maharashtra*[27], etc. will be critically analyzed to ascertain the changing judicial trend towards the rights of minority educational institutions.

Books written on Constitution of India by eminent authors like H. M. Seervai, M, P, Jain, Durga Das Basu, etc were referred for understanding the Constitutional perspective of the rights of minority educational institutions. Researcher has not come across any book with in depth research on rights of minority educational institutions. Few books that the researcher was able to get on the topic had confined their study to some specific case or few cases or confining the scope of study to limited area. But few good published article dealing with rights of minority educational institutions or rights of minorities were available. Few books were available which dealt mainly with minorities' political rights, or their Socio-Economic condition or relating to Violation of human rights during various riots.

---

[17] AIR 1971SC 1737
[18] AIR1971SC1731
[19] AIR 1970 SC 2079
[20] AIR1974 SC 1389
[21] AIR1990SC695
[22] AIR 1992 SC1630
[23] AIR 1986 SC 1490
[24] (2002) 8 SCC 481
[25] AIR 1988 SC 305
[26] (2003) 6 SCC 697
[27] (2005) 6 SCC 537

Material from various national as well as international conferences, seminars, consultations and workshops is also collected. Most current and day to day developments are collected from various websites, print and electronic media to study the importance of the topic.

Researcher has studied various international instruments to cull out minority rights as envisaged in them. Since Minority is defined nowhere i.e. neither in the Constitution nor in the Constitution Assembly Debate, researcher has made an endeavor to explain the concept based on various international instruments and judicial pronouncement. The research discusses in detail the rights of minority education institutions and provides suggestions to ensure the rights percolates for the benefit of minorities in India.

1.9 Limitation of the study

Minority rights have emerged as a clearly defined area of academic and practical work in many parts of the world. However, in India there is some difficulty as Minority is no where defined in Constitution or Constituent Assembly Debate. Concept of Minority had to be deduced through various international instruments, national legal and Constitutional provisions and through judicial pronouncements.

Researcher has confined the study ***to the rights minority educational institutions as envisage through various judicial pronouncements.*** Researcher has not dealt with any other rights of minority except the right of minority to establish and administer educational Institutions of their choice. This right has been guaranteed under Article 30(1) of the Indian Constitution. Hence the study is focused on existing legislations and land mark judgments of Supreme Court and various High Courts of the country.

1.10 Utility of the Study

The study is specifically important for the minority educational institutions as it will provide comprehensive study dealing with their rights. Improvement in the condition of minorities Education will not only benefit minorities but will also facilitate the minorities' integration into the society, ultimately benefiting both Minority and Majority. The study may be helpful in following ways:

1. In order to avail the rights guaranteed by Constitution and other legal provisions it is necessary for Minority Educational Institutions to be aware of the various rights available to them. This study deals not only with the legal provisions but has also critically analyzed nearly all the cases from 1951 to 2005. The study will give the Minorities Educational Institutions details of all their rights.
2. Researcher has come across few studies conducted on Minority Rights. Studies already conducted mainly dealt with political rights, Socio-Economic Condition etc. Government has set up National Minority Commission for Minority Educational Institutions, to ensure that minorities' rights safeguarded under the Constitution are protected. The study will help the Policy maker, National Commission of Minority, State Commissions for Minority, National Commission for Minority Educational Institution, etc to review the implementation of policies and to overcome lacunae.
3. The study will provide impetus to review decision which has annihilated the rights of minorities. This will contribute to concretize the rights of minorities in the light of various judicial decisions.
4. It will provide base for further research and education.
5. The study will facilitate the researcher to provide sound legal advice to various minority educational institutions.
6. In certain section of society there is aversion to the concept of reservation and safeguards for minorities and other deprived communities. This

leads to tension between minority and majority. Certain benefits for minorities are at times considered as appeasements even by bench. The well documented research study is an endeavor towards conflict resolution.

7. Researcher has already presented a paper in national and State level seminar on the related topic. In future also researcher will be able to participate in Conferences, Seminars, Workshops, etc relating to rights of minority educational institutions.
8. Suggestions provided for minority educational institutions will make them aware of their rights and will equip them to better administer their educational institutes for the betterment of their community and society at large.
9. Nearly all the cases decided by the Supreme Court from 1951 to 2005 ie for the period of 54 years have been critically analyzed. Cases of various High courts have been referred at appropriate places. The study not only provides comprehensive documentation but will also help in implementations of rights of minority educational institutions.

The research will provide an insight into the minority problems. Though, may be a miniscule attempt, but it will provide an opportunity for introspection in this matter, and provide a broader perspective. It is an endeavor to bridge the gap between the communities. It is a genuine effort of conflicts resolution. Researcher has provided a road map for Minority Educational Institutions for effective functioning and serving the needs of their community.

1.11 Scheme of Study

Keeping in mind the nature and objectives of the study the researcher intends to categorize the entire study into Eight Chapters.

The **first chapter** will be an **Introductory** Chapter consists of general introduction along with objectives of study, scope of the study, Statement of the problem, importance of the study, rationale of the study, hypothesis of the study, research methodology adopted and scheme of the study.

The Second Chapter discusses the **Concept of Minority**. The Chapter further deals with types of minorities, definition of minorities as per international instruments and judicial pronouncements. It discusses Constitutional provisions safeguarding minorities rights. The chapter deliberates on the needs for minority rights. After pondering over judges' opinion the researcher has consolidated the chapter with the concept of Minority for research purpose.

The Third Chapter consists of **Historical growth and developments of Minorities in India**. The chapter discusses the linguistic minority and deals with growth and development of religious minorities viz Muslims, Christians, Sikhs, Buddhists and Parsis in detail. Since State is taken as an unit to determine minority, population of minority in each State of India has been discussed.

The fourth Chapter consist of **Constitutional and legal provisions relating to Minority Rights.** The chapter discusses the legal and Constitutional provisions relating to rights of minority educational institutions. Major provisions of National Commission for Minority Act, 1992, National Commission of Minority Educational Institutions Act, 2004, etc are discussed. Rules and Regulations that governs Minority Educational Institutes are critically analyzed. Establishment and functioning of National Minorities Development and Finance Corporation towards growth of Minorities is scrutinized to evaluate its contribution to Minorities economic growth.

Chapter fifth discusses the **Relation between Article 29 and 30 of Constitution of India.** Articles 29 and 30 create two separate rights though it

is possible that the rights might meet in some case. Over the decades, the interplay of these two Articles has been the cause of intense debate, Firstly, touching on issues such as secularism and secondly, the degree of control over private educational institutions maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them. This chapter begins with the discussion of rights guaranteed under Article 29 and Article 30 of the Constitution of India. Further it discusses judicial approach relating to each Sub Clause of Articles 29 and 30. Subsequently, the researcher has discussed the judicial interpretation relating to the relation between Article 29 and 30.

Chapter Six will deal entirely with **Judicial Trend**. The changing trends and interpretation by judiciary will be discussed critically so as to deduce the present trend and judicial approach to problems related to Minority Educational Institutions. The cases on Minority Rights, from the State of Madras v Srimati Champakam Dorairaj (1951) to P. A. Inamdar v State of Maharashtra (2005) have been critically analyzed to understand the judicial approach towards rights of minority educational institutions. In most of the cases Supreme Court has upheld minorities' right to establish and administer educational Institute of their choice.

Seventh Chapter discusses **Minority Right: Establishment of University.** In the case of Azeez Basha v Union of India,[28] it was the first case where the court has held that Aligarh Muslim University is not a minority educational institution, since it is not established by Muslims. In the backdrop of controversy related to this two premier University of the country, researcher has discussed these two cases relating to Aligarh Muslim University and Jamia Milia Islamia exclusively in this chapter.

[28] AIR 1968 SC 662

Chapter Eight is last and **concluding** chapter where researcher has conclude the study and put forward her major findings and recommendations for implementations. Based on the judicial pronouncement the researcher has identified the rights of Minority Educational Institutions and has suggested the roadmap for them to follow so that they are able to enjoy the rights bestowed on them.

Cases referred are tabulated with their relevant citations so that it becomes easy to refer to any of the case and also to know the cases which are studied.

A list of **abbreviations** will be given after the table of cases.

The study will be concluded with a **Bibliography** which will show the various sources from where the material will be collected.

Appendix will provide the Acts that specifically safeguards Minorities Rights viz. National Commission of Minority Act, 1992, National Commission for Minority Educational Institutions Act, 2004 for reference.

-x-x-x-x-x-x-

CHAPTER II

Concept of Minority

"... The promotion and protection of the rights of persons belonging to national or ethnic, religious and linguistic minorities contribute to the political and social stability of States in which they live"[29]

2.1 Introduction

Almost all States have one or more minority groups within their national territories, characterized by their own ethnic, cultural, linguistic or religious identity which differs from that of the majority population. Harmonious relation of one minority with the other and between the minorities and majorities is a great asset to the multi-ethnic and multi-cultural diversity of global society. It is of prime importance that each citizen has respect for individual group's identity. Meeting the aspirations of national, ethnic, cultural, religious and linguistic groups and ensuring the rights of persons belonging to minorities acknowledges the dignity and equality of all individuals.

2.2 Concept of Minority

The expression “minority” has been derived from the Latin word “minor” and the suffix ‘ity’, which means “small in number”. According to Encyclopedia Britannica minorities means “group held together by ties of common descent, language or religious faith and feeling different in these respects from the inhabitants of a given political entity”.

Louis Wirth, who pioneered the study of Minority problems and offered a definition and classification, defines a Minority as, “A group of people who, because of physical or cultural characteristics, are singled out from the others

[29] Preamble of the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities

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"[30] J.A Laponce describes "Minority" as a group of persons having different race, language, or religion from that of majority of inhabitants.

Macmillan and Free Press have published the International Encyclopedia of Social Sciences. In the treatise, the word minority has been defined as follows: "In any society, it is a group which is different from the larger group, in terms of race, nationality, religion or language. Each group thinks it is distinct and looks down upon the other. As regards political power is concerned, the situation is different. The minorities are at the mercy of the larger group, which discriminates against the smaller group."

According to Capotorti's definition for the United Nation[31] "Minority" means a community:

a) Compactly or dispersedly settled on the territory of a state;

b) Which is smaller in number than the rest of the population of a state;

c) Whose members are citizens of that State.

d) Which have ethnic, linguistic or cultural features different from those of the rest of the population.

e) Whose members are guided by the will to safeguard these features.

According to the new Encyclopedia Britannica, "Minority is an aggregate of people who are distinct in religion, language, or nationality from other

[30] Laponce J. A. *The protection of minorities,* University of California publication in Political Science Volume 1960 Pg 5
[31]Pan, Christoph/Beate Sibylle Pfeil, *National Minorities in Europe*, Handbook, Vienna (Braumüller, Ethnos 63, 2003), Volume I and II

members of the society in which they live and who think of themselves and are thought of by others as being separate and distinct." The Oxford Dictionary defines minority as "the condition or fact of being smaller, inferior, or subordinate; smaller number or part; a number which is less than half the whole number.

First of all, it is the number count, or the statistical divide between two or more entities under consideration, resulting in majority/minority division. The minor, since it is numerically less, is perceived to be weak and has to be empowered separately through special measures to make it equal to the majority. In this power relation, the minor is supposed to be subordinate to the major.

Who is a minority? Which community fits into the definition of minority? Who are the beneficiaries of minority rights? These questions and the possible responses thereto have been subject of number of studies and lengthy debates in many forums in which minority protection has been addressed. No definite answers have been found and no satisfactory universal definition of the term "minority" has proved acceptable. The difficulty in arriving at an acceptable definition lies in the variety of situations in which minorities exist. Some live in well defined areas, separated from the dominant part of population, while others are scattered throughout the national community. Some minorities base a strong sense of collective identity on a well-remembered or recorded history; others retain only fragmented notion of common heritage. In certain cases, minorities enjoy a considerable degree of autonomy while in others there is no past history of autonomy or self government. Some minority groups may require greater protection than others, because they have resided for longer period of time in a country, or they have a stronger will to maintain and develop their characteristics.

According to anthropologists Charles Wagley and Marvin Harris[32], minorities have following distinctive characteristics:

1. Minorities are subordinate segments of complex state society;
2. Minorities have special or cultural traits held in low esteem by the dominant segments of society;
3. Minorities are self conscious units bound by special traits which their members share and by the special disabilities which these bring;
4. Membership in a minority is transmitted by a rule of descent which is capable of affiliating succeeding generations even in the absence of readily apparent special cultural or physical traits; and
5. Minority peoples, by choice or necessity, tend to marry within the group.

A Minority or a sub ordinate group is a sociological group that does not constitute a politically dominant plurality of total population of a given society. A sociological minority is not necessarily a numerical minority- it may include any group that is disadvantaged with respect to a dominant group in terms of social status, education, employment, wealth and political power. To avoid confusion, some writers prefer the terms "subordinate group" & "dominant group" rather than "minority" and "majority".

In socio-economics, the term "minority" typically refers to a socially subordinate ethnic group. Other minority groups include people with disabilities, "economic minorities" people who are poor or unemployed, "age minorities" and "sexual minorities" whose sexual orientation is different.

2.3 Sociology of minority groups

Sociologist Louis Wirth defined a minority group as "A group of people who, because of their physical or cultural characteristics singled out from the others in the society in which they live of differential and unequal treatment and who

[32] Dr M. P. Raju; *Minority Rights:Myth or Reality*, Media House, Delhi,2002 Referred on pg 15

therefore regard themselves as objects of collective discrimination."[33] This definition includes both objective and subjective criteria: membership of a minority group is objectively ascribed by society, based on an individual's physical or behavioral characteristics; it is also subjectively applied by its members, who may use their status as the basis of group identity or solidarity. In any case, minority group status as the basis of group identity or solidarity. Minority group status is categorical in nature: an individual who exhibits the physical or behavioral characteristics of a given minority group will be accorded the status of that group and be subject to the same treatment as the other members of that group.

According to the contemporary sociologist, minority is a group of people- differentiated from others in the same society by race, nationality, religion or language who both think of themselves as differentiated group and are thought of by the others as fundamental group identification from within the group and those of prejudice from without and a set of behaviors- those of discrimination and exclusion from without[34].

2.3.1 Racial or ethnic minorities

Every large society contains ethnic minorities. They may be migrant, indigenous or landless nomadic communities. In some places, subordinate ethnic groups may constitute a numerical majority such as Blacks in South Africa under apartheid. International criminal law can protect the rights of racial or ethnic minorities in number of ways[35]. The right to self determination is the key issue.

2.3.2 Religious Minorities

---

[33] Wirth Louis: *The problem of minority group* .page 347 in Ralph Linton (ed.), *The science of man in the world crises.* New York: Columbia University Press, 1945.
[34] International Encyclopaedia of Social Science, 365, in M. P. Raju; *Monority Rights: Myth or Reality,*pg 14, Media House, Delhi, 2002.
[35] Lyal S Sunga (2004) International criminal Law: Protection of Minority Rights Beyond a one Dimensional state: An Emerging Right to Autonomy? Ed Zelim Skurbaty (2004) (255-275)

Persons belonging to religious minorities have a faith which is different to that held by the majority. Most countries of the world have religious minorities. It is now widely accepted that people should have the freedom to choose their own religion, including not having any religion (atheism or agnosticism), and including the right to convert from one religion to another. However in some countries this freedom is constricted. For example in Egypt, a system of identity cards requires all citizens to state their religion – and the only choices are Islam, Christianity or Judaism. As another example, there are allegations of prejudice against Roman Catholics in the USA by Protestants.

A 2006 study suggests that atheists constitute a religious minority in the United States, with researchers concluding: "Americans rate atheists below Muslims, recent immigrants, gays and lesbians and other minority groups in 'Sharing their vision of American Society.' Atheists are also minority groups most Americans are least willing to allow their children to marry.[36]

2.3.3 Gender and Sexual Minorities

While in most societies, number of men and women are roughly equal, the status of women as a subordinate group has led some to equate them with minorities[37]. In addition, various gender variant people can be seen as constituting a minority group or groups, such as inter-sexual, trans-sexual, and gender nonconformists – especially when such phenomena are understood as intrinsic Characteristics of an identifiable group.

An understanding of Lesbian, Gay, Bisexual and transgender people as minority group or groups has gained prominence in the western world since the 19th century. The acronym LGBT is currently used to group these identities together. The phrase sexual minorities can also be used to refer to these groups, and in addition may include fetishists, Polyamorists and people who

[36] The Ultimate outsider! Reported on website www.atheists.org, March 25,2006
[37] Hacker, Helen Mayer 1951 *Women as minority group.* Social Forces, 30, 1951, Pp 60-69.

prefer sex partners of a disparate age. The term queer is sometimes understood as an umbrella term for all non-normative sexualities and gender expressions, but does not always seek to be understood as minority; rather, as with many Gay Liberationists of 1960s and 70s, it sometimes represents an attempt to uncover and embrace the sexual diversity in everyone.

2.3.4 Age Minorities

The elderly, while traditionally or even (in a gerontocracy) dominant in the past, have in the modern age usually been reduced to the minority role economically 'non-active' groups. Children can also be understood as a minority group in these terms, and the discrimination faced by the young is known as adultism, Discrimination against the elderly is known as ageism.

2.3.5 Disabled Minorities

The Disability rights movement has contributed to an understanding of disabled people as a minority or a coalition of minorities who are disadvantaged by society, not just as people who are disadvantaged by the society but as people who are disadvantaged by their impairments. Advocates of disability rights emphasize difference in physical or psychological functioning, rather than inferiority – for example, some people with Autism argue for acceptance of neuro-diversity, much as opponents of racism argue for acceptance of ethnic diversity. The deaf community is often regarded as a linguistic and cultural minority rather than a disabled group, and many deaf people do not see themselves as disabled at all. Rather, they are disadvantaged by technologies and social institutions that are designed to cater for the dominant group.

2.4 Minorities according to law

Law defines a 'minority' as "A group numerically inferior to the rest of the population in a non dominant position." In the politics of some countries a minority is an ethnic group that is recognized as such by respective laws of its

country and therefore has some rights that other group lack. Speakers of legally recognized minority language, for instance, might have right to education or communication with the government in their mother tongue. Countries that have special provisions for minorities include China, Germany, India, Romania, Russia and the United Kingdom.

The issue of establishing minority groups, and determining the extent of privileges they might derive from their status, is controversial. There are some who argue that minorities are owed special recognition and rights, while others feel that minorities are unjustified in demanding special rights, as this amounts to preferential discrimination and could hamper the ability of the minority to integrate itself into mainstream society-perhaps to the point at which the minority follows a path to separatism.

Despite the difficulty in arriving at a universally acceptable definition, various characteristics of minorities have been identified, which, taken together, cover most minority situations. The most commonly used description of a minority in a given State can be summed up as **a *non-dominant group of individuals who share certain national, ethnic, religious or linguistic characteristics which are different from those of the majority population.*** In addition, it has been argued that the use of self-definition which has been identified as "***a will on the part of the members of the groups in question to preserve their own characteristics***" and to be accepted as part of that group by the other members, combined with certain specific objective requirements could provide a viable option.

Protection of minorities is the protection of non-dominant groups, which, while wishing in general for equality of treatment with the majority, wish for a measure of differential treatment in order to preserve basic characteristics which they posses and which they distinguish them from the majority of the population. The protection applies equally to individuals belonging to such groups is justified in the interest of welfare of the community as a whole.

The Indian Constitution may justifiably be described as secular and multicultural but in a specific way. Difference is recognized but so also are the values of equal citizenship and equal rights. After protracted discussions in the Constituent Assembly, assimilation on terms of equality was offered to caste and class based minorities in the Constitution, but it was felt that to achieve this it would be necessary to recognize caste in the Constitution as a cause of inequalities and as a basis for affirmative action. At the same time, recognition and protection was offered to religious, cultural and linguistic minorities. Equal respect, fairness and non discrimination were to be the guiding principles of state policies towards minorities and no wall of separation was envisaged between State and religious activities

A meaningful conception of minorities would include sections of people who, on account of their non-dominant position in the country as a whole, are targets of discrimination and therefore deserve special consideration.

The protection applies equally to individuals belonging to such groups is justified in the interest of welfare of the community as a whole.

2.5 Minority as per international law

Almost all states have one or more minority groups within their national territories, characterized by their own ethnic linguistic or religious identity which differs from that of majority population. A harmonious relation among minorities and between minorities and majorities and respect of each group's identity is a great asset to multi ethnic and multi cultural diversity of our global society. Meeting the aspirations of national, ethnic, religious and linguistic groups and ensuring the rights of persons belonging to minorities acknowledges the dignity and equality of all individuals, furthers participatory development, and thus contributes to the lessening of tensions among groups and individuals. These factors are major determinant of stability and peace.

Generally, the minority is thought as the opposite of the majority. In democratic societies, it is based on the numerical ratio to the population as a whole in particular place. There are times when the majority is minority and minority is majority. In international law the term minority is commonly used in restricted sense. It has come to refer chiefly to a particular kind of group which differs from the dominant group within the state. The origin of minority group may be possible in any of the following manners[38]:

1) it may formerly have constituted an independent State with its own tribal organization;
2) it may formerly have been part of a State living under its own territory, which was later segregated from this jurisdiction and annexed to another State; or
3) it might have been, or yet be, a regional or scattered group which although bound to the predominant group by certain feelings of solidarity, has not reached even a minimum degree of real assimilation with the predominant group.

Minority can be identified by following distinguishing features[39].

1. A minority group is a subordinate social group. Its members suffer disadvantages resulting from prejudice and discrimination. These may include segregation and persecution.
2. The members of a minority group have their own physic, culture, dialect, etc. which is the dominant group holds in low esteem. The group usually has distinguished characteristics.
3. The members of minority group identify themselves as a part of the group. There is an in–group feeling of loyalty.
4. Membership in minority group is usually not voluntary. It is by birth.

---

[38] United Nations "Definition and classification of Minorities," 1950, p.9.; in Dr Chandra Satish, *Minorities in National and International Laws*, Deep & Deep Publications, New Delhi, 1985

[39] Charles Wagley and Marvin Horris, *Minorities in the New World,* 1964, pg 4-11 quoted in Dr Chandra Satish, *Minorities in National and International Laws*, Deep & Deep Publications, New Delhi, 1985

5. Members of a minority group have strong bound of brotherhood and generally believe in endogamy.

First time the term "Minority" evolved as a legal and constitutional concept after First World War. Further, the rights of minority were recognized through various international pronouncements. In the case of Acquisition of Polish Nationality, the Permanent Court of International Justice defined minority as inhabitants who differ from rest of the population in race, language or religion.[40] The protection of minorities slowly evolved and came to be covered within the concept of Human Rights and fundamental freedoms as enshrined in the United Nations Charter.

Concern over the protection of certain minority groups was raised by the League of Nations at the end of the First World War. However, this organization for international peace and cooperation, created by the victorious European allies, never achieved its goals. The League floundered because the United States refused to join and because the League failed to prevent Japan's invasion of China and Manchuria (1931) and Italy's attack on Ethiopia (1935). It finally died with the onset of the Second World War (1939).

In 1947, the system for the protection of minorities, as groups established under the League of Nations and considered by the United Nations to have outlived its political expediency, was replaced by the Charter of United Nations and the Universal Declaration of Human Rights and Freedoms and the principle of non- discrimination and equality. The view was that if the non-Discrimination provisions were effectively implemented, special provisions for rights of minorities would not be necessary. It was very soon evident, however, that further measures were needed in order to better protect persons belonging to minorities from discrimination and to promote their identity. To meet this

[40] 1923 Series B.7, page 14 quoted in Minorities and the Law at page 78, in M. P. Raju; *Monority Rights: Myth or Reality,* pg 14, Media House, Delhi, 2002.

end, special rights for minorities were elaborated and measures adopted to supplement the non- discrimination provisions in international human rights instruments.

The term “minority group” often occurs alongside a discourse of civil rights and collective rights which gained prominence in the 20th century. Members of minority groups are prone to different treatment in the countries and societies in which they live. This discrimination may be directly based on an individual’s personal achievement. It may occur indirectly, due to social structures that are not equally accessible to all.

In the international sphere, the demand for special safeguards to protect the cultural or linguistic identity of minority communities has emerged from the principle that owing to war or like circumstances causing territorial changes without the consent of people residing in those territories, the identity of such communities who have been torn as under by circumstances beyond their control should be preserved from ethnic extinction, by affording safeguards through International Charters and National Constitutions.

The human rights of minorities are explicitly set out in Universal Declaration of Human Rights, the International Covenants, The Convention of Elimination of all forms of Racial Discrimination, The Convention on the Rights of the Child, The Declaration on Rights of persons belonging to National or Ethnic, Religious or Linguistic Minorities and other widely adhered to international human rights treaties and Declarations.

The idea underlying the treaties for the protection of minorities is to secure for certain elements incorporated in a State, the population of which differs from them in race, language or religion, the possibility of living peaceably alongside that population and co-operating amicably with it, while at the same time

preserving the characteristics which distinguish them from the majority, and satisfying the ensuring special needs.

In order to attain that object, two things were regarded as particularly necessary, and have formed the subject of provisions in these treaties.

The first is to ensure that nationals belonging to racial, religious or linguistic minorities shall be placed in every respect on a footing of perfect equality with the other nationals of the State. The second is to ensure for the minority elements suitable means for the preservation of their racial peculiarities, their traditions and their national characteristic.

These two requirements are indeed closely interlocked, for there would be no true equality between a majority and a minority if the latter were deprived of its own institutions and were consequently compelled to renounce that which constitutes the very essence of its being a minority.

The Commission of Human Rights did not define the term minority before setting the Sub- Commission on Prevention of Discrimination and Protection of Minorities. The U. N. Assembly also did not define the term, "Right of peoples to self determinations" before proclaiming the application of the principle. Lack of proper definition was no obstacle to the drawing of the numerous international instruments containing provision on the rights of certain groups of the population to preserve their culture and use their own language. The terminology used to refer such group s varies from one instrument to another. For example, the UNESCO Convention against Discrimination in Education mentions 'National Minorities', while the expressions 'National, Ethnical, Racial or Religious groups' is used in the Convention on the Prevention and Punishment of the Crime of Genocide and 'Racial or ethnic groups' in the International Convention on Elimination of All Forms of Racial Discrimination.

The U. N. concept and protection of minorities came to be incorporated in its Covenant on Civil and Political Rights. India is a party to the International Covenant on Civil and Political Rights. Article 27 of the Covenant explicitly recognizes the rights of "ethnic, religious, or linguistic minorities".

Article 27 of the **International Convention on Civil and Political Rights** does not define the word Minority but gives them the following rights – 'In those states in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, a community with the other members of the group, to enjoy their own culture, to profess and practice their own religion or to use their own language'.

On analysis of the above Article, it is clear that the protection is available to only ethnic, religious or linguistic minorities who are already in the existence. Other groups or newly created minority groups have not been protected under this Article.

As per the interpretation of the Article following rights have been conferred on the minorities.

1. To enjoy their own culture,
2. To profess and practice their own religion, or to use their
3. To use their own language.

In examining the three rights guaranteed in Article 27, it should be remembered that the rights do not exist in isolation there is a link between them since water tight compartments cannot be created between these rights.
The United Nations[41] has sort two criteria to define the term minority. These criteria are:

i) Objective Criteria
ii) Subjective Criteria

[41] United Nations, *Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities,* (1979) U. N. Publication; quoted in Dr Chandra Satish, *Minorities in National and International Laws*, Deep & Deep Publications, New Delhi, 1985.

Objective Criteria

i) The first and foremost requirement is that of existence, within the State there has to be distinct groups possessing stable ethnic, religious or linguistic characteristics that differ sharply from rest of the population.

ii) Second criterion is the numerical size of such groups. It means that these groups must be numerically less to the rest of the population.

iii) The third criterion is non dominant position of the groups in question in relation to the rest of the population. It should not be that the minority is in dominant position ruling over the majority. For example, the black majority is ruled by the white who are minority in South Africa.

iv) The fourth criterion is the juridical status of members of the groups. It is necessary that the members of the minority groups must be nationals of the State.

Subjective Criteria.

The requirement of subjective criteria is a will on the part of the members of the groups in question to preserve their own characteristics. In preserving, the will generally emerges from the fact that a minority groups have kept its distinctive identity over a period of time. Once the existence of a group or particular community having its own characteristics in relation to the population as a whole is established, this identity implies solidarity between the members of the group, and consequently a common will on their part to contribute to the preservation of their distinctive identity.

In Article 27 of the Covenant, the term 'Minority' may be taken to refer to:

1. A group numerically less to the rest of the population of the State;
2. In a non – dominant position;
3. Whose members being nationals of the State possesses ethic, religious or linguistic characteristics differing from those of the rest of the population; and
4. These members show a sense of solidarity towards preserving their culture, traditions, religion or language.

The **Convention on the Rights of Child**[42], contain provision addressing the rights of the minorities. Its Article 30 states:

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

A special Subcommittee on the Protection of Minority Rights appointed by the United Nations Human Rights Commission in 1946 defined the 'minority' as those "non-dominant groups in a population which possess a wish to preserve stable ethnic, religious and linguistic traditions or characteristics markedly different from those of the rest of the population." It was also stated by the sub- commission that only those sufficient by themselves to develop these characteristics and loyal to the country of which they may be the nationals can be termed minorities.

The U.N. Sub-Committee on Prevention of Discrimination and Protection of Minorities has defined a minority as follows:
A group of citizens of a State, constituting a numerical minority and in a non-dominant position in that State, endowed with ethnic, religious or linguistic characteristics which differ from those of the majority of the population, having a sense of solidarity with one another, motivated, if only implicitly, by a collective will to survive and whose aim it is to achieve equality with the majority in fact and in law.

The **United Nations Commission on Human Rights** in 1950 had defined ***minorities*** as below:

[42] Adopted by UN GA Res 44/25 of Nov. 1989(1577UNTS, 3) entry into force 2 Sep. 1990.

"Only those communities other than the ruling national community can be termed as minorities, who want to have a language, religion or race different from the language, religion and race of the national community. It is essential for being recognized as minorities that they should be sufficient in number and their constituents should be faithful to the nation in which they live."

The situation in India is different in a number of significant ways to the situation in western countries like the United States, Germany or Canada. Indian society incorporates a bewildering number of minorities identified by factors like religion, caste, class or region. Moreover, the boundaries of all nation-states are expected to grant equal legal and human rights to such minorities, and not to practice any sort of discrimination against them. The United Nation Organization lays stress on it. Such groups have always been somewhat fluid and overlapping. However, the quintessential minority in most people's perception is the religious minority.

The question of who constitutes a minority, thus, has more to do with political and power relationships than with numerical characteristics. Ethnic groups which are subject to illegitimate discrimination in law or fact may be considered as minorities.

2.6 Minority as per the Constitution of India

The architects of the Indian Constitution guaranteed to minorities all necessary rights and freedoms but have no where defined the expression "Minority". There is no parliamentary legislation either defining a 'minority.' The Motilal Nehru Report (1928) showed a prominent desire to afford protection to minorities, but did not define the expression. The Sapru Report (1945) also proposed, *inter alia,* a Minorities Commission but did not define Minority.

The Constituent Assembly had set up Advisory Committee under the Chairmanship of Sardar Vallabhbhai Patel on the subject of Fundamental rights including rights of minorities, with the twin objectives of eliminating the chance of religion exploiting the State and vice-versa. The Advisory Committee appointed five sub-committees. One was the minorities sub-committee headed by H.C. Mukherjee a Christian leader from Bengal.

The Advisory Committee accepted the recommendations of Sub Committee partially and recommended the following clause to the Constituent Assembly:

1. Minorities in every unit shall be protected in respect of their language, script and culture, and no laws or, regulations may be enacted that may operate oppressively or prejudicially in this respect.
2. No minority whether based on religion, community or language shall be discriminated against with regard to admission into State educational institutions, nor shall any religious instruction be compulsorily imposed on such minority.
3. (a) All minorities whether based on religion, community or language shall be free in any unit to establish and administer educational institutions of their choice.

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

The clause was incorporated as clause 24 with some drafting changes in the Draft Constitution prepared by the Constitutional Advisor. The Drafting Committee revised the text of clause 24 twice, the most significant change being the re-drafting of sub-clause (1). The clause finally took the shape as Article 23 of the Draft Constitution. The Drafting Committee, at the revision

stage divided Article 23 into two separate Articles - Article 29 and 30 as now contained in the existing Constitution.[43]

Due to the partition of country there was a strong feeling against the communal forces and hence no attempt was made on any occasion even to define the term “minority” in precise words. The feeling was so strong that the words “certain classes” were substituted for the word “minorities” wherever it occurred in the text of the Constitution. Not only is the use of the term minority in the Constitution very rare but also no group is mentioned explicitly as a minority therein. The term ‘minority’ is mentioned in only two Articles, 29 and 30.

The expression 'minority' has been used in Article 29 and 30 of the Constitution but it has nowhere been defined. The Preamble of the Constitution proclaims to guarantee every citizen 'liberty of thought, expression, belief, faith and worship'. Group of Articles 25 to 30 guarantee protection of religious, cultural and educational rights to both majority and minority communities. It appears that keeping in view the constitutional guarantee for protection of cultural, educational and religious rights of all citizens, it was not felt necessary to define 'minority'. Minority as understood from constitutional scheme signifies an identifiable group of people or community who were seen as deserving protection from likely deprivation of their rights by other communities who happen to be in majority and likely to gain political power in a democratic form of Government based on election.

In the back ground of constitutional scheme, the provisions of the Act therefore instead of giving definition of 'minority' only provide for notifying certain communities as 'minorities' who might require special treatment and protection

[43] Patel Akhilesh, article on Concept of ‘Minority’ and ‘Minority Status’ under Indian Constitution. http://jurisonline.in/2011/04/concept-of-%E2%80%98minority%E2%80%99-and-%E2%80%98minority-status%E2%80%99-under-indian-constitution/visited on 4/06/2011

of their religious, cultural and educational rights. The definition of 'minority' given under the National Commission of Minority Act, 1992 is in fact not a definition as such but only a provision enabling the Central Government to identify a community as a 'minority' which in the considered opinion of the Central Government deserves to be notified for the purpose of protecting and monitoring its progress and development through the Commission.

2.6.1. Religious Minorities

If we see the provisions of the Constitution it talks about only two kinds of minorities' i.e. Religious and linguistic minorities. India is a land of diversity consisting of different religions with Hindus in majority. According to the 2001 census the religious composition of the population is as follows-

Religious Composition of the Indian Population

Religious group	Population (%)	Growth (%)	Sex Ratio(199120 01)	Literacy (%)	Work participation	Sex ratio(rural)	Sex ratio(urban)	Sex ratio(child)
Hindu	80.46	20.3	931	65.1	40.4	944	894	925
Muslims	13.43	36	936	59.1	31.3	953	907	950
Christian	2.34	22.6	1009	80.3	39.7	1001	1026	964
Sikh	1.87	18.2	893	69.4	37.7	895	886	786
Buddhist	0.77	18.2	953	72.7	40.6	958	944	942
Jain	0.41	26	940	94.1	32.9	937	941	872
Others	0.65	103.1	992	47	48.4	995	966	976

Source: Census report 2001

Thus we find that except Hindus all followers of other religion are minorities for a National Act or law, however in a state enactment the Hindus might also be in minority and national minorities might be in majority e.g. in Kashmir, Hindus are in minority and Muslims in majority. Similarly Christians are in majority in some eastern states whereas Hindus and Muslims are in minority.
In order to ensure the protection of religious minorities the state has been constituted under the principle of secular notion and several religious rights has been granted to the people and religious institutions under Article 25 and 26 with certain restrictions. A secular State does not mean an irreligious State, it only means that in matters of religion it is 'neutral', the State can have no religion of its own, and the State protects all religions but interferes with none. In a secular State, the State is only concerned with the relation between man and man; it is not concerned with the relation of man with God. The concept of secularism is one facet of the right to equality and implies that in matters of State, religion has no place, in other words State rights and benefits do not depend upon religion. Now 'secularism' has been elevated to the status of basic feature of the Constitution against which no law can be enacted and any State Government which acts against that ideal can be dismissed by the President.

The National Commission for Minorities Act, 1992 enabled the centre to notify minorities for the limited purposes of that Act only and in exercise of that power, the government had notified five religious communities- Muslims, Christians, Sikhs, Buddhists and Parsis- to be regarded as minorities. These five communities constitute 17%[44] of the country's population.

As will be seen from the published results of the 2001 Census, Hinduism is by far the major religion of India. Thus, persons categorized as Hindus make up 80.5 % of the total Indian population. Furthermore, this is a figure which has

[44] http://socialjustice.nic:in/obes/minority.htm

been constantly decreasing since the Census of 1961, when the figure was 83.4 %.[45] By far the largest religious minority in India consists of people belonging to Islam, to which 13.4 % of people belong. This is a figure which, if we look at it from a historical perspective, has increased almost in proportion to the decrease in the number of Hindus. Thus, in 1961 only 10.7 % of the populations were Muslims. This means that the increase in Muslims within the last 40 years has been 2.7 % of the total population, whereas the decrease in the number of Hindus has been 2.9 %. Second among the religious minorities are the Christians who in 2001 made up 2.3 % of the total population. Apart from a slight decrease of 0.1 %, this percentage has been more or less stable since 1961. The third religious minority is the Sikhs with 1.9 % of the total population. This figure has also been comparatively stable with slight increase of 0.1 since 1961. Fourth are Buddhists who made up 0.8 % of the total population, a slight increase of 0.1 % since 1961. The Buddhists found in contemporary India are mainly of two varieties. The largest is the so-called Neo-Buddhists who are actually untouchables or Dalits who since the first half of the 1950's have converted to Buddhism under the influence of Dr. Ambedkar in order to try to escape from Hindu suppression[46]. The other group consists of Tibetian Buddhist most of whom are refugees from the Chinese occupation of Tibet in 1951. Included among the group of others are the two small religious communities of Parsis and Jews. According to the 1991 Census 76,382 persons were registered as belonging to the old Zoroastrian faith, while in the same year only 5271 Jews were left in India[47]

[45] http://www.censusindia.net/religiondata/presentation_on_religion.pdf.

[46] Eleanor Zelliot, *From Untouchable to Dalit. Essays on the Ambedkar Movement*, New Delhi 1996

[47] With regard to the data of the 2001 Census, Parsis and Jews have been included under the rubric 'others'. However, according to the *Brief Analysis of Census 2001 Religion Data*, the number of Parsis were 69.601 (http://www.censusindia.net/religiondata/Brief_analysis.pdf). According to non-official sources the number of Jews was about 4000 (http://www.answers.com/topic/demographics-of-india). Visited on 22nd December 2011

As the sixth minority we find the Jains, who are adherents of an old indigenous religion, a little bit older than Buddhism. They make up 0.4 % of the population, a figure which has decreased by 0.1 % since 1961.

The National Commission for Minorities Act 1992 says that "Minority, for the purpose of the act, means a community notified as such by the central government" – Section2(c). Acting under this provision, on October 23, 1993 the central government notified the **Muslim, Christian, Sikh, Buddhist and Parsis (Zoroastrian) communities to be regarded as "minorities" for the purpose of this act.**

In several States (e.g. Himachal Pradesh, Jharkhand, Madhya Pradesh, Maharashtra, Uttar Pradesh and Uttarakhand), Jains have been recognized as a minority. The Jain community approached the Supreme Court seeking a direction to the central government for a similar recognition at the national level and their demand was supported by the National Commission for Minorities. But the Supreme Court did not issue the desired direction, leaving it to the state government to decide the issue (*Bal Patil v Union of India*[48]). In a later ruling however, another bench of the Supreme Court upheld the Uttar Pradesh law recognizing Jains as a minority (*Bal Vidya Mandir, Etah, U.P. v Sachiv, U.P. Basic Shiksha Parishad, Allahabad, U.P. and Ors.*[49]).

2.6.2. Linguistic Minority

So far as linguistic minority is considered India has more than 1650 mother tongues, belonging to five different language families. They are rationalized into 216 mother tongues, and grouped under 114 languages by the 1991 Census: Austro-Asiatic (14 languages, with a total population of 1.13%), Dravidian (17 languages, with a total population of 22.53%), Indo-European (Indo-Aryan, 19

[48] AIR 2005 SC 3172
[49] MANU/SC/3685/2006

languages, with a total population of 75.28%, and Germanic, 1 language, with a total population of 0.02%), Semito-Harmitic (1 language, with a total population of 0.01%), and Tibeto-Burman (62 languages with a total population of 0.97%). Earlier the territorialities of provinces or States were done mostly for administrative convenience ignoring the ethnic, religious, social, and linguistic aspect of the society. The Constitution of India originally listed fourteen languages Assamese, Bengali, Gujarati, Hindi, Kannada, Kashmiri, Malayalam, Marathi, Oriya, Punjabi, Sanskrit, Tamil, Telugu, and Urdu, into its Eighth Schedule in 1950. Since then, this has been expanded thrice, to include Sindhi, Konkani, Manipuri and Nepali, Bodo, Santhali, Maithili and Dogri. The Language Policy of India relating to the use of languages in administration, education, judiciary, legislature, mass communication etc. is pluralistic in its scope. It is both language development oriented and language survival oriented. The language policy is intended to encourage the citizens to use their mother tongue in certain delineated levels and domains through some gradual processes, but the stated goal of the policy is to help all languages to develop into fit vehicles of communication at their designated areas of use, irrespective of their nature or status like major, minor, or tribal languages.

The concept of linguistic minority in India is a relational one, and no one definition captures the essence of all kinds of linguistic minorities that the national planning and language plans has thrown up in the country. In the British India, India was perceived to have 'English' 'the Indian vernaculars', 'provincial languages', and other 'dialects'. Then, the word 'minorities' meant mainly the religious minorities. This was inevitable because, for the British, the major power to contend with in the acquisition of Indian territories was the Mughal Empire, which happened to be a Muslim rule over the majority Hindu. Their world view was thus shaped by this dichotomy. The progress of the struggle for the independence of India since the partition of Bengal and even before this point in modern history, revolved around the world view that the India consisted of Hindu-Muslim societies.

The Notion of linguistic minorities is largely the contribution of independent India. The British went after their administrative convenience. Moreover, several of the Indian territories they acquired and integrated were already multilingual under some princely rule or the other. They have established themselves in their chosen settlements long before their incessant acquisition of territories began. Their central trading posts had become multilingual, and the empire began spreading out from these factory towns. The English became the language of government; there was no compulsion on them to divide the territories on the basis of the dominant Indian languages used in each of these territories. Growing linguistic identity consciousness among the people of various presidencies and provinces became a focal point for the Indian National Congress in their attempt to mobilize popular support for the struggle for independence. The Congress in many of its resolutions recognized the popular aspirations and thus they could not avoid creating linguistically organized States. Thus, focused linguistic majority-minority concept is mainly the result of the creation of linguistic states and choice/categorization of language(s) by the language policy of the Union and the governments of States and Union Territories.

Linguistic minority for the purpose of Article 30(1) is one which must have separate spoken language and that language need not have a distinct script. In India, a number of languages are spoken having no script of their own. But people speaking such a language having no script of its own constitute a linguistic minority for the purposes of Article 30(1). A linguistic minority is to be determined with reference to the language spoken by the community and not with reference to any other language which the community wants it children to study.

Ultimately, it is left to the minority to establish its minority status in order to avail the benefits of the Article 30. The task is difficult especially because the

concepts of 'religion' and 'language' have not been adequately defined in the Article or the constituent assembly debates.

According to the 38th report of National Commission of linguistic Minority, "In each State there is a language which is spoken by the majority of the residents of that State. All others who do not speak that language belong to linguistic minority."

It is easy to categorize linguistic minorities. The classification of linguistic minority is not based on National level. Hindi as such is declared as the official language, it is as such spoken by less than 50% of the population; and in addition to this there are thirteen other officially recognized languages. Thus minority based on languages in the Indian constitution pertains mainly to a State and not at the National level.

2.7 Constitutional Assembly Debates on Minority Rights

In the Assembly's deliberations, the minorities question was regarded as encompassing the claims of three kinds of the communities: religious minorities, Scheduled Castes, and backward tribes, for all of whom safeguards in different forms had been instituted by the British and by Princely States in the colonial period. The representatives of most group claiming special provisions in some form emphasized that the group was minority of some kind. So close was the identification of the term 'minority' with the notion of special treatment for a group that even those opposed to the continuation of the colonial system of minority safeguards employed the same language to justify their stand. For instance, it was argued that the 'so–called minorities' were not the 'real minorities'. The latter were variously identified as 'the agriculturist', 'the rural people', 'the backward provinces', even 'the masses'. The claim was

that these were the groups that ought to receive special treatment rather than the communities hitherto favored by the British[50].

Most representatives of the scheduled Castes in the Constituent Assembly also claimed minority status but cultural distinctness from the majority community did not usually figure in this claim. Rather, such claims emphasized that untouchables were culturally part of Hindu community, or least that they were different type of minority from the religious minorities. It was stressed that they were a 'political minority'[51], that the term 'minority' in their case did not connote numerical disadvantage but rather, entitlement to special treatment on account of social and economic 'backwardness'[52]. Not all representatives of the scheduled castes claimed minority status for the community and the concomitant 'political safeguards.' Some argued, in keeping with the dominant nationalist opinion, that the reserved quotas in legislatures and public employment were undesirable and that the solution to the problems of these groups lay in the removal of economic and social disabilities[53].

The strongest opposition to minority safeguards during the Constituent Assembly debates stemmed from concern regarding their implications for national unity and was usually accompanied by a particular understanding of the history of minority safeguards. Such safeguards were regarded as instruments of a colonial 'divide and rule' policy, deliberately fashioned by the duplicitous colonial rulers to create strife between different sections of the nation, to deny that India was a nation and to delay the transfer of power once it became inevitable. These strategies were seen to have enabled the legitimization and the perpetuation of colonial rule and to have culminated in the dismemberment of the country[54].

---

[50] Constituent Assembly Debates Vol. II Pg. 264
[51] Constituent Assembly Debates Vol. I Pg. 139, 284
[52] Constituent Assembly Debates Vol. V Pg. 202.
[53] Constituent Assembly Debates Vol. I Pg. 147 Vol. III pg 470.
[54] Constituent Assembly Debates Vol. I Pg.114 Vol. II pg 205,285.

A second concern pertained to the implications of minority safeguards for the emergence of a common national identity. Nationalist opinion, for all its appeals to an eternal India, recognized that the new State had to create a common national identity that would unite its citizens, transcending group identities based on 'caste, creed, and religion' that divide them. Minority safeguards implied the recognition of group identities in the political realm that it was felt, would promote particular group identities at the expense of wider national identities among citizens necessary for securing the political integrity of the nation[55].

The distribution of minorities in South Asian states was such that the members of almost all religious denominations were present in one state or the other which created a peculiar chemistry of minority consciousness. The Muslims, Sikhs, Christians, Buddhists, Jains and Parsees in India; the Hindus and Christians in Pakistan and Bangladesh and Muslims and Christians in Sri Lanka have minority status. Such a situation led to reciprocity in the treatment of minorities and safeguarding of their rights. The idea of reciprocity had found articulation during the debate over minority rights in the Constituent Assembly in India. Participating in the debate, Mahavir Tyagi who later became a member of the Nehru's Cabinet had suggested that consideration of minority rights should be postponed until Pakistan's stand on this question became clear. Responding to it, Dr. B. R. Ambedkar, the architect of the Indian Constitution, had asserted that the rights of the minorities should be absolute rights. They should not be subjected to any consideration as to what another party may like to do to the minorities within its jurisdiction[56].

'Minority' as a concept has not been adequately defined in the Indian Constitution. Although mentioning the cultural attributes of religion and language, the Constitution does not provide details on the geographical and

[55] Constituent Assembly Debates Vol. II pg 224
[56] Constituent Assembly Debates, Vol. II:

numerical specification of the concept. Even the specifics of language and religion are not mentioned. In the Constituent Assembly Debate on Article 23, B. R. Ambedkar[57] said,

> It will be noted that the term minority was used therein not in the technical sense of the word 'minority' as we have been accustomed to use it for the purposes of certain political safeguards, such as representation in the Legislature, representation in the Services and so on. 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 nonetheless minorities in the cultural and linguistic sense. For instance, for the purposes of this Article 23, if a certain number of people from Madras came and settled in Bombay for certain purposes, they would be, although not a minority in the technical sense, cultural minorities.... The Article intends to give protection in the matter of culture, language and script not only to a minority technically, but also to a minority in the wider sense of the terms as I have explained just now. That is the reason why we dropped the word "Minority" because we felt that the word might be interpreted in narrow sense of the term when the intention of the house was to use the word "Minority" in much wider sense, so as to give cultural protection to those who are technically not minorities but minorities nonetheless.

It seems from above exploration that the scope of Article 23 of the draft, Now Article 29, was broaden by dropping the word "Minority" to include all such minorities that were not minority in technical sense but were minority nonetheless. The later part of Article 23(1) of draft Article, which corresponds

[57] Constituent Assembly Debates, Vol. II : 922-923

to Article 30, was confined to those minorities which were minorities in technical sense.

The Drafting Committee incorporated two more amendments of the substantial nature. By one the “language, Script and Culture” in Clause (1) was replace by “Language, Script or Culture”. By other it was sought to prohibit discrimination against any minority in the matter of admission by State added institutions as well as State owned institutions.

After drafting the Constitution, the draft Article 23 was presented for consideration before the Constituent Assembly. During the debate a number of amendments were moved and Assembly witnessed a long debate on sufficiency, adequacy or scope of rights. Amendments moved by Dr Ambedkar and Thakurdas Bhargava were accepted and adopted and remaining were rejected. Which such amendments Article 23 of Draft constitution was accepted by the Constituent Assembly.

Subsequently, at the revision stage, the drafting committee divided Article 23 into two Articles i.e. Article 29 and Article 30 which are referred under Constitutional Provisions of this chapter.

Thus, Constitution makers granted to the religious and linguistic minorities right to conserve their language, Script and culture and also provided them the right to establish and administer educational institutions of their choice. State was not to discriminate in giving grants on grounds of religion, language, etc, though the institutes maintained by the State or receiving grants from the State were not to discriminate any citizen on the ground of religion, race, language, caste or any of them. By granting autonomy, it was hoped, that minorities while preserving their Culture and Language and through their educational institution will contribute to the growth and development of the nation.

Minority rights impose no obligation or burden on the State to finance any education project to safeguard minority rights. It ensured that the State could not impose other culture on minority. In the words of Ambedkar[58] ,

> I think another thing which has to be borne in mind in reading Article 23 is that it does not impose any obligation or burden upon the State. It does not say that, when for instance the Madras people come to Bombay, the Bombay government shall be required by law to finance any project of giving education either in Tamil language or in Andhra language or any other language...The only limitation that is imposed by Article 23 is that if there is a cultural minority which wants to preserve its language, its script and its culture, the State shall not by law impose upon it any other culture which may be either local or otherwise. Therefore this Article really is to be read in a much wider sense and does not apply only to what I call the technical minorities as we use it in our Constitution.

Succinctly, it is left to the minority to establish its minority status in order to avail the benefits of the Article 30. The task has not been difficult as State has been considered as unit to decide minority status and the group numerically less than 50% of the population of the State has been considered as minority. This parameter has been applied for both linguistic and religious minority. There has been no difficulty in establishing minority status even though the concepts of 'religion' and 'language' have not been adequately defined in the Articles or the Constituent Assembly Debates.

In Constitution of India there are two Articles that deal with minorities' rights i.e. Articles are 29 and 30. These two Articles confer fundamental rights to religious and linguistic minorities. But the Constitution neither defines

[58] *Constituent Assembly Debates*, Vol II: 923

minority nor does it prescribe sufficient guidelines to determine a group minority. Makers of constitution and members of constituent Assembly left it to the wisdom of the courts to do so.

2.8 Minority as Per Judicial Trends

All democratic states ensure constitutional protection for minority rights. They can, however, be enforced only by an independent judiciary, comprising judges with a broad, liberal outlook when politicians, the executive and the legislature trammel on the rights of minorities.

The expression 'religion minority' means 'that the only and principal basis of the minority must be adherence to one of the many religions and not a sect or part of the religion.'

The question arises regarding what is the test to determine minority status based on religion or language of a group of persons residing in State or Union territory. The Article 30 for the first time came up for interpretation before the seven judge Constitution Bench constituted to consider the reference made by President under Article 143 in *re the Kerala Education Bill, 1957*[59]. It held, "The existence of minority community should in all circumstances and for purposes of all law of that State be determined on the State basis only when the validity of law extending to whole State is in question or it should be determined on the basis of the population of the particular locality, for the bill in practice before us extends to the whole of State of Kerala and consequently the minority must be determined by reference to the entire State. By this test Christians, Muslims and Anglo Indians will certainly be minorities in the State of Kerala."

In other words it can be said that the Supreme Court suggested the technique of arithmetical tabulation of less than 50 per cent of population for identifying

[59] AIR 1958 SC 956

a minority. This population was to be determined in accordance to the applicability of the law in question. If an Act is applicable nationwide then the minority group would be decided on the national figures and in the case of the Act being applicable in a State, the minority group would be decided on the State figures.

It has been argued by few scholars that the proposition lay down by the court to determine the minority has many snags. One is that, the population of state may be so fragmented in linguistic, religious or cultural groups that no group may fall under the protection of Articles 29 and 30 without there being a single majority community against which minorities may claim protection. Second is that, certain communities which may be in majority in a particular state like Sikhs in Punjab or Muslims in Jammu and Kashmir or Christians in Nagaland, may be minority in relation to the entire population of India. Can they be majority from one point of view and in minority from the other? Suppose, there are a number of educational institutions set up by Christian minority, spread all over the country, then , applying the test formulated by the Supreme Court, the educational institutions situated in Nagaland would not be entitled to the protection of Articles 29(1) and 30(1) but the same would have the protection as minority in Gujarat. Thus the test laid down by the court does not specify minority.

In *D.A.V. College, Jullunder's Case* [60] , the Constitutional Bench of the Supreme Court observed: 'Though there was a faint attempt to canvas the position that religious or linguistic minorities should be minorities in relation to the entire population of the country, in our view, they are to be determined only in relation to the particular legislation which is sought to be impugned, namely that if it is the State legislature these minorities have to be determined on the basis of the population of the State'.

[60] AIR 1971 SC 1737

Arya Samaj claimed to be a linguistic minority in Punjab. Since they are a minority in Punjab, they automatically got a minority status under Article 30 (1). The Court observed: 'A linguistic minority for the purpose of Article 30 (1) is one, which must have a separate spoken language. It is not necessary that the language must have a distinct script for those who speak it to be linguistic minority'.

The Calcutta High Court was required to deal with this issue in the case of Shree Jain Swetamber Terpathi Vidyalaya[61]. The Court held that Jains professed a faith different from the Hindus and were a religious minority entitled to benefits of Article 29 and 30.

Claiming rights being linguistic minority have its own limitations. For example Gujaratis are a minority in Maharashtra where as Maharashtrians are a minority in Gujarat. Prior to reorganization of the Bombay State, Ahmedabad was part of it and Gujaratis were a minority there. Hindi speaking sections of people called *"bhaiyas"* are a minority in Maharashtra. Marwaris and U. Pians, called "Hindustanis", are a linguistic minority in Calcutta. But as soon as a *"bhaiya"* goes back from Mumbai to his home State Uttar Pradesh or Bihar, or a Marwari or "Hindustani" goes back from Calcutta to Rajasthan or Uttar Pradesh *he* reverts to his status as a member of a majority community. A Tamilian or a Bengali while living in New Delhi is a member of a linguistic minority but as soon as he goes back to live in Tamil Nadu or West Bengal he becomes a member of the majority community. All this follows from the Supreme Court decision in the two cases, *D.A.V. College, Bhatinda* v. *State of Punjab*[62] and *D.A.V. College, Jullunder* v. *State of Punjab*[63] decided on the same day by the same Constitution Bench, holding that Arya Samajist Hindus

[61] AIR 1982 CAL 101
[62] AIR1971SC1731, (1971)2SCC261, [1971]SuppSCR677, MANU/SC/0038/1971
[63]AIR 1971 SC 1737

(claiming Hindi in Devanagri as their language) were a religious as well as linguistic minority in the Sikh-majority state (having Punjabi in Gurmukhi as the State language).

The same person who while living in one city is a member of a linguistic minority becomes a member of the linguistic majority on coming back to his fore fathers' land. Thus the label of "minority" and "majority" is not permanently affixed to a person: it depends on his current abode and on the latest political boundaries pertaining to that abode. Surely a Tamilian or a Bengali while living in New Delhi does not become relatively backward compared to his kith and kin in his home state. It cannot therefore be contended with any justification that the minorities were favoured by way of affirmative action in order to make them equal to others who were better placed educationally. The Article 30(1) empowers them with a right to establish and administer educational institute of their choice so that their children are not deprived of their culture and religion.

As far as language is concerned, the case of *D. A. V. College, Jullunder v State of Punjab*[64] is considered important. In this case, the Court observed, 'A linguistic minority for the purpose of Article 30(1) is one which must at least have a separate spoken language. It is not necessary that language should also have a distinct script for those who speak it'.

Protection under Article 30(1) not available to Denominations or Sects

Hindus may be in a majority in Uttar Pradesh but Arya Samajis a sect are in a minority there. Thus, can Arya Samajis claim the benefit under Article 30 (1) on the basis that it is a minority? So also Christians may be in a majority in Meghalaya but Protestants are in a minority. Can they claim benefits under Article 30 (1) despite being part of the Christian fold. A highly contentious issue there has not been a single judgment of the Supreme Court directly dealing

[64] AIR 1971 SC 1737

with it. The Supreme Court held in *Bramchari Sidheswari Shai v State of West Bengal*[65] that the Ramakrishna Mission a Hindu sect under Article 26 of the Constitution cannot be considered a religious minority under Article 30. This makes it clear that Court decision of granting protection of Article 30 (1) is available only to religious groups.

Thus whether Auroville (Emergency) Provisions Act, 1980 violated Article 30 (1) came up before the Supreme Court in S. P. Mittal vs Union of India[66] . Aurobindo society claimed to be a religious denomination or sect. The Court held that the Society was not entitled to protection under Article 30.

In the case of *Arya Samaj Education Trust* v *Director of Education* [67] the court held that Arya Samaj was not entitled to protection under Article 30. The Court went into the historical context and assessed the Report of the Minority Sub-Committee to the Constituent Assembly and the debates thereafter, came to the conclusion that the words 'based on religion; in Article 30 (1) were always meant to include religious groups and not sects or denominations. Excerpts from the report as quoted in a Delhi High Court judgment -

"The word 'minority' used in the expression minorities based on religion used in Article 30 (1) connotes only those religious minorities which had claimed separate rights from those of the Hindus prior to the Constitution such as the Muslims and the Sikhs. The Christians did not seem to have claimed separatist's rights but they were nevertheless a distinct minority based on a religion, which at no stage was regarded as a part of Hinduism. Because of the political origin of the sense in which the word 'minority' was used in India, it was never meant to be applied to a part or a section of the Hindus such as the Arya Samaj and several other Hindu sects. No section or class of Hindus was ever referred to as a minority".

[65] (1995) 4 SCC 646.
[66]AIR 1983 SC 1
[67] AIR 1976 DEL 207

In T.M.A Pai Foundation v State of Karnataka[68]

The eleven judge bench of the Supreme Court delivering the judgment in above case held by majority that

- The form minority in Article 30(1) covers linguistic and religious minorities.
- For the purpose of determining the 'minority' the unit will be the State and not the whole of India. Minorities have to be considered State wise.

The Cabinet has reportedly approved a proposal (May 2007) to define minorities State-wise in line with several Supreme Court judgments, most notably that in T.M.A. Pai. For the purpose of this legislation, minority will be specified as such in relation to a particular State/Union Territory by a presidential notification issued after consultation with the State Government; this will be in addition to the five minorities (Muslims, Christians, Sikhs, Buddhists, and Parsis) referred to in the NCM Act, 1992.

The Constitution does not define a minority or provide details relating to the geographical and numerical specification of the concept, it is clear that the constitutional scheme envisages this to be determined at the national level. Over the years, judicial pronouncements have given a restricted meaning to minority rights by limiting them to education and defining minorities at the State level in terms of protection under Article 30 which provides religious or linguistic minorities the right to set up educational institutions of their choice. The legitimization of a restrictive conception of minority rights can also be noticed, in this context, in the Central Government's proposal to adopt a State-specific notion of minorities.

Supreme Court principle in the 2002 judgment, in T.*M.A. Pai Foundation & Others vs. the State of Karnataka and Ors*[69], the Supreme Court deliberated on

[68] (2002) 8 SCC 481

the various contentions that the Centre, State, or a particular region within a State may be considered as the basic unit for protection of the right of minorities to set up minority educational institutions, and whether a minority in a State would lose its minority status if within a particular region of the State it happened to be in a majority. The Court has set out the principle that minority status should be determined in relation to the population of the State and not to India as a whole. It ruled that as the reorganization of the States in India had been effected on linguistic lines, for the purpose of determining a minority, the unit would be the State and not the whole of India. Thus, religious and linguistic minorities, who have been placed on a par in Article 30, have to be considered in terms of the State concerned.

The concept of minority is still evolving, the issue resurfaced in *Bal Patil v Union of India's case*[70] and *Anjuman Madarsa Noorul Islam Dehra Kalan, Ghazipur v State of Uttar Pradesh*, case[71]; these two judgments have further complicated the question of definition of minorities, as both these judgments relate, for the most part, to definitional issues. Bal Patil questioned the identity of Jains as a religious minority while in Anjuman Madarsa Noorul Islam Dehra Kalan, Ghazipur v State of Uttar Pradesh, Hon'ble S. N. Srivastava J[72] ruled that Muslims, by virtue of their numbers, cannot be considered a minority in Uttar Pradesh.

A study of court cases reveals a continuous struggle between the State and minorities on these issues. For instance, Patna High Court announced Arya Samaj [Arya Pratinidhi Sabha vs State of Bihar[73]], a minority distinct from the Hindus. However, in 1976, Delhi High Court in *Arya Samaj Education Trust* v

---

[69] (2002) 8 SCC 481
[70] (2005) 6 SCC 690; AIR 2005 SC 3172
[71] Decided on 5/4/2007, High Court of Judicature of Allahabad.
[72] ibid
[73] AIR 1958, Patna 359

Director of Education[74] decided against providing benefits of Article 30 to denominations and sects.

Similarly, in 1962, Brahmo Samaj of Bihar made this claim, which was accepted by the High Court in *Dipendra Nath Sarkar v State of Bihar*[75] . The court, however, did not accept such a claim in the cases of Chaudhari Janki Prasad and others v State of Bihar[76] and S. P. Mittal vs Union of India[77].
The ambiguous definition of religion has potential for controversy.

The principal rationale for State-specific minorities rests on the idea that the linguistic reorganization of States necessitates that they be treated as the basic unit for determination of minorities. As both linguistic and religious minorities are covered under Article 30, both sets of minorities have to be State-specific. The linguistic reorganization of States meant that, for the purpose of Article 30, linguistic minorities had to be determined in relation to the State because their language was not one of the official languages; other minorities are those whose mother tongue is an official language but who live outside the State(s) where the language is official. In this sense, the linguistic reorganization of States has a definite bearing on linguistic minorities because protection under Article 30 is available not only to the linguistic minorities sharing the major languages of the States, but also to speakers of the numerous languages that are not represented by any particular State on its own.

As regards religious minorities, linguistic reorganization should not really matter in the exercise of their right to set up educational institutions of their choice or seek admission in such institutions or the exercise of other minority rights. In comparison to linguistic minorities, for whom the official language matters, there is no congruence between religious identity and State

[74] AIR 1976 DEL 207
[75] AIR 1962 Patna 101
[76] AIR 1974 PAT 187
[77] AIR 1983 SC 1

boundaries. For protection under Article 30, linguistic minorities make claims upon the States rather than the Centre, but this need not be so for religious minorities who are dispersed throughout India and whose identity is not linked to specific State(s). In this context, defining minorities at the State level would limit the notion of minorities, entailing as it does the adoption of an essentially statistical conception of minorities. Thus, a religious group, which is numerically smaller than the rest of the population of the State to which it belongs, would be entitled to be termed a minority in that State even though the group may be numerically in a majority in India as a whole and hence not lacking in power or voice in the decision-making structures. This will doubtless add to the list of minorities and extend the benefits of minority entitlements to these groups, even as it will deny the same benefits to groups that are minorities in accordance with nationally and internationally accepted definitions of minorities.

2.9 Constitutional Provisions related to minority rights

It is praiseworthy that Constitution of India has afforded protection to the minorities in the country. The framers of the Constitution were quite conscious of the importance of these provisions. They very well understood that, in pluralistic society rights of minorities and weaker sections need to be safeguarded. The idea of giving some special right to the minorities is not to treat them as a privileged section of the population but to give to the minorities a sense of security. Special rights for minorities were designed not to create inequalities but to bring about equality by ensuring the preservation of the minority institutions and by guaranteeing autonomy in the matter of administration of these institutions.

In India, the safeguards for minorities under the constitution of India are in form of fundamental rights. Firstly the constitution nowhere discriminates among the citizens of India on the grounds of religion, race, caste, etc and secondly, the rights conferred under Articles 25 to 30 are fundamental rights.

The State is duty bound to protect the fundamental rights. If fundamental rights are infringed the remedy lies under Articles 32 and 226. A person can directly approach the Supreme Court or the High Court in case of violation of fundamental rights. So the true spirit and intention of the Constitution is to provide a very formal and water tight arrangement for safeguarding the interest of minorities.

There are some Articles in the constitutions of India that exclusively safeguards minority's rights, whereas, there are certain Articles though not specifically meant for minorities but they strengthen minorities' rights.

The following two Articles, 29 and 30 are placed under the Heading: Cultural and Educational rights. These Articles are the only ones in whole Constitution which specifically use the term minority. Article 29, is the most comprehensive Article, declaring that "any section of the citizens residing in the territory of India or any part there of having a distinct language, script or culture of its own shall have the right to conserve the same." Thus the Article establishes an overall right of any group of citizens to maintain their language, including script, and culture. Article 30, Clause 1, is more specific and establishes that all "minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice." Furthermore, Clause 2 says that "the state shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under management of minority, whether based on religion or language." Although Article 29 uses "Culture" instead of "religion", it seems obvious that these two Articles are very closely related, since the safest way to maintain and protect the language, Culture, or religion of a group or minority is through the establishment of separate educational institutions. It can be well concluded from Article 30, Clause 2, that if the State supplies aid to educational institutions, it is also obliged to support institutions managed by religious or linguistic minorities.

It is thus evident, that the Indian Constitution establishes that the Indian State shall be secular, in the sense that it is not allowed to give preference to any particular religion. At the same time it gives full freedom to all religions to run their own affairs and offer to religious and linguistic minorities the special protection to run their own educational institutions funded or partly funded by the state.

Minorities in India have had to face adverse discrimination and, therefore, do not stand on equal footing with others, which made the framers of the Constitution, through Article 29 and Article 30, accord special rights to the people who form religious or linguistic minority in India.

On an outset it is desirable to delineate Articles 29 and 30 of the constitution of India, which relevant subject matter for the purpose of this study. The need for defining minorities stems from Article 29 and 30, which guarantees minorities following privileges:

Cultural and Educational Rights

Article 29. Protection of interests of minorities.-

(1) 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.

(2) 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.

Article 30. Right of minorities to establish and administer educational institutions.-

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

[(1A) In making any law providing for the compulsory acquisition of any property of any educational institution established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.]

(2) 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.

From the careful perusal of the above to Articles of the Constitution of India it is found that Expression minorities has been used at four places in the Constitution of India. It has been used in the head note of Article 29 and 30 and in sub clause (1) and (2) of Article 30. Minorities in Article 30 has been used in two senses in Article 30, one based on religion and other based on language.

These provisions were to give religious and linguistic minorities' security and confidence, and develop their own culture by bringing up their children in the manner and with the ideals they preferred that the Constitution of the country embodied a special provision in the list of Fundamental Rights. .

2.10 Why Minority Rights?

Justice S. M. Sikri, former Chief Justice of India, has once said, "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." This realization is an important rationale for the special

protections accorded to the minorities in almost all the modern democracy including ours.[78]

The protection of the rights of minority is a *sine qua non* in a healthy democracy. The very basis of the minority protection is that the political non dominant i.e. a group small in number, need to be protected against interference of majority in their cultural and linguistic development. This differential treatment is necessary to preserve the basic characteristics which they posses and which distinguish them from majority of the population. Interest of minorities, their culture and individuality of minority need to be protected without jeopardizing the interest of majority at large.

Jawaharlal Nehru writing a note on Minorities in 'Young India' on May 15, 1930 stated, "the history of India and of the many countries of Europe has demonstrated that there can be no stable equilibrium in any country so long as an attempt is made to crush a minority or force it to conform to the ways of the majority .... therefore we in India must make it clear to all that our policy is based on granting this freedom to the minorities and that under no circumstance will any coercion or repression of them be tolerated ..... We can also lie down as our deliberate policy that there shall be no unfair treatment of any minority". Unlike our neighbouring countries, India did not give favoured status to the religion of the majority of its people, because the leaders feared that this would automatically reduce all others to the status of second-class citizens in their own country.

The Karachi Charter on Fundamental Rights of 1931 acknowledged the rights of the minorities to their religion, the freedom to profess and practise any religion, and laid down that the state should be neutral in religious matters. The members of the Constituent Assembly felt that the minorities' rights to their religion should be recognised. The Sub-Committee on Minorities gave

[78] Dr M. P. Raju; *Minority Rights, Myth or reality, pg. 11, Media House Delhi, 2002*

many recommendations favouring them. The Advisory Committee on Fundamental Rights headed by Sardar Patel accepted most of the recommendations. In February 1948, the provisions were incorporated into the draft constitution under the title “Special Provisions Relating to Minorities”. But later changes were made in the matter of political rights. Tabling the report of the Advisory Committee in the constituent assembly on May 25, 1949 Sardar Patel said, “Our general approach to the whole problem of the minorities is that the State should be so run that they should stop feeling oppressed by the mere fact that they are minorities and that, on the contrary, they should feel that they have as honourable a part to play in the national life as any other section of the community”.

The idea of giving some special rights to the minorities is not to have a kind of a privileged or pampered Section of the population but to give to the minorities a sense of security and a feeling of confidence. The great leaders of India since time immemorial had preached the doctrine of tolerance and catholicity of outlook. Those noble ideas were enshrined in the Constitution. Special rights for minorities were designed not to create inequality. Their real effect was to bring about equality by ensuring the preservation of the minority institutions and by guaranteeing to the minorities autonomy in the matter of the administration of these institutions. The differential treatment for the minorities by giving them special rights is intended to bring about an equilibrium, so that the ideal of equality may not be reduced to a mere abstract idea but should become a living reality and result in true, genuine equality, an equality not merely in theory but also in fact. The majority in a system of adult franchise hardly needs any protection. It can look after itself and protect its interests. Any measure wanted by the majority can without much difficulty be brought on the statute book because the majority can get that done by giving such a mandate to the elected representatives. It is only the minorities who need protection, and Article 30, besides some other Articles, is intended to afford and guarantee that protection.

India is the second most populous country of the world. The people inhabiting this vast land profess different religions and speak different languages. Despite the diversity of religion and language, there runs through the fabric of the nation the golden thread of a basic innate unity. It is a mosaic of different religions languages and cultures. Each of them has made a mark on the Indian polity and India today represents a synthesis of them all. The closing years of the British rule were marked by communal riots and dissensions. There was also a feeling of distrust and the demand was made by a Section of the Muslims for a separate homeland. This ultimately resulted in the partition of the country. Those who led the fight for independence in India always laid great stress on communal amity and accord. They wanted the establishment of a secular State wherein people belonging to the different religions should all have a feeling of equality and non-discrimination. Demand had also been made before the partition by sections of people belonging to the minorities for reservation of seats and separate electorates. In order to bring about integration and fusion of the different Sections of the population, the framers of the Constitution did away with separate electorates and introduced the system of joint electorates, so that every candidate in an election should have to look for support of all Sections of the citizens. Special safeguards were guaranteed for the minorities and they were made a part of the fundamental rights with a view to instill a sense of confidence and security in the minorities. Those provisions were a kind of a Charter of rights for the minorities so that none might have the feeling that any Section of the population consisted of first-class citizens and the others of second-class citizens. The result was that minorities gave up their claims for reservation of seats.

Sardar Patel, who was the Chairman of the Advisory Committee dealing with the question of minorities, said in the course of his speech delivered on February 27, 1947:

This Committee forms one of the most vital parts of the Constituent Assembly and one of the most difficult tasks that has to be done by us is the work of this committee. Often you must have heard in various debates in British Parliament that have been held on this question recently and before when it has been claimed on behalf of the British Government that they have a special responsibility--a special obligation--for protection of the interests of the minorities. They claim to have more special interest than we have. It is for us to prove that it is a bogus claim, a false claim, and that nobody can be more interested than us in India in the protection of our minorities. Our mission is to satisfy every interest and safeguard the interests of all the minorities to their satisfaction."[79]

In his Judgment in the St. Xavier College Ahmedabad v the State of Gujarat[80], Justice K. K. Mathew quotes from Urmila Haksar, "Protection of minorities is the protection of non-dominant groups, which, while wishing in general for equality of treatment with the majority, wish for a measure of differential treatment in order to preserve basic characteristic which they possess and which distinguish them from the majority of the population".

2.11 Opinion of Judges on Minority Rights

The rights promised in the Constitution are binding on the state and even the legislative assembly cannot modify these rights. Intrusion on these rights can be challenged. A study of court cases reveals regular and frequent interpretation of these rights in both, High Court and Supreme Court. In course of deciding the matter judges have given the opinion on minority rights. Hereunder opinion of few eminent judges is discussed to gauge the judicial trend.

[79] *Constituent Assembly Debates*, Vol II:
[80] AIR1974SC1389, (1974)1SCC717, [1975]1SCR173, MANU/SC/0088/1974

In the Kerala Education Bill[81], Reference Case (1959) Chief Justice S. R. Das observed, "So long as the constitution stands as it is and is not altered, it is, we conceive it, the duty of this court to uphold the Fundamental Rights and thereby honour our sacred obligations to the minority communities who are of our own". Justice Das has made it very clear that these rights are to be treated as "Sacred obligations to the minorities". Again he has made the following observations on Article 30 (1), "The minorities quite understandably regard it as essential that the education of their children should be in accordance with the teachings of their religion and their hope. Quite honestly such education cannot be obtained in ordinary schools designed for all the members of the public, but can only be secured in schools conducted under the influence and guidance of people well-versed in the tenets of their religion and in the traditions of their culture. The minorities evidently desire that education should be imparted to their children of their community in an atmosphere congenial to the growth of their culture. Our constitution makers recognized the validity of their claims and to allay their fears conferred on them the fundamental rights referred to above".

In the famous case of Ahmedbad St. Xavier's College Vs State of Gujarat[82] (1974) Jus. H. R. Khanna categorically stated that, "the provisions of the minority rights were a kind of Charter of Rights for the minorities so that none might have the feeling that any section of the population consisted of first-class citizens and the others of second-class citizens".

In the same case Justice K. K. Mathew and Justice Y. V. Chandachud have noted as follows, "The parental right in education is the very pivotal point of a democratic system. It is the touchstone of difference between democratic education and monolithic system of cultural totalitarianism. When the modern State with its immense power embarks upon the mission of education its

[81] AIR 1954 SC 561
[82] AIR1974SC1389, (1974)1SCC717, [1975]1SCR173, MANU/SC/0088/1974

children, the whole tendency is towards state monopoly. The fundamental right of the religious and linguistic minorities to establish and administer educational institutions of their choice is the only legal barrier to confine the bursting expansionism of the new Educational Leviathen. Great diversity of opinion exists among the people of this country concerning the best way to train children for their place in society. Because of these differences and because of reluctance to permit a singly iron cast system of education to be imposed upon a national, compounded of several strains, the Constitution has provided this right to religious and linguistic minorities".

In the T. M.A. Pai's case[83] the 11 Judge Constitution Bench headed by Justice B. N. Kripal ruled that minorities have an unfettered right to establish an educational institution of their choice but added that the State could bring regulatory measures, for ensuring educational standards and maintaining excellence thereof. At the same time the Bench has given complete power to the management in the case of unaided educational institutions.

Judges, in the various judgments have not only recognised the rights of minority but have time and again upheld their constitutional validity.

2.12 Concept of Minority for the research purpose:

Since minority is defined nowhere in the Constitution of India that guarantees minority rights it has become very important to decide as to who would constitute minority for research purpose. Article 30 safeguards rights of two kinds of minorities namely religious and linguistic.

As for religious minorities, **Muslims, Christians, Sikhs, Buddhists, and Parsis** referred to in the National Commission of Minority Act, 1992 in Section 2 (C) will be considered as minorities.

Linguistic minority for the research will be according to the 38th report of National Commission of linguistic Minority, which states, "In each state there is

[83] (2002) 8 SCC481

a language which is spoken by the majority of the residents of that state. All others who do not speak that language belong to linguistic minority." 'Linguistic minority' for the purpose of Article 30(1) is one which must have separate spoken language and that language need not have a distinct script.

-x-x-x-x-x-x-x-

CHAPTER III

Historical growth and development of Minorities in India

3.1 Introduction

India is a country where people of diverse religion stay together. Religious diversity and religious tolerance are both established in country by law and custom. A vast majority of Indian associates themselves with a religion. According to 2001 census Hinduism accounted for 80.5% of the population of India. Islam 13.4%, Christianity 2.3% and Sikhism 1.9% are the other major religions followed by the people in India.

The Constitution of India prohibits any form of discriminatory practice on ground of religion, race, caste, sex or place of birth only. Though India was not conceived as land of communities, it identified communitarian categories for special treatment to help them come at par with others. It provided space for the minority religious communities to establish their own educational institutions as also instituted some other rights that would enable them to protect their distinct identity.

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 Parsis have been notified as religious minority communities under section 2(c) of National Minority Act, 1992. Minorities in the country are about 18.4% of the total population of the country.

Following table shows the population of people of religious communities over the period from 1961 to 2001.

Population trends for major religious groups (1961-2001)[84]

Religious group	Population % 1961	Population % 1971	Population % 1981	Population % 1991	Population % 2001
Hindu	83.45	82.73	82.30	81.53	80.46
Muslim	10.69	11.21	11.57	12.61	13.43
Christian	2.44	2.60	2.44	2.32	2.34
Sikh	1.79	1.89	1.92	1.94	1.87
Buddhist	0.74	0.70	0.70	0.77	0.77
Animist, others	0.43	0.41	0.42	0.44	0.72
Jain	0.46	0.48	0.47	0.40	0.41

Analysis of census data reveals that the population of Hindus has decreases from 1961 to 2001 by 3.0 % where as population of Muslims has increased roughly in the same proportion. Christian population did grow in 1971 but has gradually decreased in subsequent years. Though Sikh population showed gradual increase from 1961 to 1991 but has declined thereafter. Buddhist population has grown from 1961 to 1991 but has not shown growth after 1991.It has remained stable. Parsis population is less than 0.2%. As per 2001 Census there are in all 69,601 Parsis in India, consisting of 33,949 male and 35,652 females. Where the populations of other communities have increased considerably, Parsis population has decreased. Jains have been recognised as Minorities by many States. The population of Jains though increased in the first decade has gradually declined with marginal growth in 2001 Census.

[84] Census Report 2001

The table below indicates that the literacy percent of Muslims is lower than the majority community ie Hindus. Literacy percent of Muslims is 59.1 % as against 65.1% of Hindus. Literacy rate of other minorities is higher than the Majority for example Christians being 80.3%, Sikh being 69.4%, Buddhist being 72.7%, etc.

Characteristics of religious groups (2001 Census)[85]

Religious group	**Population %**	**Growth 1991-2001**	**Sex ratio (Total)**	**Literacy (%)**	**Work Participation (%)**	**Sex ratio rural**	**Sex ratio Urban**	**Sex ratio Child**
Hindu	80.46	20.3 %	931	65.1	40.4	944	894	925
Muslim	13.43	29.3 %	936	59.1	31.3	953	907	950
Christian	2.34	22. 6 %	1009	80.3	39.7	1001	1026	964
Sikh	1.87	18.2 %	893	69.4	37.7	895	886	786
Buddhist	0.77	18.2 %	953	72.7	40.6	958	944	942
Animist, Others	0.72	103.1 %	992	47.0	48.4	995	966	976
Jain	0.41	26.o %	940	94.1	32.9	937	941	870

[85] http://en.wikipedia.org/wiki/Religion_in_India ,Census Report 2001

The Constitution of India recognises mainly two kinds of Minorities i.e. religious and linguistic. In the wake of the reorganisation of the States on the linguistic basis in 1956, a number of uni-lingual States were formed. Even though the States were formed more or less on linguistic basis, each of the States came to have linguistic minorities as well. In every State where there is one dominant language group, several small language groups with languages different from the dominant language also came into being. Such small group of people, in the State, having mother tongue different from that of the majority referred to as linguistic minorities. The Constitution makers had anticipated their problems and had made provisions to meet the situation.

The National Minority Commission has notified five groups as minorities' viz. Muslims, Christians, Sikh, Buddhist and Parsis. 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 divulge into historical perspective of growth and development of religious minorities in India.

3.2 Muslims

The religion practiced by Muslims is Islam. More than 13.4% of the country's populations i.e. over 138 million as per 2001 census are Muslims. India's Muslim population is the worlds' third largest and the world largest Muslim-Minority population. Most of the Muslims in India belong to Indian ethnic groups, having ancestors from Persia and Central Asia. The largest concentrations about 47% of all Muslims in India, according to the 2001 census live in three state viz. Uttar Pradesh(30.7 million)(18.5%), West Bengal (20.2 million) (25%), and Bihar (13.7 million)(16.5%). Muslims represent a majority of local population in Lakshadweep (93% in 2001) and Jammu and

Kashmir (67% in 2001). High concentrations of Muslims are found in Kerala (24.7%) and Andhra Pradesh (14%). Officially, India has third largest Muslim population after Indonesia and Pakistan.[86]

Following table points out Muslim population in Indian States.

3.2.1. Muslim population in Indian States [87]

State	Population	Percentage
Lakshadweep Island	56,353	93
J& K	6,793,240	66.97
Assam	8,240,611	30.92
West Bengal	20,240,543	25.25
Kerala	7,863,842	24.70
Uttar Pradesh	30,740,158	18.5
Bihar	13,722,048	16.53
Jharkhand	3,731,308	13.85
Karnataka	6,463,127	12.23
Uttaranchal	1,012,141	11.92
Delhi	1,623,520	11.72
Maharashtra	10,270,485	10.60

[86] http://en.wikipedia.org/wiki/Islam_in_India , last visited on 10th Nov. 2011
[87] Census Report 2001

Andhra Pradesh	6,986,856	9.17
Gujarat	4,592,854	9.06
Manipur	190,939	8.81
Rajasthan	4,788,227	8.47
Andaman and Nicobar	29,265	8.22
Tripura	254,442	7.95
Daman and Dui	12,281	7.76
Goa	92,210	6.84
Madhya Pradesh	3,841,448	6.37
Pondicherry	59,358	6.09
Haryana	1,222,9116	5.78
Tamil Nadu	3,470,647	5.56
Meghalaya	99,167	4.28
Chandigarh	35,548	3.95
Dadar and Nagar Haveli	6, 524	2.96
Orissa	761,985	2.07
Chhattisgarh	409,615	1.97
Himachal Pradesh	119,512	1.97
Arunachal Pradesh	20,673	1.83
Nagaland	35,005	1.76

Punjab	80,045	1.57
Sikkim	7,693	1.42
Mizoram	10,009	1.34

3.2.2. Origin and growth of Islam in India

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 Islamised Arabs were Islam's first contact with India. According to historians, the first ship bearing Muslim travellers 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 AD, in Kodumgallur, Kerala. In Malabar, the Mappilas was the first community to convert to Islam as they were close to Arabs.

Islam was established in Saudi Arabia. But most of Islam's spreaders in India arrived from non-Arab countries. The first spreaders of Islam in India were individuals who saw in spreading Islam a holy precept. They began coming to India from the 11th century. They arrived in India from Bukhara, Turkey, Iran, Yemen and Afghanistan. The most famous preacher of Islam in India was Khwaja Chishti, who arrived from Iran and his sect is called Sufism.

The process of converting Indians to Islam began in the 8th century, when the Arabs began invading north India and present day Pakistan. After the Arabs other Muslims invaded India. These invasions by Muslims in India were not continuous and not all Muslim invaders were Islamic fanatics. One of the

Moghul emperors, Akbar, was very liberal and he even established a new religion, Din E Elahi, which included in it, beliefs from different religions. In some of the monuments built by Akbar symbols of different religions are visible. In contrast with Akbar his great grandson, Aurangazeb, was a fanatic Muslim and during his regime he worked ardently for spreading of Islam.

3.2.3. Caste System among Muslims

Muslims in India also follow the caste system which developed as a result of the concept of *Kafa'a.* 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. A man, who claims Arab origin can marry an *Ajami* woman, the reverse is not possible. Similarly, a man from higher caste eg. Pathan muslim man can marry a woman from lower caste i.e. Julaha (Ansari), Masuri (Dhunia), Rayin (Kunjra) or Quraishi (Qasai or butchers) but an Ansari, Rayin, Mansuri and Quraishi man cannot marry a Pathan woman. Many of the Ulama also believed that it is best to marry within one own caste. Thus the practice of endogamous marriage in one's caste is strictly observed.

In, Malabar, the Mappilas may have been the first community to convert to Islam as they were more closely connected with the Arabs than others. Intensive missionary activities were carried out along the coast and a number of natives also embraced Islam. These new converts were now added to the Mappila community. Thus among Mappilas, we find, both the descendants of Arabs through local women and the converts from among the local people.

3.2.4. Sects in 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.

Different communities who adopted Islam in different ways have different community names. In west India the Bohra and Khoja are Muslim communities who adopted Islam influenced by different Muslim preachers. The Khojas also split into different communities. The leader of the Khoja (Nizari) community is Aga Khan. The Nawait are descendants of Arab and Persian immigrants. In south India in the State of Kerala, the Mophilla community is descendants from Arab merchants. A well known Indian Muslim community is Pathan. The Pathan are Muslims who arrived from Afghanistan. They normally have their surname as Khan. The original Pathans claim that they originate from the Tribes of Israel.

Though 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).

3.3 Christians

Christianity is the third largest religion with approximately 24 million followers, constituting 2.3% of India's population. 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. 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. 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.

3.3.1 Sects in Christianity

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. Protestantism was brought to India in 18th Century by British and American Missionaries. It grew following European Colonisation and Protestant Missionary efforts. Other denominations like Syrians, Baptists, Brothern, Anglican, Armenian, Methodists, Jehovah Witnesses, Pentecostals, etc are found in India. There is an Anglo-Indian community in India who too follow Christianity.

3.3.2. Population of Christians in India.

Though the Census reports of 2001 points out that the Christian population is 2.34 percent of the total population of the country the following table points out the population of Christians in various States of India.

Christian Population in India[88]

[88] http://ncm.nic.in/minority_population.pdf , last visited on 25th November 2011.

State	Population	Percentage
Andaman/Nicobar	77,178	21.7
Andhra Pradesh	1,181,917	1.6
Arunachal Pradesh	205,548	18.7
Assam	986,589	3.7
Bihar	53,137	0.1
Chandigarh	7,627	0.8
Dadra and Nagar Haveli	6,058	2.7
Daman and Diu	3,362	2.1
Delhi	130,319	0.9
Goa	359,568	26.7
Gujarat	284,092	0.6
Haryana	27,185	0.1
Himachal Pradesh	7,687	0.1
Jammu and Kashmir	20,299	0.2
Karnataka	1,009,164	1.9
Kerala	6,057,427	19.0
Lakshadweep	509	1
Madhya Pradesh	170,381	0.3
Maharashtra	1,058,313	1.1
Manipur	737,578	34.0

Meghalaya	1,628,986	70.3
Mizoram	772,809	87.0
Nagaland	1,790,349	90.0
Orissa	897,861	2.4
Pondicherry	67,688	19.0
Punjab	292,800	1.2
Rajasthan	72,660	0.1
Sikkim	36,115	6.7
Tamil Nadu	3,785,060	6.1
Tripura	102,489	3.2
Uttaranchal	27,116	0.3
Uttar Pradesh	22,578	0.1
West Bengal	515,510	0.6

3.4 Sikhs[89]

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.

3.4.1 Origin of Sikhism

[89] http://adaniel.tripod.com/sikhism.htm, last visited on 11th Nov. 2011

Guru Nanak (1469-1539) was founder of Sikhism. About 2% of India's populations are Sikhs. Even so, the Sikhs, because of their unique appearance sometimes stand for India. Traditionally the men keep their hair and do not shave their beard or moustache. They gather their head hair in a turban.

Sikhism is comparatively a new religion in India. This religion was established by Guru Nanak. Nanak was born into a Hindu family in 1469 in the Punjab region. Since childhood he loved to travel, learn and preach humanity. In those days people who taught and preached were titled Guru meaning teacher, his followers became to be known as Sikhs meaning learners. And so Guru Nanak developed a new religion and it also included beliefs from the two dominant religions in the Punjab region, Hinduism and Islam. Some claim that Guru Nanak tried to developed a new religion and included in it what he thought were the good beliefs of these two religions. Like in Islam the belief in the existence of one invisible God. Like in Hinduism the belief in Karma and reincarnation, meaning your actions in this life will decide your fate in the next incarnation. The Sikhs also cremate their dead ones as is done in Hinduism.

The creators of Sikhism tried to abolish some of the Indian customs such as the Caste System and Sati. In Sikhism everyone has equal rights irrespective of caste, creed, colour, race, sex or religion. Sikhism rejects pilgrimage, fasting, superstitions and other such rituals. Sikhism does not have a clergy class as it considers this as a gateway to corruption. However they have readers and singers in their temples.

Sikhs believe that there is only one God; 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 ('Ik Om Kar').

3.4.2 Place of Worship

A Sikh place of worship is called Gurdwara. Sikhism does not support pilgrimage to holy sites because according to Sikhism, God is everywhere and not in any certain place. But Sikhism has a few important sites, of which, the Hari Mandir, also known as the 'Golden Temple' in Amritsar in Punjab is the most important site and is considered the holiest shrine of Sikhism.

3.4.3 Belief

Equality is a very important element within the Sikh religion, regardless of caste and class all humans are seen as equal. Everyone possesses the same rights, with all men and women being treated equally in the Gurdwara (temple). This emphasis on equality then sees many people from all ethnical backgrounds being welcomed into the Gurdwara and in to 'Guru ka Langar'. Sikhism emphasizes community service and helping the needy. One of the distinct features of Sikhism is the common kitchen called Langar. In every Gurdwara there is a Langar. Every Sikh is supposed to contribute in preparing the meals in the free kitchen. The meals are served to all and are eaten sitting on the floor and this is to emphasis the point that all are equals. Sikhism does not believe in holding fasts for body is God's present to human being and therefore humans must foster, maintain and preserve it in good sound condition, unless fasting is done to foster the human body like healthy diets.

Guru Nanak who established Sikhism was its first Guru. After him there were nine more Gurus who were the highest religious authority. The last Guru, Guru Gobind Singh, proclaimed that after him the Guru of the Sikhs would be the holy book of Sikhism, Guru Granth Sahib.

Guru Granth Sahib is written in Gurumukhi script. It includes the writings of the Sikh Gurus and the writings of Hindu and Muslims saints. But out of humility Guru Gobind Singh did not include his own writings in the book he had proclaimed as the permanent Guru of the Sikhs. His writings appear in a

separate book called Dasam Granth. Guru Gobind Singh is also the Guru behind the unique appearance of Sikh men.

The Guru Granth Sahib was first compiled by the fifth Sikh guru, Guru Arjan Dev, from the writings of the first five Sikh gurus and others saints who preached the concept of universal brotherhood, including those of the Hindu and Muslim faith. Before the death of Guru Gobind Singh, the Guru Granth Sahib was declared the eternal Guru. Sikhism recognizes all humans equal before Waheguru regardless of colour, case or lineage. Sikhism rejects the belief of idol worship and circumcision.

Guru Nanak's preaching was directed with equal force to all humans regardless of their religion. Guru Nanak defines the transformation of man to a permanent union with God as part of his preaching against communalism summarized by the famous phrase, "There is no Hindu and no Muslim".

Guru Gobind decided to make his followers, the Sikhs (meaning learners), a community of fighters. He changed his surname to Singh, which means lion. His followers also changed their surname to Singh. Since then a ceremony of baptizing was established among the Sikhs in which the boys were given the title Singh and the girls were titled Kaur meaning princess. In those days "Singh" as a surname was very popular among a famous warrior caste of north India, the Rajputs. Some of the first Sikhs were also Rajputs.

3.4.4 Five marks of Sikhs

In order to make it easier for his followers to recognize each other, Gobind Singh, chose five marks, some of which even today symbolize the Sikhs. The five signs were, uncut hair; comb; sword or dagger; bracelet on the right wrist and shorts. The religious Sikhs dress according to Guru Gobind Singh's order, carrying a sword.

3.4.5 Sikh Population in India

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. The chart below depicts the population of Sikhs all over the country.

Sikh population by each Indian state[90]

State	Population	Percentage
Andaman and Nicobar	1,587	0.4
Andhra Pradesh	30,998	0.0
Arunachal Pradesh	1,865	0.2
Assam	22,519	0.1
Bihar	20,780	0.0
Chandigarh	145,175	16.1
Chhattisgarh	69,621	0.3
Dadra and Nagar Haveli	123	0.1
Daman and Diu	145	0.1
Delhi	555,602	4.0
Goa	970	0.1
Gujarat	45,587	0.1
Haryana	1,170,662	5.5
Himachal Pradesh	72,355	1.2

[90] The first report on Religion: Census of India 2001

Jammu and Kashmir	207,154	2.0
Jharkhand	83,358	0.3
Karnataka	51,326	0.0
Kerala	2,762	0.0
Lakshadweep	6	0.0
Madhya Pradesh	150,772	0.2
Maharashtra	215,337	0.2
Manipur	1,653	0.1
Meghalaya	3,110	0.1
Mizoram	326	0.0
Nagaland	1,152	0.1
Orissa	17,492	0.0
Pondicherry	108	0.0
Punjab	14,592,387	59.9
Rajasthan	818,420	1.4
Sikkim	7,176	0.2
Tamil Nadu	9,545	0.0
Tripura	1,182	0.0
Uttar Pradesh	678,059	0.4
Uttaranchal	212,025	2.5

West Bengal	66,391	0.1

3.5. Buddhists[91]:

3.5.1. Origin and growth

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 and eight-step path to achieve Nirvana.

Buddhism may have spread slowly in India until the time of the Mauryan emperor Ashoka, who was a public supporter of the religion. The support of Ashoka and his descendants led to the construction of *Stupas* (Buddhist religious memorials) and to efforts to spread Buddhism throughout the enlarged Maurya empire and into neighbouring lands.

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. Buddism has spread outside India through two main traditions; *Theravada* which extended south and east and now has widespread following in southeast Asia and Sri Lanka, *Mahayana,* which diffused first west, then north and later east throughout East Asia. Both traditions have since spread throughout the world, mainly in North America and Europe. The

[91] http://www.buddhist-temples.com/history-of-buddhism.html, visited on September 2011

practice of Buddhism as a distinct and organised religion declined from the land of its origin in around 13th century, but not without leaving 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.

On the pilgrimage to Bodh Gaya in 1891, the Sri Lankan Buddhist leader Anagarika Dharapala was shocked to find the temple in the hands of a Saivite priest, the Buddha image transformed into a Hindu icon and Buddhist barred from worship. The Buddhist revival then began in India, when he founded the Maha Bodhi Society. The organization's initial efforts were for the purpose of resuscitation of Buddhism in India and of restoring the ancient Buddhist shrines of Bobh Gaya, Samath and Kushinare.

3.5.2. Revival of Buddhism in India

In the year 1950 Dr Bhimrao Ramji Ambedkar pioneered the Dalit Buddhist movement in India for the Dalits. The revival movement of Buddhism in India underwent a major change when after publishing a series of books and articles arguing that Buddhism was the only way for the untouchables to gain equality, Ambedkar publicly converted on October 14, 1956 in Nagpur and then in turn led a mass- conversion, for over 3,80,000 dalits. Many other such mass conversion ceremonies organized.

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. Tibetan exiles numbering several thousand have since settled in the town. Most of these exiles live in upper Dhramsala, or McLeod Ganj, where they established monasteries, temples and schools. "Little Lhasa" has become one of the centres of Buddhism in the world.

3.5.3 Buddhist Population in India

Buddhist Population is 0.77 percent 1991. There has not been any remarkable growth in Buddhist population in the last few decades. The following table points out the Buddhist Population in the various states of India.

Buddhist Population in India[92]

State	Population	Percentage
Jammu and Kashmir	1,13,787	1.1
Himachal Pradesh	75,859	1.2
Punjab	41,487	0.2
Chandigarh	1,332	0.1
Uttaranchal	12,434	0.1
Haryana	7,140	0.0
Delhi	23,705	0.2
Rajasthan	10,335	0.0
Utter Pradesh	3,02,031	0.2
Bihar	18,818	0.0
Sikkim	1,52,042	28.1
Arunachal Pradesh	1,43,028	13.0
Nagaland	1,356	0.1
Manipur	1,928	0.1

[92] The first report on religion: Census of India 2001

Mizoram	70,494	7.9
Meghalaya	4,703	0.2
Tripura	98,922	3.1
Assam	51,029	0.2
West Bengal	2,43,384	0.3
Jharkhand	5,040	0.0
Orissa	9,863	0.0
Chhattisgarh	65,267	0.3
Madhya Pradesh	2,09,322	0.3
Gujarat	17,829	0.0
Daman and Diu	128	0.1
Dadra and Nagar Haveli	457	0.2
Karnataka	3,93,300	0.7
Goa	649	0.0
Kerala	2,027	0.0
Tamil Nadu	5,393	0.0
Pondicherry	73	0.0
Andaman and Nicobar	421	0.1
Maharashtra	5,838,710	6.0
Andhra Pradesh	32,037	0.0

Lakshadweep	1	0.0

3.6. Parsis

3.6.1 Origin and growth of Parsis

Zoroastrianism had become the official religion of the Persian Empire but after the invasion of the Muslims in 637 AD, Zoroastrianism disappeared in Persia. The survivors of this invasion were only found in remote villages in Iran, who later sought religious freedom in India.

A smallest religious community in India is Zoroastrianism. The follower is called Parsi because the religion arrived in India from Persia. This religion was established by Zarathustra in 6th or 7th century BC. The followers of this religion exiled from Iran in the 7th century AD because of religious persecutions by the Muslims. They arrived in Gujarat region of India.

3.6.2 Belief

The Parsis believe in the existence of one invisible God. They believe that there is a continuous war between the good forces (forces of light) and the evil forces (forces of darkness). The good forces will win if people will do good deeds think good and speak well. God is represented in their temples through fire, which symbolizes light. The holiest place for them is the village of Udvada in Gujarat, India. The holy language of the Parsis is an ancient language spoken in Iran, Avesta. The Parsis believe that fire, water, air and earth are pure element to be preserved and therefore they do not cremate or bury their dead ones but leave them on high towers, specially built for this purpose, to be eaten by hawks and crows.

3.6.3 Population of Parsis in India

As per 2001 Census there are in all 69,601 Parsis in India, consisting of 33,949 male and 35,652 females. Where the population of other communities

have increased considerably, Parsis population has decreased. This is the matter of concern for the community as well. Though the Parsis are less than 0.02% of India's population but their contribution to India is much more than their proportion in India's population. Some Parsis were main figures in establishing the Indian Nationalist movement. They were the pioneers in establishing the modern Indian industry. The rich Parsi families contributed enormously to establish institutions of all kinds in India. Even today some of the bigger finance houses in India belong to followers of this religion.

Parsis Population in India[93]

Census Year	India	Maharashtra
1901	94,910	58,093
1911	100,096	63,860
1921	101,778	65,493
1931	109,752	71,627
1941	114,890	70,139
1951	111,791	79,606
1961	100,772	77,542
1971	91,378	72,266
1981	71,630	56,886
1991	76,382	60,501
2001	69,601	54,739

3.7.Jains[94]

Jainism is one of the oldest religious traditions of India; it has existed side by side with Hinduism throughout its long history. With fewer than 5 million adherents and comprising less than 1% the Indian Population, Jainism has

[93] http://ncm.nic.in/minority_population.pdf , last visited on 25th November 2011.
[94] http://www.religionfacts.com/jainism/beliefs.htm , visited on 8th September 2011.

demonstrated a remarkable tenacity and endurance and continues to exert an influence far beyond its small numbers.

3.7.1. Origin and growth

The word Jainism is derived from a Sanskrit word meaning "follower of the Jina, or conqueror" and was established in the by Mahavira in the sixth century B.C. In fact, Mahavira is considered the most recent in a list of 24 such teachers who brought Jainism into the world. These teachers also known as "Tirthankaras," taught a path to religious awakening based on renouncing the world by practice of strict religious austerity. Mahavira established a monastic community of both nuns and monks. This community is the oldest continually surviving monastic community in the world.

Jains believe that the universe and everything in it is eternal. Nothing that exists now was ever created, nor will it be destroyed. The universe consists of three realms: the heavens, the earthly realm and the hells.

3.7.2 Population of Jain in India

Jain population is mere 0.41 of the total population in India. In the decade from 1991 to 2001 there has been increase in population by 0.01 percent. Previous to 1991 there had been gradual decline in Jain population for many decades. Following table give details of Jain population in various States of India.

Jain Population in India[95]

State	Population	Percentage
Jammu and Kashmir	2,158	0.0

[95] Census report of 2001

Himachal Pradesh	1,408	0.0
Punjab	39,276	0.2
Chandigarh	2,592	0.3
Uttaranchal	9,249	0.1
Haryana	57,167	0.3
Delhi	155,122	1.1
Rajasthan	650,493	1.2
Uttar Pradesh	207,111	0.1
Bihar	16,085	0.0
Sikkim	183	0.0
Arunachal Pradesh	216	0.0
Nagaland	2,093	0.1
Manipur	1,461	0.1
Mizoram	179	0.0
Meghalaya	772	0.0
Tripura	477	0.0
Assam	23,957	0.1
West Bengal	55,223	0.1
Jharkhand	16,301	0.1

Orissa	9,154	0.0
Chhattisgarh	56,103	0.3
Madhya Pradesh	5,45,446	0.9
Gujarat	5,25,305	1.0
Daman and Diu	268	0.2
Dadra and Nagar Haveli	684	0.4
Karnataka	4,12,659	0.8
Goa	820	0.1
Kerala	4,528	0.0
Tamil Nadu	83,359	0.1
Pondicherry	952	0.1
Andaman and Nicobar	23	0.0

The Preamble to the Constitution of India describes India as a "Sovereign Socialist Secular Democratic Republic". Secular word mandates equal treatment and tolerance of all religions. India does not have any official religion. It enshrines the right to practice, preach and propagate any religion. The right to freedom of religion is fundamental right according to Constitution of India. Most of the religious minorities are governed by their personal laws. Minorities have right to establish and administer educational institutes of their choice. No religious instructions can be imparted in government supported schools.

-x-x-x-x-

CHAPTER IV

Constitutional and other legal provisions safeguarding the Rights of the Minorities

"Despite the safeguards provided in the Constitution and the laws in force, there persists among the Minorities a feeling of inequality and discrimination. In order to preserve secular traditions and to promote National Integration, the Government of India attaches the highest importance to the enforcement of the safeguards provided for the minorities and is of firm view that effective institutional arrangements are urgently required for the enforcement and implementation of all safeguards provided for the minorities in the Constitution, in the Central and State Laws and in Government policies and administrative schemes enunciated from time to time."

(Resolution of MHA notified vide MHA Notification No. 11-16012/2/77-NID dated 12.01.1978)

----Original Charter of Minorities Commission.

In 1947, the system for the protection of minorities, as groups, was established under the League of Nations. This was replaced by the Charter of the United Nations and the Universal Declaration of Human Rights. These instruments were based on the protection of individual human rights and freedoms and the principles of non-discrimination and equality. The view was that if the non-discrimination provisions were effectively implemented, special provisions for the rights of minorities would not be necessary. It was very soon evident, however, that further measures were needed in order to better protect persons belonging to minorities from discrimination and to promote their identity.

Discrimination has been prohibited in a number of international instruments that deal with most, if not all, situations in which minority groups and their individual members may be denied equality of treatment. Discrimination is prohibited on the grounds of; race, language, religion, national or social origin, and birth or other status. Important safeguards from which individual members of minorities stand to benefit include recognition as a person before the law, equality before the courts, equality before the law, and equal protection of the law, in addition to the important rights of freedom of religion, expression and association.

4.1 Rights of Minorities under International Instruments.

Non-discrimination provisions are contained in the United Nations Charter of 1945 (Articles. 1 and 55), The Universal Declaration of Human Rights of 1948 (Article 2) and The International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights of 1966 (Article 2). Such provisions also appear in a number of specialized international instruments, including: ILO Convention concerning Discrimination in Respect of Employment and Occupation No. 111 of 1958 (Article1); International Convention on the Elimination of All Forms of Racial Discrimination of 1965 (Article 1); UNESCO Convention against Discrimination in Education of 1960 (Article 1); UNESCO Declaration on Race and Racial Prejudice of 1978 (Articles 1, 2 and 3); Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief of 1981 (Article 2); and the Convention on the Rights of the Child of 1989 (Article 2).

To this end, special rights for minorities were elaborated and measures adopted to supplement the non-discrimination provisions in international human rights instruments.

Special rights are not privileges but they are granted to make it possible for minorities to preserve their identity, characteristics and traditions. Special

rights are just as important in achieving equality of treatment as non-discrimination. Only when minorities are able to use their own languages, benefit from services they have themselves organized, as well as take part in the political and economic life of States can they begin to achieve the status which majorities take for granted. A difference in the treatment of such groups, or individuals belonging to them, is justified if it is exercised to promote effective equality and the welfare of the community as a whole.[96] This form of affirmative action may have to be sustained over a prolonged period in order to enable minority groups to benefit from society on an equal footing with the majority.

Several international human rights instruments refer to national, ethnic, racial or religious groups and some include special rights for persons belonging to minorities. These include: the Convention on the Prevention and Punishment of the Crime of Genocide (Article II); the Convention on the Elimination of All Forms of Racial Discrimination (Articles 2 and 4); the International Covenant on Economic, Social and Cultural Rights (Article 13); the International Covenant on Civil and Political Rights (Article 27); the Convention on the Rights of the Child (Article 30); the UNESCO Convention against Discrimination in Education (Article 5); the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities; and the UNESCO Declaration on Race and Racial Prejudice (Article 5).

Article 27 of the International Covenant on Civil and Political Rights

The most widely-accepted legally-binding provision on minorities is Article 27 of the International Covenant on Civil and Political Rights, which states:

> "In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right in community with the other members of their group, to enjoy their own

[96] United Nations document E/CN.4/52, Section V.

culture, to profess and practice their own religion, or to use their own language".

Article 27, of the Covenant grants persons belonging to minorities the right to preserve their ethnic, religious or linguistic identity. Although Article 27 refers to the rights of minorities in those States in which they exist, its applicability is not subject to official recognition of a minority by a State.

Article 27 does not call for special measures to be adopted by States, but States that have ratified the Covenant are obliged to ensure that all individuals under their jurisdiction enjoy their rights; this may require specific action to correct inequalities to which minorities are subjected.[97]

UN Declaration of 18th December 1992

In order to strengthen the cause of the minorities, the United Nations promulgated the "Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities" on 18th December 1992 proclaiming that:

"States shall protect the existence of the National or Ethnic, Cultural, Religious and Linguistic identity of minorities within their respective territories and encourage conditions for the promotion of their identity."

The only United Nations instrument which addresses the special rights of minorities in a separate United Nations document is the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.[98] The text of the Declaration, while ensuring a balance between the rights of persons belonging to minorities to maintain and develop their own

[97] General Comment of the Human Rights Committee 18 (37). For the full text see United Nations Document HRI/GEN/1 of 4 September 1992
[98] Adopted by the General Assembly on 18 December 1992 (General Assembly resolution 47/135).

identity and characteristics and the corresponding obligations of States, ultimately safeguards the territorial integrity and political independence of the Nation as a whole. The principles contained in the Declaration apply to persons belonging to minorities in addition to the universally recognized human rights guaranteed in other international instruments.[99]

The Declaration grants to persons belonging to minorities:

- Protection, by States, of their existence and their national or ethnic, cultural, religious and linguistic identify (Article 1);
- the right to enjoy their own culture, to profess and practice their own religion and to use their own language in private and in public (Article 2.1);
- the right to participate in cultural, religious, social, economic and public life (Article 2.2);
- the right to participate in decisions which affect them on the national and regional levels (Article 2.3);
- the right to establish and maintain their own associations (Article 2.4);
- the right to establish and maintain peaceful contacts with other members of their group and with persons belonging to other minorities, both within their own country and across State borders (Article 2.5); and
- the freedom to exercise their rights, individually as well as in community with other members of their group, without discrimination (Article 3).

States are to protect and promote the rights of persons belonging to minorities by taking measures:

- to create favourable conditions to enable them to express their characteristics and to develop their culture, language, religion, traditions and customs (Article 4.2);

[99] See article 8 of the Declaration.

- to allow them adequate opportunities to learn their mother tongue or to have instruction in their mother tongue (Article 4.3);
- to encourage knowledge of the history, traditions, language and culture of minorities existing within their territory and ensure that members of such minorities have adequate opportunities to gain knowledge of the society as a whole (Article 4.4);
- to allow their participation in economic progress and development (Article 4.5);
- to consider legitimate interests of minorities in developing national policies and programmes, as well as in planning and implementing programmes of cooperation and assistance (Article 5);
- to cooperate with other States on questions relating to minorities, including the exchange of information and experiences, in order to promote mutual understanding and confidence (Article 6);
- to promote respect for the rights set forth in the Declaration (Article 7);
- to fulfil the obligations and commitments States have assumed under international treaties and agreements to which they are parties.

Finally, the specialized agencies and other organizations of the United Nations system are encouraged to contribute to the realization of the rights set forth in the Declaration (Article 9).

4.2 Minority Rights under Indian Legal provisions:

Recognition and protection of minority rights in India was hardly an issue prior to the starting of twentieth century because of the hegemony of minority over majority and ruling class minorities' unwillingness to interfere within the private, personal and religious matters of either group. All people had freedom to be governed by their religious and customary laws within their private affairs. The issue became relevant during early twentieth when Britishers gradually started power sharing with the Indian natives; and minorities

especially Muslims led by Jinnah suspected their protection in the hands of majority Hindus. To address such fear Britishers along with certain Princely States made special provisions for minority representation in legislature and government jobs. The Separate electorate system introduced by Britishers had two fold objectives – (1) to mobilize several communities especially of minorities in India to participate in power sharing; (2) to prevent the strong nationalism growing under the single umbrella of Congress.

The separate electorate system whereas criticized by congress; minorities led by Jinnah welcomed this model. Dr. B. R. Ambedkar, a dalit leader also demanded for separate electorate system for dalits an oppressed category of Hindu society. However after an assurance given by congress and Mahatma Gandhi that in independent India special provisions shall be made for economic and social minorities he relinquished his demand of separate electorate for dalits.

4.2.1 Constitutional Assembly Stand on Minority Rights:

Nation building is a dynamic process of integrating a plurality of social groups into a common framework of identity and loyalty in a political community. While convincing few representatives in constituent assembly who had created a little disagreement about the need for pluralism and special provisions for minorities Dr. B.R. Ambedkar said:

"To diehards who have developed a kind of fanaticism against minority protection I would like to say two things. One is that minorities are an explosive force which, if it erupts, can blow up the whole fabric of the State. The history of Europe bears ample and appalling testimony to this fact. The other is that the minorities in India have agreed to place their existence in the hands of the majority. In the history of negotiations for preventing the partition of the Ireland, Redmond said to Carson, "Ask for any safeguard you like for the

Protestant minority but let us have a United Ireland." Carson's reply was "Damn your safeguards, we don't want to be ruled by you." No minority in India has taken this stand. They have loyally accepted the rule of the majority, which is basically a communal majority and not a political majority. It is for the majority to realize its duty not to discriminate against minorities. Whether the minorities will continue or will vanish must depend upon this habit of the majority. The moment the majority loses the habit of discriminating against the minority, the minorities can have no ground to exist. They will vanish."

Similar view was also expressed by Govind Ballabh Pant. With this objective the Constituent Assembly set up an Advisory Committee under the chairmanship of Sardar Patel on the subject of Fundamental Rights including rights of minorities, with the twin objectives of eliminating the chance of religion exploiting the State and vice-versa. The Advisory Committee appointed five sub-committees. One was the minorities sub-committee headed by H.C. Mukherjee a Christian leader from Bengal. Though Initially the Advisory Committee recommended, as a general rule, that seats for the different recognized minorities like Muslims, Scheduled Castes, Sikhs, Anglo Indians, Indian Christians, Parsis and tribals living in the plains of Assam should be reserved in different legislatures on the basis of their population; at a later stage it rejected separate electorates of any kind, as in the past they had sharpened communal differences and led to the partition of the country.

4.2.2. The Sub-Committee Report on Minorities: - This subcommittee after thorough analysis of present future aspect of minorities and country prepared an interim report which dealt with the question of Fundamental Rights from the point of view of minorities. The report recommended –

1. All citizens 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.

2. Minorities in every unit shall be adequately protected in respect of their language and culture, and no government may enact any laws or regulations that may act oppressively or prejudicially in this regard.
3. No minority, whether of religion, community or language shall be deprived of its rights or discriminated against in regard to the admission into state educational institutions, nor shall any religious instruction be compulsorily imposed upon them.
4. Notwithstanding any custom, law, decree or usage, presumption or terms of dedication, no Hindu on grounds of caste, birth or denomination shall be precluded from entering in educational institutions dedicated or intended for the use of the Hindu community or any action thereof, and
5. No disqualification shall arise on account of sex in respect of public services or professions or admission to educational institutions saves and except that this shall not prevent the establishment of separate educational institutions for boys and girls.

The Advisory Committee accepted the recommendations partially and recommended the following clause to the Constituent Assembly:
1. Minorities in every unit shall be protected in respect of their language, script and culture, and no laws or, regulations may be enacted that may operate oppressively or prejudicially in this respect.
2. No minority whether based on religion, community or language shall be discriminated against with regard to admission into state educational institutions, nor shall any religious instruction be compulsorily imposed on such minority.
3. (a) All minorities whether based on religion, community or language shall be free in any unit to establish and administer educational institutions of their choice.
(b) The State shall not, while providing state aid to schools, discriminate against schools under the management of minorities whether based on religion, community, or language.

The clause was incorporated as clause 24 with some drafting changes in the Draft Constitution prepared by the Constitutional Advisor. The Drafting Committee revised the text of clause 24 twice, the most significant change being the re-drafting of sub-clause (1). The clause finally took the shape as Article 23 of the Draft Constitution. The Drafting Committee, at the revision stage divided Article 23 into two separate Articles - Article 29 and 30 as now contained in the existing Constitution. However other kind of language related issues were given the Constitutional rights rather than fundamental rights. Thus except for a few concessions which the Assembly admitted for the Anglo-Indian community no other religious minority could secure any political rights. The concession to Anglo-Indians, as finally incorporated in the Constitution, comprised of provisions authorizing the President to nominate not more than two members of the Anglo-Indian community to the House of the People if in his opinion that community happened to be inadequately represented (Article 331). A similar provision was made for nomination in the State Legislative Assemblies (Article 333). Both the provisions were to remain in force for a period of 30 years only (Article 334), a provision for reservation in railways, customs and postal and telegraph services for ten years, the reservations being on the same basis on which they were made before 1947 (Article 336). A special provision was incorporated for continuance of special educational grants for a period of ten years which were available to that community in 1948 (Article 337). Due to the partition of country there was a strong feeling against the communal forces and hence no attempt was made on any occasion even to define the term “Minority” in precise words. The feeling was so strong that the words “Certain Classes” were substituted for the word “Minorities” wherever it occurred in the text of the Constitution. Not only is the use of the term minority in the Constitution very rare but also no group is mentioned explicitly as a minority therein. The term ‘Minority’ is mentioned in only two Articles, 29 and 30. Here too the use of the term is 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. More so Article 366 of the Constitution, which is exclusively utilized to give the meaning of words and terms used in the text of the Constitution gives meaning to 30 such expressions. But here too the term "Minority" is not covered.

4.2.3 Constitutional Provisions relating to minority rights

It is praiseworthy that Constitution of India has afforded protection to the minorities in the country. The framers of the Constitution were quite conscious of the importance of these provisions. They very well understood that, in pluralistic society rights of minorities and weaker sections need to be safeguarded. The idea of giving some special right to the minorities is not to treat them as privileged section of the population but to give to the minorities a sense of security. Special rights for minorities were designed not to create inequalities but to bring about equality by ensuring the preservation of the minority institutions and by guaranteeing autonomy in the matter of administration of these institutions.

In India, the safeguards for minorities under the constitution of India are in form of fundamental rights. Firstly the Constitution nowhere discriminates among the citizens of India on the grounds of religion, race, caste, etc and secondly, the rights conferred under Articles 25 to 30 are fundamental rights. The State is duty bound to protect the fundamental rights.

If fundamental rights are infringed the remedy lies under Articles 32 and 226. A person can directly approach the Supreme Court or the High Court in case of violation of fundamental rights. So the true spirit and intention of the Constitution is to provide a very formal and water tight arrangement for safeguarding the interest of minorities.

There are some Articles in the constitutions of India that exclusively safeguards minority's rights, whereas, there are certain Articles though not specifically

meant for minorities but they strengthen minorities' rights. Hereunder the safeguards of minority rights are discussed.

Article 14, Equality before law- The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

The concept of equality, guaranteed in Article 14, as enshrined has made every one equal before the law. The fundamental rights are guaranteed to minority and majority as well. According to Article 14 of the Constitution, all persons shall be equally subjected to the law and that among equals; law shall be equal and shall be equally administered. Thus minorities cannot be put to any legal disability vis- a-vis the majority. Articles 15 and 16 prohibit discrimination only on certain grounds. Both these Articles are guarantee against discrimination of any kind and it can be asserted that no member of a minority community will be handicapped simply because he belongs to any particular minority group. Thus, other things being equal, minorities have every right in India to be appointed to any public office, however high; they have a common citizenship and these rights along with their cultural and educational rights will go long way in safeguarding the interests of minorities.

Article 15, Prohibition of discrimination on the grounds of religion, race, caste, sex or place of birth-

(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, and place of birth or any of them.

(2) No citizen shall , on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to-

(a) access to shops, public restaurants, hotels and places of public entertainment, or

(b) the use of wells, tanks, bathing ghats roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of general public.

(3) Nothing in the Article shall prevent the State from making any special provision for women and children.

(4) Nothing in this Article or in clause (2) of Article 29 shall prevent the State form making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes

Article 16. Equality of opportunity in matters of public employment-

(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the state.

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

(3) Nothing in this Article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office [under the Government of, or any local or other authority within, a State or union territory, any requirement as to residence within that State or Union territory] prior to such employment or appointment.

(4) Nothing in this Article shall prevent the State from making any provision for the reservation of appointments or posts in favor of any backward class of citizens which, in the opinion of the State, is not adequately represented in the service under the state.

[(4A) Nothing in this Article shall prevent the State from making any provision for reservation [in matters of promotion, with consequential seniority, to any class] or classes of posts in the services under the state in favour of the Scheduled Castes and Scheduled Tribes which in the opinion of the State are not adequately represented in the services under the State.

[4B) Nothing in this Article shall prevent the State from considering any unfilled vacancies of a year which are reserved for the being filled up in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent. Reservation will depend on total number of vacancies of that year.]

(5) Nothing in this Article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.

Article 21. Protection of life and personal liberty- No person shall be deprived of his life or personal liberty except according to procedure established by law.

Article 25. Freedom of conscience and free profession, practice and propagation of religion-

(1) Subject to public order, morality and health and to other provisions of this part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion.

(2) Nothing in this Article shall affect the operation of any existing law or prevent the state from making any law-

(a) regulating or restricting any economic, financial political or other secular activity which may be associated with religion practice.

(b) providing for social welfare and reform or throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus. Explanation 1- The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religions.

Explanation II –In sub clause (b) of clause (2) the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina, or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.

Article 26. Freedom to manage religious affairs

Subject to public order, morality and health, every religious denomination or any section thereof shall have the right-

(a) to establish and maintain institutions for religious and charitable purposes;

(b) to manage its own affairs in matters of religion.

(c) To own and acquire movable and immovable property; and

(d) To administer such property in accordance with law.

Article 27. Freedom as to payment of taxes for promotion of any particular religion

No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination.

Article 28. Freedom as to attendance at religious instruction or religious worship in certain educational institutions –

(1) No religious instruction shall be provided in any educational institution wholly maintained out of State fund.

(2) Nothing in clause (1) shall apply to an education institution which is administered by the State but has been established under any endowment or trust which required that religious instruction shall be imparted in such institution.

(3) No person attending any educational institution recognized by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious

worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto.

Exclusive rights of minorities.

India is the largest democracy of the world with secular character and is governed by the constitution. The founding fathers of the Indian Constitution, in order to give a sense of security and confidence to the minorities, have conferred certain rights to minorities. Minorities in India do not stand on equal footing with others, which made the framers of the Constitution, through Article 29 and Article 30, accord special rights to the people who form religious or linguistic minority in India.

On an outset it is desirable to delineate Articles 29 and 30 of the Constitution of India, which relevant subject matter for the purpose of this study. The need for defining minorities stems from Article 29 and 30, which guarantees minorities following privileges:

Cultural and Educational Rights

Article 29. Protection of interests of minorities.-

(1) 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.

(2) 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.

Article 30. Right of minorities to establish and administer educational institutions.-

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

[(1A) In making any law providing for the compulsory acquisition of any property of any educational institution established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.]

(2) 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.

From the careful perusal of the above to Articles of the Constitution of India it is found that expression minorities has been used at four places in the Constitution of India. It has been used in the head note of Article 29 and 30 and in sub clause (1) and (2) of Article 30. Minorities in Article 30 has been used in two senses in Article 30, one based on religion and other based on language.

These provisions were to give religious and linguistic minorities' security and confidence, and develop their own culture by bringing up their children in the manner and with the ideals they preferred that the Constitution of the country embodied a special provision in the list of Fundamental Rights.

As these rights are part of Chapter III of the Constitution, consisting of fundamental rights, they are safeguarded against future infringement. Every legal provision or executive action need to conform to the mandates implied in them. Article 13 of the Constitution of India bars the state from making any law abridging or limiting any of the rights guaranteed under this chapter.

Article 13 of Constitution of India deals with: Laws inconsistent with or in derogation of the fundamental rights.

1. All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void
2. The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void
3. In this Article, unless the context otherwise requires law includes any Ordinance, order, bye law, rule, regulation, notification, custom or usages having in the territory of India the force of law; laws in force includes laws passed or made by Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas
4. Nothing in this Article shall apply to any amendment of this Constitution made under Article 368.

As per the Article 13 of the Constitution of India the State is barred from making any law abridging or limiting any of the fundamental rights guaranteed under chapter III of the Constitution of India. It threatens to veto the laws found inconsistent with the Fundamental Rights.

Article 12 defines State: The State includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.

The term 'law' includes within its amplitude any ordinance, order, bye-law, rule, regulation, notification, custom or usage having the force of law; and the prohibition binds all such instrumentalities within the State as having legal authority to formulate such law. The promise of enforcement is contained in Article 32 which, conferring practicability to the assertions contained in Article

13, declares that the right to move the Supreme Court by appropriate proceedings for the enforcement of Fundamental Rights is guaranteed and thus imposes a duty upon the highest court to afford protection against any violation and vests a corresponding right in the religious and linguistic minorities to seek remedy in case the rights are threatened with deprivation or infringement. A similar jurisdiction has been conferred upon the High Courts under Article 226. The rights are made justifiable before the courts for double purpose of protecting them against arbitrary action of regulatory authorities wielding the force of state and against excesses of elected legislatures dominated by transient numerical majorities and often swayed by passions and prejudices.

Further Articles related to linguistic minorities are as under

Article 347: Special provision relating to language spoken by a section of the population of a State:

On a demand being made in that behalf the President may, if he is satisfied that a substantial proportion of the population of a State desire the use of any language spoken by them to be recognized by that State, direct that such language shall also be officially recognized throughout that State or any part thereof for such purpose as he may specify.

Article 350: Language to be used in representations for redress of grievances:

Every person shall be entitled to submit a representation for the redressal of any grievance to any officer or authority of the Union or a State in any of the languages used in the Union or in the State, as the case may be.

Art. 350A: Facilities for instruction in mother-tongue at primary stage:

It shall be the endeavour of every State and of every local authority within the State to provide adequate facilities for instruction in the mother-tongue at the primary stage of education to children belonging to linguistic minority groups;

and the President may issue such directions to any State as he considers necessary or proper for securing the provision of such facilities.

Art. 350 B: Special Officer for Linguistic Minorities

i) There shall be a special officer for the linguistic minorities to be appointed by the president.

It shall be the duty of the Special Officer to investigate all matters to the safeguards provided for linguistic minorities under this Constitution and report to the president upon those matters at such intervals as the President may direct, and the President shall cause all such report to be laid before each House of the Parliament, and sent to the Government of the State concerned.

4. 3. Consensual Safeguards for Minorities

In addition to Constitutional safeguards of Article 29 and 30 mentioned earlier, following the reorganization of the states on the linguistic basis, there emerged some safeguards on consensual basis for linguistic minorities. These have been agreed to by the Central and the State Governments through series of meetings of Chief Ministers of all the states.

1. Instruction through minority languages at the Secondary stage of education;

2. Translation and publication of important rules, regulations, notices, etc., into all languages, which are spoken by at least 15% of the total population at district or sub-district level;

3. No insistence upon knowledge of State's Official Language at the time of recruitment. Test of proficiency in the State's Official Language to be held before completion of probation.

The constitutional and the consensual safeguards together with practical way to implement them has led to the following

4. 4. Combined Scheme of Safeguards for Minorities

The salient features of the Scheme, as at present, are:

1. Translation and publication of important rules, regulations, notices, etc., into all languages, which are spoken by at least 15% of the total population at district or sub-district level;

2. Declaration of minority languages as second official language in districts where persons speaking such languages constitute 60% or more of the population;

3. Receipt of, and reply to, representations in minority languages; scheme of safeguards

4. Instruction through mother tongues/ minority languages at the Primary stage of education;

5. Instruction through minority languages at the Secondary stage of education;

6. Advance registration of linguistic preference of linguistic minority pupils, and inter-school adjustments;

7. Provision for text books and teachers in minority languages; scheme of safeguards

8. Implementation of Three-language Formula;

9. No insistence upon knowledge of State's Official Language at the time of recruitment. Test of proficiency in the State's Official Language to be held before completion of probation

10. Issue of Pamphlets in minority languages detailing safeguards available to linguistic minorities;

11. Setting up of proper machinery at the State and district levels.

Beyond the above provisions there is a National Commissioner of linguistic Minorities.

4.5. National Commissioner of linguistic minorities.

We have **National Commissioner for Linguistic minorities,** an organisation to monitor and implementation of Constitutional and Consensual safeguards for linguistic minorities.

Safeguards provided to the linguistic minorities are of two kinds.

1. Those provided by the Constitution

2. Those arrived at by the consensus by Central and State Governments through series of meetings.

3. The combine scheme.

4.6. Classification of Minority Educational Institutions

Minority Educational Institutes can be classified into recognized and unrecognized institutions. Institutions like school and colleges that provide secular education are generally recognized by the government, where as informal centers of education like Madrasas, Bible colleges, etc are unrecognized. Recognized schools and colleges are of two kinds Viz: Aided and Unaided. Aid schools and colleges means financial assistance is granted to the said school or college by the Central government, State government or any funding agency establish by the government. Unaided schools and colleges are

the one which do not receive any funds from the government and they manage the institutions by the funds generated by them.

It would be pertinent to understand the kind of Educational Institutions run by Minority Community.

Recognized – means an institution recognized by an appropriate authority where 'appropriate authority' can be defined as administrator or any other officer authorized by Central or State government.

Aided schools or colleges – means a recognized school or college which is receiving aid in the form of maintenance grant from the central government, administrator or local authority or any other authority designated by the central government, administrator or a local authority.

Unaided schools or colleges – means a recognized school or college, which does not receive any aid.

In terms of government regulations also, there is **difference between aided and unaided institutions**

1) State can't impose its reservation policy on minority and non-minority on unaided private colleges including professional colleges.

2) Up to the level of undergraduate education, the minority unaided educational institution enjoys total freedom.

3) However, different considerations would apply for graduate and postgraduate level of education as also for technical and professional educational institution i.e. such education cannot be imparted by any institution unless recognized or affiliated by any competent authority created by law such as university, board, central or state government or alike.

4.7. Highlights of various Acts that deals with Minority Rights

The Indian Parliament on the 17, May 1992 passed the National Commission for Minorities Act, ordering the Central Government to constitute a body, called the National Commission for Minorities. In 2004 National Commission of Minority Educational Institutions Act was enacted to ensure that the rights

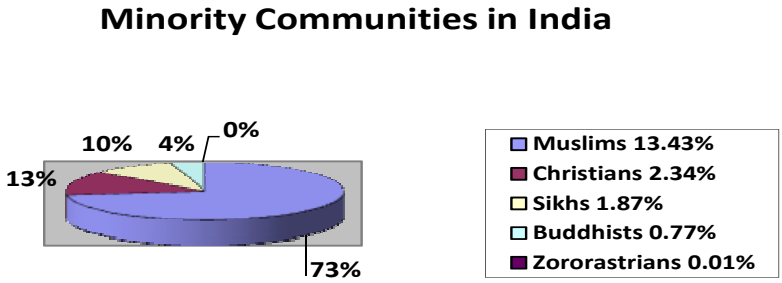
guaranteed to minorities were effectively implemented. Hereafter the important provisions of both the Acts are highlighted.

4.7.1. National Commission of Minority Act, 1992[100]

The setting up of Minorities Commission was envisaged in the Ministry of Home Affairs Resolution dated 12.01.1978 which specifically mentioned that, "despite the safeguards provided in the Constitution and the laws in force, there persists among the Minorities a feeling of inequality and discrimination. In order to preserve secular traditions and to promote National Integration the Government of India attaches the highest importance to the enforcement of the safeguards provided for the Minorities and is of the firm view that effective institutional arrangements are urgently required for the enforcement and implementation of all the safeguards provided for the Minorities in the Constitution, in the Central and State Laws and in the government policies and administrative schemes enunciated from time to time. Sometime in 1984 the Minorities Commission was detached from Ministry of Home Affairs and placed under the newly created Ministry of Welfare.

With the enactment of the National Commission for Minorities Act, 1992, the Minorities Commission became a statutory body and renamed as National Commission for Minorities. The first Statutory National Commission was set up on 17th May 1993. Vide a Gazette notification issued on 23rd October 1993 by Ministry of Welfare, Government of India, five religious communities viz; **the Muslims, Christians, Sikhs, Buddhists and Zoroastrians (Parsis)** were notified as minority communities. As per the 2001 Census, these five religious minority communities constitute 18.42% of the country's population.

[100] http://ncm.nic.in/



Functions of NCM

As per Section 9(1) of the NCM Act, 1992, the Commission is required to perform following functions:-

(a) Evaluation of the progress of the development of minorities under the Union and States;

(b) Monitoring of the working of the safeguards for minorities provided in the Constitution and in laws enacted by Parliament and the State Legislatures;

(c) Making recommendations for the effective implementation of safeguards for the protection of the interests of minorities by the Central Government or the State Governments;

(d) Looking into specific complaints regarding deprivation of rights and safeguards of minorities and taking up such matters with the appropriate authorities;

e) Getting studies to be undertaken into the problems arising out of any discrimination against minorities and recommending measures for their removal;

(f) Conducting studies, research and analysis on the issues relating to socio-economic and educational development of minorities;

(g) Suggesting appropriate measures in respect of any minority to be undertaken by the Central Government or the State Governments;

(h) Making periodical or special reports to the Central Government or any matter pertaining to minorities and in particular the difficulties confronted by them; and

(i) Any other matter, which may be referred to it by the Central Government.

Powers vested with National Commission of Minority

The Commission shall, have all the powers of a civil court trying a suit and, in particular, in respect of the following matters, namely:-

a) Summoning and enforcing the attendance of any person from any part of India and examining him on oath.
b) Requiring the discovery and production of any document.
c) Receiving evidence of affidavits.
d) Requisitioning any public record or copy thereof from any court or office.
e) Issuing commissions for the examination of witnesses and documents; and
f) Any other matter which may be prescribed.

4.7.2 National Commission for Minority Educational Institutions Act, 2004[101]

The National Commission of Minority Educational Institutions Act is the outcome of the UPA Government's manifesto that called for 'National Common

[101] http://ncmei.gov.in/index.aspx?clt=84,

Minimum Programme'. In the National Common Minimum Programme, in its Section on "National Harmony, Welfare of Minorities," it was mentioned that a commission for minority educational institutions would be established which will provide direct affiliation for minority professional institutions to Central Universities.The Government brought out an Ordinance in November 2004 establishing the Commission. Later a Bill was introduced in the Parliament in December 2004 and both Houses passed the Bill. The NCMEI Act was notified in January 2005.

The Commission is mandated to look into specific complaints regarding deprivation or violation of rights of minorities to establish and administer educational institutions of their choice. Protection of rights of minorities are enshrined in Article 30 of the Constitution which states that "all minorities, whether based on religion or language shall have the right to establish and administer educational institutions of their choice". Thus, the Commission can look into any complaints relating to violation and deprivation of rights of minorities to establish and administer educational institutions of their choice.

This is the first time that a specific Commission has been established for protecting and safeguarding the rights of minorities to establish and administer educational institutions of their choice. This Commission is a quasi-judicial body and has been endowed with the powers of a Civil Court. It is headed by a Chairman who has been a Judge of the Delhi High Court and two members to be nominated by Central Government. The Commission has 3 roles namely adjudicatory function, advisory function and recommendatory powers. So far as affiliation of a minority educational institution to a university is concerned, the decision of the Commission would be final.

The Commission has powers to advise the Central Government or any State Government on any question relating to the education of minorities that may be referred to it. The Commission can make recommendations to the Central

Government and the State Governments regarding any matter which directly or indirectly deprives the minority community of their educational rights enshrined in Article 30.

The empowerment of the Commission has provided a much needed forum for the minority educational institutions to highlight their grievances and to get speedy relief. The subject matter of a petition or complaint include non issue of No Objection Certificate (NOC) by the State Governments, delay in issue of NOC, refusal or delay in issue of minority status to minority educational institutions, refusal to allow opening of new colleges, schools or institutions by minorities, refusal to allow additional courses in minority educational institutions, delay or refusal in the release of grants in-aid, refusal to give financial assistance, denial of permission to create new posts of teachers in minority educational institutions even though there is increase in the number of students, approval of appointment of teachers being denied, non equality in pay scales of minority schools teachers as compared to Government school teachers denial of teaching aids and or other facilities like computers, library, laboratory etc. to minority educational institutions on par with Government institution, non availability of books in Urdu in all subject for students of Urdu school, non appointment of Urdu knowing teachers, in adequate payment to Madrasa employees, non-release of grants to Madrasa, non-payment of retirement benefits to teachers and non-teaching staff of minority schools, extension of Sarva Shiksha Abhiyan facilities to minority educational institution especially in the deprived rural areas etc.

Functions and Powers of the Commission are enumerated below:-

Functions of Commission:-

Notwithstanding anything contained in any other law for the time being in force, the Commission shall –

(a) Advise the Central Government or any State Government on any question relating to the education of minorities that may be referred to it;

(b) Enquire, *suo motu,* or on a petition presented to it by any minority educational institution, or any person on its behalf into complaints regarding deprivation or violation of rights of minorities to establish and administer educational institutions of their choice and any dispute relating to affiliation to a University and report its finding to the appropriate Government for its implementation;

(c) Intervene in any proceeding involving any deprivation or violation of the educational rights of the minorities before a court with the leave of such court;

(d) Review the safeguards provided by or under the Constitution, or any law for the time being in force, for the protection of educational rights of the minorities and recommend measures for their effective implementation;

(e) Specify measures to promote and preserve the minority status and character of institutions of their choice established by minorities;

(f) Decide all questions relating to the status of any institution as a minority educational institution and declare its status as such;

(g) Make recommendations to the appropriate Government for the effective, implementation of programmes and schemes relating to the minority educational institutions; and

(h) Do such other acts and things as may be necessary, incidental or conducive to the attainment of all or any of the objects of the Commission.

Powers of Commission:-

As enunciated in Section 12 of the NCMEI Act, 2004 the Commission enjoy the following powers.

1. If any dispute arises between a minority educational institution and a University relating to its affiliation to such University, the decision of the Commission thereon shall be final.

2. The Commission shall, for the purposes of discharging its functions under this Act, have all the powers of a civil court trying a suit and in particular, in respect of the following matters, namely:-

(a) Summoning and enforcing the attendance of any person from any part of India and examining him on oath;

(b) Requiring the discovery and production of any document;

(c) Receiving evidence on affidavits;

(d) Subject to the provisions of section 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), requisitioning any public record or document or copy of such record or document from any office;

(e) Issuing commissions for the examination of witnesses or documents; and

(f) Any other matter which may be prescribed.

1. Every proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196, of the Indian Penal Code (45 of 1860) and the Commission shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

The Commission is also vested with the powers of appeal against order of competent authority (Section 12A) to decide on minority status of educational institutions (Section 12B) power to cancel the status granted (Section 12C), and to investigate matters relating to deprivation of educational rights of minorities (Section 12D). The Commission has also powers for calling for information from the Central Government or any State Government or any other authority or any organization subordinate thereto, while enquiring into complaints, violation or deprivation of educational rights of minorities (Section 12E).

No court except the Supreme Court and a High Court exercising jurisdiction under Articles 226 and 227 of the Constitution shall entertain any suit, application or other proceedings in respect of any order made by the Commission (Section 12 F).

Rights of Minority Educational Institutions:

The National Commission for Minority Educational Institutions Act 2004 (2 of 2005) as amended by the NCMEI (Amendment Act 2006) lays down rights of Minority Educational Institutions as under:-

Right to establish a Minority Educational Institution:-

1. Any person who desires to establish a Minority Institution may apply to the Competent authority for the grant of no objection certificate for the said purpose.

2. The Competent authority shall:-

(a) on perusal of documents, affidavits or other evidence, if any; and

(b) after giving an opportunity of being heard to the applicant, decide every application filed under sub-section (1) as expeditiously as possible and grant or reject the application, as the case may be: Provided that where an application is rejected, the Competent authority shall communicate the same to the applicant.

3. Where within a period of ninety days from the receipt of the application under sub-section (1) for the grant of no objection certificate:-

a) the Competent authority does not grant such certificate; or

(b) where an application has been rejected and the same has not been communicated to the person who has applied for the grant of such certificate, it shall be deemed that the Competent authority has granted a no objection certificate to the applicant.

4.8. State–wise and year wise details of Minority Status Certificates issued as on 31.07.2011[102]

Educational institutions have to apply for acquiring the Minority Status to the State Government. Following table gives the details of minority status certificate issued from 2005 to 2011 in the different States of the Country.

[102] http://ncmei.gov.in/index.aspx?clt=84,

There are maximum numbers of minority educational institutes in Kerala followed by Uttar Pradesh and West Bengal.

Sr. No.	State	2005	2006	2007	2008	2009	2010	2011	Minority Status Certificate issued
1.	Andaman	-	3	2				1	6
2.	A.P	4	9	24	6	30	2	7	82
3.	Arunachal Pradesh			2		6			8
4.	Assam		2		17	2	13	102	136
5.	Bihar	1	2	20	17	3	3	7	53
6.	Chandigarh	-	2	3	1	1	1	1	9
7.	Chhattisgarh	-	1	4	5	7	55	90	162
8.	D & N Haveli	-	2	2	-	-	-	-	4
9.	Daman	-	1	-	-	-	-	-	1
10.	Delhi	2	36	8	15	10	14	20	105
11.	Goa	-	9	31	28	81	4	2	155
12.	Gujarat	-	3	3	5	8	5	4	28
13.	Haryana	-	20	12	3	4	-	11	50
14.	H.P.	-	9	3	4	-	1	1	18
15.	Jharkhand	-	2	15	15	3	1	1	37
16.	Karnataka	-	4	26	15	11	9	5	70
17.	Kerala	-	9	78	97	524	822	410	1940
18.	Madhya Pradesh	-	15	19	12	23	23	31	123
19.	Maharashtra	11	22	28	21	7	3	1	93
20.	Manipur	-	1	-	1	-	-	32	34
21.	Meghalaya	-	1	4	-	-	1	-	6
22.	Orissa	-	14	16	23	6	12	5	76
23.	Pondicherry	-	2	13	-	3	-	-	18

24.	Punjab	-	11	39	4	-	9	3	66
25.	Rajasthan	-	2	22	37	26	4	11	86
26.	Sikkim	-	3	13	-	1	-	-	17
27.	T.N.	1	9	19	13	14	16	4	76
28.	Tripura	-	-	-	1	6	-	-	7
29.	U.P.	1	107	99	48	59	114	69	497
30	Uttarakhand	-	36	17	6	4	3	6	72
31.	West Bengal	1	85	215	113	15	7	19	455
	Total	**21**	**422**	**737**	**507**	**848**	**1122**	**833**	**4490**

4.9. Guidelines applicable for granting of minority status to educational institutions

Minority educational institution means an institution established and administered by a minority having the right to do so under clause (1) of Article 30 of the constitution. Respective State Government while granting recognition to Minority Institution lay down certain conditions. Delhi Government has laid down following conditions for grant of recognition to minority educational institutions[103] [More or less the conditions applied are on the same line everywhere in the country.]:

The following policy guidelines are hereby notified for grant of minority status to educational institutions seeking affiliation to an University and the Board of Technical Education, Delhi :-

1. **Definition of minorities for the purpose of minority-run educational institutions:**

"Minority communities" for the purpose of establishing minority educational institutions means a community notified as such under the Government of Delhi Minorities Commission Act 1999.

[103] http://te.delhigovt.nic.in/minor.html

2. **Competent Authority for according recognition to minority Educational Institutions.**

The Competent authority to grant recognition to minority educational institutions in Delhi will be the Secretary of the Department concerned in the Government of Delhi.

3. **Criteria for recognition of Minority Educational Institutions:**

The educational institution should have been established by a minority community.

a) The agency managing the institution should have been registered under the Societies Registration Act, 1860.
b) The Managing Committee of the Society and Governing body of the institution should be wholly or substantially managed by the representatives of the respective minority community.
c) The educational institution should have been running for at least two academic years in accordance with the regulations laid down by statutory authorities such as the State Government, AICTE, University, Board of Technical Education, etc.'
d) Merely giving a nomenclature as that of belonging to a minority community will not entitle the institutions to be recognized as a minority educational institution.

4 **Conditions for grant of recognition to minority Educational Institutions:**

i) The aim and objectives of the educational agency incorporated in its byelaws should clearly specify that it is meant to primarily serve the interest of the minority community to which it belongs.
ii) The minority educational institution shall not compel its students or employees to take part in any of its religious activities.
iii) The minority educational institution shall observe general laws of the land relating to educational institutions.

iv) The minority educational institution will not use its privilege as minority institution for any pecuniary benefit.

v) The minority educational institution shall charge the fees as prescribed by competent authority concerned.

vi) The minority educational institution shall appoint teachers as per the qualifications laid down by the statutory authority concerned from time to time.

vii) In all academic, administrative and financial matters the rules and regulations laid down by the respective statutory authorities from time to time shall be wholly applicable to these institutions.

viii) The minority educational institution shall do nothing which may come in the way of communal and social harmony.

ix) Fifty percent of the seats permitted to be filled up from minority communities shall be equally distributed between `free' and 'payment' seats.

5. **Admission**

All admissions shall be made on the basis of merit as per the Common Entrance Test held by competent authority. No admission outside the merit list shall be allowed until and unless competent authority allows doing so.

6. **Procedure for seeking recognition as a Minority Educational Institution:**

i) Educational agencies who wish to seek recognition of their institution as a minority institution should submit an application on a prescribed form to the competent authority concerned.

ii) A fee of Rs.10,000/- will be charged for processing the proposal and inspection of the institution. In case of renewal of recognition a fee of Rs.5,000/- shall be charged.

iii) Respective competent authority shall examine the proposals and get the institute inspected, if required.

iv) The recognition given by the competent authority shall be valid for a period of three academic years. During the validity period of recognition the competent authority can withdraw recognition at any time.

v) The institution will have to apply to the competent authority for revalidation of the recognition at least three months before the expiry of the period of validity.

7. **Withdrawal of Recognition**

The competent authority can withdraw the approval or recognition of any minority educational institution on following grounds:

i) If the educational institution subsequent to grant of approval as minority educational institution modified/revises/amends the constitution, aims and objectives on the basis of which approval was accorded.

ii) If the educational institution fails to adhere to the norms and conditions relating to fee structure, admission procedure, staff pattern and other qualifications, etc. prescribed by competent authority.

iii) If at any time the educational institution fails to meet the requirements prescribed by competent authority or other statutory authorities under their policy guidelines for recognition of the institution as minority educational institution.

iv) Any other circumstances which in view of competent authority warrants withdrawal of recognition of minority educational institution.

Provided that recognition once given will not be withdrawn unless competent authority has given sufficient opportunity to the minority institution to show cause as to why the recognition given should not be withdrawn.

There are separate rules for recognition of linguistic minority institutions the criteria being:

1) Institutes conducting definable and verifiable activity for promotion of minorities.
2) Minority language is taught as a language subject of the study.
3) Minority language is medium of instruction.

4.10 National Minorities Development Finance Corporation (NMDFC)

National Minorities Development Financial Corporation was incorporated under the aegis of "Ministry of Social Justice and Empowerment", Government of India on the 30th of September 1994 under the Section 25 of the Companies Act – 1956 with the main objective to promote economic development of the poorer section of Minorities. The people belonging to five communities i.e. Muslims, Christians, Sikhs, Buddhists & Parsis have been notified as minorities under the National Commission for Minorities Act, 1992. The prime mandate of NMDFC has been to provide concessional finance to the minorities living below double the poverty line for self-employment. NMDFC functions under the administrative control of the Ministry of Social Justice & Empowerment, Government of India.

4.11. The national Commission for Religious and Linguistic Minorities [NCRLM]

National Commission for Religious and Linguistic Minorities also called as Ranganath Misra Commission was constituted by Government of India on 29 October 2004 to look into various issues related to Linguistic and Religious minorities in India. It was chaired by former Chief Justice of India Justice Ranganath Misra. The commission submitted the report to the Government on 21 May 2007.

Initially, the commission was entrusted with the following terms of reference.

(a) To suggest criteria for identification of socially and economically backward sections among religious and linguistic minorities;

(b) To recommend measures for welfare of socially and economically backward sections among religious and linguistic minorities, including reservation in education and government employment; and

(c) To suggest the necessary constitutional, legal and administrative modalities required for the implementation of its recommendations.

After nearly five months of its work the Commission's Terms of Reference were modified so as to add the following to its original Terms of Reference.

(d) To examine and give recommendation on the demand of the Christian and Muslim dalits to be included in the Scheduled Castes. This issue has gone to the apex court through several writ petitions filed in that court and in several High Courts.

Major finding of the commissions were as follows:

i) 15% of jobs in government services and seats in educational institutions be reserved for minorities.

ii) 8.4% of OBC quota of 27% be reserved for minorities

iii) Scheduled Caste reservation benefits be extended to dalit converts.

4.12. Present United Progressive Alliance Government's efforts towards Minority Rights

After election to Lok Sabha the United Progressive Alliance (UPA) Government took office in May 2004, and adopted a National Common Minimum Programme (NCMP). Following are the extracts from the NCMP which have a bearing on Minorities Education.

- The UPA Government will amend the Constitution to establish a Commission for Minority Educational Institutions that will provide direct affiliation for Minority Professional Institutions to Central Universities.
- The UPA Government will promote modern and technical education among all minority communities. Social and economic empowerment of minorities to more systematic attention to education and employment will be a priority concern for the UPA

To fulfill their commitment the UPA Government passed National Commission for Minority Educational Institutions Act, 2004. Further the Prime minister announced 15 point programme for the welfare of Minorities.

4.13. Prime Minister's New 15 Point Programme for Welfare of Minorities'.

Prime Minister has announced 15 point programme for upliftment of

minorities. Those points are enumerated hereunder

(A) Enhancing opportunities for Education.

(1)Equitable availability of ICDS Services.

The integrated Child Development Services (ICDS) Scheme is aimed at holistic development of children and pregnant/lactating mothers from disadvantaged section, by providing services through Anganwadi Centres such as supplementary nutrition , immunization, health check-up, referral services, pre-school and non-formal education. A certain percentage of the ICDS projects and Anganwadi Centres will be located in blocks/villages with a substantial population of minority communities to ensure that he benefits of the scheme are equitable available to such communities also.

(2) Improving access to School Education.

Under the Sarva Shiksha Abhiyan, the Kasturba Gandhi Balika Vidyalaya Scheme, and other similar Government schemes, it will be ensured that a certain percentage of such school are located in villages/localities having a substantial population of minority communities

(3) Greater resources for teaching Urdu.

Central assistance will be provided for recruitment and posting of Urdu language teachers in primary and upper primary schools that serve a population in which at least one-fourth belong to that language group.

(4) Modernizing Madarsa Education.

The Central Plan Scheme of Area Intensive and Madarsa Modernization Programm provides basis educational infrastructure in areas of concentration of educationally backward minorities and resources for the modernization of Madarsa education. Keeping in view of importance of addressing this need, this programme will be substantially strengthened and implemented effectively.

(5) Scholarships for meritorious students from minority communities.

Schemes for pre-matric and post-matric scholarships for students from minority communities will be formulated and implemented.

(6) Improving educational infrastructure through the Maulana Azad Education

Foundation.

The Government shall provide all possible assistance to Maulana Azad Education Foundation (MAEF) to strengthen and enable it to expand its activities more effectively.

(B) Equitable Share in Economic Activities and Employment

(7) Self-Employment and Wage Employment for the poor.

The Swarnjayanti Gram Swarojgar Yojna (SGSY), the primary self-employment programme for rural areas, has the objective for bringing assisted poor rural families above the poverty line by providing them income generating assets through a mix of bank credit and Governmental subsidy. A certain percentage of the physical and financial targets under the SGSY will be earmarked for beneficiaries belonging to the minority communities living below the poverty line in rural areas.

The Swarnjayanti Shahary Rozgar Yojna (SSRY) consists of two major components namely, the Urban Self-Employment Programme (USEP) and the Urban Wage Employment Programme (UWEP). A certain percentage of the physical and financial targets under USEP and UWEP will be earmarked to benefit people below the poverty line from the minority communities.

The Sampurna Grameen Rozgar Yojna (SGRY) is aimed at providing additional wage employment in rural areas alongside the creation of durable community, social and economic infrastructure. Since the National Rural Employment Guarantee Programme (NREGP) has been launched in 200 districts, and SGRY has been merged with NREGP in these districts, in the remaining districts, a certain percentage of the allocation under SGRY will be earmarked for beneficiaries belonging to the minority communities living below the poverty line till these districts are taken up under NREGP. Simultaneously, a certain percentage of the allocation will be earmarked for the creation of infrastructure in such villages, which have a substantial population of minorities.

(8) Upgradation of skill through technical training.

A very large proportion of the population of minority communities is

engaged in low-level technical work or earns its living as handicraftsmen. Provision of technical training to such people would upgrade their skills and earning capability. Therefore, a certain proportion of all new ITIs will be located in areas predominantly inhabited by minority communities and a proportion of existing it is to be upgraded to 'Centres of Excellence' will be selected on the same basis.

(9) Enhanced credit support for economic activities.

The National Minorities Development & Finance Corporation (NMDFC) was set up in 1994 with the objective of promoting economic development activities among the minority communities. The Government is committed to strengthen the NMDFC by providing it greater equity support to enable it to fully achieve its objective.

Bank credit is essential for creation and sustenance of self-employment initiative. A target of 40% of net bank credit for priority sector lending has been fixed for domestic banks. The priority sector includes, inter alia, agricultural loans, loan to small-scale industries & small business, loans to retail trade, professional and self-employed persons, education loans, housing loans and micro-credit. It will be ensured that an appropriate percentage of the priority sector lending in all categories is targeted for the minority communities.

(10) Recruitment to State and Central Services.

In the recruitment of police personnel, State Governments will be advised to give special consideration to minorities. For this purpose, the composition of selection committees should be representative.

The Central Government will take similar action in the recruitment of personnel to the Central police forces. Large scale employment opportunities are provided by the Railways, nationalized banks and public sector enterprises. In these cases also, the concerned departments will ensure that special consideration is given to recruitment from minority communities.

An exclusive scheme will be launched for candidates belonging to minority communities to provide coaching in Government institutions as well as private

coaching institutes with credibility.

(C) Improving the conditions of living of minorities.

(11) Equitable share in rural housing scheme.

The Indira Awaas Yojna(IAY) provides financial assistance for shelter to the rural poor living below the poverty line. A certain percentage of the physical and financial targets under IAY will be earmarked for poor beneficiaries from minority communities living in rural areas.

(12) Improvement in condition of slums inhabited by minority communities. Under the schemes of Integrated Housing & Slum Development Programme (IHSDP) and Jawaharlal Nehru Urban Renewal Mission (JNURM), the Central Government provides assistance to States/UTs for development of urban slums through provision of physical amenities and basic services. It would be ensured that the benefits of these programmes flow equitable to members of the minority communities and to cities/slums, predominantly inhabited by minority communities.

(D) Prevention & Control of Communal Riots

(13) Prevention of communal incidents.

In the areas, which have been identified as communally sensitive and riot prone districts and police officials of the highest known efficiency, impartiality and secular record must be posted. In such areas and even elsewhere, the prevention of communal tension should be one of the primary duties of the district magistrate and superintendent of police. Their performance in this regard should be an important factor in determining their promotion prospects.

(14) Prosecution for communal offences.

Severe action should be taken against all those who incite communal tension or take part in violence. Special court or courts specifically earmarked to try communal offences should be set up so that offenders are brought to book speedily.

(15) Rehabilitation of victims of communal riots.

Victims of communal riots should be given immediate relief and provided

prompt and adequate financial assistance for their rehabilitation.

4.14 Out Come

Thus, it can be seen that there are International Instruments, Constitutional provisions, Various Acts, like National Commission for Minorities Act, 1992, National Commissions for Minorities Educational Institutions Act, 2004, etc safeguarding rights of minorities to establish and administer educational institutions of their choice. Yet, it has been observed that the State authority has not enacted any law for enforcement of educational rights of minorities. Subordinate legislation and administrative laws has abrogated the provisions of the Constitution. Numerous Universities have not incorporated provisions to meet the requirement of Article 30. Regulatory bodies like University Grant Commission (UGC), the National Council for Educational Research and Training (NCERT), the All India Council of Technical Education (AICTE), The Medical Council of India (MCI), and the Bar Council of India (BCI) too have not incorporated rules to accommodate the requirements of Article 30. Despite of the safeguards, it has been observed that minorities have not been able to enjoy these rights automatically. Minorities have approached the Court to get their rights implemented. Since minority rights being spelled out as fundamental rights, therefore Minority Educational Institutes have approached the Court under Articles 32 and 226 for protection of their rights from being infringed the State.

-x-x-x-x-

CHAPTER V

Relation between Article 29 and 30

5.1 Introduction

Articles 29 and 30 of the Constitution are grouped under the heading "Cultural and Educational rights". These both Articles protect and guarantee certain collective rights for the minorities to help them preserve their language, religion and culture. These rights also contribute to preserve the rich diversity of the country and give minority a sense of security. Over the decades, the interplay of these two Articles has been the cause of intense debate, Firstly, touching on issues such as secularism and secondly, the degree of control over private educational institutions maintained by the State or receiving aid out of State funds; on grounds only of religion, race, caste, language or any of them. This chapter begins with the discussion of rights guaranteed under Articles 29 and 30 of the Constitution of India. Further it discusses judicial approach relating to each Sub Clause of Articles 29 and 30. Subsequently, the researcher has discussed the judicial interpretation relating to the relation between Articles i.e. 29 and 30.

Article 29(1) deal with right of any section of the citizens residing in India to preserve their language, script or culture. In order to invoke Article 29(1), all that is essential is that a section of the citizens, residing in India should have a distinct language, script or culture of its own. If so, then they will have the right to conserve the same. Article 29(2) prohibits discrimination in matters of admission into educational institutions on grounds only of religion, race, caste, language or any of them. This provision guarantees the rights of individual irrespective of the community to which he belongs. Article 30 (1) provides that all religious and linguistic minorities have the right to establish and administer educational institutions of their choice. Article 30(2) prevents States from

making any discrimination against any educational institution in granting aid on the ground that it is managed by a religious or linguistic minority.

5.2. Article 29(1): Rights of citizens to preserve their language, script and culture.

Article 29(1) is not subjected to any reasonable restrictions. The right conferred upon the citizens to conserve their language, Script and culture is made absolute by the Constitution. In *D. A.V College Jullunder v State of Punjab's* case[104], it was held that were a legal provision required the Guru Nanak University to promote studies and research in Punjabi language and literature, and to undertake measures for the development of Punjabi language, literature and culture, did not infringe Article 29(1). The Supreme Court had emphasized that the purpose and object of the linguistic States, which has come to stay in India, is to provide greater facility for the development of the people of the area educationally, socially and culturally in the regional language. The concern State or the University has every right to provide for the education of the majority in the regional medium.

This right however is subject to restrictions contained in Articles 25 to 30. Promotion of the majority language does not mean stifling of minority language and script. To do so will be to trespass on the rights of those sections of the citizens which have distinct language or script which they have right to conserve through their own educational institutions. The provision in question cannot, therefore be read as requiring the minority institutions affiliated to Guru Nanak University to teach in Punjabi language, or in any may impeding their right to conserve their language, script and culture.

The Supreme Court observation in the case was:

[104] AIR 1971 SC 1737

"The provision, as we construe it, is for the promotion of Punjabi studies and research and development of the Punjabi language, literature and culture which is far from saying that the University can under that provision compel the affiliated colleges particularly those of the minority to give instruction in the Punjabi language, or in any way impede the right to conserve their languages, script and culture."

The legal provisions of University that was challenged on the ground that the colleges administered by other religious minorities, i.e., Arya Samaj, and affiliated to the University would be compelled to study the religious teaching of Guru Nanak and such provisions amounted to violation of fundamental right under Article 29(1). The Supreme Court rejected the argument saying that there is no mandate in the provision compelling affiliated colleges either to study the religious teachings of Guru Nanak, or to adopt in any way the culture of the Sikhs. If the University makes provision for an academic and philosophical study and research on the life and teachings of a saint, it cannot be said that the affiliated colleges are being required to compulsorily study his life and teachings.

5.3. Article 29(2): Right of the citizen not to be denied admission into any State maintained or State aided educational institution.

The right guaranteed under this Article is not restricted to minorities but extends to all citizens whether belonging to majority or minority. In *State of Bombay v Bombay Education Society's Case*[105] held that limiting this right only to minority groups will amount to holding that the citizens of the majority group have no right to be admitted into an educational institution for the maintenance of which they contribute by the way of taxes. *In Ravneet Kaur v Christian Medical College, Ludhiana's Case,*[106] the Court held that a private

[105] AIR 1954 SC 561
[106] AIR 1998 P&H 1

institution receiving aid from the State cannot discriminate on grounds of religion, caste, race language or any of them.

Ambit of Article 29(2).

In *State of Madras v Champakam's Case*,[107] for the first time the question of application of Article 29(2) was challenged. The communal Government Order of the State of Madras allotted seats in medical and engineering colleges in the State proportionately to the several communities, viz, non-Brahmin Hindus, Backward Hindus, Brahmins, Harijans, Anglo Indians, Christians, and Muslims. A Brahmin candidate who could not be admitted to an engineering college challenged the Government Order as being inconsistent to Article 29(2).

The Supreme Court held that the classification in the Government order was based on religion, race and caste which were inconsistent with Article 29(2). Even though the petitioner had got much higher marks than secured by many non-brahmins who were admitted in the seats allotted to them, he could not be admitted into any institution. The only reason for the denial of admission to him was that he was a Brahmin and not a non- Brahmin.

In the *State of Bombay v Bombay Education Society*,[108] an order issued by the Bombay Government banning admission of those whose language was not English to a school using English as a medium of instruction, was declared invalid under Article 29(2).

The Government had argued that the order did not debar citizens from the admission into English medium schools only on the ground of religion, race, caste, language, but on the ground that such denial would promote the advancement of the national language. Rejecting the contention the Supreme Court pointed out that the argument over looked the distinction between the

[107] AIR 1951 SC 226
[108] AIR 1954 SC 561

object underlying the order was laudable but even then its validity had to be judged by the method of its operation and its effect on the Fundamental Rights guaranteed under Article 29(2). The immediate ground for denying admission in English schools to pupils whose mother tongue was not English was only language and so order could not be upheld. Thus, discrimination in matters of admission on the basis of language was vetoed by the Supreme Court under Article 29(2).

5.4. Article 30(1): Rights of minorities to establish and administer educational institutions of their choice.

Article 30 (1) gives the linguistic or religious minorities the following two rights:

i) Right to establish, and
ii) Right to administer educational Institutions of their choice.

This benefit is extended to only linguistic and religious minorities and to no other section of the Indian Citizens. The word 'or' means that a minority may either be linguistic or religious and that it does not have to be both- a religious minority as well as linguistic minority. It is sufficient of it is one or the other or both.

While interpreting Article 30 of the Indian Constitution the question of relative degree of autonomy and permitted area and extent of regulation of minority educational institutions has been one important issue to be resolved by the judiciary during the past six decades.

In *re Kerala Education Bill case*[109] Supreme Court held that Article 30(1) covers institutions imparting general secular education. The object of Article 30(1) is to enable children of linguistic and religious minorities to go out in the world fully equipped. Protection guaranteed to minority under Article 30 is to

[109] AIR 1958 SC 956

preserve and strengthen the integrity and unity of the country. The sphere of general secular education will develop the commonness among the students of the country. This is in true spirit of liberty, equality, and fraternity through the medium of education. The minorities will feel isolated and separated if they are not given the protection under Article 30.

In *Sidhrajbhai's Case*[110], it was held that under Article 30(1) fundamental right declared is in term absolute and is not subject to reasonable restrictions. It is intended to be a real right for the protection of minorities in the matter of setting up of educational institutions of their choice. The right is intended to be effective and not to be whittled down by so-called regulatory measures conceived in the interest not of the minority educational institution, but of the public or the nation as a whole.

The learned Judges had held that, "Regulations which may be lawfully be imposed either by legislative or executive action as a condition of receiving grant or recognition, must be directed to making the institution, while retaining its character as a minority institutions, effective as an educational institution. Regulations must satisfy a dual test- the test of reasonableness, and the test that it is regulative of the educational character of the institutions and is conducive to making the institution an effective vehicle of education for the minority community or other persons who resort to it."

In *Rt. Rev Mark Netto v State of Kerala,*[111] the Supreme Court held that refusal of Regional Deputy Director of Public Instruction to admit girl students was violative of Article 30(1). The principle that can be deduced from these decisions is that Article 30(1) is absolute in terms and said right cannot be whittled down by regulatory measures conceived in the interest not of minority institutions but of the public or the nation as a whole.

---

[110] AIR 1963 SC 540
[111] (1979) 1 SCC 23

In *D. A. V. College Jullunder v State of Punjab*[112] the Court held that a linguistic minority for the purpose of Article 30(1) is one which has separate spoken language. It is not necessary that language should also have separate script. India has number of languages which do not have script of its own but nonetheless, people speaking such a language will constitute a linguistic minority to claim protection of Article 30(1).

In *Ahmedabad St. Xavier's College v State of Gujarat*[113], Supreme Court has pointed out that the spirit behind Article 30(1) is the conscience of the nation that the minorities, religious as well as linguistic, are not prohibited from establishing and administrating educational institutions of their choice for the purpose of giving their children the best general education to make them complete men and women of the country.

The Supreme Court in *S. K. Patro v State of Bihar*[114] ruled that a minority claiming privilege under Article 30 should be minority of persons residing in India. Foreigners not residing in India do not fall within the scope of Article 30(1). Residents in India and forming the well define religious or linguistic minority fall under the protection of Article 30. Further, Article 30(1) does not expressly refer to citizenship as a qualification for the members of the minorities. The fact that funds have been obtained from outside India for setting up and developing a school is no ground for denying to it protection under Article 30(1).

T.M.A Pai Foundation v State of Karnataka,[115] over ruled the proposition that no regulation can be cast in the interest of the nation if it does not serve the interest of minority as well. Justice Kirpal C. J. had ruled, that "any regulation framed in the national interest must necessarily apply to all educational institutions, whether run by majority or minority. Such a limitation must

[112] AIR 1971 SC 1737
[113] AIR 1974 SC 1389
[114] AIR 1970 SC 259
[115] (2002) 8 SCC 481

necessarily be read into Article 30. The right under Article 30(1) cannot be such as to override the national interest or to prevent the Government from framing regulations in that behalf. Court further was of the view that no right can be absolute. Whether a minority or a non minority, no community can claim its interest to be above national interest.

The words 'Establish' and 'Administer' in Article 30(1) have been read conjunctively. Therefore, a minority can claim a right to administer an educational institution only if it has established by it but not otherwise. A religious minority cannot claim the right to administer an educational institution establish by someone else, merely because, for some reason or other, it had been administering the institution before Constitution came into force.

In, The *Manager, St. Thomas U. P. School, Kerala v Commissioner's Case*[116], it was held that Article 30(1) postulates that the religious community will have the right to establish and administer educational institutions of their choice meaning thereby that where a religious minority establishes an educational institution, it will have the right to administer that. The right to administer has been given to the minority, so that it can mould the institution as it thinks fit, and in accordance with its ideas of how the interest of the community in general, and the institution in particular, will be best served. For purposes of Article 30 (1), even a single philanthropic individual from the concerned minority can found the institution with his own means.

In State *of Kerala v Reverend Mother Provincial's Case*[117], construing Article 30 (1), Hidayatullah C. J. held that, 'It matters not if a single philanthropic individual with his own means, founds the institution or the community at large contributes the funds. The position in law is the same and the intention

[116] (2002) 9 SCC 497
[117] (1970) 2 SCC 417

in either case must be to found an institution for the benefit of a minority community by the member of that community.'

In *S. Azeez Basha v Union of India*[118], it was held that the Aligarh Muslim University was established by the Central legislature Act of 1920. It could not therefore be said to have been establish by the Muslim community. No degree granting institution can be established in India without a statute. Accordingly, the validity of a statute regulating administrative arrangements in the University could not be adjudged under Article 30(1). The material factor to attract Article 30(1) is the establishment of the institution by the minority concerned.

The Article 30(1) clearly shows that the minority will have the right to administer the institutions of their choice provided they have established them, but not otherwise. It is a matter of proof through production of satisfactory evidence that the institution in question was established by the minority claiming to administer it. The proof of the fact of establishment of the institution is a condition precedent for claiming the right to administer the institution. The onus lies on one who asserts that an institution is a minority institution

The Courts may have to decide whether the institution is minority institution. In, *S. P. Mittal v Union of India*[119] the Supreme Court laid down that in order to claim the benefit of Article 30(1), the community must show a) that it is a religious or linguistic minority, b) that the institution was established by it. Without satisfying these two conditions it cannot claim the guaranteed rights to administer it.

[118] AIR 1968 SC 662
[119] AIR 1983 SC 1

In *Yogendra Nath Singh v State of Uttar Pradesh,*[120] the Government recognized the institution as a minority institution. This order was challenged in the High Court through a writ petition. Looking into the antecedent history of the institution right from its inception, the Court concluded that the institution was not established as a minority institution, and, therefore, it could not be granted minority status even though presently it was being managed by the minority community. Under Article 30(1), the requirements of establishment and management have to be read conjunctively. The twin requirements are needed to be fulfilled and in the absence of one, an institution cannot be given minority status.

The minority educational continues to be so whether the government declares it as such or not. When the government declares the institution as a minority educational institution, it merely recognizes a factual position that the institution was established and is administered by the minority community. The declaration is merely an open acceptance of the legal character of the institution which must necessarily have existed antecedents to such declaration. Such a declaration is neither necessary nor decisive of the character of the institution in question as a minority educational institution. The final word in this regard rests with the courts. It is ultimately for the court to decide whether the institution in question is a minority institution or not.

Even if Government has recognized an institution being as minority educational institution does not immunize the institution from judicial scrutiny of its antecedents. The government decision is not binding and it is ultimately for the court to decide whether the institution in question is a minority institution or not.

[120] AIR 1999 All 356

In *Andhra Pradesh Christian Medical Association v Government of Andhra Pradesh,*[121] the Supreme court has asserted that the Government, the University and ultimately the Court can go behind the claim that the institution in question is a minority institution and to investigate and satisfy itself whether the claim is well founded or ill founded. The Government, the University and ultimately the Court have undoubted right to pierce the minority veil and discover whether there is lurking behind it no minority at all and in any case no minority institution. The Supreme Court emphasized that the object of Article 30 (1) is not to allow bogies to be raised by pretenders. The institution must be an educational institution of minority in truth and reality and not mere masked phantoms.

In this case, the Court held that the institution in question was not a minority institution. The Court clarified that the protection of Article 30(1) is not available if the institution is mere cloak or pretension and the motive was business venture. The institution was started to make money from gullible persons anxious to obtain admission to professional colleges. So, the court refused to treat it as a minority educational institution.

A minority institution may impart general secular education; it need not confine itself only to the teaching of minority language, culture or religion. Minority institution to be treated as one, it must be shown that it serves or promotes in some manner the interests of the minority community by promoting its religious tenets, philosophy, culture, language or literature.

Article 30(1) gives right to minority community as such and not to an individual member, and the right is meant to benefit the minority by protecting and promoting its interest. A considerable section of the minority must be benefited by the institution. In order to claim the benefit of minority institution it has to show that it any manner it serves or promotes the interest of the

[121] AIR 1986 SC 1490

minority to which it claims to belong. In *Andhra Pradesh Christian Medical Association v State of Andhra Pradesh,*[122] Supreme Court emphasized upon that, 'What is important and what is imperative is that there must exist some real positive index to enable the institution to be identified as an educational institution of the minorities.'

In *Sree Jain Swetamber Terapanthi Vidyalaya v State of West Bengal*[123], the High Court of Calcutta held that the school was entitled to the benefit of Article 30 (1) , Since the school was established by the Jain Swetamber Sect. The members of the sect donated considerable amount for the establishment of the institution. The school was run to promote the culture and religious tenets of the primarily along with secular education imparted to the pupils and majority of the pupils belonged to the Jain Swetamber sect.

The educational institution established by linguistic minority i.e. Gujarati, where the medium of instruction was Gujarati and 80% of the teachers were Gujarati – speaking. The Court in *Indulal Hiralal Shah v S. S. Salgaonkar,*[124] characterized the institution as minority institution. Admitting non Gujarati students did not affect the minority character of the institution.

In St *Stephen's College v University of Delhi's Case,*[125] Supreme Court held that Article 30(1) does not mean that the minority can establish an educational institution solely for the benefit of its own community people. The minorities are not entitled to establish such institutions for their exclusive benefit.

The Court observed that, 'Every educational institution irrespective of community to which it belongs is a 'melting pot' in our national life and that it is essential that there should be a proper mix of students of different communities in all educational institutions. This means that a minority

[122] AIR 1986 SC 1490
[123] AIR 1982 Cal 101
[124] AIR 1983 Bom 192
[125] AIR 1992 SC 1630

institution cannot refuse admission to students of other minority and majority communities.

The right of religious and linguistic minorities to administer educational institutions of their choice, though couched in absolute terms, is not free from regulations because it is necessary that even the minority institutions must be subjected to some administrative control without impairing their identity or independence as minority institutions. For the application of this right, minority institutions are divided into three classes:

a) Institutions which neither seek aid nor recognition from state;
b) Institutions that seek aid from the state; and
c) Institutions which seek recognition but not aid.

While the institutions which neither seek aid nor recognition from the State cannot be subjected to any regulation except those emanating from the general laws of the land such as labour, contract or tax laws. The institutions that seek recognition only and not aid could be subjected to regulations or restrictions pertaining to the academic standards and better administration of the institution in the interest of that institution itself. Regulations and restriction for any other purpose are not permissible.

5.5. Article 30(2): Bars the State from discriminating in granting aid

Article 30(2) bars the State, while granting aid to educational institutions, from discriminating against any educational institution on the ground that it is under the management of linguistic or religious minority. Article 30(2) mandates that in granting aid to educational institutions, the state shall not discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

Minority educational institutions, under Article 30 (2), cannot claim State aid as matter of right. Minority educational institutions are entitled to get financial

assistance much the same way as the educational institutions run by majority community. The state is bound to maintain equality of treatment in granting aid to educational institutions. Minority institutions are not to be treated differently while giving financial assistance.

5.6. Relation between Article 29 and 30

The Supreme Court has consistently held that the right to establish and administer an educational institution under Article 30(1) is not confined only to purpose specified under Article 29(1). Though an educational institution may serve as a means for conserving script, language and culture as mentioned in Article 29(1), but Article 30(1) enables the religious and linguistic minority to establish an institution which may have no concern with the object of conserving its script, language or culture. The words "of their choice' occurring in the Article 30(1) does not put any limitation on any particular type of educational institution and includes the right to impart general secular education also for enriching the children of minorities intellectually, morally and financially and enabling them to face the realities of life.

The width of Article 30(1) cannot be cut down by imposing into it the consideration on which Article 29(1) is based because firstly, if the educational institutions referred to in Article 30(1) must only be those institutions which has been established for the purpose of language, script or culture then it will render Article 30(1) redundant, for this Article also grants rights to a religious minority to establish an educational institution which may be wholly unconnected with the conservation of language, script or culture. eg. A religious minority may impart purely religious education in its institution. Secondly, While the right under Article 29(1) are available to "any section of citizens" whether belonging to majority or minority, Article 30(1) applies to "all minorities whether based on religion or language" and no other section of citizen can claim this right. Thirdly, while educational institution falling under 29(1) can be set up only for conserving language, script or culture, where as

Article 30(1) enables the religious and linguistic minorities to establish and administer any type of educational institution of their choice.

The Court in *Rev. Father Proost v State of Bihar*[126] said that the width of Article 30 could not be cut down by introducing any consideration on which Article 29(1) is based. Article 29(1) is a general protection given to sections of citizens to conserve their language, script or culture. Article 30(1) is a special right to minorities to establish educational institutions of their choice. This Court said that the two Articles create two separate rights though it is possible that the rights might meet in a given case.

A.N. Ray, C.J. in *St Xavier's Case*[127] held that under Article 30(1) minority is not restricted to establish and administer educational institutions of their choice only to cases where such institutions are concerned with language, script or culture of the minorities. They reasons cited by him were First, Article 29(1) confers the fundamental right on any section of the citizens which will include the majority section whereas Article 30(1) confers the right on all minorities. Second, Article 29(1) is concerned with language, script or culture, whereas Article 30(1) deals with minorities of the nation based on religion or language. Third, Article 29(1) is concerned with the right to conserve language, script or culture, whereas Article 30(1) deals with the right to establish and administer educational institutions of the minorities of their choice. Fourth, the conservation of language, script or culture under Article 29(1) may be by means wholly unconnected with educational institutions and similarly establishment and administration of educational institutions by a minority under Article 30(1) may be unconnected with any motive to conserve language, script or culture. A minority may administer an institution for religious education which is wholly unconnected with any question of conserving a language, script or culture.

---

[126] (1969) 2 SCR 73
[127] AIR 1974 SC 1389

All nine judges were unanimous in their opinion that Articles 29(1) and 30(1) deal with distinct matters and may be considered supplementing each other so far as certain cultural rights of minorities are concerned.

If the scope of Article 30(1) is to establish and administer the educational institutions to conserve language, script or culture of minorities it will render Article 30 superfluous. If rights under Articles 29(1) and 30(1) are the same then the consequence will be that any section of citizens not necessarily linguistic or religious minorities will have the right to establish and administer educational institutions of their choice. The scope of Article 30 rests on linguistic or religious minorities and no other section of citizens of India has such a right.

The right to establish and administer educational institutions of their choice has been conferred on religious and linguistic minorities so that the majorities who can always have their rights by having proper legislation do not pass a legislation prohibiting minorities to establish and administer educational institutions of their choice. If the scope of Article 30(1) is made an extension of the right under Article 29(1) as the right to establish and administer educational institutions for giving religious instruction or for imparting education in their religious teachings or tenets, the fundamental right of minorities to establish and administer educational institution of their choice will be taken away.

In Catena of decisions by various High Courts and Supreme Court, the Court has interpreted the law contained in Articles 29(2) and 30(1) and their inter-relation without any unanimity. In some cases judicial interpretation of the Court is that minority institutions that receives government aid are bound by Article 29(2). Other interpretation is that minority institutions which are receiving government aid while admitting students from their own communities in the institutions established by them are *free to admit* students from other communities. The students of other communities may even belong to majority.

Admission of such students in the minority institutions does not destroy the minority character of the institutions. In some cases interpretation given by the judiciary is that there can be no communal reservation for admission in Government or Government aided institutions.

In, *Ashu Gupta v State of Punjab,* [128] the Court held that unaided minority institutions have complete freedom to select their students. It held that all minority institutions not receiving aid from the government were wholly out of the ambit of Article 29(2)'.

In *State of Bombay v Bombay Education Society,*[129] the Court held that, Article 29 (1) gives protection to any section of the citizens having distinct language, script or culture by guaranteeing their right to conserve the same. Article 30(1) secures all minorities, whether based on religion or language, the right to establish and administer educational institution of their choice. Article 29(2) is not designed for the protection of minority. Article 29(2) confers a special right on citizens for admission into educational institutions maintained or aided by the State. To limit this right only to the citizens belonging to minority groups will be to provide a double protection for such citizens and to hold that the citizens of the majority group have no special educational rights in the nature of a right to be admitted into an educational institution for the maintenance of which they make contributions by the way of taxes.

In *State of Kerala v Very Rev. Mother Provincial,*[130] the Court held that it is permissible that minority institution while admitting students from its community may also admit students from majority community. Admission of such non-minority students would bring income and these students need not be turned away to enjoy protection. The principle that can be deduced from these decisions is that a minority educational institution while admitting

[128] AIR 1987 P&H 227
[129] AIR 1954 SC 561
[130] (1970) 2 SCC 417

members from its own community is free to admit students from the non-minority community also.

In *Re Kerala Education Bill Case,*[131] the Court held that there is no such limitation in Article 30(1) on the part of minority institutions that they cannot admit students from other communities. To accept such limitation will necessarily involve the addition of the words "for their community" in the Article which is ordinarily not permissible according to the well established rules of interpretation. Nor is it reasonable to assume that the purpose of Article 29(2) was to deprive minority educational institutions of the aid they receive from the State. To say that an institution which receives aid on account of its being a minority educational institution must not refuse to admit any member of any other community only on the grounds therein mentioned and then to say that as soon as such institution admits such an outsider it will cease to be a minority institution is tantamount to saying that minority institutions will not remain, as minority institutions, be entitled to any aid. The real import of Article 29(2) and Article 30(1) seems to us to be that they clearly contemplate a minority institutions with a sprinkling of outsiders admitted into it. By admitting a non-member into it the minority institution does not shed its character and cease to be a minority institution.

In *D. A. V. College Jullunder v State of Punjab,*[132] the question relating to Articles 29(2) and 30(1) were considered by the Supreme Court. The Court concluded that a religious or linguistic minority has a right to establish and administer educational institutions of its choice for effectively conserving its distinctive language, script or culture, which right however, is subject to the regulatory power of the State for maintaining and facilitating the excellence of its standards. This right is further subject to 29(2) which provide that no citizen shall be denied admission into any educational institution which is

[131] AIR 1958 SC 956
[132] AIR 1971 SC 1737

maintained by the State or receives aid out of State funds, on grounds only of religion, race, caste, language or any of them.

In *St Stephen's College v University of Delhi,*[133] the right of minority educational institutions under Article 30 (1) and the applicability of Article 29(2) to an institution to which Article 30(1) was applicable were considered. The Court held that the fact that Article 29(2) applies to minorities as well as non-minorities does not mean that it was intended to nullify the special right guaranteed to minorities in Article 30(1). Supreme Court had held that even a minority institution receiving aid from state funds was entitled to accord preference to or reserve seats for candidates belonging to its own community on the basis of religion or language. However, the Court allowed such institutions to admit students of its own community to the extent of 50 per cent of the annual intake and insisted that such differential treatment must be in conformity with the University's standards. The Court held that differential treatment of students in the admission process did not violate Article 29(2) or Article 14 (equality before law) and it was essential to maintain the minority character of the institution. Minority cannot have an educational institution solely for the benefit of its own community people. It should provide 50 percent seats for the benefit of other communities. The principle that can be culled out from these decisions is that Article 30(1) is subject to Article 29(2).

In *T. M. A. Pai's Case*,[134] the Supreme Court held that a minority aided institution would be entitled to have the right of admission belonging to the minority group but would be required to admit a reasonable extent of non minority students. State government can notify such percentages for admission for non- minorities. Ratio laid down in St Stephan's College v University of Delhi is correct but rigid percentage cannot be stipulated. The authorities can

[133] AIR 1992 SC 1630
[134] (2002) 8 SCC 481

stipulate reasonable percentage in accordance to the type of institution, population and educational needs of the minorities.

The eleven judges bench held in T. M. A. Pai's case that denying admission even though seats are available on the grounds of applicant's religion, race, caste or language is prohibited, but preferring students of minority groups did not violate Article 29(2). Examining the word "only" used in Article 29(2) six judges of the bench Viz. Justices B. N. Kirpal, G. B. Pattanaik, S. Rajendra Babu, K. G. BalaKrishnan, P. Venkatarama Reddi, and Arijit Pasayat said that denying admission to non minorities for the purpose of accommodating minority students to reasonable extent will not be only on the grounds of religion and so on, but is primarily meant to preserve the minority character of the institute and to effectuate the guarantee under Article 30(1). They held that as long as the minority educational institutions permitted the admission of non minorities to a reasonable extent based on merit, it would not be an infraction of Article 29(2), even though the minority educational institute admitted students of the minority group of its own choice for whom it was meant.

The Court held, "What would be reasonable extent would depend upon variable factors. And it may not be advisable to fix any specific percentage. The situation would vary according to the type of institution and the nature of education that is being imparted at the institution. A variable percentage of admission of minority depending on the type of institution and education is desirable, and indeed necessary to promote the Constitutional guarantees enshrined in both, Article 29(2) and Article 30(1)," the six judges said. The six judges endorsed the ratio laid down in St Stephen's Case but removed the 50 percent ceiling fixed in that case. They said that they believed that it would be more appropriate, depending on the level of the institution and the population and educational needs of the area in which minority educational institute was located, the State properly balanced the interests of all the providing for such a percentage of students of the minority community to be admitted so as to serve

adequately the interests of all by providing for such a percentage of students of minority community to be admitted so as to serve adequate the interest of community for which the minority educational institutes were established.

5.7. Conclusion:

It is settled in case of *St. Xavier's College v State of Gujarat*[135] that Articles 29(1) and 30(1) deal with distinct matters and may be considered supplementing each other so far as certain cultural rights of minorities are concerned. However, the relation between Article 30(1) and Article 29(2) is paradoxical generating confusions like; can minority education institutions deny admission to any student on the basis of religion or language? Whether in admission to minority education institutions, preferences can be given to minority students, overruling the criteria of merit?

In large number of cases the court has held that unaided minority institutions have complete freedom to select their students. It held that all minority institutions not receiving aid from the government 'are wholly out of the ambit of Article 29(2)'.

The case of *St Stephan's College*[136]decided by a bench of five judges of the Supreme Court is a landmark case as far as relation between Article 29(2) and Article 30(1) is concerned. Tackling the issue of admission the Court advocated the theory of melting pot and attempted to strike a balance between the two Articles.

It stated, in the nation building with secular character sectarian schools or colleges; segregated faculties or universities for imparting general secular education are undesirable and they may undermine secular democracy. They would be inconsistent with the central concept of secularism and equality

[135] AIR 1974 SC 1389
[136] AIR 1992 SC 1654

embedded in the Constitution. Every educational institution irrespective of the community to which it belongs is a 'melting pot' in our national life. The students and teachers are the critical ingredients. It is there they develop respect for, and tolerance of, the cultures and beliefs of others. It is essential therefore, that there should be proper mix of students of different communities in all educational institutions.

In the light of all these principles and factors, and in view of the importance which the Constitution attaches to protective measures to minorities under Article 30 (1), the minority aided educational institutions are entitled to prefer their community candidates to maintain the minority character of their institutions subject to, of course, in conformity with the university standard. The State may regulate the intake in this category with due regard to the need of the community in the area which the institution is intended to serve. But in no case such intake shall exceed 50 per cent of the annual admission. The minority institutions shall make available at least 50 per cent of the annual admission to members of communities other then the minority community.

-x-x-x-x-

CHAPTER VI

Judicial Trend

'We must never forget that it is the Constitution we are expounding'[137].

.....Chief Justice Marshall.

'We are under a Constitution, but the Constitution is what the Judges say it is.'[138]

..... Governor Hughes.

Protection of minority rights derives its legitimacy from the internationally recognized vulnerability of identity based groups caused by their non-dominance in terms of number and power. Such position makes it difficult for them to achieve equality in the common national domain, while preserving their distinct identity. Minority rights were fully reflected in the Charter of the League of Nations and the treaties in the U.N. system, these rights more comprehensive and definite expression in the binding Article 27 of the International Covenant on Civil and Political Rights (ICCPR) of 1966, and subsequently in the UN Declaration on Rights of Person Belonging to National or Ethic, Religious & Linguistic minorities (1992) along with the official explanations by the U.N. Human Rights Committee in 1994 Asbjorn Eide in 2001[139], which put an obligation on the states to give minorities cultural freedom, and also to create conditions favourable for the preservation and development of their identity.

Article 29 and 30, these two Articles of the Indian Constitution which relate to rights of minority institutions have figured before the Courts ever since the well

---

[137] *McColloch v. Maryland Case* 4 Wheaton 316, 407

[138] Referred by Justice Krishna Iyer in *The Gandhi Faiz-E-Am College, Shahjahanpur v University of Agra and Anr.* [AIR1975SC1821, (1975)2SCC283, [1975]3SCR810]

[139] E/CN-4/sub2/AC51/2001/2

known Supreme Court judgment, relating to *the Kerala Education Bill*[140]. This protection, enshrined in Articles 29 and 30 and grouped as Cultural and Educational Rights, has given the minorities a sense of security and belonging in the face of aggressive majoritarian tendencies everywhere. However, a certain degree of ambiguity has clouded this protection owing to different judicial interpretations. In the beginning, the Courts were mostly concerned with striking a balance between the guaranteed rights of such institutions on the one hand and demands of public interest, including excellence in academic and organizational standards, on the other hand. In the course of this process, many points arose for consideration.

Constitution of India nowhere defines Minority neither Motilal Nehru's report nor the Sapru report has tried to define Minority. May be the framers of the Constitution has left it to the wisdom of Courts to decide who would be the inheritors of the rights guaranteed under Article 30 of the Constitution of India. Even after sixty years of independence it is not evident as to who are the inheritors or scions of rights under Article 30 of the Indian Constitution. Neither it is clear as to who constitute minority nor is the law relating to legal rights of Minority Educational Institutes settled in spite of plethora of judgments.

Researcher in this chapter would discuss the judicial trends related to rights of minority to establish and administer Educational institutions of their choice as guaranteed under Article 30 of the Indian Constitution. Judicial trend is studied through the pronouncement in relation to landmarks cases here under. Though the cases referred may have dealt with other issues as well but the researcher has restricted the discussion to minority rights as enshrined in Articles 29 and 30.

[140] A.I.R. 1958 S.C. 956, [1959] 1 SCR 995

6.1. The State of Bombay v Bombay Education Society and Ors[141]

5 Judges Bench consisting of Hon'ble Judges : Mehr Chand Mahajan, C.J., S.R. Das, Ghulam Hasan, Bhagwati, and Jagannadhadas, J J.

In this case, Government order prohibiting admission of students other than those of non-Asiatic descends and Anglo-Indians to English medium schools was challenged. Admission of non Anglo-Indian students was denied. Appeal filed by State of Bombay with a certificate granted by Bombay High Court. Court held, circular imposing such obligation for, receipt of grant, unconstitutional. State was directed to pay costs of respondents.

Circular issued for English Medium Schools

In this case writ petitions were filed against the government circular of January 1954 headed "Admission to schools teaching through the medium of English." The circular order stated, "No primary or secondary school should admit to a school where English was used as a medium of instruction, any pupil other than a pupil belonging to the section of citizens, the language of which was English, namely, Anglo-Indians and citizens of Non-Asiatic descent."

Circular Challenged

Writ petition was filed by one Christian parent, whose daughter was refused admission by Barnes School, Devlali, Nasik, based on the above order. Similarly, even a member of the Gujarati Hindu community challenged the order since his daughter was refused admission. The Management of the school also filed a petition impugning the Government order. These petitions were consolidated and the High Court of Bombay issued mandamus as prayed for.

On appeal the Supreme Court framed two major questions:

[141] AIR 1954 SC 561

1. The right of students who were neither Anglo-Indians nor of Non-Asiatic descent to be admitted to the Barnes High School and
2. The right of Barnes High School to admit such students.

Supreme Court held that Anglo-Indians constitute a religious as well as linguistic minority. They thus enjoy the right to conserve their language, script and culture under Article 29(1) and to establish and administer educational institutions of their choice under Article 30(1).

The Supreme Court rejected the State's contention that the word "namely" in the circular was merely illustrative and that the Schools were free to admit not only Anglo-Indians and citizens of Non-Asiatic descent but were free to admit pupils belonging to any other section of the citizens, whose language was English.

Circular held void

Attorney general contended that Article 29(2) does not confer any fundamental right on all citizens generally but guarantees the rights of citizens of minority groups by providing that they must not be denied admission to educational institutions maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them and he referred to the marginal note to the Article. Court held that Article 29(2) confers a special right on citizens for admission into educational institutions maintained or aided by the State and cannot be restricted for minorities.

The ground for denying admission in English school to pupils whose mother tongue was not English was only language and so the order could not be upheld. Thus discrimination in matters of admission on basis of language was vetoed by the Supreme Court under Article 29(2).

Court held that Article 29(2) ex facie put no limitation or qualification on the expression "citizen" and therefore the order violated Article 29(2). Moreover, the

second proviso to Article 337 provided further that no educational institution shall be entitled to receive any grant under this Article unless at least 40 per cent of the annual admissions therein are made available to members of communities other than Anglo-Indian community therefore the circular was void as it not only violates Articles 29(2), 30(1) but also Article 337. *The right of minorities to establish and administer educational institutions of their choice may be subject to regulatory power of the State but such power did not include the right to prescribe a particular language as a medium of instruction.* The order of the court said, it would not be valid, even if the object for making it was the promotion or advancement of national language.

6.2. Re Kerala Education Bill case [1958][142]

Seven Judge Constitution Bench consisting of Hon'ble Judges: S. R. Das, C.J., B. P. Sinha, J. L. Kapur, Bhagwati, S. K. Das, Jafer Imam and Venkatarama Aiyar, JJ.

Article 30 (1) first came up for interpretation before a seven judge Constitution Bench constituted to consider the reference made by the President under Article 143 in the present case sponsored by the Communist Government of the State, which was stoutly opposed by Christians and Muslims. The reference was made because grave doubts were raised about the validity of certain provisions of the Bill with regards to Articles 29 and 30. Articles 29 and 30 conferred certain educational and cultural rights as fundamental rights. Chief Justice S. R. Das delivered the majority opinion. He spoke for six judges — the sole dissent by Justice Venkatarama Aiyar being confined to the question whether minority institutions were entitled also to recognition and State aid as part of the right guaranteed by Article 30(1). Chief Justice Das held:

[142] A.I.R. 1958 S.C. 956, [1959] 1 SCR 995

Accordingly in exercise of the powers vested in him by Art. 143(1) the President referred the matter to the Supreme Court, for consideration and reports the following questions:

> "(1) Does sub-clause (5) of clause 3 of the Kerala Education Bill, read with clause 36 thereof or any of the provisions of the said sub-clause, offend Article 14 of the Constitution in any particulars or to any extent?
>
> (2) Do sub-clause (5) of clause 3, sub-clause (3) of clause 8 and clauses 9 to 13 of the Kerala Education Bill, or any provisions thereof, offend clause (1) of Article 30 of the Constitution in any particulars or to any extent?
>
> (3) Does clause 15 of the Kerala Education Bill or any provisions thereof, offend Article 14 of the Constitution in any particulars or to any extent?
>
> (4) Does clause 33 of the Kerala Education Bill or any provisions thereof, offend Article 226 of the Constitution in any particulars or to any extent?"

Since question (2) is specifically dealing with the legal status of minority institutions to establish and administer educational institutions of their choice, researcher will focus the discussion on minority rights.

In reference to question 2, the main Articles that confer rights to minority are Articles 29 and 30 are set out in Part III of our Constitution which guarantees our fundamental rights. They are grouped together under the sub-head "Cultural and Educational Rights". The text and the marginal notes of both the Articles show that their purpose is to confer those fundamental rights on certain sections of the community which constitute minority communities. Under clause (1) of Article 29 any section of the citizen residing in the territory of India or any part thereof having a distinct language, script or culture of its own has the right to conserve the same. It is obvious that a minority

community can effectively conserve its language, script or culture by and through educational institutions and, therefore, the right to establish and maintain educational institutions of its choice is a necessary concomitant to the right to conserve its distinctive language, script or culture and that is what is conferred on all minorities by Article 30(1). This right, however, is subject to clause 2 of Article 29 which provides that 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. The court

As soon as, Article 30(1) was referred, the first question that came up was: What is a minority? The term is not defined in the Constitution. The court was called upon to decide scope and ambit of the right conferred by Article 30(1). It is easy to say that a minority community means a community which is numerically less than 50 per cent, but then the question was not fully answered, for part of the question that yet needed to be answered, namely, 50 per cent of what? Is it 50 per cent of the entire population of India or 50 per cent of the population of a State forming a part of the Union?

After considering the contentions of the parties, the Court held that the Bill extended to the whole of State of Kerala and consequently the minority must be determined by reference to the entire population of that State. By this test Christians, Muslims and Anglo Indians were certainly minorities in the State of Kerala.

The State contended that there are three conditions which must be fulfilled before the protection and privileges of Article 30(1) may be claimed, namely,

(1) There must be a minority community.

(2) One or more of the members of that community should, after the commencement of the Constitution, seek to exercise the right to establish an educational institution of his or their choice, and

(3) The educational institution must be established for the members of his or their own community.

The Court held that

The Anglo-Indians, Christians and Muslims are minority communities in the State of Kerala, since their population is less than 50% of the state's population.

A right under Article 30(1) exists for institutions established before and after the Constitution. The benefit of Article 30(1) should not be limited only to educational institutions established after the commencement of the Constitution. *The language employed in Article 30(1) is wide enough to cover both pre-Constitution and post-Constitution institutions.*

No limitation placed on the subjects to be taught in minority educational institutions. Article 30(1) gives rights not only to religious minorities but also to linguistic minorities to establish educational institutions of their choice. It is not necessary that an institution run by a religious minority should impart only religious education or that one run by a linguistic minority should teach language only. As such minorities will ordinarily desire that their children should be brought up properly and efficiently and be eligible for higher university education and go out in the world fully equipped with such intellectual attainments as will make them fit for entering the public services, educational institutions of their choice will necessarily include institutions imparting general secular education also. In other words, the Article leaves it to their choice to establish such educational institutions as will serve both purposes, namely, the purpose of conserving their religion, language or culture, and also the purpose of giving a thorough, good general education to their

children. Thus minority Institutions imparting general secular education are equally protected. The minority has a right to give "a thorough, good general education".

Provisions Clauses 3(5), 8(3) and 9 to 13 of the Kerala Education Bill held void. The court recognized three categories of Educational Institutions:

1. Which neither seek aid nor recognition from the Government.
2. Institutions which wanted Government aid and
3. Institutions which wanted recognition but not aid.

The bill in this matter did not refer to institute of first category. The second class can be further sub divided into two sub classes a) Those eligible for receiving grants under the Constitution and b) those not so entitled but nevertheless seeking to get aid. Anglo Indian educational institutions came within the sub clause a). Article 366 (2), which defines Anglo Indian, showed that Anglo Indian community was well known minority community in India based on religion as well as language and it has been recognized as such by Supreme Court in *Bombay v Bombay Education society's case.*[143] The State's contention was that such schools were only entitled to grant under Article 337 was negatived, for though the word "grant' was used in Article 337, and the word "aid" in Articles 29(2) and 30(2), the word "aid" covered grant referred to in Article 337. The conditions of grants under the Bill would infringe the rights of the educational institution not only under Article 337 but also under Article 30(2). As to grants under Article 337, Clause 3(5), Clause 8(3) and Clauses 9 to 13 of Kerala Education Bill had in substance and effect, infringed the fundamental rights under Article 30(1), and were to that extend void. Relevant clauses are her under discussed for reference.

[143] (1955) 1 SCR 568

Clause 3(5): " After the commencement of this Act, the establishment of a new school or the opening of a higher class in any private school shall be subject to the provisions of this Act and the rules made there under and any school or higher class established or opened otherwise than in accordance with such provisions shall not be entitled to be recognized by the Government."

Clause 8(3): " All fees and other dues, other than special fees, collected from the students in an aided school after the commencement of this section shall, notwithstanding anything contained in any agreement, scheme of arrangement, be made to the Government in such manner as may be prescribed."

Clauses 9 to 13: Clause 9 makes it obligatory on the Government to pay the salary of all teachers in aided schools direct or through the headmaster of the school and also to pay the salary of the non-teaching staff of the aided schools. It gives power to the Government to prescribe the number of persons to be appointed in the non-teaching establishment of aided schools, their salaries, qualifications and other conditions of service. The Government is authorized, under sub-clause (3), to pay to the manager a maintenance grant at such rates as may be prescribed and under sub-clause (4) to make grants-in-aid for the purchase, improvement and repairs of any land, building or equipment of an aided school. Clause 10 requires Government to prescribe the qualifications to be possessed by persons for appointment as teachers in Government schools and in private schools which, by the definition, means aided or recognized schools. The State Public Service Commission is empowered to select candidates for appointment as teachers in Government and aided schools according to the procedure laid down in clause 11. Shortly put, the procedure is that before the 31st May of each year the Public Service Commission shall select for each district separately candidates with due regard to the probable number of vacancies of teachers that may arise in the course of the year, that the list of candidates so selected shall be published in the Gazette and that the manager shall appoint teachers of aided schools only from the candidates so selected for the district in which the school is located subject to the proviso that the manager may, for sufficient reason, with the permission of the

Commission, appoint teachers selected for any other district. Appointments of teachers in Government schools are also to be made from the list of candidates so published. In selecting candidates the Commission is to have regard to the provisions made by the Government under clause (4) of Article 16 of the Constitution, that is to say, give representation in the educational service to persons belonging to the Scheduled Castes or Tribes - a provision which has been severely criticized by learned counsel appearing for the Anglo-Indian and Muslim communities. Clause 12 prescribes the conditions of service of the teachers of aided schools obviously intended to afford some security of tenure to the teachers of aided schools. It provides that the scales of pay applicable to the teachers of Government schools shall apply to all the teachers of aided schools whether appointed before or after the commencement of this clause. Rules applicable to the teachers of the Government schools are also to apply to certain teachers of aided schools as mentioned in sub-clause (2). Sub-clause (4) provides that no teacher of an aided school shall be dismissed, removed, reduced in rank or suspended by the manager without the previous sanction of the authorized officer. Other conditions of service of the teacher of aided schools are to be as prescribed by rules.

Regulations prescribing the qualifications for teachers were held reasonable. Those relating to protection and security of teachers and to reservations in favor of backward classes which covered government schools and aided schools alike, were "perilously near violating that right", but "at present advised" were held to be permissible regulations. However, provisions centralizing recruitment of teachers through the State Public Service Commission and taking over the collection of fees, etc., were held to be destructive of the rights of minorities to manage the institutions.

Grant- in –aid or recognition cannot be offered at the cost of surrendering of rights under Article 30(1). The Court said what cannot be done directly cannot be done indirectly. There is no Constitutional provision for grant-in-aid to

educational institutions established by Anglo- Indian community after 1948, or those established by minorities at any time. It is known fact that modern educational institutions to be properly and effectively run, considerable expense was necessary which could not be met fully by fees collected from the schools, private endowments and the like, and therefore educational institutions cannot be maintained effectively without the substantial State aid. Articles 28(3), 29(2) and 30(2) postulated that educational institutions would receive aid from the State funds. The impugned Bill also contemplated making grants- in –aid. *The Court rejected the State's contention that any conditions could be imposed for the grant, since the school can forgo the grant and exercise their right under Article 30(1), and also rejected the schools' contention that no conditions at all could be imposed upon those rights. Making grant-in-aid was a government function which must be discharged in reasonable manner.*

A Government may not make any grants or be unable to do so; but if grants were made, conditions must not be attached to those grants which would destroy the fundamental rights. Article 30 guaranteed a fundamental right; Article 45 laid down directive principle of State policy making primary and secondary education free and compulsory. The right under Article 30 was a right to establish and administer educational institutions of their choice and *the right to administer effectively did not include a right to mal administer.* The Government therefore could impose reasonable regulations to secure proper administration as a condition for giving aid and recognition. Legislative powers under Articles 245 and 246 were subject to the other provisions of the constitution including fundamental rights. The court upheld several clauses of the Bill as imposing permissible regulations, but found it impossible to support Clauses 14 and 15 of the Kerala Education Bill as they were totally destructive of rights guaranteed under Article 30(1).

Clauses 14 and 15 for reference are stated hereunder:

Clause 14 provides, by sub-clause (1), that the Government, whenever it appears to it that the manager of any aided school has neglected to perform any of the duties imposed by or under the Bill or the rules made there under, and that in the public interest it is necessary so to do, may, after giving a reasonable opportunity to the manager of the Educational agency for showing cause against the proposed action, take over the management for a period not exceeding five years. In cases of emergency the Government may, under sub-clause (2), take over the management after the publication of notification to that effect in the Gazette without giving any notice to the Educational agency or the manager. Where any school is thus taken over without any notice the Educational agency or the manager may, within three months of the publication of the notification, apply to the Government for the restoration of the school showing the cause therefore. The Government is authorized to make orders which may be necessary or expedient in connection with the taking over of the management of an aided school. Under sub-clause (5) the Government is to pay such rent as may be fixed by the Collector in respect of the properties taken possession of. On taking over any school the Government is authorized to run it affording any special educational facilities which the school was doing immediately before such taking over. Right of appeal to the District Court is provided against the order of the Collector fixing the rent. Sub-clause (8) makes it lawful for the Government to acquire the school taken over under this clause if the Government is satisfied that it is necessary so to do in the public interest, in which case compensation shall be payable in accordance with the principles laid down in clause 15 for payment of compensation. Clause 15 gives power to the Government to acquire any category of schools. This power can be exercised only if the Government is satisfied that for standardizing general education in the State or for improving the level of literacy in any area or for more effectively managing the aided educational institutions in any area or for bringing education of any category under their direct control and if in the public interest it is necessary so to do. No notification for taking over any school is to be issued unless the proposal for the taking over is supported by a

resolution of the Legislative Assembly. Provision is made for the assessment and apportionment of compensation and an appeal is provided to the District Court from the order passed by the Collector determining the amount of compensation and its apportionment amongst the persons entitled thereto. Thus the Bill contemplates and provides for two methods of acquisition of aided schools, namely, under sub-clause (8) of clause 14 the Government may acquire a school after having taken possession of it under the preceding sub-clauses or the Government may, under clause 15, acquire any category of aided schools in any specified area for any of the several specific purposes mentioned in that clause.

As regards, the school which sought recognition and not aid, the Court observed that the distinct language, script or culture was not the only object of the choice of minority communities, but they also desired that scholars of their educational institutions should go out into the world fully equipped with the qualifications necessary for a useful career in life. But according to the education code that was in operation, the scholars of unrecognized schools were not permitted to avail themselves of education in the University and were not eligible for entering public services. Without recognition, therefore, the educational institutions established or to be established by minority communities could not fulfill the real objects of their choice and the right under Article 30(1) could not be effectively exercised. Though right to recognition was not a fundamental right, it could not be granted on the condition that no fees should be taken from the students attending primary and secondary classes, as it would, in effect, make it impossible for an educational institute established by the minority to be carried on. Article 45 required the state to provide for free and compulsory education for all children but there was nothing to prevent the State from discharging that obligation through Government and aided schools, and Article 45 did not required that obligation to be discharged at the expense of minority community. *So far as institutions which sought only recognition and not aid, even the provisions*

abolishing fees for primary schools were held impermissible. If fees are to be abolished in pursuance of the directive principle in Article 45, the State should compensate the institution for the loss of fees.

To the state argument that the minorities should not be pampered in maintaining their selfish and sectional interest, the Court held, *"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 honor our sacred obligation to the minority communities who are of our own. Throughout the ages endless inundations of men of diverse creeds, cultures and races - Aryans and non-Aryans, Dravidians and Chinese, Scythians, Huns, Pathans and Mughals - have come to this ancient land from distant regions and climes. India has welcomed them all. They have met and gathered, given and taken and got mingled, merged and lost in one body. India's tradition has thus been epitomised in the following noble lines:*

"None shall be turned away
From the shore of this vast sea of humanity
That is India" [144].

Indeed India has sent out to the world her message of goodwill enshrined and proclaimed in our National Anthem :

"Day and night, thy voice goes out from
land to land,
calling Hindus, Buddhists, Sikhs and Jains
round thy throne
and Parsees, Mussalmans and Christians.
Offerings are brought to thy shrine by
the East and the West
to be woven in a garland of love.

[144] Poems by Rabindranath Tagore

Thou bringest the hearts of all peoples
into the harmony of one life,
Thou Dispenser of India's destiny,
Victory, Victory, Victory to thee."[145]

6.3. Sidhrajbhai v State of Gujarat[146]

Five Judge Constitution Bench consisting of Hon'ble Judges: B. P. Sinha, C. J., J. C. Shah, K. H. Subba Rao, K. N. Wanchoo and N. Rajagopala Ayyangar, JJ

In this case the Government order directing reservation of 80% of seats for Government nominee in a Christian training centre was challenged.

The petitioners profess the Christian faith and belong to the United Church of Northern India. They are members of the Gujarat and Kathiawar Presbyterian Joint Board-hereinafter called 'the society' - which conducts in the State of Gujarat, forty two primary schools and a Training College for teachers, known as the "Mary Brown Memorial Training College", at Borsad, District Kaira. The teachers trained in the colleges were absorbed in the primary schools conducted by the society and those not so absorbed were employed by other Christian Mission Schools conducted by the United Church of Northern India. The cost of maintaining the Training College and the primary schools was met out of donations received from the Irish Presbyterian Mission, fee from scholars and grant-in-aid under the education Code of the State Government. The primary schools and the college were conducted for the benefit of the religious denomination of the United Church of Northern India and Indian Christians generally, though admission was not denied to students belonging to other communities. The training course in the college was of the duration of two years and originally 25 students were admitted in the First Year and 25 in the

[145] Poems by Rabindranath Tagore
[146] AIR 1963 SC 540, MANU/SC/0076/1962

Second Year. Till the year 1952 surplus accommodation after admitting students who were to qualify as teachers required for the society's primary schools, was available for other students. The College was recognized by the Government of Bombay for training students for the examination held by the Education Department for granting certificates for trained teachers.

On May 28, 1955, the Government of Bombay issued an order that with effect from the academic year 1955-56, 80% of the seats should be reserved by the Management in non-Government Training Colleges for the District and Municipal School Board teachers to be nominated by the Government. It was recited in the order that there were 40,000 untrained primary teachers employed by District School Boards and Authorized Municipalities, and some more untrained teachers were likely to be selected and appointed as primary teachers during the next academic year and in order that untrained teachers should have the necessary training as soon as possible, Government had decided to expand the existing training facilities with a view to increasing "the output of trained teachers" by opening new Training Colleges and by directing that 80% of the seats in non-Government Training Colleges should be reserved for School Board teachers with effect from the next academic year (1955-56). On June 13, 1955, the Educational Inspector, Kaira District addressed a letter to the Principal of the College informing him that 80% of the total number of seats in the training college be reserved for school Board teachers "deputed by the Government," and ordered the Principal not to admit private students in his institution in excess of 20% of the total strength in each class without specific permission of the Education Department. The Principal of the College, by letter dated June 15, 1955, expressed his inability to comply with the order. There was correspondence between the society and the Education Department in the course of which the Department insisted that 80% of the seats should be reserved by the College for school Board teachers and that no fresh admissions should be made. By letter dated December 27, 1955, the Educational Inspector, Kaira District informed the management of the College that the

action taken by them in refusing admission to the School Board teachers was highly irregular and "against the Government policy", that the management was severely warned for disregarding the orders issued in that connection, and that in view of the management's defiant attitude it had been decided that no grant would be paid to the College for the current year unless the management agreed to reserve 80% seats for School Board teachers from 1956-57 and that the management should maintain only one division of the second Year class during the year 1956-57 and that it should not admit fresh candidates to the first Year without specific permission from the Director of Education, Poona, failing which severe disciplinary action such, as withdrawal of recognition of the institution would be taken. The society submitted on February 10, 1956 a memorial to the Minister for Education Government of Bombay protesting against the threat to take disciplinary action and to withdraw recognition. By letter dated March 12, 1956, the society was informed that in view of the refusal of the society to reserve seats for the school Board teachers, grant for the current year was withheld. By letter dated March 29, 1956, the Educational Inspector called upon the Principal of the College not to admit private candidates to the 1st year class without obtaining previous permission from the Director of Education, and informed him that the provisional grant of Rs. 8,000/- sanctioned to the College was on "the distinct understanding that 80% of the seats are reserved for School Board teachers from 1956-57 and necessary residential accommodation is made available for them."

On June 9, 1956, the Director of Education again wrote to the society calling upon it to admit all the School Board teachers as may be deputed up to 80% of the seats in the first year class for the year 1956-57, and to provide adequate hostel accommodation for them and if the society failed to communicate its willingness to comply therewith within seven days from the receipt of the letter, the Government would be constrained to withdraw recognition accorded to the 1st year class of the training College under Rule 11 for recognition of non-primary training College framed by the Government under G.R. 11 dated

November 9, 1949. This letter was written in pursuance of the authority assumed under two sets of Rules framed by the Government of Bombay - (i) Rules for Primary Training Colleges, and (2) Rules for the recognition of the Private Training Institutions. By 5(2) of the first set of Rules, it was prescribed that in non-Governmental Institutions, percentage of seats reserved for Board deputed teachers shall be fixed by the Government and the remaining seats shall be filled by students deputed by private schools or by private students. Rules 11, 12 and 14 of the Rules for the recognition of Private Primary Training Institutions were as follows:-

" Rule 11: The Institution will have to be kept open for all students irrespective of caste or creed. It will be open to Government to reserve seats for Board deputed teachers to such extent as is deemed necessary. The institution will have to give such representation on its staff and students to backward classes as may be fixed by Government."

"Rule 12: Women teachers will be admitted in Women's Training Institutions. The Head of such Institutions should be a woman and not less than 50 percent of the Assistant Teachers, should be women. In special cases, men's institutions may be allowed to admit women teachers provided:

(i) Separate classes for women are formed.

(ii) One trained graduate woman teacher is appointed per class for women teachers opened in the college.

(iii) Separate residential arrangement under supervision of a woman teacher is made for women students in the Hostel.

(iv) Satisfactory arrangements are made for teaching Home Science as an auxiliary craft to women students.

(v) Separate sanitary arrangements are made for women teachers in the college and hostel premises."

"Rule 14: It will be open to the Department to withdraw recognition or refuse payment of grant to any private training institution for non-fulfillment of any of the conditions mentioned above, for inefficient management and poor quality of teaching, or for failure to comply with any of the Departmental regulation now in force or that may be issued from time to time by the Government, or by the Director of Education on behalf of Government."

The petitioners moved this Court for a writ in the nature of mandamus or other writ directing the State of Bombay and the Director of Education not to compel the society and the petitioners to reserve 80% or any seats in the training College for "the Government nominated teachers" nor to compel the society and the petitioners to comply with the provisions of Rules 5(2), 11, 12 and 14 and not to withdraw recognition of the College or withhold grant-in-aid under Rule 14 or otherwise.

The petitioners are members of a religious denomination and constitute a religious minority. The society of which they are members maintains educational institutions primarily for the benefit of the Christian community, but admission is not denied to students professing other faiths. They maintain a college for training women teachers required for their primary schools. The petitioners claim that their fundamental rights guaranteed by Arts. 30(1), 26(a), (b), (c) and (d) and 19(1)(f) and (g) are violated by letters dated May 28, 1955, December 27, 1955 and March 29, 1956 threatening to withhold the grant-in-aid and to withdraw recognition of the College.

The Court held that Art. 26(a) conferred on religious denominations a right to establish and maintain institutions for religious and charitable purposes and in a larger sense an educational institution may be regarded as charitable. But

in the view of Article 30 (1), it found it unnecessary to consider the case further under Article 26.

Rights under Article 30(1) are absolute but State through legislation or by executive direction may prescribe reasonable regulations to ensure the excellence of institutions aided.

The Court held that serious inroads were made by the Rules and orders issued by the Government of Bombay upon the right vested in the society to administer the training College. Article 30(1) provides that all minorities have the right to establish and administer educational institutions of their choice, and Article 30(2) enjoins the State, in granting aid to educational institutions not to discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language. Clause (2) is only a phase of the non-discrimination clause of the Constitution and does not derogate from the provisions made in clause (1).

Unlike Article 19, the fundamental freedom under Article 30(1), is absolute in terms; it is not made subject to any reasonable restrictions of the nature the fundamental freedoms enunciated in Article19 may be subjected to. All minorities, linguistic or religious have by Article 30(1), an absolute right to establish and administer educational institutions of their choice; and any law or executive direction which seeks to infringe the substance of that right under Article 30(1) would to that extent be void. This, however, is not to say that it is not open to the State to impose regulations upon the exercise of this right. The fundamental freedom is to establish and to administer educational institutions: it is a right to establish and administer what are in truth educational institutions, institutions which cater to the educational needs of the citizens, or sections thereof. Regulation made in the true interests of efficiency of instruction, discipline, health, sanitation, morality, public order and the like may undoubtedly be imposed. Such regulations are not restrictions on the

substance of the right which is guaranteed: they secure the proper functioning of the institution, in matters educational.

Right to administer does not include right to mal-administer.

The Court rejected the extreme contentions advanced by the Managers of the educational institutions and by the State, and observed that the right to administer did not include a right to mal-administer, and the minority could not ask for aid or recognition for an educational institution run by them in unhealthy surroundings, without any competent teachers possessing any semblance of qualification, and which did not maintain even a fair standard of teaching or which taught matters subversive of the welfare of the scholars. The constitutional right to administer an educational institution of their choice, it was observed, does not necessarily militate against the claim of the State to insist that in order to grant aid the State may prescribe reasonable regulations to ensure the excellence of institutions to be aided, but the State could not grant aid in such a manner as to take away fundamental right of the minority community under Article 30(1).

The court summed up their position in following words:

"The right established by Article 30(1) is a fundamental right declared in terms absolute. Unlike the fundamental freedoms guaranteed by Article 19, it is not subject to reasonable restrictions. It is intended to be a real right for the protection of the minorities in the matter of setting up of educational institutions of their own choice. The right is intended to be effective and is not to be whittled down by so called regulative measures conceived in the interest not of the minority educational institution, but of the public or the nation as a whole. If every order which while maintaining the formal character of a minority institution destroys the power of administration if held justifiable because it is in the public or national interest, though not in its interest as an educational institution,

the right guaranteed by Article30(1) will be but a "teasing illusion", a promise of unreality. Regulations which may lawfully be imposed either by legislative or executive action as a condition of receiving grant or of recognition must be directed to making the institution while retaining its character as a minority institution effective as an educational institution. Such regulation must satisfy a dual test - the test of reasonableness, and the test that it is regulative of the educational character of the institution and is conducive to making the institution an effective vehicle of education for the minority community or other persons who resort to it."

The Court was of the view that the Rule 5(2) of the Rules for Primary Training Colleges, and Rules 11 and 14 for recognition of Private Training institutions, insofar as they relate to reservation of seats therein under orders of Government, and directions given pursuant thereto regarding reservation of 80% of the seats and the threat to withhold grant-in-aid and recognition of the college, infringe the fundamental freedom guaranteed to the petitioners under Article 30(1).

6.4. Rev. Father W. Proost and Ors. v The State of Bihar and Ors.[147]

Five Judge Constitution Bench consisting of Hon'ble Judges M. Hidayatullah, C.J., J. C. Shah, V. Ramaswami. G. K. Mitter and A. N. Grover, JJ.

The Principal and the Rector of St. Xavier's College, Ranchi and two parents of students, in an Article 32 petition, challenged Section 48-A of the Bihar State Universities (University of Bihar, Bhagalpur and Ranchi) Act, 1960 as amended by Second Amendment Act, 1961 as *ultra vires* to Articles 29 and 30 of the Constitution.

[147] AIR1969SC465, 1968(0)KLT878(SC), [1969]2SCR73, MANU/SC/0248/1968

St. Xavier's College was established by the Jesuits of Ranchi. It was affiliated to Patna University in 1944, the management of the college vests in a Governing Body consisting of 11 members. They were:

"(i) The Superior Regular of Ranchi Jesuit Mission--President ex-officio.

(ii-v) Four Counselors to the Superior Regular to be nominated by the Jesuit Mission authorities.

(vi) The Principal of the College--Vice-president and Secretary ex-officio.

(vii) One representative of the teaching staff of the college elected by the members of the staff.

(viii) One representative of the Patna University.

(ix-xi) Three persons to represent Hindu, Muslim and Aboriginal interests."

The terms of service of Religious staff are determined by the Jesuit Mission Authorities, but those of the members of the Lay staff including their appointment are determined by the Governing Body. All appointments to the teaching staff, both Religious and Lay are reported to the Syndicate of the Patna University. The object of founding the college inter alia is 'to give Catholic youth a full course of moral and liberal education, by imparting a thorough religious instruction and by maintaining a Catholic atmosphere in the institution.' The college is, however, open to all non-catholic students. All non-catholic students receive a course of moral science.

The College was thus founded by a Christian minority and the petitioners claim they had a right to administer it, as Constitutional right guaranteed to minorities by Article 30. The petitioners' complaint is that the Bihar Legislature passed an amending Act and introduced in the Bihar Universities Act Section 48-A to come into force from March 1, 1962, which deprives them of this

protection and is, therefore, *ultra vires*. The provisions of this section are as follows:--

"48-A. Establishment of a University Service Commission for affiliated colleges not belonging to the State Government and its powers and functions:--

(1) With effect from such date as the State Government may, by notification in the Official Gazette, appoint, there shall be established a Commission by the name of the University Service Commission.

(2) The said Commission shall be a body corporate having perpetual succession and a common seal, and shall by the said name sue and be sued.

(3) The commission shall consist of a Chairman and two other members to be appointed by the State Government who shall be whole time officers, and shall hold office for a term of three years from the date of assumption of charge of office, on the expiration of which term they, or any of them, may be reappointed for only one more term which shall not exceed three years.

(4) There shall be a Secretary to the Commission who shall also be a whole-time officer to be appointed by the State Government.

(5) Other terms and conditions of service of the Chairman, members and the Secretary shall be determined by the State Government.

(6) Subject to the approval of the University, appointments, dismissals, removals termination of service or reduction in rank of teachers of an affiliated college not belonging to the State Government shall be made by the governing body of the college on the recommendation of the Commission.

(7) (i) In making recommendations for appointment to every post of teacher of any such affiliated college, the Commission shall have the assistance of two experts in the subject for which an appointment is to be made, of whom one

shall whenever possible be a teacher of the University to be nominated by the Syndicate and the other shall be a person, other than a teacher of the University, to be nominated by the Academic Council.

(ii) The experts shall be associated with the Commission as assessors whose duty it shall be to give expert advice to the Commission but who shall have no right to vote.

(8) The Commission shall, wherever feasible, recommend to the governing body of a college for appointment to every post of teacher of the college names of two persons arranged in order of preference and considered by the Commission to be the best qualified therefore.

(9) In making appointment to a post of teacher of a college, the governing body of the college shall, within three months from the date of the receipt of the recommendation under Sub-section (8), make its selection out of the names recommended by the Commission, and in no case shall the governing body appoint a person who is not recommended by the Commission.

(10) Notwithstanding anything contained in the preceding sub-sections, it shall not be necessary for the governing body to consult the Commission if the appointment to a post of teacher is not expected to continue for more than six months and cannot be delayed without detriment to the interest of the College:

Provided that if it is proposed to retain the person so appointed in the same post for a period exceeding six months or to appoint him to another post in the college the concurrence of the Commission shall be necessary in the absence of which the appointment shall be deemed to have been terminated at the end of six months.

(11) (ii) The Commission shall be consulted by the governing body of a college in all disciplinary matters affecting a teacher of the college and no memorials or petitions relating to such matters shall be disposed of nor shall any action be

taken against, or any punishment imposed on, a teacher of the college otherwise than in conformity with the finding of the Commission:

Provided that it shall not be necessary to consult the Commission where only an order of censure, or an order withholding increment, including stoppage at an efficiency bar, or an order of suspension pending investigation of charges is passed against a teacher of a college.

(12) It shall be the duty of the Commission to present annually to the University a report as to the work done by the Commission in relation to such colleges affiliated to the University and a copy of the report shall be placed before the Senate at its next meeting, and the University shall further prepare and submit to the State Government a memorandum explaining, as respects the cases, if any, where the advice of the Commission was not accepted, the reasons for such non-acceptance and the State Government shall cause the same to be laid before the Legislature of the State".

While this petition was pending in this Court, the Governor of Bihar promulgated an Ordinance on July 16, 1968. It amended the Bihar State Universities Act, 1960 by inserting Section 48-B after Section 48-A. The new section read:

"48-B. College established and administered by a minority entitled to make appointments etc. with approval of the Commission and the Syndicate.

Notwithstanding anything contained in Sub-section (6), (7), (8), (9), (10) and (11) of Section 48-A, the Governing Body of an affiliated college established by a minority based on religion or language, which the minority has the right to administer, shall be entitled to make appointments, dismissals, removals, termination of service or reduction in rank of teachers or take other disciplinary measures subject only to the approval of the Commission and the

Syndicate of the University. Simultaneously the Magadh University Act, 1961 was also similarly amended.

The petitioners, therefore, claim the protection of Section 48-B and submit that as an affiliated college established by a minority based on religion or language, they are exempt from the operation of Section 48-A (6), (7), (8), (9), (10) and (11), They say that if this position is accepted, they will withdraw the petition which has become superfluous now.

The Supreme Court held that section 48 A completely took away the autonomy of the governing body of the college in the favor of University Services Commission.

Article 29(1) and Article 30(1) create separate rights

The State conceding that the Jesuits answer the description of minority based on religion, argued that the protection was available only if the institution was founded to conserve 'language, script or culture' and since the college is open to all sections of the people and there is no programme of this kind, the protection of Article 30(1) would not available.

The Court rejecting the argument held that the width of Article 30(1) cannot be cut down by introducing in it considerations on which Article 29(1) is based. The latter Article is a general protection which is given to minorities to conserve their language, script or culture. The former is a special right to minorities to establish educational institutions of their choice. This choice is not limited to institution seeking to conserve language, script or culture and the choice is not taken away if the minority community having established an educational institution of its choice also admits members of other communities. That is a circumstance irrelevant for the application of Article 30(1) since no such limitation is expressed and none can be implied. The two articles create two separate rights, although it is possible that they may meet in a given case.

The Court held that St. Xavier's College was founded by a Catholic Minority Community based on religion and that this educational institution has the protection of Article 30(1) of the Constitution. Therefore, it is exempted under Section 48-B of the Act.

6.5 ***The Right Rev. Bishop S.K. Patro and Ors. v The State of Bihar and Ors.***[148]

Five Judge Constitution Bench consisting of Hon'ble Judges: M. Hidayatullah, C. J., G. K. Mitter, V. Ramaswami, J. C. Shah, A. N. Grover

Church Missionary Society School challenged the Government order, directing school to constitute managing committee in accordance with Order, as it interfered with the rights of minority under Article 30(1), to control affairs of school.

A primary school started in 1854 at Bhagalpur was later converted into a Higher Secondary School.

The Legislature of the State of Bihar enacted the Bihar High Schools (Control and Regulation of Administration) Act 13 of 1960 which by Section 8 invested the State Government with power to frame rules. Section 8(1) provides:

The State Government may, after previous publication and subject to the provisions of Articles 29, 30 and 337 of the Constitution of India, make rules not inconsistent with this Act for carrying out the purposes of this Act.

In 1964 rules were framed under the Act by the State Government of Bihar. Rule 41 provides:

---

[148] AIR1970SC259, 1970(0)BLJR241, (1969)1SCC863, [1970]1SCR172

These rules shall not apply to the schools established and administered by the minorities whether based on religion or language.

By order dated September 4, 1963, the President of the Board of Secondary Education approved the election of Bishop Parmar as President and Rev. Chest as Secretary of the Church Missionary Society Higher Secondary School. This order was set aside by the Secretary to the Government, Education Department, by order dated May 22, 1967. On June 21, 1967, the Regional Deputy Director of Education, Bhagalpur, addressed a letter to the Secretary, Church Missionary Society School; Bhagalpur, inviting his attention to the order dated May 22, 1967, and requested him to take steps to constitute a Managing Committee of the School "in accordance with that order".

A petition was then filed in the High Court of Patna by four petitioners for a writ quashing the order dated May 22, 1967, and for an order restraining the respondents-the State of Bihar, the Secretary to the Government of Bihar, Government of Education and the educational authorities of the State-from interfering with the right of the petitioners to control, administer and manage the affairs of the School. The High Court of Patna dismissed the petition. The High Court held that the primary School at Bhagalpur was established by the Church Missionary Society of London; that the School had developed into the present Church Missionary Society Higher Secondary School; and that the School was administered in recent times by the Church Missionary Society of the Bhagalpur Diocese; and that the School not being an education institution established by a minority, protection was not afforded thereto by Article 30 of the Constitution. Against the order dismissing the petition, Civil Appeal had been filed in Supreme Court.

Two other petitions were filed in Supreme Court claiming relief on the footing that by the order dated May 22, 1967, of the Government of Bihar the fundamental right of the Christian minority to maintain an educational institution of its choice and guaranteed by Article 30(1) is infringed.

The only question which falls to be determined is whether the petitioners in the two writ petitions and the appellants in appeal were entitled to claim the protection of Article 30 of the Constitution on the ground that the Church Missionary Society Higher Secondary School at Bhagalpur is an educational institution of their choice established by a minority.

Benefit of Article 30(1) is available to pre constitution and post constitution Educational Institutions.

There is no reason why the benefit of Article 30(1) should be limited only to educational institutions established after the commencement of the Constitution. The language employed in Article 30(1) is wide enough to cover both pre-Constitution and post-Constitution institutions. It must not be overlooked that Article 30(1) gives the minorities two rights, namely, (a) to establish, and (b) to administer, educational institutions of their choice. The second right clearly covers pre-Constitution schools just as Article 26 covers the right to maintain pre-Constitution religious institutions.

Funds received from foreign country for assisting the school is not a ground for denying the protection under Article 30(1) on the ground that it is not establish by minority.

The Court held that High Court had not correctly appreciated important documentary evidence which showed that in 1854 the school was set up by local Christians in buildings erected from funds collected by them. Although substantial assistance was obtained from Church Missionary Society of London, it could not be said on that account that the school was not educational institution established by a minority. The fact that funds were obtained from the United Kingdom for assisting in setting up and developing the School or that the management of the institution was carried on by some persons who may not have been born in India is not a ground for denying the protection of Article 30(1).

Citizenship is not a qualification for members of minority to avail the benefit of Article 30(1).

Supreme Court disagreeing with Patna High Court held that there was no settled concept Indian Citizenship in the year 1854 independently of the citizenship of the British Empire, to incorporate in the interpretation of Article 30 in respect of an institution established by a minority the condition that it must in addition be proved to have been established by persons who would, if the institution had been set up after the Constitution, have claimed Indian citizenship, is to whittle down the protection of Article 30 in a manner not warranted by the provisions of the Constitution. It could not be said that the Christian Missionaries who had settled in India and the local Christian residents of Bhagalpur did not form a minority community.

Rights under Article 30(1) not conferred on nonresident foreigners

Court opined that Article 30(1) did not confer upon nonresident foreigners the right to set up educational institutions of their choice in India- persons setting up such institutions must be resident of India and form a well defined religious and linguistic minority.

The order passed by the Educational authorities requiring the Secretary of the Church Missionary Society Higher Secondary School to take steps to constitute a Managing Committee in accordance with the order dated May 22, 1967, was declared invalid.

6.6. D.A.V. College, Bhatinda, etc. v State of Punjab and Ors[149].

Five Judge Constitution Bench consisting of Hon'ble Judges: S. M. Sikri, C.J. , G. K. Mitter, K. S. Hegde, P. Jaganmohan Reddy and A. N. Grover, JJ

[149] AIR1971SC1731, (1971)2SCC261, [1971]SuppSCR677, MANU/SC/0038/1971

The petitioners challenged Ss. 4(2) and 5 of Punjabi University Act, 1961and certain circulars and notifications as unconstitutional and void.

The Petitioners are educational institutions founded by D.A.V. College Trust and Society registered under the Societies Registration Act as an association comprised of Arya Samajis. These Colleges were affiliated to the Punjab University before the reorganization of the State of Punjab in 1966. The Punjabi University had been constituted in 1961 and by a Notification dated June 30, 1962, it was given jurisdiction over a radius of 10 miles from the office of the University at Patiala which seat had earlier been notified on 30-4-1962 as a Seat of the University. As the Writ Petitioners were not within the 10 miles radius of the University they continued to be affiliated to the Punjab University. After the reorganization the Punjab Government by Notification dated 13-5-1969 issued under Sub-section (1) of Section 5 of the Act specified the Districts of Patiala, Sangrur, Bhatinda and Rupar as the areas in which the Punjabi University exercised its power and under Sub-section (3) of the said Section, 30th June 1969 was notified as the date for the purpose of the said Section. The effect of this Notification was that the Petitioners were deemed to be associated with and admitted to the privileges of the University and ceased to be associated in any way with or to be admitted to any privileges of the Punjab University. It may also be mentioned that the Central Government by a Notification dated 12-9-1969 in exercise of the powers conferred on it by Section 72 of the Reorganization Act directed that the Punjab University constituted under the Punjab University Act 1947 shall cease to function and operate in the areas of the very four Districts regarding which the Punjab Government had earlier issued a Notification under Section 5 of the Act.

Thereafter the University by the impugned Circular dated 15-6-1970 issued to all the Principals of the Colleges admitted to the privileges of the University declared that Punjabi "will be the sole medium of instruction and examination for the pre-University even for Science group with effect from the Academic

Session 1970-71". Later the University by a letter dated 2-7-1970 informed the Principals that a decision of the Senate Sub-Committee dated 1-7-1970 as enclosed therewith was made giving "relaxation in some special cases of pre-University students seeking admission for the year 1970". This enclosure was in Punjabi, an English translation of which would show that the relaxation was to permit students who had passed their matriculation examination with English as their medium of examination to be taught and to answer examination papers in the English medium at pre-University level 'only so long as the other Universities and School bodies of Punjab did not adopt Punjabi as their medium of instruction'. On 7-10-70 the University made a further modification and it was decided by the Senate "that English be allowed as an alternative medium of examination for all students for the courses for which the University had adopted the regional language as the medium. It was however understood that qualifying in the elementary Punjabi paper would, as already decided by the University be obligatory in the case of such students offering English medium as had not studied Punjabi as an elective or optional subject even up to the middle standard". The resolution of 1-7-1970 further decided that students availing themselves of the facilities given there under will have to pass a compulsory course in Punjabi of 50 marks of which a minimum of 25 marks will be required to pass that course.

The main contention of the Petitioners however, was that

1. Section 4(2) of the Act does not empower the University to make Punjabi the sole medium of instruction;
2. It is not within the legislative power of the State under Entry 11 of List II to make Punjabi the sole medium of instruction, which power in fact vested in the Union Parliament under entry 66 of List I.
3. In so far as the medium of instruction in Punjabi with Gurumukhi as the script is sought to be imposed on the educational institutions established by the Arya Samajis a religious denomination, they also offend Article

26(1), 29(1) and 30(1) of the Constitution. The impugned Notification and the Circulars were *ultra vires* and Unconstitutional.

The prepositions that culled out from the judgment are as under:

Arya Samajis held as religious and linguistic minority in Punjab

Arya Samajis who are part of the Hindu community, in Punjab are a religious minority and that they had a distinct script of their own the Devnagri which entitled them to invoke the guarantees under Article 29(1) and 30(1) of the Constitution.

Minority has the right to have a choice of the medium of instruction.

Minorities who have a distinct language, script and culture and whose right to conserve them, and to administer their institutions are guaranteed under Article 29(1) and 30(1) of the Constitution. The right of the minorities to establish and administer educational institutions of their choice would include the right to have a choice of the medium of instruction also which would be the result of reading Article 30(1) and 29(1). Surely then there was an implicit in such fundamental right the right to impart instruction in their own institutions to the children of their own community in their own language. To hold otherwise will be to deprive Article 29(1) and Article 30(1) of the greater part of their contents.

The State must therefore harmonise its power to prescribe the medium of instruction with the rights of the religious or linguistic minority or any section of the citizens to have the medium of instruction and script of their own choice by either providing also for instruction in the media of these minorities or if there are other Universities which allow such Colleges to be affiliated where the medium of instruction is that which is adopted by the minority institutions, to allow them the choice to be affiliated to them. When the country has been reorganised and formed into linguistic States it may be the natural outcome of

that policy to allow Colleges established by linguistic and religious minorities giving instructions in the medium of language adopted by the Universities in other States to affiliate to them or if it wants Colleges including the minority institutions to be affiliated to it, to make provision for allowing instruction to be given and examination to be conducted in the media and script of the minorities when it imposes a regional language as the medium of instruction for the University. No inconvenience or difficulties, administrative or financial can justify the infringement of the guaranteed rights.

State does not have legislative competence to prescribe any particular medium of instruction

It is also worthy of note that no State has the legislative competence to prescribe any particular medium of instruction in respect of higher education or research and scientific or technical instructions, if it interferes with the Power of the Parliament under item 66 of List I to coordinate and determine the standards in such institutions.

Section 4(3) of the Act did not empower Punjabi University to prescribe Punjabi in the Gurumukhi script as an exclusive medium of instruction. The University Act having compulsorily affiliated these Colleges must of necessity cater to their needs and allow them to administer their institutions in their own way and impart instructions in the medium and write examination in their own script. The impugned Circulars of 15-6-1970 as amended by Circular of 2-7-1970 in terms of the resolution of the Senate Sub-Committee of 1-7-1970 and that of 7-10-1970 were struck down as being, invalid and *ultra vires* of the powers vested in the University.

6.7. State of Kerala etc. v Very Rev. Mother Provincial, Etc[150]

[150] AIR 1970 SC 2079, 1971 SCR (1) 734, 1970 2 SCC 417,MANU/SC/0065 /1970

Six Judge Constitution Bench consisting of Hon'ble Judges: Hidayatullah, M. , C.J., Shah, J. C. Hegde, K. S. Grover, A. N. Ray, A.N. Dua

Petitioners challenged the validity of the following sections of the Kerala University Act 9 of 1969, on the ground that they violated Article 30: Ss. 48, 49, 53, 56, 58 and 63.

The Kerala University Act 1969 was passed to reorganise the University of Kerala with a view to establishing a teaching, residential and affiliating University for the southern districts of the State of Kerala. Some of its provisions affected private colleges, particularly those founded by minority communities in the State. Their constitutional validity was challenged by some members of those communities on various grounds in writ petitions filed in the High Court.

The provisions challenged were mainly those contained in Chapters VIII & IX of the Act. By Ss. 48 and 49, an 'Educational Agency' which had established and was maintaining a private college or a 'corporate management' which was managing more than one private college, were required to set up a governing body for a private college or a managing council for private colleges under one corporate management. The sections provided for the composition of the two bodies which were to include the Principals and managers of the private colleges, and nominees of the University and Government, as well as elected representatives of, teachers. Sub-section (2) provided, for the new bodies becoming bodies corporate having perpetual succession and a common seal. Sub-section (4) provided that the members would hold office for four years and by sub- section (5) of each section a duty was cast on the new governing body or the managing council 'to administer' the private college or colleges in accordance with the provisions of the Act. Sub-section (6) in each section laid down that the powers and functions of the new bodies, the removal of members thereof and the procedure to be followed by them shall be prescribed by

statutes. The petitioners challenged the provisions of these two sections as also *inter alia* those of

(a) sub-sections (1), (2), (3) and (9) of s. 53 which conferred on the Syndicate of the University the Power to -veto the decisions of the governing council; and a right of appeal to any person aggrieved by their action;

(b) Section 56, which conferred ultimate power on the University and the Syndicate in disciplinary matters in respect of teachers:

(c) S. 58, which removed membership of the Legislative Assembly as a disqualification for teachers; and

(d) S.63 (I)-Which provided that whenever government was satisfied that a grave situation had arisen in the working of a private college, it could *inter alia*, appoint the University to manage the affairs of such private college for a temporary period.

It was contended that these provisions of the new Act were violative of Article 30, which protects the rights of the minorities to establish and administer educational institutions of their choice as also Articles 19(1) (f), and 14 of the Constitution. The High Court allowed the writ petitions and declared some of the provisions of the Act invalid.

The High Court allowed the writ petitions and declared that sub-Ss. (2) and (4) of s. 48, Sub-Ss. (2) and (4) of s. 49, sub-Ss. (1), (2), (3) and (9) of s. 53, sub-Ss. (2) and (4) of s. 56, s. 58 in so far as the minority institutions are concerned, offensive to Article 30(1) and therefore void.

On appeal to Supreme Court, held: The High Court was right in holding that sub-Ss. (2) and (4) of Ss. 48 and 49 are *ultra vires* to Article 30 (1). Sub-section (6) of each of these two sections is also *ultra vires*: they offend more than the other two of which they are a part and parcel. The High Court was also right in

declaring that sub-Ss. (1), (2), (9) and of s. 53, sub-Ss. (2) and (4) of s. 56, are *ultra vires* as they fall within Ss. 48 and 49; that s. 58 (in so far as it removes disqualification which the founders may not like to agree to, and s. 63 are *ultra vires* Article 30(1) in respect of the minority institutions.

It is obvious that after the erection of the governing body or the managing council the founders or even the minority community had no hand in the administration. The two bodies are vested with the complete administration of the institutions and were not answerable to the founders in this respect. Sub-sections (2), (4), (5) and (6) of Ss. 48 and 49 clearly vest the management and administration in the hands of the two bodies with mandates from the University. Coupled with this is the power of the Vice-Chancellor and the Syndicate under subsections (2) and (4) of s. 56 to have the final say in respect of disciplinary proceedings against teachers.

Furthermore, the provisions of s.58 granting special privileges to teachers who happened to be members of the Legislative Assembly enabled political parties to come into the picture of administration of minority institutions, and coupled with the choice of nominated members left to Government and the University under Ss. 48 and 49, it was clear there was much room for interference by persons other than those in whom the founding community would have confidence.

The provisions of s. 63 laid down elaborate procedure for management of the private colleges in which the governing body or managing Council would have no say. [The Court expressed no opinion regarding sub- Ss. (1), (2), (3) and (9) of S. 53 and sub-Ss. (2) and (4) of S. 56 vis-a-vis Art. 30.]

Section 63 was, however, held to offend Art. 31(2) and not saved by Art. 3 1 A(1)(b) and this declaration was in favour of all the petitioners. It was also declared void as offending Art. 30(1) in so far as the minority institutions was

concerned. The rest of the Act was declared to be valid and the challenge to it was 'rejected.

The main contentions of the minorities came from Article 30 (1) of the Constitution. Which states as: All minorities, whether based on religions or language, shall have the right to establish and administer educational institutions of their choice.

It is declared to be a fundamental right of the minorities, whether based on religion or language, to establish and administer educational institutions of their choice. It is conceded by the petitioners representing minority communities that the State or the University to which these institutions are affiliated may prescribe standards of teaching and the scholastic efficiency expected from colleges. They concede also that to a certain extent conditions of employment of teachers, hygiene and physical training of students can be regulated. '. What they contended is that there is an attempt to interfere with the administration of these institutions and this is an invasion of the fundamental right. The minority communities further claim protection for their property rights in institutions under Arts. 31 and 19(1)(f) and the right to practice any profession or to, carry on any occupation trade or business guaranteed by sub-cl(g) of the latter Article.

Court held that establishment here means the bringing into being of an institution and it must be, by a minority community. It matters not if a single philanthropic individual with his own means founds the institution or the community at large contributes-the funds. The position in law is the same and the intention in either case must be to found an institution for the benefit of a minority community by a member of that community. It is equally irrelevant that in addition to the minority community others from other minority communities- or even from the majority community can take advantage of these institutions. Such other communities bring in income and they do not have to be turned away to enjoy the protection.

The next part of the right relates to the administration of such institutions. Administration means 'management of the affairs' of the institution. This management must be free of control so that the founders or their nominees can mould the institution as they think fit, and in accordance with their ideas of how the interests of the community in general and the institution in particular will be best served. No part of this management can be taken away and vested in another body without an encroachment upon the guaranteed right.

There is, however, an exception to this and it is that the standards of education are not a part of management as such. These standards concern the body politic and are dictated by considerations of the, advancement of the country and its people. *Therefore, if universities establish syllabi for examinations they must be followed, subject however to special subjects which the, institutions may seek to teach, and to a certain extent the State may also regulate the conditions of employment of teachers and the health and hygiene of students. Such regulations do not bear directly upon management as such although they may indirectly affect it. Yet the right of the State to regulate education, educational Standards and allied matters cannot be denied.* The minority institutions cannot be allowed to fall below the standards of excellence expected of educational institutions, or under the guise of exclusive right of management, to decline to follow the general pattern. While the management must be left to them, they may be compelled to keep in step with others.

Supreme Court held that though the provisions of the Act were made bona fide and in the interest of education but unfortunately they do affect the administration of these institutions and rob the founders of that right which the Constitution desires should be theirs. The provisions, even if salutary, cannot stand in the face of the constitutional guarantee. The-result of the above analysis of the provisions which have been successfully challenged discloses that High Court was right in its appreciation of the true position in the light of the Constitution. Supreme Court agreed with the High Court that

sub-Ss. (2) and (4) of Ss. 48 and 49 are *ultra vires* Art. 30(1) and that sub-Ss. (6) of these two sections were also ultra vires. They offend more than the other two of which they are a part and parcel. Court also agreed that sub-Ss. (1), (2), (3) and (9) of s. 53, sub-Ss. (2) and (4) of s. 56 were *ultra vires* as they fall with Ss. 48 and 49. Court also agreed that Section 58 (in so far as it removes disqualification which the founders may not like to agree to) and Sec. 63 are *ultra vires* Articles 30(1) in respect of the minority institutions. Thus Supreme Court upheld the judgment under appeal

6.8. The Ahmedabad St. Xavier's College Society and Anr. V State of Gujarat and Anr[151].

Nine Judge Constitution Bench consisting of Hon'ble Judges: A. N. Ray, A. Alagiriswami, D. G. Palekar, H. R. Khanna, K. K. Mathew, M. H. Beg, P. Jaganmohan Reddy, S. N. Dwivedi and Y. V. Chandrachud, JJ.

The Petitioner Society and St Xavier's College seek to provide higher education to Christian students. Children, however, of all classes and creeds provided they attain qualifying academic standards are admitted to the St. Xavier's College. The college was an affiliated college under the Gujarat University Act, 1949.

St. Xavier's College Society and St Xavier's College challenged the validity of the following sections of the Gujarat University (Amendment) Act, 1972, on the ground that they violated Article 30: Section 33A (1) (a), which provided for the constituting of the Governing Body and selection committee; Ss 40 and 41, which converted affiliated colleges in to constituent colleges; and Ss 51 A and 52 B which provided for the dismissal, removal and termination of the services of members of the staff of colleges, and the reference of disputes to arbitration. Although the petitioners did not impugn the validity of S 33A (1) (b) which

[151] AIR1974SC1389, (1974)1SCC717, [1975]1SCR173, MANU/SC/0088/1974

provided for the recruitment of the Principal and the teaching staff of colleges, some of the interveners impugned the validity of that section also.

The larger bench was called upon to determine the following questions.

1. Whether the rights conferred on religious and linguistic minorities by Article 30 (1) were confined to the purposes set out in Article 29(1), namely, the preservation of the language, script or culture of the said minorities, or whether those rights extended also to establishing educational institutions imparting general “secular” education?
2. Whether the grant, recognition or affiliation of an educational institution to which Article 30 (1) applied, could be made dependent on the religious and linguistic minorities accepting conditions which would involve the surrender by such minorities of the rights conferred on them by Article 30(1).
3. Whether the right to establish and administer educational institution carried with it a right to grant-in-aid, and/or recognition and /or affiliation.

All the nine judges held that Article 30(1) was not limited by Article 29(1).

Articles 29 and 30 of the Constitution are grouped under the heading "Cultural and educational rights". Article 29(1) deal with right of any section of the citizens residing in India to preserve their language, script or culture. Article 30(1) provides that all religious and linguistic minorities have the right to establish and administer educational institutions of their choice. Article 29(2) prohibits discrimination in matters of admission into educational institutions of the types mentioned therein on grounds only of religion, race, caste, language or any of them. Article 30(2) prevents States from making any discrimination against any educational institution in granting aid on the ground that it is managed by a religious or linguistic minority.

Articles 29 and 30 confer four distinct rights. First, is the right of any section of the resident citizens to conserve its own language script or culture as mentioned in Article 29(1). Second, is the right of all religious and linguistic minorities to establish and administer educational institutions of their choice as mentioned in Article 30(1). Third, is the right of an educational institution not to be discriminated against in the matter of State aid on the ground that it is under the management of a religious or linguistic minority as mentioned in Article 30 (2). Fourth is the right of the citizen not to be denied admission into any State maintained or State aided educational institution on the ground of religion, caste, race or language, as mentioned in Article 29(2).

It will be wrong to read Article 30(1) as restricting the right of minorities to establish and administer educational institutions of their choice only to cases where such institutions are concerned with language, script or culture of the minorities. The reasons are these. First, Article 29 confers the fundamental right on any section of the citizens which will include the majority section whereas Article 30(1) confers the right on all minorities. Second, Article 29(1) is concerned with language, script or culture, whereas Article 30(1) deals with minorities of the nation based on religion or language. Third, Article 29 is concerned with the right to conserve language, script or culture, whereas Article 30(1) deals with the right to establish and administer educational institutions of the minorities of their choice. Fourth, the conservation of language, script or culture under Article 29(1) may be by means wholly unconnected with educational institutions and similarly establishment and administration of educational institutions by a minority under Article 30(1) may be unconnected with any motive to conserve language, script or culture. A minority may administer an institution for religious education which is wholly unconnected with any question of conserving a language, script or culture.

All nine judges agreed that recognition or affiliation cannot be offered on terms which would involve surrender of the rights conferred by Article 30(1).

As to affiliation or recognition, the two questions which arose were:

1) Can recognition or affiliation be granted on terms involving a surrender of the rights conferred by Article 30(1)?
    - All nine judges agreed upon that recognition or affiliation cannot be offered on terms which would involve a surrender of rights conferred by Article 30(1).
2) Do the rights conferred by Article 30(1) include right to recognition or affiliation, and what are consequences involved in applying for and obtaining affiliation?

The consistent view of Supreme Court had been that there is no fundamental right of a minority institution to affiliation. An explanation has been put upon that statement of law. It is that affiliation must be a real and meaningful exercise for minority institutions in the matter of imparting general secular education. Any law which provides for affiliation in terms which will involve abridgement of the right of linguistic and religious minorities to administer and establish educational institutions of their choice will offend Article 30(1). The educational institutions set up by minorities will be robbed of their utility if boys and girls cannot be trained in such institutions for University degrees. Minorities will virtually lose their right to equip their children for ordinary careers if affiliation be on terms which would make them surrender and lose their rights to establish and administer educational institutions of their choice under Article 30. The primary purpose of affiliation is that the students reading in the minority institutions will have qualifications in the shape of degrees necessary for a useful career in life. The establishment of a minority institution is not only ineffective but also unreal unless such institution is affiliated to a University for the purpose of conferment of degrees on students.

Affiliation to a University really consists of two parts. One part relates to syllabi, curricula, courses of instruction, the qualifications of teachers, library, laboratories, conditions regarding health and hygiene of students. This part relates to establishment of educational institutions. The second part consists of terms and conditions regarding management of institutions. It relates to administration of educational institutions.

With regard to affiliation a minority institution must follow the statutory measures regulating educational standards and efficiency, the prescribed courses of study, courses of instruction and the principles regarding the qualification of teachers, educational qualifications for entry of students into educational institutions etcetera.

When a minority institution applies to a University to be affiliated, it expresses its choice to participate in the system of general education and courses of instruction prescribed by that University. Affiliation is regulating courses of instruction in institutions for the purpose of coordinating and harmonizing the standards of education. With regard to affiliation to a University, the minority and non-minority institutions must agree in the pattern and standards of education. Regulatory measures of affiliation enable the minority institutions to share the same courses of instruction and the same degrees with the non-minority institutions.

The right conferred on the religious and linguistic minorities to administer educational institutions of their choice is not an absolute right.

The entire controversy centers round the extent of the right of the religious and linguistic minorities to administer their educational institutions. The right to administer is said to consist of four principal matters. First is the right to choose its managing or governing body. It is said that the founders of the minority institution have faith and confidence in their own committee of body

consisting of persons selected by them. Second is the right to choose its teachers. It is said that minority institutions want teachers to have compatibility with the ideals, aims and aspirations of the institution. Third is the right not to be compelled to refuse admission to students. In other words, the minority institutions want to have the right to admit students of their choice subject to reasonable regulations about academic qualifications. Fourth is the right to use its properties and assets for the benefit of its own institution.

The right conferred on the religious and linguistic minorities to administer educational institutions of their choice is not an absolute right. This right is not free from regulation. Just as regulatory measures are necessary for maintaining the educational character and content of minority institutions similarly regulatory measures are necessary for ensuring orderly, efficient and sound administration.

These rulings of this Court indicate how and when there is taking away or abridgement of the right of administration of minority institutions in regard to choice of the governing body, appointment of teachers and in the right to administer.

Educational institutions are temples of learning. The virtues of human intelligence are mastered and harmonized by education. 'Where there is complete harmony between the teacher and the taught, where the teacher imparts and the student receives, where there is complete dedication of the teacher and the taught in learning, where there is discipline between the teacher and the taught, where both are worshippers of learning, no discord or challenge will arise. An educational institution runs smoothly when the teacher and the taught are engaged in the common ideal of pursuit of knowledge. It is, therefore, manifest that the appointment of teachers is an important part in educational institutions. The qualifications and the character of the teachers are really important. The minority institutions have the right to administer institutions. This right implies the obligation and duty of the minority

institutions to render the very best to the students. In the right of administration, checks and balances in the shape of regulatory measures are required to ensure the appointment of good teachers and their conditions of service. The right to administer is to be tempered with regulatory measures to facilitate smooth administration. The best administration will reveal no trace or color of minority. A minority institution should shine in exemplary eclectic in the administration of the institution. The best compliment that can be paid to a minority institution is that it does not rest on or proclaim its minority character.

Regulations which will serve the interest of the students, regulations which will serve the interests of the teachers are of paramount importance in good administration. Regulations in the interest of efficiency of teachers, discipline and fairness in administration are necessary for preserving harmony among affiliated institutions.

Education should be a great cohesive force in developing integrity of the nation. Education develops the ethos of the nation. Regulations are, therefore, necessary to see that there are no divisive or disintegrating forces in administration.

Three sets of regulations are impeached as violative of Article 30. The first set consists of Section 40 and 41 of the Gujarat University Act, 1949 as amended, referred to, as the Act. The second set consists of Section 33 A (1) (a). The third set consists of Sections 51 A and 52 B.

Section 40 of the Act enacts that teaching and training shall be conducted by the university and shall be imparted by teachers of the university. Teachers of the university may be appointed or recognized by the University for imparting instructions on its behalf. As soon as the Court which is one of the authorities of the university determines that the teaching and training shall be conducted by the university the provisions of Section 41 of the Act come into force.

Section 41 of the Act consists of four sub-sections. The first subsection states that all colleges within the university area which are admitted to the privileges of the university under Sub-section (3) of Section 5 of the Act and all colleges which may hereafter be affiliated to the university shall be **constituent colleges of the university**. It is true that no determination has yet been made by the court of the university under Section 40 of the Act but the power exists. The power may be used in relation to minority institution. Once that is done the minority institutions will immediately become constituent colleges. The real implication of Section 40 of the Act is that teaching and training shall be conducted by the university. The word "conduct" clearly indicates that the university is a teaching university. Under Section 40 of the Act the university takes over teaching of under-graduate classes.

Section 41 of the Act is a corollary to Section 40 of the Act. Section 41 of the Act does not stand independent of Section 40 of the Act. Once an affiliated college becomes a constituent college within the meaning of Section 41 of the Act pursuant to a declaration under Section 40 of the Act it becomes integrated to the university. A constituent college does not retain its former individual character any longer. The minority character of the college is lost. Minority institutions become part and parcel of the university. The result is that Section 40 of the Act cannot have any compulsory application to minority institutions because it will take away their fundamental right to administer the educational institutions of their choice, being the constituent colleges of the university. The second sub-section states that all institutions within the university area shall be the constituent institutions of the university. The third sub-section states that no educational institution situate within the university area shall, save with the consent of the university, and the sanction of the State Government be associated in any way with or seek admission to any privilege of any other university established by law. The fourth sub-section states that the relations of the constituent colleges and constituent, recognized or approved institutions within the university area shall be governed by the statutes to be made in that

behalf and such statutes shall provide in particular for the exercise by the university of the powers enumerated therein in respect of constituent degree colleges and constituent recognized institutions.

Section 41(4) (ii) of the Act confers power on the university to approve the appointment of the teachers made by colleges. Section 41 (4) (iii) of the Act requires colleges to contribute teachers for teaching on behalf of the university. Section 41 (4) (iv) of the Act confers power on the university to co-ordinate and regulate the facilities provided and expenditure incurred by colleges and institutions in regard to libraries, laboratories and other equipments for teaching and research. Section 41(4) (v) confers power on the university to require colleges and institutions when necessary to confine the enrolment of students in certain subjects. Section 41(4) (vi) confers power on the university to levy contributions from colleges and institutions and to make grants to them.

In view of our conclusion that Sections 40 and 41of the Act hang together and that Section 40 of the Act cannot have any compulsory application to minority institutions, it follows that Section 41 of the Act cannot equally have any compulsory application to minority institutions. It is not necessary to express any opinion on the provisions contained in Section 41 of the Act as to whether such provisions can be applied to minority institutions affiliated to a university irrespective of the conversion of affiliated colleges into constituent colleges.

The provisions contained in Section 33 A (1) (a) of the Act state that every college shall be under the management of a governing body which shall include amongst its members, a representative of the university nominated by the Vice-Chancellor and representatives of teachers, non-teaching staff and students of the college. These provisions are challenged on the ground that this amounts to invasion of the fundamental right of administration. It is said that the governing body of the college is a part of its administration and therefore that administration should not be touched. The right to administer is the right to

conduct and manage the affairs of the institution. This right is exercised through a body of persons in whom the founders, of the institution have faith and confidence and who have full autonomy in that sphere. The right to administer is subject permissible regulatory measures. Permissible regulatory measures are those which do not restrict the right of administration but facilitate it and ensure better and more effective exercise of the right for the benefit of the institution and through the instrumentality of the management of the educational institutions and without displacing the management. If the administration has to be improved it should be done through the agency or instrumentality of the existing management and not by displacing it. Restrictions on the right of administration imposed in the interest of the general public alone and not in the interests of and for the benefit of minority educational institutions concerned will affect the autonomy in administration.

Autonomy in administration means right to administer effectively and to manage and conduct the affairs of the institutions. The distinction is between a restriction on the right of administration and a regulation prescribing the manner of administration. The right of administration is day to day administration. The choice in the personnel of management is a part of the administration. The university will always have a right to see that there is no mal-administration. If there is maladministration, the university will take steps to cure the same. There may be control and check on administration in order to find out whether the minority institutions are engaged in activities which are not conducive to the interest of the minority or to the requirements of the teachers and the students.

Autonomy in administration means right to administer effectively and to manage and conduct the affairs of the institutions. The distinction is between a restriction on the right of administration and a regulation prescribing the manner of administration. The right of administration is day to day administration. The choice in the personnel of management is a part of the

administration. The university will always have a right to see that there is no mal-administration. If there is maladministration, the university will take steps to cure the same. There may be control and check on administration in order to find out whether the minority institutions are engaged in activities which are not conducive to the interest of the minority or to the requirements of the teachers and the students. In State of Kerala v. Very Rev. Mother Provincial etc. this Court said that if the administration goes to a body in the selection of which the founders have no say, the administration would be displaced. This Court also said that situations might be conceived when they might have a preponderating voice. That would also affect the autonomy in administration. The provisions contained in Section 33 A (1) (a) of the Act have the effects of displacing the management and entrusting it to a different agency. The autonomy in administration is lost. New elements in the shape of representatives of different type are brought in. The calm waters of an institution will not only be disturbed but also mixed. These provision in Section 33 A (1) (a) cannot therefore apply to minority institutions.

The provisions contained in Section 33 A (1) (b) of the Act were not challenged by the petitioners. The interveners challenged those provisions. The settled practice of this Court is that an intervener is not to raise contentions which are not urged by the petitioners. In view of the fact that notices were given to minority institutions to appear and those institutions appeared and made their submissions a special consideration arises here for expressing the views on Section 33 A (1) (b) of the Act. The provisions contained in Section 33 A (1) (b) of the Act are that for the recruitment of the Principal and the members of the teaching staff of a college there is a selection committee of the college which shall consist, in the case of the recruitment of a Principal, of a representative of the university nominated by the Vice-Chancellor and, in the case of recruitment of a member of the teaching staff of the college, of a representative of the university nominated by the Vice-Chancellor and the Head of the Department if any for subjects taught by such persons. The contention of the

interveners with regard to these provisions is that there is no indication and guidance in the Act as to what types of persons could be nominated as the representative. It was suggested that such matters should not be left to unlimited power as to choice. The provisions contained in Section 33 A (1) (b) cannot therefore apply to minority institutions.

The third set of provisions impeached by the petitioners consists of Sections 51A and52A, Section 51A states that no member of the teaching, other academic and non-teaching staff of an affiliated college shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges and given a reasonable opportunity of being heard and until (a) he has been given a reasonable opportunity of making representation on any such penalty proposed to be inflicted on him; and (b) the penalty to be inflicted on him is approved by the Vice-Chancellor or any other officer of the university authorized by the Vice-Chancellor in this behalf., Objection is taken by the petitioners to the approval of penalty by the Vice-Chancellor or any other officer of the university authorized by him. First, it is said that a blanket power is given to the Vice-Chancellor without any guidance. Second, it is said that the words "any other officer of the university authorized by him" also confer power on the Vice-Chancellor to authorize any one and no guidelines are to be found there. In short, unlimited and undefined power is conferred on the Vice-Chancellor. The approval by the Vice-Chancellor may be intended to be a check on the administration. The provision contained in Section51A, clause (b) of the Act cannot be said to be a permissive regulatory measure inasmuch as it confers arbitrary power on the Vice-Chancellor to take away the right of administration of the minority institutions. Section 51A of the Act cannot, therefore, apply to minority institutions.

The provisions contained in Section 52A of the Act contemplate reference of any dispute between the governing body and any member of the teaching, other academic and non-teaching staff of an affiliated college which is connected with

the conditions of service of such member to a Tribunal of Arbitration consisting of one member nominated by the governing body of the college, one member nominated by the member concerned and an Umpire appointed by the Vice-Chancellor. These references to arbitration will introduce an area of litigious controversy inside the educational institution. The atmosphere of the institution will be vitiated by such proceedings. The governing body has its own disciplinary authority. The governing body has its domestic jurisdiction. This jurisdiction will be displaced. A new jurisdiction will be created in administration. The provisions contained in Section 52A of the Act cannot, therefore, apply to minority institutions.

In spite of the consistent and categorical decisions which have held invalid certain provisions of the University Acts of some of the States as interfering with the fundamental rights of management of minority in-situations inherent in the right to establish educational institutions of their choice under Article 30(1), the State of Gujarat has incorporated similar analogous provisions to those that have been declared invalid by this Court. No doubt education is a State subject, but in the exercise of that right any transgression of the fundamental right guaranteed to the minorities will have its impact beyond the borders of that State and the minorities in the rest of the country will feel apprehensive of their rights being invaded in a similar manner by other States. A kind of instability in the body politic will be created by action of a State which will be construed as a deliberate attempt to transgress the rights of the minorities where similar earlier attempts were successfully challenged and the offending provisions held invalid.

For these reasons the provisions contained, in Sections 40, 41, 33 A (1) (a), 33 A (1) (b), 51 A and 52A cannot be applied to minority institutions. These provisions violate the fundamental rights of the minority institutions.

The ultimate goal of a minority institution, imparting general secular education is advancement of learning. This Court has consistently held that it is 'not only

permissible but also desirable to regulate everything in educational and academic matters for achieving excellence and uniformity in standards of education.

In the field of administration it is not reasonable to claim that minority institutions will have complete autonomy. Checks on the administration may be necessary in order to ensure that the administration is efficient and sound and will serve the academic needs of the institution. The right of a minority to administer its educational institution involves, as part of it, a correlative duty of good administration.

The teachers and the taught form a world of their own where everybody is a votary of learning. They should not be made to know any distinction. Their harmony rests on dedicated and disciplined pursuit of learning. The areas of administration of minorities should be adjusted to concentrate on making learning most excellent. That is possible only when all institutions follow the motto that the institutions are places for worship of learning by the students and the teachers together irrespective of any denomination and distinction.

In spite of the consistent and categorical decisions which have held invalid certain provisions of the University Acts of some of the States as interfering with the fundamental rights of management of minority institutions inherent in the right to establish educational institutions of their choice under Article 30(1), the State of Gujarat has incorporated similar analogous provisions to those that have been declared invalid by this Court. No doubt education is a State subject, but in the exercise of that right any transgression of the fundamental right guaranteed to the minorities will have its impact beyond the borders of that State and the minorities in the rest of the country will feel apprehensive of their rights being invaded in a similar manner by other States. A kind of instability in the body politic will be created by action of a State which will be construed as a deliberate attempt to transgress the rights of the

minorities where similar earlier attempts were successfully challenged and the offending provisions held invalid.

HELD:

By Majority: (Ray C.J. Palekar, Khanna, Mathew, Beg and Chandrachud, JJ.) Articles, 29 and 30 are not mutually exclusive. (Jaganmohan Reddy and Alagiriswami, JJ. did not deal with this question.) Dwivedi, J: The content of right under Article 29(1) differs from content of, the right under Article 30(1)

By full Court: There, is no fundamental right to affiliation. But recognition or affiliation is necessary for a meaningful exercise of the right to establish and administer educational institutions.

By majority: (Ray, C. J., Palekar, Jaganmohan Reddy, Khanna, Mathew, Chandrachud and Alagiriswami JJ.) Section 33 A cannot apply to minority institutions. Beg. J: Section 33A would not impinge upon the right under Article 30(1). Dwivedi, J. Section 33A(1)(a) is violative of minority rights.

By majority (Ray C.J., Palekar, Jaganmohan Reddy, Khanna, Mathew, Chandrachud and Alagiriswami. JJ.) Section 40 and 41 cannot have compulsory application to minority institutions. Beg, J.: Sections 40 and 41 would be violative of the right under Article 30(1) and, therefore, do not apply to minority institutions unless they opt for affiliation. Dwivedi, J. :No legitimate objection could be taken of Sections 40 and 41.

By majority(Ray C.J., Palekar, Jaganmohan Reddy, Khanna, Mathew, Chandrachudand Alagiriswami, JJ.) Section 51 (A) (1) and (2) and Section 52A cannot have application to minority institutions. Beg J. did not consider it really necessary on the view he was taking to consider the validity, of Sections 51A(1) and (2) and Section 52(A) of the Act but, after assuming it was

necessary to do so, held these provisions to be valid. Dwivedi, J. Sections 51A and 52A are not violative of Article 30(1) of the Constitution.

6.9. The Gandhi Faiz-E-Am College, Shahjahanpur v University of Agra and Anr[152].

Three Judge Bench consisting of A.C. Gupta, K. K. Mathew and V. R. Krishna Iyer, JJ

An instruction given by university to minority institution regarding new organizational discipline and mutations in administrative body was challenged as it infringed the fundamental right secured under Article 30 to minorities**.**

The question was whether Statute 14A framed by the University of Agra abridged the fundamental right guaranteed under Article 30(1) of the Constitution of the Muslim community of Saharan-pur, a religious minority, to administer the Gandhi Faizeam College, Saharanpur, established by it.

In August, 1964, an application was made on behalf of the college management to the University for Permission to start teaching in courses of study including Sociology, Sanskrit, Arabic, Military Studies, Drawing and Painting. The University insisted that as condition for recognition of these additional subjects as courses of study, the managing committee of the college must be reconstituted in conformity with Statute 14A by including the Principal and the senior-most member of the staff in it. Statute 14A provides:

‘ Each college, already affiliated or when affiliated, which is not maintained exclusively by Government must be under the Management of a regular constituted Governing Body (which term includes Managing Committee) on which the staff of the college shall be represented by the Principal of the College and at least one representative of the teachers of the college to be

[152] AIR1975SC1821, (1975)2SCC283, [1975]3SCR810.

appointed by rotation in order of seniority determined by length of service in the college, who shall hold office for one academic year.'

In the writ petition filed before the High Court, the appellant contended that Statute 14A abridged its fundamental right under Article 30 (1). But the High Court negatived the contention holding that even if Statute 14A is implemented by the religious minority, the right of the minority to administer the educational institution would not be taken away or destroyed and dismissed the writ petition.

The appellant is a registered society formed by the members of the Muslim community at Shahjehanpur. Indubitably, the community ranks as minority in the country and the educational institution run by it has been found to be what may loosely be called a 'minority institution,' within the Constitutional compass of Article 30. The A. V. Middle School was the off-spring of the effort of the Muslim minority resident in Shahjehanpur District. It later became a High School and afterwards attained the status of an Intermediate College. Eventually it blossomed into a degree college affiliated to the University of Agra. In 1948, on the assassination of the Father of the Nation, this college was commemoratively renamed as Gandhi Faiz-e-am College. In August 1964, an application was made on behalf of the college management to the University for permission to start teaching in courses of study including Sociology, Sanskrit, Arabic, military studies, drawing and painting. The University entertained the thought that a new organisational discipline must be brought into the institution and insisted, as a condition of recognition of these additional subjects as course of study, on certain mutations in the administrative body of the college. The bone of contention before Supreme Court and was before the High Court, was that this prescription by the University, in tune with Statute 14-A framed by it, is an invasion of the fundamental right guaranteed to the minority community under Article 30 of the Constitution of India. The High

Court had negatived the plea of the management and the appeal issued from that decision.

Supreme Court held that the principal is the vital, vibrant and lucent presence within the educational campus; no administration can bring out its best in the service of the institution sans the principal. To alienate him is to self-inflict wounds; to associate him is to integrate the academic head into the administrative body for the obvious betterment of managerial insight and proficiency. He is no stranger to the college but the commander appointed by the management itself. A regulation which requires his inclusion in the Governing Council imposes no external element nor exposes the college to the espionage of one with dual loyalties. His membership on the Board is a blessing in many ways and not a curse in any conceivable way. After all the functions of the Managing Committee, as set down in bye-law 15, are:

15. The Managing Committee shall-

(a) Dispose of applications for scholarships and concession etc., received by the Secretary or any other person.

(b) Check and pass account kept by the treasurer, Secretary or Principal.

(c) Have powers to appoint, suspend, remove or otherwise punish or dismiss any servant of the school or college or give them promotion or make reductions in their salaries and grant them leave in accordance with the Agra University rules as the case may be.

Provided that in case of dismissal or removal or fine exceeding one month's pay or suspension for a period exceeding one month, an appeal shall lie to the Governing Body whose decision shall be final. The period for filing the appeal shall be 15 days from the receipt of the order against which the appeal is to be preferred.

(d) See that the property of the institution, whether movable or immovable, is properly managed and kept.

(e) Generally supervise the work of all the Office bearers.

(f) To pass the annual budget, annual report and dispose of the audit note.

(g) To sanction expenditure upto Rs. 25,000/- in the course of one year, irrespective of the budget provisions.

(h) To acquire by purchase, mortgage or otherwise immoveable or movable property for the institution and to sell or otherwise dispose of movable property.

An activist principal is an asset in discharging these duties which are inextricably interlaced with academic functions. The principal is an invaluable insider-the Management's own choice-not an outsider answerable to the Vice-Chancellor. He brings into the work of the Managing Committee that intimate acquaintance with educational operations and that necessary expression of student-teacher aspirations and complaints which are so essential for the minority institution to achieve a happy marriage between individuality and excellence. And the role of the senior most teacher, less striking maybe and more un-obtrusive, is a useful input into managerial skills, representing as he does the teachers and being only a seasoned minion chosen by the management itself. After all, two creatures of the Society on a 16-member Managing Committee can bring light, not tilt scales. Moreover, the Managing Committee itself is subject to the hierarchical control of the Governing Body, and the General Council.

The Court found no force in the objection to the two innocuous insider-beings seated on the Managing Committee.

The features of the Agra University Act vis-a-vis the minority institutions are conspicuously different and leave almost unaffected the total integrity of the administration by the religious group save in the minimal inclusion of two internal entities namely the principal of their own choice and the senior most lecturer independently appointed by them.

The court being satisfied that the regulatory clauses challenged before them improved the administration and did not inhibit its autonomy and were therefore good and valid. Court therefore held that the statute impugned was neither vulnerable nor void.

6.10. Lily Kurian v Sr. Lewina and Ors[153].

Five Judge Bench consisting of Y. V. Chandrachud, C. J., A. N. Sen, N. L. Untwalia, R. S. Sarkaria and A. D. Koshal, JJ.

The case deals with the question whether an educational institution established and managed by a religious or linguistic minority is bound by the provisions of ordinance 33(4) Chapter 57 of Ordinance framed by Syndicate of University and under Section 19(j). The Court held that Ordinance 33 (4) Chapter 57 of Ordinance framed by Syndicate of University under Section 19 (j) would not be applicable to an educational institution established and managed by religious or linguistic minority.

Smt. Lilly Kurian, the appellant in this case, was appointed as Principal of the St. Joseph Training College for Women, Ernakulam in the year 1957. The College was established by the Congregation of the Mothers of Carmal, which is a religious society of Nuns belonging to the Roman Catholic Church, and is

---

[153] AIR1979SC52, (1979)2SCC124, , [1979]1SCR820, MANU/SC/0041/1978

affiliated to the University of Kerala. It is administered by a Managing Board, and the Provincial of the Congregation is its President.

On October 30, 1969, there was an unfortunate incident between the appellant and one P.K. Rajaratnam, a lecturer of the College, placed on deputation by the Government. On the basis of a complaint by Rajaratnam, the Managing Board initiated disciplinary proceedings against the appellant and appointed a retired Principal of the Maharaja's College, Ernakulam, to be the Enquiry Officer. The appellant did not participate in the proceedings. The attitude adopted by the appellant was one of supreme indifference, taking the stand that the Managing Board had no competence whatsoever to initiate any such disciplinary action. The Enquiry Officer by his report dated November 27, 1969, held the appellant guilty of misconduct. The Secretary of the Managing Board accordingly served her with a notice dated December 2, 1969 stating that a meeting of the Board was to be held on December 19, 1969, to consider the representation, if any, made by her and also the punishment to be imposed, on the basis of the findings recorded by the Enquiry Officer.

In the wake of the disciplinary action, on December 16, 1969, the appellant filed a suit O.S. No. 819 of 1969 in the Munsiff's Court, Ernakulam, challenging the validity of the proceedings of the Managing Board. On December 19, 1969 the Munsiff issued an interim injunction restraining the Management from implementing the decision, if any, taken by it at the meeting to be held on that day. A meeting of the Board had, in fact, been held and a decision was taken to remove the appellant from service. The Provincial of the Congregation by virtue of her office as the President of the Managing Board, by order dated January 2, 1970, dismissed the appellant from service. It was stated that the Managing Board had after giving due notice to the appellant, and on a careful consideration of the enquiry report, and the findings thereon, found that the charges of misconduct were proved. The appellant was accordingly directed to handover all papers, files, vouchers and documents

connected with the College to Sr. Lewina, Professor, without further delay, stating that the order for her dismissal from service would be implemented immediately after the decision of the Munsiff on the application for temporary injunction.

On January 17, 1970, the Munsiff held that the dismissal of the appellant was free from any infirmity and was by the competent authority, that is the Managing Board, and, therefore, she had no prima facie case. The Munsiff accordingly vacated the injunction with a direction that temporary injunction already issued will remain in force for two weeks to enable the appellant, if she wanted to move the Vice-Chancellor and obtain from him a stay of the order of dismissal. The appellant had, in the meanwhile, on January 9, 1970; already filed an appeal before the Vice-Chancellor *under Ordinance 33(4), Chapter 57 of the Ordinance framed by the Syndicate*, against the order of dismissal. The Vice-Chancellor by his order dated January 24, 1970, stayed the operation of the order of dismissal. The suit filed by the appellant was subsequently dismissed by the Munsiff as withdrawn.

It appears that the appellant was all the while functioning as principal of the College. It was brought to light that she had sent two communications dated October 6, 1969, and November 5, 1969, to the Secretary to the Government, Education Department, calling for termination of deputation of Rajaratnam, appointed as a Lecturer in the College by the Management, as a result of which his deputation was cancelled by the Government on December 9, 1969. The Managing Board viewed the sending of these communications by the appellant without reference to it as an act of insubordination, and, therefore, decided to conduct an enquiry against the appellant and she was suspended pending enquiry. A substitute Principal, Sr. Lewina, was appointed and the appellant was relieved of the duties on April 10, 1970. On April 13, 1970 the appellant filed an appeal to the Vice-Chancellor against the order of suspension under Ordinance 33(1) of Chapter LVII, and the Vice-Chancellor by his order dated

April 20, 1970 directed that the status quo be maintained. In view of this order, the Management was presumably apprehensive that the appellant might force herself upon the College. The substitute Principal, Sr. Lewina, appointed by the Management in place of the appellant accordingly on July 2, 1970 filed the suit O.S. No. 405 of 1970 in the Munsiff's Court, Ernakulam for an injunction restraining the appellant from functioning and from interfering with her discharging the duties as Principal. The Munsiff granted a temporary injunction, in the terms prayed for, which was subsequently confirmed.

The Vice-Chancellor, University of Kerala, by his two orders dated October 19, 1970 held that the order of dismissal from service and the order of suspension passed against the appellant were in breach of the rules of natural justice and fair play and were consequently illegal and null and void, and accordingly directed the Management to allow her to function as Principal. Before the orders were communicated, the Management filed the suit O.S. No. 110 of 1970 in the Munsiff's Court, Ernakulam on October, 22, 1970, seeking an injunction restraining the appellant from functioning as Principal of the College and obtained a temporary injunction. While these two injunctions were in force, the appellant wrote to the Superintendent of the Post Offices demanding delivery of letters addressed to the Principal at her residence. The non-delivery of letters created a deadlock in the administration of the College. On July 22, 1972, the substitute Principal, Sr. Lewine accordingly filed a suit O.S. No. 569 of 1972 in the Munsiff's Court, Ernakulam against the appellant and the Postal Authorities for prohibiting the one from receiving and the other from delivering, the postal articles addressed to the Principal of the College. All the three suits pending in the Munsiff's Court, Ernakulam were transferred, by the order of the District Judge, Ernakulam to the 1st Additional Sub-Court, Ernakulam for disposal.

The trial court by its judgment dated December 6, 1972 dismissed the suits holding that the appellate power conferred on the Vice-Chancellor by Clauses

(1) and (4) of Ordinance 33, Chapter LVII of the Ordinance framed by the Syndicate under Section 19(j) of the Act, was a valid conferment of power on the Vice-Chancellor and even after the commencement of the Kerala University Act, 1969, both the Vice-Chancellor and the Syndicate had concurrent powers of appeal. It, therefore, upheld the orders of the Vice-Chancellor directing reinstatement of the appellant in service. On appeal, the District Judge, Ernakulam by his judgment dated March 17, 1973 held that the orders of the Vice-Chancellor were perfectly valid and within jurisdiction, and that his direction to the Management to continue the appellant as Principal in her office was also legal. He, accordingly dismissed the appeals.

The Kerala High Court, however, by its judgment dated July 19, 1973 reversed the judgment and decree of the court below and decreed the plaintiffs' suit holding that (i) the conferment by the Syndicate of a right of appeal to a teacher against his order of dismissal from service to the Vice-Chancellor cannot be said to be in excess of the permissible limits of the power to prescribe the duties and conditions of service of teachers in private colleges in terms of Section 19(j) of the Act, and (ii) the provisions for a right of appeal contained in Ordinance 33(1) and (4), Chapter LVII of the Ordinance were not violative of the rights guaranteed to the religious minorities under Article 30(1), and were, therefore, valid, following certain observations of its earlier Full Bench decision in v. Rev. Mother Provincial v. State of Kerala[154]. According to the High Court, although the Vice-Chancellor had the power to hear an appeal against an order of dismissal under Ordinance 33(4), he had not, expressly or impliedly, the power to order reinstatement or even to grant a declaration that the services of the appellant had been wrongly terminated. It held that a statutory tribunal like the Vice-Chancellor could not grant such a relief as the same would amount to specifically enforcing the contract of service. In reaching the conclusion, the High Court observes that this, in effect, "amounts to

[154] I.L.R. [1969] Ker 642

eviscerating the right of appeal to the Vice-Chancellor, but the remedy lies elsewhere", in the light of the authorities cited by it.

On Appeal, Supreme Court held that the power of appeal conferred on the Vice-Chancellor under Ordinance 33(4) is not only a grave encroachment on the institution's right to enforce and ensure discipline in its administrative affairs but it is uncanalised and unguided in the sense that no restrictions are placed on the exercise of the power. The extent of the appellate power of the Vice-Chancellor is not defined; and, indeed, his powers are unlimited. The grounds on which the Vice-Chancellor can interfere in such appeals are also not defined. He may not only set aside an order of dismissal of a teacher and order his reinstatement, but may also interfere with any of the punishments enumerated in items (ii) to (v) of Ordinance 33(2); that is to say, he can even interfere against the infliction of minor punishments. In the absence of any guidelines, it cannot be held that the power of the Vice-Chancellor under Ordinance 33(4) was merely a check on maladministration.

Referring to the principle laid down by the majority in St. Xaviers College's case, Court held such a blanket power directly interferes with the disciplinary control of the managing body of a minority education institution over its teachers. The majority decision of St. Xaviers College's case squarely applies to the facts of the present case and accordingly it must be held that the impugned Ordinance 33(4) of the University of Kerala is violative of Article 30(1) of the Constitution. If the conferment of such power on an outside authority like the Vice-Chancellor, which while maintaining the formal character of a minority institution destroys the power of administration, that is, its disciplinary control, is held justifiable because it is in the public and national interest, though not in its interest as an educational institution, the right guaranteed by Article 30(1) will be, to use the well-known expression, a 'teasing illusion', a 'promise of unreality'.

Thus the Court held that Ordinance 33(4), Chapter LVII of the Ordinances framed by the Syndicate of the University under Section 19(j) of the Kerala University Act, 1969 would not be applicable to an educational institution established and managed by a religious or linguistic minority like St. Joseph's Training College for Women, Ernakulam.

The result, therefore, was that the appeals failed and was dismissed. The judgment of the High Court setting aside the two orders of the Vice-Chancellor of the University of Kerala dated October 19, 1970, was upheld though on a different ground, namely, the Vice-Chancellor under Ordinance 33(1) and (4) had no power to entertain the appeals from the impugned orders of dismissal or suspension of the appellant.

6.11. Rt. Rev. Msgr. Mark Netto v State of Kerala and ors[155]

Five Judge Bench consisting of Y. V. Chandrachud, C. J., N. L. Untwalia , O. Chinnappa Reddy, R. S Sarkaria and A. N. Sen, , JJ.

The case was an appeal by special leave from the judgment of the Kerala High Court dismissing the appellant's writ application for quashing the order dated June 5, 1973 of the Regional Deputy Director of Public Instruction, Trivandrum and the order dated May 2, 1974 of the District Education Officer issued pursuant to the order aforesaid of the Regional Deputy Director. The constitutional question involved in this appeal was about the vires of Rule 12(iii) of Chapter VI of the Kerala Education Rules, 1959. The question was whether the said rule is violative of Article 30(1) of the Constitution.

In the year 1947 Dr. A.G. Pereira, a retired Medical Officer, opened a High School at Kaniyapuram mainly for the benefit of the students of the Christian

---

[155] AIR1979SC83, (1979)1SCC23, [1979]1SCR609, MANU/SC/0044/1978

community. The sanction of the then Government of Travancore for opening the School was accorded to him by letter dated 21st February, 1947. Subsequently the School was transferred to the Trivandrum Roman Catholic Diocese. For the last more than 25 years the School was administered by this Diocese. The appellant was the corporate Manager of the Schools belonging to the Roman Catholic Diocese of Trivandrum. It was not in dispute that as a matter of fact only boy students were admitted in the School till the end of academic year 1971-72. In the year following the management built a separate building in the School compound to provide accommodation for girl students. The Manager applied to the Regional Deputy Director for permission to admit girl students in the School. By letter dated June 5, 1973 the Regional Deputy Director refused to give sanction for admission of the girl students. The main ground of refusal of the sanction contained in the said letter was that St. Vincent's High School, Kaniyapuram the School in question, was not opened as a mixed School, that is to say, for imparting education both to boys and girls and that "the School had been running purely as a boys' School for the last more than 25 years. There is also facility for the education of the girls of the locality in the near girls' School situated within a radius of one mile." As mentioned in the letter, the Manager of Muslim High School, Kaniyapuram, which was a girl's School said to be situated within a radius of one mile from the School in question seems to have objected to the grant of permission for admission of girl students in the St. Vincent's High School. The girls' School was established by the Muslims and was also a minority institution within the meaning of Article 30 of the Constitution. The appellant filed a revision before the State Government from the order of the Regional Deputy Director and pending revision many girl students were admitted in the School. The District Education Officer wrote the letter dated 2-5-1974, to the authorities of the St. Vincent's High School that since the admission of girl pupils had been prohibited by the Regional Deputy Director no girl should be admitted in the School. The appellant, thereupon, challenged the orders of the educational authorities by filing a Writ Petition in the High Court.

In the judgment under appeal the High Court had said that although girls School has been defined in Rule 6 of Chapter II of the Rules, a boys' School is not defined either in The Kerala Education Act, 1958, hereinafter to be referred to as the Act, or in the Rules, since only boys were admitted in the School for a long time the self-imposed restriction by the management made it a boys' School. The authorities of the School could be prevented from admitting the girls in the School under Rule 12(iii) of Chapter VI of the Rules, even though a separate building has been constructed for them in the same compound. In the opinion of the High Court, to quote its language :-

'The basis of the rule seems to be that it will be better for the girls to get instruction in girls' schools as far as possible; and if there is a girls' school why the parents of the minority community should insist on admission of the girls in boys' school is ununderstandable. By the time the child reaches the secondary school stage it would have grown up a little. At that age to keep them under proper guidance and discipline the rule is made that they should as far as possible be given education in girls' Schools only. This is only in the nature of a regulation for discipline and morality. It does not interfere with the power of administration of an educational institution by a minority community'.

The language of Clause (i) of Rule 12 indicated that in all Primary Schools admission shall be open to boys and girls alike and such Schools shall be deemed to be mixed Schools. But it is open to the Director to exempt a particular institution from this Rule meaning thereby that if the School authorities so wanted; they may run the School for the admission of the boys or the girls only. Similarly Clause (ii) of Rule 12 suggests that admission to Secondary Schools which are specifically recognized as Girls' Schools shall be restricted to girls only, but with the permission of the Director boys below the age of twelve may be admitted. The purport of impugned Clause (iii), however, was to enable the Director to permit the admission of girls into Secondary

Schools for boys in areas and towns where there are no girls' Schools. In other words if there are other girls' Schools permission may be refused for admission of the girls in a School which has been run for imparting education to boys only.

Supreme Court examined the constitutionality of Rule 12(iii) contained in Chapter VI of the Rules and the validity of the impugned orders. The Court observed that dominant object of the said Rule does not seem to be for the sake of discipline or morality. Any apprehension of deterioration in the moral standards of students if co-education is permitted in Secondary Schools does not seem to be the main basis of this Rule, although it may be a secondary one. The very fact that girls can be admitted into a boy's school situated at a place where there was no girls' school in the town or the area leads to this conclusion. It is to be remembered that no category of a school as a boys' school was specified in the Act or the Rules. Nor was Court's attention drawn to any provision enabling the educational authorities to force the school authorities to admit girls in a school where they don't want to admit them. The self imposed restriction by the management in vogue for a number of years restricting the admission for boys only, per se, is wholly insufficient to cast a legal ban on them not to admit girls. The ban provided in Rule 12(iii) as already adverted to is of a very limited character and for a limited purpose. Permission was granted to Dr. Pereira for opening the school in 1947 as a High School. No restriction in terms was imposed for not admitting any girl students. If the successor school authorities wanted to depart from the self-imposed restriction, they could only be prevented from doing so on valid, legal and reasonable grounds and not otherwise. As was apparent from the impugned order dated 5-6-1973 of the Regional Deputy Director of Public Instruction as also from the passage of the High Court judgment which is extracted above, the permission sought for by the appellant for admission of girls in the St. Vincent's School was refused not on the ground of any apprehended deterioration of morality or discipline but mainly, or perhaps, wholly in the

interest of the existing Muslim girls' school, respondent No. 4, in the locality. The basis of the Rule, as remarked by the High Court, seems to be "that it will be better for the girls to get instructions in girls' schools as far as possible." If that be so, then clearly the Rule violates the freedom guaranteed to the minority to administer the school of its choice. But, as already stated, in our opinion this is not the dominant object of the rule. The Christian community in the locality, for various reasons which are not necessary to be alluded to here, wanted the girls also to receive their education in this school and especially of their community. They did not think it in their interest to send them to the Muslim girls' school which is an educational institution run by the other minority community. *In that view of the matter the Rule in question in its wide amplitude sanctioning the with-holding of permission for admission of girl students in the boy's minority school is violative of Article 30. If so widely interpreted it crosses the barrier of regulatory measures and comes in the region of interference with the administration of the institution, a right which is guaranteed to the minority under Article 30.* The Rule, therefore, must be interpreted narrowly and was held to be inapplicable to a minority educational institution. It follows, therefore, that the impugned orders dated 5-6-1973 and 2-5-1974 passed by the Regional Deputy Director and the District Education Officer respectively are bad and invalid and must be quashed.

6.12. A. P. Christian Medical Educational Society v Government of Andhra Pradesh and Anr.[156]

Three Judge Bench consisting of G. L. Oza, K. N. Singh and O. Chinnappa Reddy, JJ.

---

[156] AIR1986SC1490, 1986(1)SCALE 895, (1986)2SCC667, [1986]2SCR749

This case is about a brazen and bizarre exploitation of the naive and foolish, eager and ready-to-be-duped, aspirants for admission to professional collegiate courses, behind the veil of the right of the minorities to establish and administer educational institutions of their choice. A society styling itself as the 'Andhra Pradesh Christian Medical Educational Society' was registered on August 31, 1984. The first of the objectives mentioned in the memorandum of association of the society was, "to establish, manage and maintain educational and other institutions and impart education and training at all stages, primary, secondary, collegiate, Post-graduate and doctoral, as a Christian Minorities' Educational Institutions." Another object was "to promote, establish, manage and maintain Medical colleges, Engineering colleges, Pharmacy colleges, Commerce, Literature, Arts and Sciences and Management colleges and colleges in other subjects and to promote allied activities for diffusion of useful knowledge and training." Other objects were also mentioned in the Memorandum of Association. None of the objects, apart from the first extracted object, had anything to do with any minority. Even the first mentioned object did not specify or elucidate what was meant by the statement that education and training at all stages was proposed to be imparted in the institutions of that society "As Christian Minorities" Educational Institutions'. Apparently the words "as Christian minorities' educational institutions" were added in order to enable the society to claim the rights guaranteed by Article 30(1) of the Constitution and for no other purpose.

It is also worthy of note that neither the memorandum of association nor the articles of association make any reference to any amount of corpus with which the society and the institutions proposed to be founded by it were to be financed initially. It was admitted before the court in answer to a question by the Court to the learned Counsel for the appellant-society that the society had no funds of its own apart from what was collected from the students.

On August 27, 1984, one Professor C.A. Adams was one of the signatories to the memorandum of association of the society, claiming also to be the President of a self-styled National Congress of Indian Christian addressed a letter to Smt. Indira Gandhi, late Prime Minister of India, requesting that the Central Government may grant them permission to establish a Central Christian University of India in Andhra Pradesh, where Christian children would be provided with facilities for education in arts, sciences, engineering and technological courses, medicine, law and theological courses. The Petitions' officer attached to the Prime Minister's office informed Prof. Adams that his letter had been forwarded to the Ministry of Education and Culture for further action. On September 20, 1984, the Deputy Secretary to the Government of India, Ministry of Education and Culture wrote to the President, National Congress of Indian Christians to the effect that universities could only be established under Acts of Parliament or of State Legislatures and there was, therefore, no question of giving permission to any organization to establish a university. However, it was pointed out that it was open to private organizations to establish colleges of higher education which could seek affiliations to the universities in whose jurisdiction they were established. Such colleges could offer courses leading to university degrees only if they were affiliated to a university. Prof. Adams then wrote to the Government of India claiming that there was no legal impediment to the grant of permission by the Government to the establishment of a university. It was said that if necessary, the Government could initiate legislation also. In order to avoid further delay, the letter proceeded to State, they were starting professional courses in rural areas at Vikarabad in Rangareddy District. It was stated "to start with, as per your advice, we are proposing to start the following faculties at Vikarabad where we have our Christian Hospital, High School, Church and other vacant buildings and plenty of vacant land suitable for further expansion belonging to our Christian churches." The Government of India was further requested to address the University of Hyderabad to grant affiliation to their colleges and to recommend to the All-India Institution of Medical Sciences to affiliate their

medical college. The Government was also requested to sanction 'the Central grant' for these colleges. Earlier in the letter it was also mentioned that the Prime Minister was kind enough to agree to grant permission for establishing the Central Christian University of India in Andhra Pradesh for the benefit of two crores of Christians living in India. Most of the statements in the letter were either misleading or false. That the Prime Minister had agreed to the establishment of a Central Christian University was admitted before the Court to be false. Similarly the reference to "Our Christian Hospital, High School, and Church and vacant buildings" would give an impression that the hospital, high-school, etc. were institutions of the self-styled National Congress of Indian Christians. None of those institutions were even remotely connected with this so called organisation. This was admitted before the Court in an answer to a question by the Court. While Prof. Adams in his capacity as the so-called President of the National Congress of Indian Christians correspondent with the Central Government, the same Professor Adams in another capacity, namely Chairman of the Andhra Pradesh Christian Medical Educational Society, entered into a correspondence with the Chief Minister of the Government of Andhra Pradesh and the Vice Chancellor, Osmania University. He and one Christopher, who described himself as the Secretary of the Society addressed a letter to the Chief Minister claiming that under the provisions of Article 30(1) of the Constitution, they, the Christian minority had the right to establish educational institutions of their choice and requested him to initiate necessary action for the establishment of a Central Christian University of India as suggested by the Government of India and to grant permission for establishing a Christian Medical College at Vikarabad. It was mentioned in the letter that the Government of India had informed them that either Parliament or the State Legislature had to initiate action for establishing a university, but the Government of India had permitted them to start professional colleges and seek affiliation of the University within whose jurisdiction they fell. It is unnecessary to repeat that the reference to the grant of permission was false. On November 30, 1984, Christopher, Secretary of the National Congress of Indian Christians

wrote a circular letter to the Vice-Chancellors of the Osmania University, the Hyderabad Central University and eight other universities all over India requesting them to grant affiliation to their colleges. On January 22, 1985, the Registrar of the Osmania University replied stating that it was necessary for the association to submit documentary evidence regarding the fulfillment of the conditions prescribed for affiliation and to submit an application in the prescribed form.

The National Congress of Indian Christians was requested to furnish information as required in the annexure in 10 copies. Thereafter on March 19, 1983, Professor Adams as Chairman of the Christian Medical Education Society wrote to the Registrar, Osmania University informing the latter that the Management was taking necessary action in regard to the various matters mentioned in the letter of the University dated January 22, 1985 and that one Dr. K. Sanjeeva Rao had been appointed as Principal of that College. It was stated in the letter that there was no need to get the permission of the State Government as the Christian Community had a right to establish its own educational institutions under Article 30 of the Constitution. But if permission was necessary permission had already been granted by the Central Government in their letter dated September 20, 1984. It was also mentioned that 'plans and estimates' of the proposed medical college at Muttangi, Medak District were enclosed. The University was further informed that 60 students had already been admitted to the first year of University MBBS course of 1984 session and that the classes were functioning from February 25, 1985. The University was requested to send its screening Committee to inspect the college. The University was also requested to grant temporary affiliation. The letter contained the usual false statements. The statement that the Central Government had granted permission was of course false. The statement referring to 'plans and estimates' of the proposed college building at Muttangi, Medak District was again a misleading statement as it was admitted before the Court that the society does not own any land in Muttangi. Though the

University had called upon the society to fulfil several conditions before affiliation could be granted, it is clear from the letter that apart from appointing somebody as Principal of the College, nothing whatever had been done to comply with any of the other conditions. The society itself did not refer to any effort made by it to fulfil any of the other conditions. The admission of 60 students into the first year MBBS course was in defiance of the conditions laid down by the University. It was audacious since the society had no right to admit any student without getting affiliation from the University. By purporting to admit students into the so-called medical college, the society had perpetrated a huge hoax on innocent boys and girls. The University wrote to the society on May 23, 1985 pointing out that according to the procedure laid down, affiliation could not be granted without obtaining the feasibility report of the Screening Committee. It was also pointed out that it was necessary to obtain the permission of the State Government and the Medical Council of India in order to start a medical college. The society was informed that their action in admitting students in the first year MBBS course was highly irregular and illegal and the society was asked to cancel the admissions made by them. It was also pointed out that attendance at the institutions not affiliated or recognised by the University would not qualify a candidate for admission to any examination conducted by the university.

At this juncture, it is necessary to mention that the Andhra Pradesh Christian Medical Education Society inserted an advertisement in the 'Deccan Chronicle' of December 9, 1984 inviting applications from candidates for admission to the first year MBBS course of the Andhra Pradesh Central Institute of Medical Sciences. When the advertisement came to the notice of the University authorities, they published a notification informing the public in general and the student community in particular that the Osmania University had neither permitted nor granted affiliation in the MBBS course to the above institution' and 'whoever seeks admission in the above institution will be doing so at his/her own risk'. The society appears to have been inserting advertisements

off and on inviting applications for admission to the MBBS course. So on March 4, 1985 the University once again published a notification in the newspapers containing a similar warning. The warning was also broadcast on the radio and telecast on the television. Despite all this, the society again inserted an advertisement in the newspapers inviting applications from candidates for admission to the first year MBBS course for the 1985 session. The University once again, had to publish a notification warning the public. On June 5, 1985, the society inserted an advertisement in the 'Decean Chronicle' styled as a 'reply notice', signed by an Advocate. The notice contained the oft-repeated false allegation that the Central Government had granted permission to the society to start professional colleges and that the Prime Minister herself had recommended the grant of permission. It was claimed that the Osmania University had no power to interfere with the affairs of the Christian Medical College and that the notification published by the Osmania University was unconstitutional and uncalled for. It was also stated that the management was seeking affiliation with other universities and had made good progress. This of course is another false statement. There was nothing whatever to indicate that the institution had made any progress in obtaining affiliation from any other university.

On July 24, 1985, the Government of Andhra Pradesh wrote to the society informing them that permission to start a private medical college could not be granted as it was the policy of the Government of India and the Medical Council of India not to permit opening of new medical colleges. Before us, the petitioner society disputed the statement that there was any policy decision of the Government of India or the Medical Council of India not to permit opening of new Medical colleges. But two letters - one from the Medical Council of India to the Government of Andhra Pradesh and another from the Government of India to the Medical Council of India - have been brought to the notice of Court. In the letter dated January 16, 1981 from the Medical Council of India to the Government of Andhra Pradesh it was stated, "The council is against the

starting of any new medical colleges until all the existing ones are put on a firm footing." In the letter of the Government of India to the Medical Council of India, it is stated, "At present there are 106 medical colleges in the country with an annual out turn of 12,500 medical graduates per year. This output is considered sufficient to meet the medical man power requirements of the country. Therefore, the present policy of the Government of India is not to permit setting up of new medical colleges."

On the refusal of the Government of Andhra Pradesh to grant permission to the society to start a medical college, the society filed a, writ petition in the High Court of Andhra Pradesh seeking a writ to quash the refusal of permission by the Government of Andhra Pradesh and to direct the Government to grant permission and the University to grant affiliation. The claim for the issue of a writ was based on the fundamental right guaranteed by Article 30(1) of the Constitution. The writ petition was dismissed *in limine* by the High Court by a speaking order on the ground that there were no circumstances to justify compelling the Government to grant permission to the society to start a new medical college in view of the restriction placed by an expert body like a Medical Council of India that no further medical college should be started. The society has filed this appeal by special leave of this Court under Article136 of the Constitution.

Even while narrating the facts, the Court thought that they had enough to justify a refusal by us to exercise our discretionary jurisdiction under Article136 of the Constitution. The Court did not have any doubt that the claim of the petitioner to start a minority educational institution was no more than the merest pretence. Except the words, "As the Christian Minorities Educational Institutions" occurring in one of the objects of the society, as mentioned in the memorandum of association, there is nothing whatever to justify the claim of the society that the institutions proposed to be started by it were 'minority educational institutions'. Every letter written by the society

whether to the Central Government, the State Government or the University, contained false and misleading statements. The petitioner had the temerity to admit or pretend to admit students in the first year MBBS course without any permission being granted by the Government for the starting of the medical college and without any affiliation being granted by the University. The society did this despite the strong protest voiced by the University and the several warnings issued by the university. The society acted in defiance of the University and the Government, in disregard of the provisions of the Andhra Pradesh Education Act, the Osmania University Act and the Regulations of the Osmania University and with total indifference to the interest and welfare of the students. The society has played havoc with the careers of several score students and jeopardised their future irretrievably. Obviously the so-called establishment of a medical college was in the nature of a financial adventure for the so-called society and its office bearers, but an educational misadventure for the students. Many, many conditions had to be fulfilled before affiliation could be granted by the University. Yet the society launched into the venture without fulfilling a single condition beyond appointing someone as principal. No one could have imagined that a medical college could function without a teaching hospital, without the necessary scientific equipment, without the necessary staff, without the necessary buildings and without the necessary funds. Yet that is what the society did or pretended to do. We do not have any doubt that the society and the so-called institutions were started as business ventures with a view to make money from gullible individuals anxious to obtain admission to professional colleges. It was nothing but a daring imposture and skullduggery. Thus status and dignity of a minority institution was not conferred on the society.

It was seriously contended before the Court that any minority, even a single individual belonging to a minority, could found a minority institution and had the right so to do under the Constitution and neither the Government nor the University could deny the society's right to establish a minority institution, at

the very threshold as it were, howsoever they may impose regulatory measures in the interests of uniformity, efficiency and excellence of education. The fallacy of the argument in so far as the instant case is concerned lies in thinking that neither the Government nor the University has the right to go behind the claim that the institution is a minority institution and to investigate and satisfy itself whether the claim is well-founded or ill-founded. The Government, the University and ultimately the Court have the undoubted right to pierce the 'minority veil' with due apologies to the Corporate Lawyers - and discover whether there is lurking behind it no minority at all and in any case, no minority institution. The object of Article 30(1) is not to allow bogies to be raised by pretenders but to give the minorities 'a sense of security and a feeling of confidence' not merely by guaranteeing the right to profess, practice and propagate religion to religious minorities and the right to conserve their language, script and culture to linguistic minorities, but also to enable all minorities, religious or linguistic, to establish and administer educational institutions of their choice. These institutions must be educational institutions of the minorities in truth and reality and not mere masked phantoms'. They may be institutions intended to give the children of the minorities the best general and professional education, to make them complete men and women of the country and to enable them to go out into the world fully prepared and equipped. They may be institutions where special provision is made to the advantage and for the advancement of the minority children. They may be institutions where the parents of the children of the minority community may expect that education in accordance with the basic tenets of their religion would be imparted by or under the guidance of teachers, learned and steeped in the faith. They may be institutions where the parents expect their children to grow in a pervasive atmosphere which is in harmony with their religion or conducive to the pursuit to it. What is important and what is imperative is that there must exist some real positive index to enable the institution to be identified as an educational institution of the minorities. The Court said that in the present case apart from the half a dozen words 'as a Christian minorities

institution' occurring in one of the objects recited in the memorandum of association, there is nothing whatever, in the memorandum or the articles of association or in the actions of the society to indicate that the institution was intended to be a minority educational institution. As already found by Court these half a dozen words were introduced merely to found a claim on Article 30(1). They were a smoke-screen.

It was contended before the Court that the permission to start a new medical college could not be refused by the Government nor could affiliation be refused by the University to a minority institution on the ground that the Government of India and the Medical Council of India had taken a policy decision not to permit the starting of new medical colleges. It was said that such a policy decision would deny the minorities their right to establish an educational institution of their choice, guaranteed by Article 30(1) of the Constitution. The argument was that the right to establish an educational institution was an absolute right of the minorities and that no restriction, based on any ground of the public interest or state or social necessity could be placed on that right so as to destroy that right itself. It was said that to deny permission to a minority to start a medical college on the ground that there were already enough medical colleges in the country was tantamount to denying the right of the minority guaranteed under Article 30(1). On the other hand, it was said, when in the pursuit of general or professional educational for its members, a minority community joins the mainstream of national life, it must subject itself to the national interest. The right guaranteed by Article 30(1) gives the minority the full liberty to establish educational institutions of its own choice. If the minority community expresses its choice and opts to join the scheme of national educational policy, it must naturally abide by the terms of that policy unless the terms require the surrender of the right under Article 30(1). It was said that a medical college needed very heavy investment and that to produce doctors beyond need would be a national waste apart from creating a problem of unemployment in a sphere where there should be none. It appears, if one

may borrow the words of Sir Roger de Coverley, 'there is much to be said on both sides'. In view of our conclusion on the other issues we do not want to venture an opinion on this question.

Shri K.K. Venugopal, learned Counsel for the students who have been admitted into the MBBS course of this institution, pleaded that the interests of the students should not be sacrificed because of the conduct or folly of the management and that they should be permitted to appear at the University examination notwithstanding the circumstance that permission and affiliation had not been granted to the institution. He invited our attention to the circumstance that students of the Medical College established by the Daru-Salaam Educational Trust were permitted to appear at the examination notwithstanding the fact that affiliation had not by then been granted by the University. Shri Venugopal suggested that we might issue appropriate directions to the University to protect the interests of the students. We do not think that we can possibly accede to the request made by Shri Venugopal on behalf of the students. Any direction of the nature sought by Shri Venugopal would be in clear transgression of the provisions of the University Act and the regulations of the University. We cannot by our fiat direct the University to disobey the statute to which it owes its existence and the regulations made by the University itself. We cannot imagine anything more destructive of the rule of law than a direction by the Court to disobey the laws. The case of the medical college started by the Daru-Salaam Trust appears to stand on a different footing as we find from the record placed before us that permission had been granted by the State Government to the Trust to start the medical college and on that account, the University had granted provisional affiliation. We also find that the Medical Council of India took strong and serious exception to the grant of provisional affiliation whereupon the University withdrew the affiliation granted to the college. We are unable to treat what the University did in the case of the Daru-Salaam Medical College as a precedent in the present case to direct the University to do something which it is forbidden

from doing by the University Act and the regulations of the University. We regret that the students who have been admitted into the college have not only lost the money which they must have spent to gain admission into the college, but have also lost one or two years of precious time virtually jeopardising their future careers. But that is a situation which they have brought upon themselves as they sought and obtained admission in the college despite the warnings issued by the University from time to time. We are happy to note that the University acted watchfully and wake-fully, issuing timely warnings to those seeking admission to the institution. We are sure many must have taken heed of the warnings issued by the university and refrained from seeking admission to the institution. If some did not heed the warnings issued by the university, they are themselves to blame. Even so if they can be compensated in some manner, there is no reason why that may not be done. We are told that the assets of the institutions, which have sprung out of the funds collected from the students, have been frozen. It is up to the State Government to devise suitable ways, legislative and administrative, to compensate the students at least monetarily. The appeal filed by the society was dismissed with costs which Court quantified at Rs. 10,000. The writ petition filed by the students was dismissed but, in the circumstances, without costs.

6.13. All Saints High School, Hyderabad and Ors. v Government of Andhra Pradesh and Ors.[157]

Three Judge Bench consisting of Y. V. Chandrachud, C. J., P. S. Kailasam and S Murtaza Fazal Ali, JJ .

In this case, the question that arose in the appeal was whether sections 3, 4, 5, 6 and 7 of Andhra Pradesh Recognized Private Educational Institutions (Control) Act, 1975 offended the fundamental rights conferred on minorities by Article 30(1). The Court declared Sections 3 (3) (a), 3 (3) (b), 6 and 7 valid while

[157] AIR1980SC1042, (1980)2SCC478, [1980]2SCR924

Sections 3 (1), 3 (2), 4 and 5 were declared invalid in their application to minority institutions and held that such institutions cannot be proceeded against for violation of provisions which were not applicable to them.

The impugned Act, by reason of Section 1(3), applied to all private educational institutions, whether or not they are established by minorities. The appellants' contention was that several provisions of the Act violate the guarantee contained in Article 30(1) by permitting or compelling interference with the internal administration of private educational institutions established by minorities. The appellants were particularly aggrieved by the provisions of Sections 3 to 7 of the Act, the validity whereof was challenged on the ground that they deprive the appellants of their right to administer the affairs of minority institutions by vesting the ultimate administrative control in an outside authority. These contentions having been rejected by the High Court of Andhra Pradesh, the appellants had filed these appeals by special leave.

Section 3(1) of the Act provided that, subject to any rule that may be made in this behalf, no teacher employed in any private educational institution shall be dismissed, removed or reduced in rank nor shall his appointment be otherwise terminated, except with the prior approval of the competent authority. The proviso to the section says that if any educational institution contravenes the aforesaid provision, the teacher affected by the contravention shall be deemed to be in service. Section 3(2) requires that where the proposal to dismiss, remove or reduce in rank or otherwise terminate the appointment of any teacher employed in any private educational institution is communicated to the competent authority, that authority shall approve the proposal, if it is satisfied that there are adequate and reasonable grounds for the proposal.

For appreciating their true meaning and effect, Sections 3(1) and 3(2) have to be read together. The requirement of prior approval of the competent authority to an order of dismissal, removal, etc. may not by itself be violative of Article 30(1) because it may still be possible to say, on a reasonable construction of

the provision laying down that requirement, that its object is to ensure compliance with the principles of natural justice or the elimination of mala fides or victimization of teachers. But Court found it difficult to read down Section 3(1) so as to limit its operation to these or similar considerations. In the first place, the section did not itself limit its operation in that manner; on the contrary, it gave an unqualified mandate that no teacher shall be dismissed, removed, etc. except with the prior approval of the competent authority. Under the provision contravention of the section resulted in a total invalidation of the proposed action. If the section is contravened the teacher shall be deemed to be in service. Secondly, Section 3(1) not only applied to cases in which a teacher was, what is generally termed as 'punished', by an order of dismissal, removal or reduction in rank, but it also applied to cases in which an appointment is otherwise terminated. An order of termination simpliciter which involves no stigma or aspersion and which does not result in any evil consequences was also required to be submitted for the prior approval of the competent authority. The argument that the principles of natural justice have not been complied with or the argument of mala fides and victimization has seldom any relevance if the services are terminated in accordance with the terms of a contract by which the tenure of the employment was limited to a specified period. This shows that the true object of Section 3(1) was not that which one could liberally assume by reading down the section.

Section 3(1) was subject to any rules that may be made in behalf of the matter covered by it. If the State Government were to frame rules governing the matter, there would have been some tangible circumstances or situations in relation to which the practical operation of Section 3(1) could have been limited. But in the absence of any rules furnishing guidelines on the subject, it was difficult to predicate that, in practice, the operation of the section was limited to a certain class of cases only. The absence of rules on the subject makes the unguided discretion of the competent authority the sole arbiter of

the question as to which cases would fall within the section and which would fall outside it.

Any doubt as to the width of the area in which Section 3(1) operated and was intended to operate, was to remove by the provision contained in Section 3(2), by virtue of which the competent authority "shall" approve the proposal, "if it was satisfied that there were adequate and reasonable grounds" for the proposal. This provision, under the guise of conferring the power of approval, confers upon the competent authority an appellate power of great magnitude. The competent authority was made by that provision the sole judge of the propriety of the proposed order since it was for that authority to see whether there were reasonable grounds for the proposal. The authority was indeed made a judge both of facts and law by the conferment upon it of a power to test the validity of the proposal on the vastly subjective touch-stone of adequacy and reasonableness. Section 3(2), in court opined that it, leaves no scope for reading down the provisions of Section 3(1). The two sub-sections together confer upon the competent authority, in the absence of proper rules, a wide and untrammelled discretion to interfere with the proposed order, whenever, in its opinion, the order, is based on grounds which do not appear to it either adequate or reasonable.

The form in which Section 3(2) is couched was apt to mislead by creating an impression that its real object was to cast an obligation on the competent authority to approve a proposal under certain conditions. Though the section provided that the competent authority "shall" approve the proposed order if it was satisfied that it was based on adequate and reasonable grounds, its plain and necessary implication was that it shall not approve the proposal unless it was so satisfied. The confernment of such a power on an outside authority, the exercise of which was made to depend on purely subjective considerations arising out of the twin formula of adequacy and reasonableness, cannot but constitute an infringement of the right guaranteed by Article 30(1).

The Court found it difficult to save Sections 3(1) and 3(2) by reading them down in the light of the objects and reasons of the impugned Act. The object of the Act and the reasons that led to its passing were laudable but the Act, in its application to minority institutions, had to take care that it did not violate the fundamental right of the minorities under Article 30(1). Sections 3(1) and 3(2) were in the opinion of the Court unconstitutional in so far as they are made applicable to minority institutions since, in practice, these provisions were bound to interfere substantially with their right to administer institutions of their choice.

Section 3(3)(a) provided that no teacher employed in any private educational institution shall be placed under suspension except when an inquiry into the gross misconduct of such teacher was contemplated. Section 3(3)(b) provides that no such suspension shall remain in force for more than a period of two months and if the inquiry is not completed within that period the teacher shall, without prejudice to the inquiry, be deemed to have been restored as a teacher. The proviso to the Sub-section confers upon the competent authority the power, for reasons to be recorded in writing, to extend the period of two months for a further period not exceeding two months if, in its opinion, the inquiry could not be completed within the initial period of two months for reasons directly attributable to the teacher.

The Court held that discipline was not to be equated with dictatorial methods in the treatment of teachers. The institutional code of discipline must therefore conform to acceptable norms of fairness and cannot be arbitrary or fanciful. The Court did not think that in the name of discipline and in the purported exercise of the fundamental right of administration and management, any educational institution can be given the right to 'hire and fire' its teachers. After all, though the management may be left free to evolve administrative policies of an institution, educational instruction has to be imparted through the instrumentality of the teachers; and unless, they have a constant

assurance of justice, security and fair play it will be impossible for them to give of their best which alone can enable the institution to attain the ideal of educational excellence. Section 3(3)(a) contains but an elementary guarantee of freedom from arbitrariness to the teachers. The provision is regulatory in character since it neither denies to the management the right to proceed against an erring teacher nor indeed did it place an unreasonable restraint on its power to do so. It assumed the right of the management to suspend a teacher but regulates that right by directing that a teacher shall not be suspended unless an inquiry into his conduct is contemplated and unless the inquiry is in respect of a charge of gross misconduct. Fortunately, suspension of teachers is not the order of the day, for which reason the court do not think that these restraints which bear a reasonable nexus with the attainment of educational excellence can be considered to be violative of the right given by Article 30(1). The limitation of the period of suspension initially to two months, which can in appropriate cases be extended by another two months, partakes of the same character as the provision contained in Section 3(3)(a). In the generality of cases, a domestic inquiry against a teacher ought to be completed within a period of two months or say, within another two months. A provision founded so patently on plain reason was difficult to construe as an invasion of the right to administer an institution, unless that right carried with it the right to maladminister. The Court therefore held that Sections 3(3)(a) and 3(3)(b) of the Act do not offend against the provisions of Article 30(1) and were valid.

Section 4 of the Act provided that any teacher employed in a private educational institution (a) who is dismissed, removed or reduced in rank or whose appointment is otherwise terminated; or (b) whose pay or allowances or any of whose conditions of service are altered or interpreted to his disadvantage, may prefer an appeal to such authority or officer as may be prescribed. This provision in the opinion of the Court was too broadly worded to be sustained on the touchstone of the right conferred upon the minorities by Article 30(1). In the first place, the section conferred upon the Government the

power to provide by rules that an appeal may lie to such authority or officer as it designates, regardless of the standing or status of that authority or officer. Secondly, the appeal is evidently provided for on all questions of fact and law, thereby throwing open the order passed by the management to the unguided scrutiny and unlimited review of the appellate authority. It would be doing no violence to the language of the section to interpret it to mean that, in the exercise of the appellate power, the prescribed authority or officer can substitute his own view for that of the management, even in cases in which two views are reasonably possible. Lastly, it was strange, and perhaps an oversight may account for the lapse, that whereas a right of appeal was given to the aggrieved teacher against an order passed by the management, no corresponding right was conferred on the management against an order passed by the competent authority under Section 3(2) of the Act. It may be recalled that by Section 3(1), no teacher can be dismissed, removed, etc. except with the prior approval of the competent authority. Section 3(2) confers power on the competent authority to refuse to accord its approval if there were no adequate and reasonable ground for the proposal. In the absence of the provision for an appeal against the order of the competent authority refusing to approve the action proposed by the management, the management is placed in a gravely disadvantageous position vis-a-vis the teacher who is given the right of appeal by Section 4. By reason of these infirmities the Court e concluded that Section 4 of the impugned Act was unconstitutional, as being violative of Article 30(1). Section 5 was consequential upon Section 4 and was struck with it.

Section 6 provided that where any retrenchment of a teacher is rendered necessary consequent on any order of the Government relating to education or course of instruction or to any other matter, such retrenchment may be effected with the prior approval of the competent authority. Section 6 aims at affording a minimal guarantee of security of tenure to teachers by eschewing the passing of mala fide orders in the garb of retrenchment. The Court considered it to be implicit in its provisions that the limited jurisdiction which

it confers upon the competent authority was to examine whether, in cases where the retrenchment it stated to have become necessary by reason of an order passed by the Government, it has in fact so become necessary. It was a matter of common knowledge that Governmental orders relating to courses of instruction were used as pretence for terminating the services of teachers. The conferment of a guided and limited power on the competent authority for the purpose of finding out whether, in fact, a retrenchment has become necessary by reason of a Government order, cannot constitute an interference with the right of administration conferred by Article 30(1). Section 6 is therefore held valid.

Section 7 provided that the pay and allowances of a teacher shall be paid on or before such day of a month, in such manner and by or through such authority, officer or person, as may be prescribed. The Court held that the provision was regulatory in character and was, therefore, valid. By a majority, Court held that Sections 3(3)(a), 3(3)(b), 6 and 7 were valid while Sections 3(1), 3(2), 4 and 5 were invalid in their application to minority education institutions.

6.14. Bihar State Madarasa Education Board, Patna v. Madarasa Hanfia Arabic College Jamalia and Ors.[158]

Two Judge Bench consisting of K. N. Singh and N. M. Kasliwal JJ.

In this case minority institutions challenged the validity of sections 3 and 7(2) of Bihar State Madarasa Education Board Act, 1982 as it infringed the rights of minority institutions guaranteed under Article 30(1). The Bihar State Madarasa Education Board had dissolving the Managing Committee of the Minority institution and had appointed adhoc committee to manage the institution. Supreme Court upheld the decision of the High Court that dissolving Managing

---

[158] AIR1990SC695, MANU/SC/0076/1989

Committee and appointing adhoc committee amounts to take over completely and was violative of Article 30(1).

The State Legislature of Bihar had enacted the Bihar State Madarasa Education Board Act (Act 32 of 1982) providing for the Constitution of an autonomous Board for development and supervision of Madrasa Education in the State of Bihar. "Madarasa" as defined by Section 2 means an educational institutions providing in Islamic, Arabic and Persian studies and recognised as such by the Board. The 'Board' means the Board established under Section 3 of the Act. Section 3 provides for the Constitution of State Madarasa Education Board which was a body corporate with perpetual succession and a common seal. The Board consisted of a Chairman appointed by the State Government, Director of Education (Incharge of Oriental Education), Director, Institution of Post-graduate studies and research in Arabic and Persian, Patna, The Principal, Madarasa Islamia, Shamsul Hoda Patna, Chairman, Bihar, Sunni Wakf Board, Patna, Chairman. Bihar Shia Wakf Board, Patna two members of the State Legislature nominated by the Government having interest in Madarasa Education or Islamic studies, two senior teachers of recognised Madarasa nominated by the State Government and three other members nominated by the State Government who had interest in Madarasa Education or Islamic studies. The Board was invested with powers and functions to provide for instruction and research in Arabic, Persian and Islamic studies and to advise the State Government on all matters relating to Madarasa Education. The Act empowered the Board to direct, supervise and control Madarasa Education, to grant recognition to Madrasa in accordance with the regulations framed by it, to conduct different Madrasa examination, to publish results, to make regulations prescribing conditions of employees of the Board, to provide for the Constitution of the Managing Committee to constitute academic committee, recognition committee, examination committee, and for carrying on its powers and functions in regulating the education in Madarasa Institutions. The Board was headed by a Chairman nominated by the State Government

under Section 10(2), of the Act, it laid down that no person shall be eligible for appointment as Chairman unless he holds adequate administrative experience under the Central or State Government and he had teaching or research experience for not, less than 10 years in post-graduate educational institutions or he was regarded scholar in Arabic, Persian, Islamic studies and he was interested in Madarasa Education. The Board as constituted by the Act was an autonomous body entrusted with the duty to grant recognition, aid, supervise and control the academic efficiency in the Madarasa Institutions, aided and recognised by it. The members of the Board consist of those persons who were connected with or interested in the teaching and research of Arabic, Persian and Islamic studies, and interested in the Madarasa Education. The Legislature has enacted the Act with the primary purpose of providing an autonomous educational authority for regulating the efficiency of Madarasa Institutions where studies are carried on in Arabic, Persian and Islamic studies.

The Hanfia Arabic College Jamalia and Madarasa Shamsul Uloom institutions were Madarasa institutions aided and recognised by the Board under the provisions of the Act, as such the institutions wear subjected to the provisions of the Act and the regulations framed by the Board in matters relating to their management and administration. The committees of management of the two respondent institutions failed to comply with the directions issued by the Board with regard to payment of salary to teachers, whereupon the Board in exercise of its power under Section 7(2)(n) of the Act dissolved the Managing Committee of the respondent's institution and appointed Ad Hoc Committee to manage the institutions. The outgoing Managing Committee of the institutions and some of the affected members of the Committee filed writ petitions before the High Court of Patna under Article 226 of the Constitution challenging the Order of the Board, dissolving the Committee of Management and appointing Ad Hoc Committee. Before the High Court, the outgoing Committee members submitted that Section 7(2)(n) of the Act which confers power on the Board to □ssolve Managing Committee of a Madarasa was violative of Article 30(1) of the

Constitution as it interfered with their right of Management of institutions. The High Court upheld the outgoing Committee members plea and declared Section 7(2)(n) unconstitutional as it confers power on the Board to dissolve Committee of Management of a Madarasa. The Board had preferred appeal by leave against the aforesaid judgment of the High Court.

Section 7(2)(n) reads thus : Power and functions of the Board (i) it shall be the duty of the Board to provide for instruction and research in Arabic, Persian and Islamic studies and such other branches of knowledge including vocational courses and training which the Board thinks fit and to advise the State Government on all other matters relating to Madarasa Education. Subject to the provisions of this Act and the Rules and Regulations made there under the Board shall have the power to direct, supervise and control Madarasa Education and in particular have the powers....

(n) To get the Managing Committee of Madaras constituted in a manner such as to include the Head Maulvi, two guardian's representatives and one member nominated by the Board and two other persons interested in Madaras Education or Islamic studies to be composed by the above seven members. The power to dissolve the Managing Committee shall vest in the Board.The above provision confers power on the Board to provide for Constitution and dissolution of Managing Committee of a Madarasa. There was no dispute that the respondent Madarasa was educational institutions established by the Muslim minority community.

The question which arose for consideration was whether Section 7(2)(n) which confers power on the Board to dissolve the managing, committee of an aided and recognised Madarasa Institution violates the minorities constitutional right to administer its educational institution according to their choice. The Court had all along held that though the minorities have right to establish and administer educational institution of their own choice but they had no right to maladminister and the State has power to regulate management and

administration of such institutions in the interest of educational need and discipline of the institution. Such regulation may have indirect effect on the absolute right of minorities but that would not violate Article 30(1) of the Constitution as it is the duty of the State to ensure efficiency in educational institutions. The State had, however, no power to completely take over the management of a minority institution under the guise of the regulating the educational standards to secure efficiency in institution, the State is not entitled to frame rules or regulations compelling the management to surrender its right of administration. The order of the Board dissolving the Managing Committee of the minority institutions and appointing ad-hoc committee was thus quashed.

6.15. St. Stephen's College etc., etc. v The University of Delhi Etc., Etc.[159]

Five Judges Bench consisting of M. H. Kania, K Jagannatha Shetty, M. M. Kasliwal, M Fatima Beevi and Yogeshwar Dayal, JJ

The major question that was answered by this case was, whether the minority institutions receiving grant-in-aid from the government was entitled to accord preference to or reserve seats for students of their own community or whether such preference would be invalid under Article 29(2) which prohibits discrimination in admission into any educational institution maintained or receiving funds out of State funds on grounds only of religion, race, caste, language or any of them. Article 30(1) was made subject to Article 29(2). The court strike the balance between the competing rights provided in Article 30(1) and 29(2). It held that minority aided educational institutions were entitled to prefer the candidates of their community to maintain minority character of the institutions but such preference was limited to 50% of annual admission.

---

[159]AIR1992SC1630, MANU/SC/0319/1992

Minority educational institutions were directed to make available 50% of the seats of annual admission to other communities purely on merit.

The case is related to St. Stephen's College at New Delhi and Allahabad Agricultural Institute at Naini both premier and renowned institutions. The former affiliated to the Delhi University and the latter to the U. P. University. Both were aided educational institutions and getting grant from the State funds. They had their own admission programme which they followed every academic year. The admission programme provided for giving preference in favour of Christian students. It was claimed that they were entitled to have their own admission programme since they were religious minority institutions. The validity of the admission programme and the preference given to Christian students were the issues that needed to be resolved in this case. The questions were of great constitutional importance and consequence to all minority institutions in the country.

The major issue that the case dealt with was, whether St. Stephen's College and the Allahabad Agricultural Institute were entitled to accord preference to or reserve seats for students of their own community and whether such preference or reservation would be invalid under Article 29 (2) of the Constitution?

In the instant case also the impugned directives of the University to select students on the uniform basis of marks secured in the qualifying examinations would deny the right of St. Stephen's College to admit students belonging to Christian community. It has been the experience of the College as seen from the chart of selection produced in the case that unless some concession is provided to Christian students they would have no chance of getting into the college. If they were thrown into the competition with the generality of students belonging to other communities, they would not even be brought within the zone of consideration for the interview. Even after giving concession to a certain

extent, only a tiny number of minority applicants would gain admission. This was beyond the pale of controversy. The Court did not accept that minorities are entitled to establish and administer educational institutions for their exclusive benefit. If such was the aim, Article 30(1) would have been differently worded and it would have contained the words "for their own community". In the absence of such words it is legally impermissible to construe the Article as conferring the right on the minorities to establish educational institution for their own benefit.

The Court opined that 'Even in practice, such claims was likely to be met with considerable hostility. It may not be conducive to have relatively a homogenous society. It may lead to religious bigotry which is the bane of mankind. In the nation building with secular character sectarian schools or colleges; segregated faculties or universities for imparting general secular education was undesirable and they may undermine secular democracy. They would be inconsistent with the central concept of secularism and equality embedded in the Constitution. Every educational institution irrespective of community to which it belongs is a 'melting-pot' in our national life. The students and teachers are the critical ingredients. It is there that they developed respect for, and tolerance of, the cultures and beliefs of others. It is essential therefore, that there should be proper mix of students of different communities in all educational institutions.'

In the light of all the principles and factors and in view of the importance which the Constitution attaches to protective measures to minorities under Article 30(1), the Court held that minority aided educational institutions are entitled to prefer their community candidates to maintain the minority character of the institutions subject of course in conformity with the University standard. The State may regulate the intake in this category with due regard to the need of the community in the area which the institution is intended to serve. But in no case such intake shall exceed fifty per cent of the annual admission. The

minority institutions shall make available at least fifty per cent of the annual admission to members of communities other than the minority community. The admission of other community candidates shall be done purely on the basis of merit.

6.16. T. M. A. Pai Foundation and Ors. Etc. Etc. v State of Karnataka and Ors. Etc. Etc.[160]

Eleven Judges Bench consisting of B. N. Kirpal, C. J., G. B. Pattanaik, S. Rajendra Babu, K. G. Balakrishnan, P. Venkatarama Reddi, Arijit Pasayat, V. N. Khare, Syed Shah Mohammed Quadri, Ruma Pal, S. N. Variava and Ashok Bhan JJ.

The case deals with the fundamental rights of minority to establish and administer educational institutions of their choice. The Court held that minority educational institutions can admit non-minority students of their choice in the left over seats in each year as Article 29(2) of the Constitution does not override Article 30(1). Grant of aid by the State cannot alter the character of minority institution, including, its choice of students. Fixing a percentage for intake of minority students in minority educational institutions would infringe upon the right under Article 30 as it would amount to cutting down that right. Best way to ensure compliance with Article 29(2) as well as Article 30(1) is to consider individual cases where denial of admission of a non-minority student by a minority educational institution is alleged to be in violation of Article 29(2) and provide appropriate relief.

Mr. B. N. Kirpal, C. J. I. gave the judgment on behalf of himself and on behalf of justices G. B. Pattanaik, S. Rajendra Babu, K. G. Balakrishnan, P.

[160] (2002)8SCC481a, MANU/SC/1050/2002

Venkatarama Reddi and Arijit Pasayat. Since this judgment is on behalf of six judges out of eleven, it is deemed to be binding verdict by majority of judges.

Education as powerful tool of upliftment and progress

The Court acknowledged that India is a land of diversity -- of different castes, peoples, communities, languages, religions and culture. Although these people enjoy complete political freedom, a vast part of the multitude is illiterate and lives below the poverty line. The single most powerful tool for the upliftment and progress of such diverse communities is education. The State, with its limited resources and slow-moving machinery, is unable to fully develop the genius of the Indian people very often the impersonal education that is imparted by the State, devoid of adequate material content that will make the students self-reliant only succeeds in producing potential pen-pushers, as a result of which sufficient jobs are not available.

Grievances of Educational Institutions

There is a lack of quality education in the country and adequate number of schools and colleges that private educational institutions have been established by educationists, philanthropists and religious and linguistic minorities. Their grievance was that the unnecessary and unproductive load on their back in the form of governmental control, by way of rules and regulations, has thwarted the progress of quality education. It was their contention that the government must get off their back, and that they should be allowed to provide quality education uninterrupted by unnecessary rules and regulations, laid down by the bureaucracy for its own self-importance. The private educational institutions, both aided and unaided, established by minorities and non-minorities, in their desire to break free of the unnecessary shackles put on their functioning as modern educational institutions and seeking to impart quality education for the benefit of the community for whom they were established, and others, had filed the present writ petitions and appeals

asserting their right to establish and administer educational institutions of their choice unhampered by rules and regulations that unnecessarily impinge upon their autonomy.

The chequered history of the hearing

The hearing of these cases has had a chequered history. Writ Petition No. 350 of 1993 filed by the Islamic Academy of Education and connected petitions were placed before a Bench of 5 Judges. As the Bench was *prima facie* of the opinion that Article 30 did not clothe a minority educational institution with the power to adopt its own method of selection and the correctness of the decision of this Court in *St. Stephen's College v. University of Delhi*[161] was doubted, it was directed that the questions that arose should be authoritatively answered by a larger Bench. These cases were then placed before a Bench of 7 Judges. The questions framed were recast and on 6th February, 1997, the Court directed that the matter be placed a Bench of at least 11 Judges, as it was felt that in view of the Forty-Second Amendment to the Constitution, whereby "education" had been included in Entry 25 of List III of the Seventh Schedule, the question of who would be regarded as a "minority" was required to be considered because the earlier case laws related to the pre-amendment era, when education was only in the State List. When the cases came up for hearing before an eleven Judge Bench, during the course of hearing on 19th March, 1997, the following order was passed:-

Since a doubt has arisen during the course of our arguments as to whether this Bench would feel itself bound by the ratio propounded in -- In *Re Kerala Education Bill*[162] and *the Ahmedabad St. Xaviers College Society v. State of Gujarat*[163], it is clarified that this sized Bench would not feel itself inhibited by the views expressed in those cases since the present endeavour is to discern

[161] (1992) 1 SCC 558
[162] 1959 SCR 955
[163] [1975]1SCR173

the true scope and interpretation of Article 30(1) of the Constitution, which being the dominant question would require examination in its pristine purity.

When the hearing of these cases commended, some questions out of the eleven referred for consideration were reframed. The Court proposed to give answers to those questions after examining the rival contentions on the issues arising therein.

All institutions set their claim under fundamental right

On behalf of all these institutions, the learned counsels had submitted that the Constitution provides a fundamental right to establish and administer educational institutions. With regard to non-minorities, the right was stated to be contained in Article19(1)(g) and/or Article 26, while in the case of linguistic and religious minorities, the submission was that this right was enshrined and protected by Article 30. It was further their case that private educational institutions should have full autonomy in their administration. While it is necessary for an educational institution to secure recognition or affiliation, and for which purpose rules and regulations or conditions could be prescribed pertaining to the requirement of the quality of education to be provided, e.g., qualifications of teachers, curriculum to be taught and the minimum facilities which should be available for the students, it was submitted that the State should not have a right to interfere or lay down conditions with regard to the administration of those institutions. In particular, objection was taken to the nominations by the State on the governing bodies of the private institutions, as well as to provisions with regard to the manner of admitting students, the fixing of the fee structure and recruitment of teachers through State channels.

Every party requested to reconsider decision of *Unni Krishnan's Case*

The counsels for these educational institutions, as well as the Solicitor General of India, appearing on behalf of the Union of India, urged that the decision of

this Court in *Unni Krishnan, J.P. and Ors. v. State of Andhra Pradesh*[164] case required reconsideration. It was submitted that the scheme that had been framed in *Unni Krishnan's* case had imposed unreasonable restrictions on the administration of the private educational institutions, and that especially in the case of minority institutions, the right guaranteed to them under Article 30(1) stood infringed. It was also urged that the object that was sought to be achieved by the scheme was, in fact, not achieved.

Contentions of Minorities

On behalf of the private minority institutions, it was submitted that on the correct interpretation of the various provisions of the Constitution, and Articles 29 and 30 in particular, the minority institutions have a right to establish and administer educational institutions of their choice. The use of the phrase "of their choice" in Article 30(1) clearly postulated that the religious and linguistic minorities could establish and administer any type of educational institution, whether it was a school, a degree college or a professional college; it was argued that such an educational institution is invariably established primarily for the benefit of the religious and linguistic minority, and it should be open to such institutions to admit students of their choice. While Article 30(2) was meant to ensure that these minority institutions would not be denied aid on the ground that they were managed by minority institutions, it was submitted that no condition which curtailed or took away the minority character of the institution while granting aid could be imposed. In particular, it was submitted that Article 29(2) could not be applied or so interpreted as to completely obliterate the right of the minority institution to grant admission to the students of its own religion or language. It was also submitted that while secular laws relating to health, town planning, etc., would be applicable, no other rules and regulations could be framed that would in any way curtail or interfere with the administration of the minority educational institution. It was

[164] [1993]1SCR594, MANU/SC/0333/1993

emphasized by the learned counsel that the right to administer an educational institution included the right to constitute a governing body, appoint teachers and admit students. It was further submitted that these were the essential ingredients of the administration of an educational institution, and no fetter could be put on the exercise of the right to administer. It was conceded that for the purpose of seeking recognition, qualifications of teachers could be stipulated, as also the qualification of the students who could be admitted; at the same time, it was argued that the manner and mode of appointment of teachers and selection of students had to be within the exclusive domain of the educational institution.

Contentions of non minorities

On behalf of the private non-minority unaided educational institutions, it was contended that since secularism and equality were part of the basic structure of the Constitution the provisions of the Constitution should be interpreted so that the right of the private non-minority unaided institutions were the same as that of the minority institutions. It was submitted that while reasonable restrictions could be imposed under Article 19(6), such private institutions should have the same freedom of administration of an unaided institution as was sought by the minority unaided institutions.

Union Government's stand

The learned Solicitor General did not dispute the contention that the right in establish an institution had been conferred on the non-minorities by Articles 19 and 26 and on the religious and linguistic minorities by Article 30. He agreed with the submission of the counsels for the appellants that the *Unni Krishnan* decision required reconsideration, and that the private unaided educational institutions were entitled to greater autonomy. He, however, contended that Article 29(2) was applicable to minority institutions, and the claim of the minority institutions that they could preferably admit students of

their own religion or language to the exclusion of the other communities was impermissible. In other words, he submitted that Article 29(2) made it obligatory even on the minority institutions not to deny admission on the ground of religion, race, caste, language or any of them.

States disagree to the arguments advanced by Solicitor General

Several States have totally disagreed with the arguments advanced by the learned Solicitor General with regard to the applicability of Article 29(2) and 30(1). The States of **Madhya Pradesh, Chattisgarh and Rajasthan** have submitted that the words "their choice" in Article 30(1) enabled the minority institutions to admit members of the minority community, and that the inability of the minority institutions to admit others as a result of the exercise of "their choice" would not amount to a denial as contemplated under Article 29(2). The State of **Andhra Pradesh** has not expressly referred to the inter-play between Article 29(2) and Article 30(1), but has stated that *"as the minority educational institutions are intended to benefit the minorities, a restriction that at least 50 per cent of the students admitted should come from the particular minority, which has established the institution should be stipulated as a working rule"*, and that an institution which fulfilled the following conditions should be regarded as minority educational institutions:

1. All the office bearers, members of the executive committee of the society must necessarily belong to the concerned religious/linguistic minority without exception.

2. The institution should admit only the concerned minority candidates to the extent of sanctioned intake permitted to be filed by the respective managements, and that the Court "*ought to permit the State to regulate the intake in minority educational institutions with due regard to the need of the community in the area which the institution is intended to serve. In no case should such intake exceed 50% of the total admissions every year.*"

The State of **Kerala** has submitted, again without express reference to Article 29(2), "*that the Constitutional right of the minorities should be extended to professional education also, but while limiting the right of the minorities to admit students belonging to their community to 50% of the total intake of each minority institution*".

The State of **Karnataka** has submitted that "aid is not a matter of right but receipt thereof does not in any way dilute the minority character of the institution. Aid can be distributed on non-discriminatory conditions but in so far as minority institutions are concerned, their core rights will have to be protected.

On the other hand, the States of **Tamil Nadu, Punjab, Maharashtra, West Bengal, Bihar and Uttar Pradesh** have submitted that Article 30(1) is subject to Article 29(2), arguing that a minority institution availing of State aid loses the right to admit members of its community on the basis of the need of the community.

Attorney General's submission

The Attorney General, pursuant to the request made by the Court, made submissions on the Constitutional issues in a fair and objective manner. The Court recorded their appreciation for the assistance rendered by him and the other learned counsel.

Framing of Issues

The Court during the hearing had framed and reframed the questions and had come to 11 questions. However, the main judgment given through Chief justice Kirpal identifies five issues as arising in these cases which would encompass the eleven questions.

The five issues were

1. Is there fundamental right to set educational institutes and if so, under what provision?

2. Does *Unnikrishnan* case require reconsideration?

3. In case of private institutions (aided and unaided), can there be government regulations and, if so, to what extent?

4. In order to determine the existence of a religious or linguistic minority in relation to Article 30, what is to be the unit, the State or the country as a whole?

5. To what extent can the rights of aided private minority institutions to administer be regulated?

Out of these five issues, only the last two relates to minority rights under Articles 29 and 30 of the Constitution of India. The first three questions relate to non-minority educational institutions. So the researcher will discuss the findings and the reasons on the last two issues.

Issue 4 : IN ORDER TO DETERMINE THE EXISTENCE OF A RELIGIOUS OR LINGUISTIC MINORITY IN RELATION TO ARTICLE 30, WHAT IS TO BE THE UNIT - THE STATE OR THE COUNTRY AS A WHOLE?

Religious and linguistic minority at par

Article 30(1) deal with religious minorities and linguistic minorities. The opening words of Article 30(1) make it clear that religious and linguistic minorities have been put at par, insofar as that Article is concerned. Therefore, whatever the unit, whether a State or the whole of India, for determining a linguistic minority, it would be the same in relation to a religious minority. India is divided into different linguistic States. The States have been carved out on the basis of the language of the majority of persons of that region. For

example, Andhra Pradesh was established on the basis of the language of that region. viz., Telugu. "Linguistic minority" can, therefore, logically only be in relation to a particular State. If the determination of "linguistic minority" for the purpose of Article 30 is to be in relation to the whole of India, then within the State of Andhra Pradesh, Telugu speakers will have to be regarded as a "linguistic minority". This will clearly be contrary to the concept of linguistic States.

If, therefore, the State has to be regarded as the unit for determining "linguistic minority" vis-a-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.

State as unit to determine minority

In the *Kerala Education Bill* case[165], the question as to whether the minority community was to be determined on the basis of the entire population of India, or on the basis of the population of the State forming a part of the Union was posed. It had been contended by the State of Kerala that for claiming the status of minority, the persons must numerically be a minority in the particular region in which the education institution was situated, and that the locality or ward or town where the institution was to be situated had to be taken as the unit to determine the minority community. No final opinion on this question was expressed, but it was observed that as the Kerala Education Bill "*extends to the whole of the State of Kerala and consequently the minority must be determined by reference to the entire population of that State.*"

In two cases pertaining to the DAV College, this Court had to consider whether the Hindus were a religious minority in the State of Punjab. In *D.A.V. College v. State of Punjab and Ors*[166], the question posed was as to what constituted a

[165] 1959 SCR 955
[166] 1971 (Supp.) SCR 688

religious or linguistic minority, and how it was to be determined. After examining the opinion of this Court in the *Kerala Education Bill* case, the Court held that the Arya Samajis, who were Hindus, were a religious minority in the State of Punjab, even though they may not have been so in relation to the entire country. In another case, *D.A.V. College Bhatinda v. State of Punjab and Ors.,*[167] the observations in the first *D.A.V. College* case were explained, and it was stated that "*what constitutes a linguistic or religious minority must be judged in relation to the State in as much as the impugned Act was a State Act and not in relation to the whole of India.*" The Supreme Court rejected the contention that since Hindus were a majority in India, they could not be a religious minority in the State of Punjab, as it took the State as the unit to determine whether the Hindus were a minority community.

There can, therefore, be little doubt that this Court has consistently held that, with regard to a State law, the unit to determine a religious or linguistic minority can only be the State.

The Forty-Second Amendment to the Constitution included education in the concurrent List under Entry 25. Would this in any way change the position with regard to the determination of a "religious" or "linguistic minority" for the purposes of Article 30?

As a result of the insertion of Entry 25 into List III, Parliament can now legislate in relation to education, which was only a State subject previously. The jurisdiction of the Parliament is to make laws for the whole or a part of India. It is well recognized that geographical classification is not violative of Article 14. It would, therefore, be possible that, with respect to a particular State or group of States, Parliament may legislate in relation to education. However, Article 30 gives the right to a linguistic or religious minority of a State to establish and administer educational institutions of their choice. The

[167] MANU/SC/0038/1971: AIR1971SC1731

minority for the purpose of Article 30 cannot have different meanings depending upon who is legislating. Language being the basis for the establishment of different states for the purposes of Article 30 a "linguistic minority" will have to be determined in relation to the State in which the educational institution is sought to be established. The position with regard to the religious minority is similar, since both religious and linguistic minorities have been put at par in Article 30.

Issue 5: TO WHAT EXTENT CAN THE RIGHTS OF AIDED PRIVATE MINORITY INSTITUTIONS TO ADMINISTER BE REGULATED?

Under this issue the judgment deals with the interplay of Articles 29(2) and 30(1) and further deals with extent of rights under Article 30(1).

Rights under Article 25 not absolute

Article 25 give to all persons the freedom of conscience and the right to freely profess, practice and propagate religion. This right, however, is not absolute. The opening words of Article 25(1) make this right subject to public order, morality and health, and also to the other provisions of Part III of the Constitution.

Rights of religious denominations under Article 26

The freedom to manage religious affairs is provided by Article 26. This Article gives the right to every religious denomination, or any section thereof, to exercise the rights that it stipulates. However, this right has to be exercised in a manner that is in conformity with public order, morality and health. Clause (a) of Article 26 gives a religious denomination the right to establish and maintain institutions for religious and charitable purposes. There is no dispute that the establishment of an educational institution comes within the meaning of the expression "Charitable purpose".

Secularism and Article 27

Secularism being one of the important basic features of our Constitution, Article 27 provides that no person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated for the payment of expenses for the promotion and maintenance of any particular religion or religious denomination. The manner in which the Article has been framed does not prohibit the State from enacting a law to incur expenses for the promotion or maintenance of any particular religion or religious denomination, but specifies that by that law, no person can be compelled to pay any tax, the proceeds of which are to be so utilized. In other words, if there is a tax for the promotion or maintenance of any particular religion or religious denomination, no person can be compelled to pay any such tax.

Religious instructions cannot be imparted in an educational institution maintained wholly by the State funds. (Article 28)

Article 28 prohibits any educational institution, which is wholly maintained out of state funds, to provide for religious instruction. Moral education dissociation from any denominational doctrine is not prohibited; but, as the State is intended to be secular, an educational institution wholly maintained out of State funds cannot impart or provide for any religious instruction.

Cultural and Educational Rights

The judgment discusses Articles 29 and 30 as a group of Articles relating to Cultural and Educational rights.

Right under Article 30 not absolute in view of Article 29(2)

The right under Article 30 is not absolute. Article 29(2) provides that, where any educational institution is maintained by the State or receives aid out of State funds no citizen shall be denied admission on the grounds only of

religion, race, caste, language or any of them. The use of the expression "any educational institution" in Article 29(2) would refer to any educational institution established by anyone, but which is maintained by the State or receives aid out of State funds. In other words, on a plain reading, state-maintained or aided educational institutions, whether established by the Government or the majority or a minority community cannot deny admission to a citizen on the grounds only of religion, race, caste or language.

Difference between rights under Article 26 and 30(1)

The right of the minorities to establish and administer educational institutions is provided for by Article 30(1). To some extent, Article 26(1)(a) and Article 30(1) overlap, in so far as they relate to the establishment of educational institutions but whereas Article 26 gives the right both to the majority as well as minority communities to establish and maintain institutions for charitable purposes, which would *inter alia*, include educational institutions, Article 30(1) refers to the right of minorities to establish and maintain educational institutions of their choice. Another difference between Article 26 and Article 30 is that whereas Article 26 refers only to religious denominations, Article 30 contains the right of religious as well as linguistic minorities to establish and administer educational institutions of their choice.

No limitation imposed to Article 30 as compared to Articles 25 and 26

Article 30(1) bestows on the minorities, whether based on religion or language, the right to establish and administer educational institution of their choice. Unlike Article 25 and 26, Article 30(1) does not specifically state that the right under Article 30(1) is subject to public order, morality and health or to other provisions of Part III. This Sub-Article also does not specifically mention that the right to establish and administer a minority educational institution would be subject to any rules or regulations.

Can Article 30(1) be so read as to mean that it contains an absolute right of the minorities, whether based on religion or language, to establish and administer educational institutions in any manner they desire, and without being obliged to comply with the provisions of any law? Does Article 30(1) give the religious or linguistic minorities a right to establish an educational institution that propagates religious or racial bigotry or ill will amongst the people? Can the right under Article 30(1) be so exercised that it is opposed to public morality or health? In the exercise of its right, would the minority while establishing educational institutions not be bound by town planning rules and regulations? Can they construct and maintain buildings in any manner they desire without complying with the provisions of the building by-laws or health regulations?

Interplay between Article 29 and 30.

In order to interpret Article 30 and its interplay, if any, with Article 29, our attention was drawn to the Constituent Assembly Debates. While referring to them, the learned Solicitor General submitted that the provisions of Article 29(2) were intended to be applicable to minority institutions seeking protection of Article 30. He argued that if any educational institution sought aid, it could not deny admission only on the ground of religion, race, caste or language and, consequently giving a preference to the minority over more meritorious non-minority students was impermissible. It is now necessary to refer to some of the decisions of this Court insofar as they interpret Articles 29 and 30, and to examine whether any creases therein need ironing out.

Scope of Article 29(2) as per *Srimathi Champakam Dorairajan's Case*

In *the State of Madras v. Srimathi Champakam Dorairajan*[168] the State had issued an order, which provided that admission to students to engineering and medical colleges in the State should be decided by the Selection Committee strictly on the basis of the number of seats fixed for different communities.

[168] MANU/SC/0007/1951: [1951]2SCR525

While considering the validity of this order this Court interpreted Article 29(2) and held that if admission was refused only on the grounds of religion, race, caste, language or any of them, then there was a clear breach of the fundamental right under Article 29(2). The said order was construed as being violative of Article 29(2), because students who did not fall in the particular categories were to be denied admission. In this connection it was observed as follows:

".....So far as those seats are concerned, the petitioners are denied admission into any of them, not on any ground other than the sole ground of their being Brahmins and not being members of the community for whom those reservations were made....."

This government order was held to be violative of the Constitution and constitutive of a clear breach of Article 29(2). Article 30 did not come up for consideration in that case.

The court after the discussion on the decision of *The State of Bombay v. Bombay Education Society and Ors case,*[169] came to the conclusion that in the case of minority educational institutions to which protection was available under Article 30, the provisions of Article 29(2) were indeed applicable. But, it may be seen that the question in the present from i.e., whether in the matter of admissions into aided minority educational institutions, minority students could be preferred to a reasonable extent, keeping in view the special protection given under Article 30(1), did not arise for consideration in that case.

The Court discussed the judgment of *Kerala Education Bill* case [170], which was a reference under Article 143(1) of the Constitution. With reference to Article 29(2), the Court observed that " *Article 29(2) provides, that no citizen shall be*

[169] MANU/SC/0029/1954 : [1955]1SCR568
[170] 1959 SCR 955

denied admission into any educational institution receiving did out of State funds on grounds only of religion, race, caste, language or any of them".

The Court took special note of the observation in *Kerala Education Bill Case* that : The real import of Article 29(2) and Article 30(1) seems to us to be that they clearly contemplate a minority institution with a sprinkling of outsiders admitted into it. By admitting a non-member into it the minority institution does not shed its character and cease to be a minority institution.

The judgment quotes with approval the concluding part of the case:

"...We have already observed that Article 30(1) gives two rights to the minorities, (1) to establish and (2) to administer, educational institutions of their choice. The right to administer cannot obviously include the right to maladminister. The minority cannot surely ask for aid or recognition for an educational institution run by them in unhealthy surroundings, without any competent teachers, possessing any semblance of qualification, and which does not maintain even a fair standard of teaching or which teaches matters subversive of the welfare of the scholars. It stands to reason, then, that the constitutional right to administer an educational institution of their choice does not necessarily militate against the claim of the State to insist that in order to grant aid the State may prescribe reasonable regulations to ensure the excellence of the institutions to be aided....."

The present judgment reviewed the argument addressed and answered in that case as to whether a minority aided institution loses its character as such by admitting non-minority students in terms of Article 29(2). It was observed that **the admission of 'sprinkling of outsiders' will not deprive the institution of its minority status.** The opinion expressed therein does not really go counter to the ultimate view taken by the Court in regard to the inter-play of Articles 30(1) and 29(2).

The judgment discusses the decision in *Rev. Sidhajbhai Sabhai and Ors. v. State of Bombay and Anr*[171] and held that it was not an authority for the proposition canvassed before the present judges. However, C J Kirpal clarified a few observations made in the Sidhajbhai case especially with regards to the absoluteness of the right under Article 30 and the permissibility of regulations in the national interest.

Rights under Article 30(1) not so absolute as to be above law

There are few observations in Sidhajbhai decision which describes the right under Article 30 as absolute. While interpreting Article 30, it was observed by this Court as under:-

"....All minorities, linguistic or religious have by Article 30(1) an absolute right to establish and administer educational institutions of their choice; ....."

Further in the same decision it stated:

"The right established by Article 30(1) is a fundamental right declared in terms absolute. Unlike the fundamental freedoms guaranteed by Article 19, it is not subject to reasonable restrictions."

Clarifying the decision of the Court in Sidhaj bhai's case the Court held that: The aforesaid decision does indicate that the right under Article 30(1) is not so absolute as to prevent the government from making any regulation whatsoever. As already noted hereinabove, in *Sidhajbhai Sabhai's* case, it was laid down that regulations made in the true interests of efficiency of instruction, discipline, health, sanitation, morality and public order could be imposed. It further clarified, It is, of course, true that government regulations cannot destroy the minority character of the institution or make the right to establish

[171] MANU/SC/0076/1962, [1963]3SCR837

and administer a mere illusion; but the right under Article 30 is not so absolute as to be above the law."

Regulations can be made in National Interest

The Court in the present Judgment clarified the observations in Sidhajbhai's Case with regards to the permissibility of regulative measures in public and national interest. The Court with regards to Article 30 (1) had held in Sidhajbhai's case,

"The right is intended to be effective and is not to be whittled down by so-called regulative measures conceived in the interest not of the minority educational institution, but of the public or the nation as a whole. If every order which while maintaining the formal character of a minority institution destroys the power of administration is held justifiable because it is in the public or national interests, though not in its interest as an educational institution, the right guaranteed by Article 30(1) will be but a "teasing illusion", a promise of unreality."

Chief Justice Kirpal explained the observation as: "As already noted hereinabove, in *Sidhajbhai's* case, it was laid down that regulations made in the true interests of efficiency of instruction, discipline, health, sanitation, morality and public order could be imposed. If this is so, it is difficult to appreciate how the government can be prevented from framing regulations that are in the national interest, as it seems to be indicated in the passage quoted hereinabove. Any regulation framed in the national interest must necessarily apply to all educational institutions, whether run by the majority or the minority. Such a limitation must necessarily be read into Article 30. The right under Article 30(1) cannot be such as to override the national interest or to prevent the government from framing regulations in that behalf. It is, of course, true that government regulations cannot destroy the minority character of the

institution or makes the right to establish and administer a mere illusion; but the right under Article 30 is not so absolute as to be above the law.

The present judgment quoted and approved the following from the decision of *State of Kerala, Etc. v. Very Rev. Mother Provincial, Etc*[172]

"Article 30(1) has been construed before by this Court. Without referring to those cases it is sufficient to say that the clause contemplates two rights which are separated in point of time. The first right is the initial right to establish institutions of the minority's choice. Establishment here means the bringing into being of an institution and it must be by a minority community. It matters not if a single philanthropic individual with his own means founds the institution or the community at large contributes the funds. The position in law is the same and the intention in either case must be to found an institution for the benefit of a minority community by a member of that community. It is equally irrelevant that in addition to the minority community others from other minority communities or even from the majority community can take advantage of these institutions. Such other communities bring in income and they do not have to be turned away to enjoy the protection.

The next part of the right relates to the administration of such institutions. Administration means 'management of the affairs' of the institution. This management must be free of control so that the founders or their nominees can mould the institution as they think fit, and in accordance with their ideas of how the interest of the community in general and the institution in particular will be best served. No part of this management can be taken away and vested in another body without an encroachment upon the guaranteed right."

Chief Justice Kirpal further added that an exception to the right under Article 30 was the power with the State to regulate education, educational standards and allied matters. It was held that the minority institutions could not be

[172] MANU/SC/0065/1970: [1971]1SCR734

allowed to fall below the standards of excellence expected of educational institutions or under guise of the exclusive right of management, allowed to decline to follow general pattern. The Court stated that while the management must be left to minority, they may be compelled to keep in step with others.

The present judgment took note of interplay of Article 29 and Article 30 in *D. A. V. College Case,*[173] it was observed that Article 30(1) is subject to 29(2), the question whether the preference to minority students is altogether excluded, was not considered.

The judgment also notices the other observations like Hindus being entitled to minority rights in Punjab, impermissibility of regulations requiring approval of Senate for the governing body and approval of Vice Chancellor for staff and the permissibility of regulations governing the service and conduct of teachers, since this was in the larger interest of the institutions, and in order to ensure their efficiency and excellence.

The present judgment discusses with approval exclusively from *The Ahmedabad St. Xaviers College Society and Anr. Etc. v State of Gujarat and Anr.*[174] The Court considered the scope and ambit of the rights of the minorities, whether based on religion or language, to establish and administer educational institutions of their choice under Article 30(1) of the Constitution. In dealing with this aspect, Ray, C.J., at page 192, while considering Article 25 to 30, observed as follows:-

"Every section of the public, the majority as well as minority has rights in respect of religion as contemplated in Articles 25 and 26 and rights in respect of language, script, culture as contemplated in Article 29. The whole object of conferring the right on minorities under Article 30 is to ensure that there will

[173] 1971 (Supp.) SCR 688
[174] MANU/SC/0088/1974 : [1975]1SCR173

be equality between the majority and the minority. If the minorities do not have such special protection they will be denied equality."

Meaning and intent of Article 30(1)

Elaborating on the meaning and intent of Article 30, the learned Chief Justice further observed as follows:-

"The real reason embodied in Article 30(1) of the Constitution is the conscience of the nation that the minorities, religious as well as linguistic, are not prohibited from establishing and administering educational institutions of their choice for the purpose of giving their children the best general education to make them complete men and women of the country. The minorities are given this protection under Article 30 in order to preserve and strengthen the integrity and unity of the country. The sphere of general secular education is intended to develop the commonness of boys and girls of our country. This is in the true spirit of liberty, equality and fraternity through the medium of education. If religious or linguistic minorities are not given protection under Article 30 to establish and administer educational institutions of their choice, they will feel isolated and separate. General secular educations will open doors of perception and act as the natural light of mind for our countrymen to live in the whole."

The judgment refers to the decision of St Xavier's which it was held that with regard to affiliation, a minority institution must follow the statutory measures regulating educational standards and efficiency, prescribed courses of study, courses of instruction, the principles regarding the qualification of teachers, educational qualifications for entry of students into educational institutions, etc.

Minorities Right to administer Education institutions.

The observation of Ray, C.J. regarding the right of the religious and linguistic minorities to administer their educational institutions In St Xavier's case was quoted:

".....The right to administer is said to consist of four principal matters. First is the right to choose its managing or governing body. It is said that the founders of the minority institution have faith and confidence in their own committee or body consisting of persons selected by them. Second is the right to choose its teachers. It is said that minority institutions want teachers to have compatibility with the ideals, aims and aspirations of the institution. Third is the right not to be compelled to refuse admission to students. In other words, the minority institutions want to have the right to admit students of their choice subject to reasonable regulations about academic qualifications. Fourth is the right to use its properties and assets for the benefit of its own institution."

Minorities do not have right to mal administer

Minorities' right to administer is not absolute and that reasonable regulations can be imposed in the interest of the institution. The present judgment relying on the observations of St Xavier's quotes:

".....The minority institutions have the right to administer institutions. This right implies the obligation and duty of the minority institutions to render the very best to the students. In the right of administration, checks and balances in the shape of regulatory measures are required to ensure the appointment of good teachers and their conditions of service. The right to administer is to be tempered with regulatory measures to facilitate smooth administration. The best administration will reveal no trace colour of minority. A minority institution should shine in exemplary eclecticism in the administration of the institution. The best compliment that can be paid to a minority institution is that it does not rest on or proclaim its minority character."

Chief Justice observations on desirability of regulations, in St Xavier's case were further referred :

"The ultimate goal of a minority institution too imparting general secular education is advancement of learning. This Court has consistently held that it is not only permissible but also desirable to regulate everything in educational and academic matters for achieving excellence and uniformity in standards of education.

In the field of administration it is not reasonable to claim that minority institutions will have complete autonomy. Checks on the administration may be necessary in order to ensure that the administration is efficient and sound and will serve the academic needs of the institution. The right of a minority to administer its educational institution involves, as part of it, a correlative duty of good administration."

Rationale for differential treatment to minority under Article 30

The judgment also refers with acceptance the observations of Justice Khanna in St Xavier's case which explains the rationale of Article 30:

"The idea of giving some special rights to the minorities is not to have a kind of a privileged or pampered section of the population but to give to the minorities a sense of security and a feeling of confidence. The great leaders of India since time immemorial had preached the doctrine of tolerance and catholicity of outlook. Those noble ideas were enshrined in the Constitution. Special rights for minorities were designed not to create inequality. Their real effect was to bring about equality by ensuring the preservation of the minority institutions and by guaranteeing to the minorities autonomy in the matter of the administration of these institutions. The differential treatment for the minorities by giving them special rights is intended to bring about an equilibrium, so that the ideal of equality may not be reduced to a mere abstract

idea but should become a living reality and result in true, genuine equality, an equality not merely in theory but also in fact."

Dual test of permissible Regulations was approved

Chief Justice Kirpal in the present case, approves and upholds the observations of Justice Khanna in St Xavier's case in the following words: Recognizing that the right to administer educational institutions could not include the right to mal-administer, it was held that regulations could be lawfully imposed, for the receiving of grants and recognition, while permitting the institution to retain its character as a minority institution. The regulation "*must satisfy a dual test -- the test of reasonableness, and the test that it is regulative of the educational character of the institution and is conducive to making the institution an effective vehicle of education for the minority community or other persons who resort to it.*" It was permissible for the authorities to prescribe regulations, which must be complied with, before a minority institution could seek or retain affiliation and recognition. But it was also stated that the regulations made by the authority should not impinge upon the minority character of the institution. Therefore, a balance has to be kept between the two objectives -- that of ensuring the standard of excellence of the institution, and that of preserving the right of the minorities to establish and administer their educational institutions. Regulations that embraced and reconciled the two objectives could be considered to be reasonable. This, in our view, is the correct approach to the problem.

Minorities do have right to choose teachers and have disciplinary control

The present Judgment discussed St Xavier's case, where Justice Khanna after referring to the earlier cases in relation to appointment of teachers noted that a law which interfered with a minority's choice of qualified teachers, or its disciplinary control over teachers and other members of the staff of the institution, was void, as it was violative of Article 30(1). While it was

permissible for the State and its educational authorities to prescribe the qualifications of teachers, it was held that once the teachers possessing the requisite qualifications were selected by the minorities for their educational institutions, the State would have no right to veto the selection of those teachers. The selection and appointment of teachers for an educational institution was regarded as one of the essential ingredients under Article 30(1).

The present judgment made the reference of *Lilly Kurian v. Sr. Lewina and Ors case*[175] wherein the Supreme Court struck down the power of the Vice-Chancellor to veto the decision of the management to impose a penalty on a teacher. It was held that the power of the Vice-Chancellor, while hearing an appeal against the imposition of the panel was uncanalized and unguided.

The present judgment also took note of in *Christian Medical College Hospital Employees' Union and Anr. v. Christian Medical College Vellore Association and Ors*[176] wherein the Supreme Court had upheld the application of industrial law to minority colleges, and it was held that providing a remedy against unfair dismissals would not infringe Article 30.

Judgment also referred to, *Gandhi Faizeam College Shahajhanpur v. University of Agra and Anr.*[177]a law which sought to regulate the working of minority institutions by providing that a broad-based management committee could be re-constituted by including therein the Principal and the senior-most teacher, was valid and not violative of the right under Article 30(1) of the Constitution.

The Judgment mentions the decision in *All Saints High School, Hyderabad Etc. Etc. v. Government of A.P. and Ors. Etc.*[178], Wherein a regulation providing that no teacher would be dismissed, removed, or reduced in rank, or terminated otherwise except with the prior approval of the competent authority, was held

[175] MANU/SC/0041/1978: [1979]1SCR820
[176] MANU/SC/0041/1978: [1979]1SCR820
[177]MANU/SC/0070/1975: [1975]3SCR810
[178] MANU/SC/0059/1980: [1980]2SCR924

to be invalid, as it sought to confer an unqualified power upon the competent authority.

The judgment also takes the note of *Frank Anthony Public School Employees Association v. Union of India and Ors.*[179], the regulation providing for prior approval for dismissal was held to be invalid, while the provision for an appeal against the order of dismissal by an employee to a Tribunal was upheld. The regulation requiring prior approval before suspending an employee was held to be valid, but the provision, which exempted unaided minority schools from the regulation that equated the pay and other benefits of employees of recognized schools with those in schools run by the authority, was held to be invalid and violative of the equality clause. It was held by this Court that the regulations regarding pay and allowances for teachers and staff would not violate Article 30.

The Judgment discusses the decision in *St Stephan's College v The University of Delhi's Case*[180] in detail in which the right of minorities to administer educational institutions and the applicability of Article 29(2) to an institution to which Article 30(1) was applicable, came up for consideration. The Court referred to earlier decision and with regards to Article 30(1) observed as follows: "The minorities whether based on religion or language have the right to establish and administer educational institutions of their choice. The administration of educational institutions of their choice under Article 30(1) means 'management of the affairs of the institution'. This management must be free from control so that the founder or their nominees can mould the institution as they think fit, and in accordance with their ideas of how the interests of the community in general and the institution in particular will be best served. But the standards of education are not a part of the management

[179] MANU/SC/0076/1986 : [1987]1SCR238

[180] MANU/SC/0319/1992, AIR1992SC1630, (1992)1SCC558

as such. The standard concerns the body politic and is governed by considerations of the advancement of the country and its people. Such regulations do not bear directly upon management although they may indirectly affect it. The State therefore has the right to regulate the standard of education and allied matters. Minority institutions cannot be permitted to fall below the standards of excellence expected of educational institutions. They cannot decline to follow the general pattern of education under the guise of exclusive right of management. While the management must be left to them, they may be compelled to keep in step with others...."

State do have right to regulate all academic matters

The judgment refers to the observation in St Stephen's Case that the right under Article 30(1) had to be read subject to the power of the State to regulate education, educational standards and allied matters. The Court had observed:

"The need for a detailed study on this aspect is indeed not necessary. The right to minorities whether religious or linguistic, to administer educational institutions and the power of the State to regulate academic matters and management is now fairly well settled. The right to administer does not include the right to maladminister. The State being the controlling authority has right and duty to regulate all academic matters. Regulations which will serve the interests of students and teachers, and to preserve the uniformity in standards of education among the affiliated institutions could be made. The minority institutions cannot claim immunity against such general pattern and standard or against general laws such as laws relating to law and order, health, hygiene, labor relations, social welfare legislations, contracts, torts, etc. which are applicable to all communities. So long as the basic right of minorities to manage educational institution is not taken away, the State is competent to make regulatory legislation. Regulations, however, shall not have the effect of depriving the right of minorities to educate their children in their own

institution. That is a privilege which is implied in the right conferred by Article 30(1).

Minority Institutions have right to select students for admission

Judgment discusses the decision of St Stephen's Case on the issue of selection of students for admission as: Dealing with the question of the selection of students, it was accepted that the right to select students for admission was a part of administration, and that this power could be regulated, but it was held that the regulation must be reasonable and should be conducive to the welfare of the minority institution or for the betterment of those who resort to it. Bearing this principle in mind, this Court took note of the fact that if the College was to admit students as per the circular issued by the University, it would have to deny admissions to the students belonging to the Christian community because of the prevailing situation that even after the concession, only a small number of minority applicants would gain admission. It was the case of the College that the selection was made on the basis of the candidate's academic record, and his/her performance at the interview keeping in mind his/her all round competence, his/her capacity to benefit from attendance at the College, as well as his/her potential to contribute to the life of the College. While observing that the oral interview as a supplementary test and not as the exclusive test for assessing the suitability of the candidates for college admission had been recognized by this Court, this Court observed that the admission programme of the college "*based on the test of promise and accomplishment of candidates seems to be better than the blind method of selection based on the marks secured in the qualifying examinations.*" The Court accordingly held that St. Stephen's College was not bound by the impugned circulars of the University.

This Court then dealt with the question as to whether a preference in favour of, or a reservation of seats for candidates belonging to, its own community by the minority institutions would be invalid under Article 29(2) of the

Constitution. After referring to the Constituent Assembly Debates and the proceedings of the Draft Committee that led to the incorporation of Articles 29 and 30, this Court proceeded to examine the question of the true import and effect of Articles 29(2) and 30(1) of the Constitution. On behalf of the institutions, it was argued that a preference given to minority candidates in their own educational institutions, on the ground that those candidates belonged to that minority community, was not violative of Article 29(2), and that in the exercise of Article 30(1), the minorities were entitled to establish and administer educational institutions for the exclusive advantage of their own community's candidates. This contention was not accepted by this Court on two grounds. Firstly, it was held that institutional preference to minority candidates based on religion was apparently an institutional discrimination on the forbidden ground of religion -- the Court stated that "*if an educational institution says yes to one candidate but says no to other candidate on the ground of religion, it amounts to discrimination on the ground of religion. The mandate of Article 29(2) is that there shall not be any such discrimination.*"

It further held that, as pointed out in the *Kerala Education Bill* case[181], the minorities could not establish educational institutions for the benefit of their own community alone. For if such was the aim, Article 30(1) would have been differently worded and it would have contained the words "*for their own community*". In this regard, it would be useful to bear in mind that the Court noticed that:-

"Even in practice, such claims are likely to be met with considerable hostility. It may not be conducive to have a relatively homogeneous society. It may lead to religious bigotry which is the bane of mankind. In the nation building with secular character sectarian schools or colleges, segregated faculties or universities for imparting general secular education are undesirable and they may undermine secular democracy. They would be inconsistent with the

[181] (1959)1SCR995

central concept of secularism and equality embedded in the Constitution. Every educational institution irrespective of community to which it belongs is a 'melting pot' in our national life. The students and teachers are the critical ingredients. It is there they develop respect for, and tolerance of, the cultures and beliefs of others. It is essential therefore, that there should be proper mix of students of different communities in all educational institutions."

Article 29(2) not to nullify the special right guaranteed to minorities in Article 30(1).

The Court then dealt with the contention on behalf of the University that the minority institutions receiving government aid were bound by the mandate of Article 29(2), and that they could not prefer candidates from their own community. The Court referred to the decision in the case of *Champakam Dorairajan*'s Case[182], but observed as follows:

".....the fact that Article 29(2) applied to minorities as well as non-minorities did not mean that it was intended to nullify the special right guaranteed to minorities in Article 30(1). Article 29(2) deals with non-discrimination and is available only to individuals. General equality by non-discrimination is not the only need of minorities. Minority rights under majority rule imply more than non-discrimination; indeed, it begins with non-discrimination. Protection of interests and institutions and the advancement of opportunity are just as important. Differential treatment that distinguishes them from the majority is a must to preserve their basic characteristics."

Minority institutions not to be treated differently while giving financial assistance.

Observations in St Stephen's case were quoted: "It is quite true that there is no entitlement to State grant for minority educational institutions. There was only

[182] AIR 1951 SC 226

a stop-gap arrangement under Article 337 for the Anglo-Indian community to receive State grants. There is no similar provision for other minorities to get grant from the State. But under Article 30(2), the State is under an obligation to maintain equality of treatment in granting aid to educational institutions. Minority institutions are not to be treated differently while giving financial assistance. They are entitled to get the financial assistance much the same way as the institutions of the majority communities."

It was further held that the State could lay down reasonable conditions for obtaining grant-in-aid and for its proper utilization, but that the State had no power to compel minority institutions to give up their rights under Article 30(1). After referring to the *Kerala Education Bill case*[183] and *Sidhajbhai Sabhai's* case,[184] the Court observed as follows:-

"....In the latter case this Court observed at SCR pages 856-57 that the regulation which may lawfully be imposed as a condition of receiving grant must be directed in making the institution an effective minority educational institution. The regulation cannot change the character of the minority institution. Such regulations must satisfy a dual test; the test of reasonableness, and the test that it is regulative of the educational character of the institution. It must be conducive to making the institution and effective vehicle of education for the minority community or other persons who resort to it. It is thus evident that the rights under Article 30(1) remain unaffected even after securing financial assistance from the government."

Striking a balance between Article 30(1) and Article 29(2).

According to the learned Judges, the question of the interplay of Article 29(2) with Article 30(1) had arisen in *St. Stephen's* case[185] for the first time, and had not been considered by the Court earlier, they observed that "*we are on virgin*

[183] (1959)1SCR995
[184] AIR 1963 SC 540
[185] AIR 1992 SC1630

soil, not on trodden ground". Dealing with the interplay of these two Articles, it was observed, as follows:-"The collective minority right is required to be made functional and is not to be reduced to useless lumber. A meaningful right must be shaped, moulded and created under Article 30(1), while at the same time affirming the right of individuals under Article 29(2). There is a need to strike a balance between the two competing rights. It is necessary to mediate between Article 29(2) and Article 30(1), between letter and spirit of these articles, between traditions of the past and the convenience of the present, between society's need for stability and its need for change."

The two competing rights are the right of the citizen not to be denied admission granted under Article 29(2), and right of the religious or linguistic minority to administer and establish an institution of its choice granted under Article 30(1). While treating Article 29(2) as a facet of equality, the Court gave a contextual interpretation to Articles 29(2) and 30(1) while rejecting the extreme contention on both sides, i.e., on behalf of the institutions that Article 29(2) did not prevent a minority institution to preferably admit only members belonging to the minority community, and the contention on behalf of the State that Article 29(2) prohibited any preference in favour of a minority community for whose benefit the institution was established. The Court concluded, as follows:-

"In the light of all these principles and factors, and in view of the importance which the Constitution attaches to protective measures to minorities under Article 30(1), the minority aided educational institutions are entitled to prefer their community candidates to maintain the minority character of the institutions subject of course to conformity with the University standard. The State may regulate the intake in this category with due regard to the need of the community in the area which the institution is intended to serve. But in no case such intake shall exceed 50 per cent of the annual admission. The minority institutions shall make available at least 50 per cent of the annual

admission to members of communities other than the minority community. The admission of other community candidates shall be done purely on the basis of merit."

Basic features of St Stephen upheld

The judges opined that If they kept these basic features, as highlighted in *St. Stephen's* case, in view, then the real purposes underlying Articles 29(2) and 30 could be better appreciated.

Fundamental rights subject to other fundamental rights

The Court agreed with the contention of the learned Solicitor General that the Constitution in Part III does not contain or give any absolute right. All rights conferred in Part III of the Constitution are subject to at least other provisions of the said Part. It is difficult to comprehend that the framers of the Constitution would have given such an absolute right to the religious or linguistic minority which would enable them to establish and administer educational institutions in manner so as to be in conflict with the other Parts of the Constitution. We find difficult to accept that in the establishment and administration of educational institutions by the religious and linguistic minorities, no law of the land, even the Constitution, is to apply to them.

Minority rights to administer not absolute

Decisions of this Court have held that the right to administer does not include the right to mal-administer. It has also been held that the right to administer is not absolute, but must be subject to reasonable regulations for the benefit of the institutions as the vehicle of education, consistent with national interest. General laws of the land applicable to all persons have been held to be applicable to the minority institutions also -- for example, laws relating to taxation, sanitation, social welfare, economic regulation, public order and morality.

It follows from the aforesaid decisions that even though the words of Article 30(1) are unqualified, this Court has held that at least certain other laws of the land pertaining to health, morality and standards of education apply. The right under Article 30(1) has, therefore, not been held to be absolute or above other provisions of the law, and we reiterate the same. By the same analogy, there is no reason why regulations or conditions concerning, generally, the welfare of students and teachers should not be made applicable in order to provide a proper academic atmosphere; as such provisions do not in any way interfere with the right of administration or management under Article 30(1).

Preservation of Secularism and Equality through Article 30(1)

According to the Judges Article 30(1) is a sort of guarantee or assurance to the linguistic and religious minority institutions of their right to establish and administer educational institutions of their choice. Secularism and equality being two of the basic features of the Constitution, Article 30(1) ensures protection to the linguistic and religious minorities, thereby preserving the secularism of the country. Furthermore, the principles of equality must necessarily apply to the enjoyment of such rights. No law can be framed that will discriminate against such minorities with regard to the establishment and administration of educational institutions vis-a-vis other educational institutions. Any law or rule or regulation that would put the educational institutions run by the minorities at a disadvantage when compared to the institutions run by the others will have to be struck down. At the same time, there also cannot be any reverse discrimination. It was observed in *St. Xaviers College* case[186], at page 192, that "*the whole object of conferring the right on minorities under Article 30 is to ensure that there will be equality between the majority and the minority. If the minorities do not have such special protection, they will be dented equality.*" In other words, the essence of Article 30(1) is to ensure equal treatment between the majority and the minority institutions. No

[186] AIR 1974 SC1389

one type or category of institution should be disfavoured or, for that matter, receive more favourable treatment than another. Laws of the land, including rules and regulations, must apply equally to the majority institutions as well as to the minority institutions. The minority institutions must be allowed to do what the non-minority institutions are permitted to do.

Autonomy to unaided Minority institutions

The Court held that like any other private unaided institutions, similar unaided educational institutions administered by linguistic or religious minorities are assured maximum autonomy in relation thereto; e.g., method of recruitment of teachers, charging of fees and admission of students. They will have to comply with the conditions of recognition, which cannot be such as to whittle down the right under Article 30.

Grants and its effect on autonomy of Minority institutions

The grant of aid is not a constitutional imperative. Article 337 only gives the right to assistance by way of grant to the Anglo-Indian community for a specified period of time. If no aid is granted to anyone, Article 30(1) would not justify a demand for aid, and it cannot be said that the absence of aid makes the right under Article 30(1). The founding fathers have not incorporated the right to grants in Article 30, whereas they have done so under Article 337; what, then, is the meaning, scope and effect of Article 30(2)? Article 30(2) only means what it states, viz that a minority institution shall not be discriminated against when aid to educational institutions is granted. In other words the state cannot, when it chooses to grant aid to educational institutions, deny aid to a religious or linguistic minority institution only on the ground that the management of that institution is with the minority. We would, however, like to clarify that if an object surrender of the right to management is made a condition of aid, the denial of aid would be violative of Article 30(2). However, conditions of aid that do not involve a surrender of the substantial right of

management would not be inconsistent with constitutional guarantees, even if they indirectly impinge upon some fact of administration. If, however, aid were denied on the ground that the educational institution is under the management of a minority, then such a denial would be completely invalid.

Granting of aid will not affect the minority character of the institution.

The judges explained: The implication of Article 30(2) is also that it recognizes that the minority nature of the institution should continue, notwithstanding the grant of aid. In other words, when a grant is given to all institutions for imparting secular education, a minority institution is also entitled to receive it subject to the fulfillment of the requisite criteria, and the state gives the grant knowing that a linguistic or minority educational institution will also receive the same. Of course, the State cannot be compelled to grant aid, but the receipt of aid cannot be a reason for altering the nature of character of the incipient educational institution.

This means that the right under Article 30(1) implies that any grant that is given by the State to the minority institution cannot have such conditions attached to it, which will in any way dilute or abridge the rights of the minority institution to establish and administer that institution. The conditions that can normally be permitted to be imposed, on the educational institutions receiving the grant, must be related to the proper utilization of the grant and fulfillment of the objectives of the grant. Any such secular conditions so laid, such as a proper audit with regard to the utilization of the funds and the manner in which the funds are to be utilized, will be applicable and would not dilute the minority status of the educational institutions. Such conditions would be valid if they are also imposed on other educational institutions receiving the grant.

It cannot be argued that no conditions can be imposed while giving aid to a minority institution. Whether it is an institution run by the majority or the minority, all conditions that have relevance to the proper utilization of the

grant-in-aid by an educational institution can be imposed. All that Article 30(2) states is that on the ground that an institution is under the management of a minority, whether based on religion or language, grant of aid to that educational institution cannot be discriminated against, if other educational institutions are entitled to receive aid. The conditions for grant or non-grant of aid to educational institutions have to be uniformly applied, whether it is a majority-run institution or a minority-run institution. As in the case of a majority-run institution, the moment a minority institution obtains a grant of aid, Article 28 of the Constitution comes into play. When an educational institution is maintained out of State funds, no religious instructions can be provided therein. Article 28(1) does not state that it applies only to educational institutions that are not established or maintained by religious or linguistic minorities. Furthermore, upon the receipt of aid, the provisions of Article 28(3) would apply to all educational institutions whether run by the minorities or the non-minorities. Article 28(3) is the right of a person studying in a State recognized institution or in an educational institution receiving aid from State funds, not to take part in any religious instruction, if imparted by such institution, without his/her consent (or his/her guardian's consent if such a person is a minor). Just as Article 28(1) and (3) become applicable the moment any educational institution takes aid, likewise, Article 29(2) would also be attracted and become applicable to an educational institution maintained by the State or receiving aid out of State funds. It was strenuously contended that the right to give admission is one of the essential ingredients of the right to administer conferred on the religious or linguistic minority, and that this right should not be curtailed in any manner. It is difficult to accept this contention. If Article 28(1) and (3) apply to a minority institution that receives aid out of State funds, there is nothing in the language of Article 30 that would make the provisions of Article 29(2) inapplicable. Like Article 28(1) and Article 28(3), Article 29(2) refers to "*any educational institution maintained by the State or receiving aid out of State funds*". A minority institution would fall within the ambit of Article 29(2) in the same manner in which Article 28(1) and Article

28(3) would be applicable to an aided minority institution. It is true that one of the rights to administer an educational institution is to grant admission to the students. As long as an educational institution, whether belonging to the minority or the majority community, does not receive aid, it would, in our opinion, be its right and discretion to grant admission to such students as it chooses or selects subject to what has been clarified before. Out of the various rights that the minority institution has in the administration of the institution, Article 29(2) curtails the right to grant admission to a certain extent. By virtue of Article 29(2), no citizen can be denied admission by an aided minority institution on the grounds only of religion, race, caste, language or any of them. It is no doubt true that Article 29(2) does curtail one of the powers of the minority institution, but on receiving aid, some of the rights that an unaided minority institution has are also curtailed by Article 28(1) and 28(3). A minority educational institution has a right to impart religious instruction - this right is taken away by Article 28(1), if that minority institution is maintained wholly out of state funds. Similarly on receiving aid out of State funds or on being recognized by the State, the absolute right of a minority institution requiring a student to attend religious instruction is curtailed by Article 28(3). If the curtailment of the right to administer a minority institution on receiving aid or being wholly maintained out of State funds as provided by Article 28 is valid, there is no reason why Article 29(2) should not be held to be applicable. There is nothing in the language of Article 28(1) and (3), Article 29(2) and Article 30 to suggest that on receiving aid, Article 28(1) and (3) will apply, but Article 29(2) will not. Therefore, the contention that the institutions covered by Article 30 are outside the injunction of Article 29(2) cannot be accepted.

Two interpretations of Article 29(2)

The judgment examines the true scope of Article 29(2) in context of minority institutions. Article 29(2) is capable of two interpretations. One interpretation, which is put forth by the Solicitor General and the other counsel for the

different States, is that a minority institution receiving aid cannot deny admission to any citizen on the grounds of religion, race, caste, language or any of them. In other words, the minority institution, once it takes any aid, cannot make any reservation for its own community or show a preference at the time of admission, i.e., if the educational institution was a private unaided minority institution, it is free to admit all students of its own community, but once aid is received, Article 29(2) makes it obligatory on the institution not to deny admission to a citizen just because he does not belong to the minority community that has established the institution.

The other interpretation that is put forth is that Article 29(2) is a protection against discrimination on the ground of religion, race, caste or language, and does not in any way come into play where the minority institution prefers students of its choice. To put it differently, denying admission, even though seats are available, on the ground of the applicant's religion, race, caste or language, is prohibited, but preferring students of minority groups does not violate Article 29(2).

Constitutional history of Article 29

According to the judgment Article 29 carries the head note "Protection of interests of minorities" it does not use the expression "minorities" in its text. The original proposal of the Advisory Committee in the Constituent Assembly recommended the following:-

"(1) Minorities in every unit shall be protected in respect of their language, script and culture and no laws or regulations may be enacted that may operate oppressively or prejudicially in this respect"[187]

But after the clause was considered by the drafting Committee on 1st November, 1947, it emerged with substitute of 'section of citizen'[188]. It was

[187] B. Siva Rao, "Select Documents" (1957) Vol. 2 page 281

explained that the intention had always been to use 'minority' in a wide sense, so as to include, for example, Maharashtrians who settled in Bengal[189]."

Both Articles 29 and 30 forms a part of the fundamental rights Chapter in Part III of the Constitution. Article 30 is confined to minorities, be it religious or linguistic, and unlike Article 29(1), the right available under the said Article cannot be availed by any section of citizens. The main distinction between Article 29(1) and Article 30(1) is that in the former, the right is confined to conservation of language, script or culture. As was observed in the *Father W. Proost* case, the right given by Article 29(1) is fortified by Article 30(1), insofar as minorities are concerned. In the *St. Xaviers College* case[190], it was held that the right to establish an educational institution is not confined to conservation of language, script or culture. When constitutional provisions are interpreted, it has to be borne in mind that the interpretation should be such as to further the object of their incorporation. They cannot be read in isolation and have to be read harmoniously to provide meaning and purpose. They cannot be interpreted in a manner that renders another provision redundant. If necessary, a purposive and harmonious interpretation should be given.

Interpretation of Article 29 and 30

Although the right to administer includes within it a right to grant admission to students of their choice under Article 30(1), when such a minority institution is granted the facility of receiving grant-in-aid, Article 29(2) would apply, and necessarily, therefore, one of the right of administration of the minorities would be eroded to some extent. Article 30(2) is an injunction against the State not to discriminate against the minority educational institution and prevent it from receiving aid on the ground that the institution is under the management of a minority. While, therefore, a minority educational institution receiving grant-in-

---

[188] B. Siva Rao, Select Documents (1957) Vol. 3, pages 525-26. Clause 23, Draft Constitution
[189] 7 C.A.D. pages 922-23
[190] AIR 1974 SC1389

aid would not be completely outside the discipline of Article 29(2) of the Constitution by no stretch of imagination can the rights guaranteed under Article 30(1) be annihilated. It is this context that some interplay between Article 29(2) and Article 30(1) is required. As observed quite aptly in *St. Stephen's* case "*the fact that Article 29(2) applies to minorities as well as non-minorities does not mean that it was intended to nullify the special right guaranteed to minorities in Article 30(1).*" The word "only" used in Article 29(2) is of considerable significance and has been used for some avowed purpose. Denying admission to non-minorities for the purpose of accommodating minority students to a reasonable extent will not be only on grounds of religion etc., but is primarily meant to preserve the minority character of the institution and to effectuate the guarantee under Article 30(1). The best possible way is to hold that as long as the minority educational institution permits admission of citizens belonging to the non-minority class to a reasonable extent based upon merit, it will not be an infraction of Article 29(2), even though the institution admits students of the minority group of its own choice for whom the institution was meant. What would be a reasonable extent would depend upon variable factors, and it may not be advisable to fix any specific percentage. The situation would vary according to the type of institution and the nature of education that is being imparted in the institution. Usually, at the school level, although it may be possible to fill up all the seats with students of the minority group, at the higher level, either in colleges or in technical institutions, it may not be possible to fill up all the seats with the students of the minority group. However, even if it is possible to fill up all the seats with students of the minority group, the moment the institution is granted aid, the institution will have to admit students of the non-minority group to a reasonable extent, whereby the character of the institution is not annihilated, and at the same time, the rights of the citizen engrafted under Article 29(2) are not subverted. It is for this reason that a variable percentage of admission of minority students depending on the type of institution and education is desirable, and indeed,

necessary, to promote the constitutional guarantee enshrined in both Article 29(2) and Article 30.

The judgment accept the principle of *Stare Decisis*

The Court in this judgment accepted the principle of *Stare Decisis.* The judgment refers to the following observations of B.P. Jeevan Reddy, J., in *Indra Sawhney v. Union of India and Ors*[191]*.* at page 657, paragraph 683, as follows:-

"Before we proceed to deal with the question, we may be permitted to make a few observations: The questions arising herein are not only of great moment and consequence, they are also extremely delicate and sensitive. They represent complex problems of Indian society, wrapped and presented to us as Constitutional and legal questions. On some of these questions, the decisions of this Court have not been uniform. They speak with more than one voice. Several opposing points of view have been pressed upon us with equal force and passion and quite often with great emotion. We recognize that these viewpoints are held genuinely by the respective exponents. Each of them feels their own point of view is the only right one. We cannot, however, agree with all of them. We have to find--and we have tried our best to find--answers which according to us are the right ones constitutionally and legally. Though, we are sitting in a larger Bench, we have kept in mind the relevance and significance of the principle of *stare decisis.* We are conscious of the fact that in law certainty, consistency and continuity are highly desirable features. Where a decision has stood the test of time and has never been doubted, we have respected it--unless, of course, there are compelling and strong reasons to depart from it. Where, however, such uniformity is not found, we have tried to answer the question on principle keeping in mind the scheme and goal of our Constitution and the material placed before us."

[191] MANU/SC/0664/1992 : [1992]6SCR321

St. Stephen's Case Ratio upheld except 50% ceiling to admit students of its community.

The right of the aided minority institution to preferably admit students of its community, when Article 29(2) was applicable, has been clarified by this Court over a decade ago in the *St. Stephen's College* case. While upholding the procedure for admitting students, this Court also held that aided minority educational institutions were entitled to preferably admit their community candidates so as to maintain the minority character of the institution, and that the state may regulate the intake in this category with due regard to the area that the institution was intended to serve, but that this intake should not be more than 50% in any case. Thus, *St. Stephen's* endeavoured to strike a balance between the two Articles. Though we accept the ratio of *St. Stephen's*, which has held the field for over a decade, we have compelling reservations in accepting the rigid percentage stipulated therein. As Article 29 and Article 30 apply not only to institutions of higher education but also to schools, a ceiling of 50% would not be proper. It will be more appropriate that depending upon the level of the institution, whether it be a primary or secondary or high school or a college, professional or otherwise, and on the population and educational needs of the area in which the institution is to be located the state properly balances the interests of all by providing for such a percentage of students of the minority community to be admitted, so as to adequately serve the interest of the community for which the institution was established.

Admissions in Colleges on the Merit of Minority Candidates

At the same time, the admissions to aided institutions, whether awarded to minority or non-minority students, cannot be at the absolute sweet will and pleasure of the management of minority educational institutions. As the regulations to promote academic excellence and standards do not encroach upon the guaranteed rights under Article 30, the aided minority educational institutions can be required to observe *inter se* merit amongst the eligible

minority applicants and passage of common entrance test by the candidates, where there is one, with regard to admissions in professional and non-professional colleges. If there is no such test, a rational method of assessing comparative merit has to be evolved. As regards the non-minority segment, admission may be on the basis of the common entrance test and counselling by a state agency. In the courses for which such a test and counselling are not in vogue, admission can be on the basis of relevant criteria for the determination of merit. It would be open to the state authorities to insist on allocating a certain percentage of seats to those belonging to weaker sections of society, from amongst the non-minority seats.

Aided Linguistic Minority Institutions free to admit reasonable number of students from their own community

The aided linguistic minority educational institution is given the right to admit students belonging to the linguistic minority to a reasonable extent only to ensure that its minority character is preserved and that the objective of establishing the institution is not defeated. If so, such an institution is under an obligation to admit the bulk of the students fitting into the description of the minority community. Therefore, the students of that group residing in the state in which the institution is located have to be necessarily admitted in a large measure because they constitute the linguistic minority group as far as that state is concerned. In other words, the predominance of linguistic students hailing from the state in which the minority educational institution is established should be present. The management bodies of such institution cannot resort to the device of admitting the linguistic students of the adjoining state in which they are in a majority, under the facade of the protection given under Article 30(1). If not, the very objective of conferring the preferential right of admission by harmoniously constructing Articles 30(1) and 29(2), which we have done above, may be distorted.

Presumption in favour of Government

The judgment makes presumptions in favour of Government in the following words,' It will be wrong to presume that the government or the legislature will act against the Constitution or contrary to the public or national interest at all times. Viewing every action of the government with skepticism, and with the belief that it must be invalid unless proved otherwise, goes against the democratic form of government. It is no doubt true that the Court has the power and the function to see that no one including the government acts contrary to the law, but the cardinal principle of our jurisprudence is that it is for the person who alleges that the law has been violated to prove it to be so. In such an event, the action of the government or the authority may have to be carefully examined, but it is improper to proceed on the assumption that, merely because an allegation is made, the action impugned or taken must be bad in law. Such being the position, when the government frames rules and regulations or lays down norms, especially with regard to deduction, one must assume that unless shown otherwise, the action taken is in accordance with law. Therefore, it will not be in order to so interpret a Constitution, and Article 29 and 30 in particular, on the presumption that the state will normally not act in the interest of the general public or in the interest of concerned sections of the society.

CONCLUSION

Equality and Secularism

Our country is often depicted as a person in the form of ***"Bharat Mata -- Mother India".*** The people of India are regarded as her children with their welfare being in her heart. Like and loving mother, the welfare of the family is of paramount importance for her.

For a healthy family, it is important that each member is strong and healthy. But then, all members do not have the same constitution, whether physical and/or mental. For harmonious and healthy growth, it is natural for the

parents and the mother in particular, to give more attention and food to the weaker child so as to help him/her become stronger. Giving extra food and attention and ensuring private tuition to help in his/her studies will, in a sense, amount to giving the weaker child preferential treatment. Just as lending physical support to the aged and the infirm, or providing a special diet, cannot be regarded as unfair or unjust, similarly, conferring certain rights on a special class, for good reasons, cannot be considered inequitable. All the people of India are not alike, and that is why preferential treatment to a special section of the society is not frowned upon. Article 30 is a special right conferred on the religious and linguistic minorities because of their numerical handicap and to instill in them a sense of security and confidence, even though the minorities cannot be *per se* regarded as weaker sections or underprivileged segments of the society.

The one billion population of India consists of six main ethnic groups and fifty-two major tribes; six major religions and 6,400 castes and sub-castes; eighteen major languages and 1,600 minor languages and dialects. The essence of secularism in India can best be depicted if a relief map of India is made in mosaic, where the aforesaid one billion people are the small pieces of marble that go into the making of a map. Each person, whatever his/her language, caste, religion has his/her individual identity, which has to be preserved, so that when pieced together it goes to form a depiction with the different geographical features of India. These small pieces of marble, in the form of human beings, which may individually be dissimilar to each other, when placed together in a systematic manner, produce the beautiful map of India. Each piece, like a citizen of India, plays an important part in making of the whole. The variations of the colours as well as different shades of the same colour in a map is the result of these small pieces of different shades and colours of marble, but even when one small piece of marble is removed, the whole map of India would be scarred, and the beauty would be lost.

Each of the people of India has an important place in the formation of the nation. Each piece has to retain its own colour. By itself, it may be an insignificant stone, but when placed in a proper manner, goes into the making of a full picture of India in all its different colours and hues.

A citizen of India stands in a similar position. The Constitution recognizes the differences among the people of India, but it gives equal importance to each of them, their differences notwithstanding, for only then can there be a unified secular nation. Recognizing the need for the preservation and retention of different pieces that go into the making of a whole nation, the Constitution, while maintaining, *inter alia*, the basic principle of equality, contains adequate provisions that ensure the preservation of these different pieces.

The essence of secularism in India is the recognition and preservation of the different types of people, with diverse languages and different beliefs, and placing them together so as to form a whole and united India. Articles 29 and 30 do not more than seek to preserve the differences that exist, and at the same time, unite the people to form one strong nation.

ANSWERS TO ELEVEN QUESTIONS:

Q.1. What is the meaning and content of the expression "minorities" in Article 30 of the Constitution of India?

A. Linguistic and religious minorities are covered by the expression "minority" under Article 30 of the Constitution. Since reorganisation of the State in India has been on linguistic lines, therefore, for the purpose of determining the minority the unit will be the State and note the whole of India. Thus, religious and linguistic minorities, who have been put at par in Article 30, have to be considered State-wise.

Q.2. What is meant by the expression "religion" in Article 30(1)? Can the followers of a sect or denomination of a particular religion claim protection

under Article 30(1) on the basis that they constitute a minority in the State, even though the followers of that religion are in majority in that State?

A. This question need not be answered by this Bench; it will be dealt with by a regular Bench.

Q.3(a) What are the indicia for treating an educational institution as a minority educational institution? Would an institution be regarded as a minority educational institution because it was established by a person(s) belonging to a religious or linguistic minority or its being administered by a person(s) belonging to a religious or linguistic minority?

A. This question need not be answered by this Bench; it will be dealt with by a regular Bench.

Q3(b) To what extent can professional education be treated as a matter coming under minorities rights under Article 30?

A. Article 30(1) gives religious and linguistic minorities the right to establish and administer educational institutions of their choice. The use of the words "of their choice" indicates that even professional educational institutions would be covered by Article 30.

Q.4 Whether the admission of students to minority educational institution, whether aided or unaided, can be regulated by the State Government or by the University to which the institution is affiliated?

A. Admission of students to unaided minority educational institutions, viz., schools and undergraduates colleges where the scope for merit-based selection is practically nil, cannot be regulated by the concerned State or University, except for providing the qualifications and minimum conditions of eligibility in the interest of academic standards.

The right to admit students being an essential facet of the right to administer educational institutions of their choice, as contemplated under Article 30 of the Constitution, the State government or the university may not be entitled to interfere with that right, so long as the admission to the unaided educational institutions is on a transparent basis and the merit is adequately taken care of. The right to administer, not being absolute, there could be regulatory measures for ensuring educational standards and maintaining excellence thereof, and it is more so in the matter of admissions to professional institutions.

A minority institution does not cease to be so; the moment grant-in-aid is received by the institution. An aided minority educational institution, therefore, would be entitled to have the right of admission of students belonging to the minority group and at the same time, would be required to admit a reasonable extent of non-minority students, so that the rights under Article 30(1) are not substantially impaired and further the citizens rights under Article 29(2) are not infringed. What would be a reasonable extent would vary from the types of institution, the courses of education for which admission is being sought and other factors like educational needs. The concerned State Government has to notify the percentage of the non-minority students to be admitted in the light of the above observations. Observance of inter se merit amongst the applicants belonging to the minority group could be ensured. In the case of aided professional institutions, it can also be stipulated that passing of the common entrance test held by the state agency is necessary to seek admission. As regards non-minority students who are eligible to seek admission for the remaining seats, admission should normally be on the basis of the common entrance test held by the state agency followed by counselling wherever it exists.

Q5(a) Whether the minority's rights to establish and administer educational institutions of their choice will include the procedure and method of admission and selection of students?

A. A minority institution may have its own procedure and method of admission as well as selection of students, but such a procedure must be fair and transparent, and the selection of students in professional and higher education colleges should be on the basis of merit. The procedure adopted or selection made should not tantamount to mal-administration. Even an unaided minority institution ought not to ignore the merit of the students for admission, while exercising its right to admit students to the colleges aforesaid, as in that event, the institution will fail to achieve excellence.

Q5(b) Whether the minority institutions' right of admission of students and to lay down procedure and method of admission, if any, would be affected in any way by the receipt of State aid?

A. While giving aid to professional institutions, it would be permissible for the authority giving aid to prescribe by-rules or regulations, the conditions on the basis of which admission will be granted to different aided colleges by virtue of merit, coupled with the reservation policy of the State qua non-minority students. The merit may be determined either through a common entrance test conducted by the concerned University or the Government followed by counselling, or on the basis of an entrance test conducted by individual institutions--the method to be followed is for the university or the government to decide. The authority may also devise other means to ensure that admission is granted to an aided professional institution on the basis of merit. In the case of such institutions, it will be permissible for the government or the university to provide that consideration should be shown to the weaker sections of the society.

Q5(c) Whether the statutory provisions which regulate the facets of administration like control over educational agencies, control over governing bodies, conditions of affiliation including recognition/withdrawal thereof, and appointment of staff, employees, teachers and Principal including their service

conditions and regulation of fees, etc. would interfere with the right of administration of minorities?

A. So far as the statutory provisions regulating the facets of administration are concerned, in case of an unaided minority educational institution, the regulatory measure of control should be minimal and the conditions of recognition as well as the conditions of affiliation to an university or board have to be complied with, but in the matter of day-to-day management like the appointment of staff, teaching and non-teaching, and administrative control over them, the management should have the freedom and there should not be any external controlling agency. However, a rational procedure for the selection of teaching staff and for taking disciplinary action has to be evolved by the management itself.

For redressing the grievances of employees of aided and unaided institutions who are subjected to punishment or termination from service, a mechanism will have to be evolved, and in our opinion, appropriate tribunals could be constituted, and till then, such tribunals could be presided over by a Judicial Officer of the rank of District Judge.

The State or other controlling authorities, however, can always prescribe the minimum qualification, experience and other conditions bearing on the merit of an individual for being appointed as a teacher or a principal of any educational institution.

Regulations can be framed governing service conditions for teaching and other staff for whom aid is provided by the State, without interfering with the overall administrative control of the management over the staff.

Fees to be charged by unaided institutions cannot be regulated but no institution should charge capitation fee.

Q6(a) Where can a minority institution be operationally located? Where a religious or linguistic minority in State 'A" establishes an educational institution in the said State, can such educational institution grant preferential admission/reservations and other benefits to members of the religious/linguistic group from other States where they are non-minorities?

A. This question need not be answered by this Bench; it will be dealt with by a regular Bench.

Q6(b) Whether it would be correct to say that only the members of that minority residing in State 'A' will be treated as the members of the minority vis-à-vis such institution?

A. This question need not be answered by this Bench; it will be dealt with by a regular Bench.

Q.7 Whether the member of a linguistic non-minority in one State can establish a trust/society in another State and claim minority status in that State?

A. This question need not be answered by this Bench; it will be dealt with by a regular Bench.

Q.8 Whether the ratio laid down by this Court in the St. Stephen's case[192] is correct? If no, what order?

A. The basic ratio laid down by this Court in the *St. Stephen's College* case is correct, as indicated in this judgment. However, rigid percentage cannot be stipulated. It has to be left to authorities to prescribe a reasonable percentage having regard to the type of institution, population and educational needs of minorities.

[192] MANU/SC/0319/1992: AIR1992SC1630

Q.9 Whether the decision of this Court in ***Unni Krishnan J.P. v. State of A.P***[193]**.** (except where it holds that primary education is a fundamental right) and the scheme framed there under required reconsideration/modification and if yes, what?

A. The scheme framed by this Court in ***Unni Krishnan's*** case and the direction to impose the same, except where it holds that primary education is fundamental right, is unconstitutional. However, the principle that there should not be capitation fee or profiteering is correct. Reasonable surplus to meet cost of expansion and augmentation of facilities does not, however, amount to profiteering.

Q.10 Whether the non-minorities have the right to establish and administer educational institution under Article 21 and 29(1) read with Articles 14 and15(1), in the same manner and to the same extent as minority institutions? And

Q.11 What is the meaning of the expressions "Education" and "Educational Institutions" in various provisions of the Constitution? Is the right to establish and administer educational institutions guaranteed under the Constitution?

A. The expression "education" in the Articles of the Constitution means and includes education at all levels from the primary school level up to the post-graduate level. It includes professional education. The expression "educational institutions" means institutions that impart education, where "education" is as understood hereinabove.

The right to establish and administer educational institutions is guaranteed under the Constitution to all citizens under Articles 19(1)(g) and 26, to minorities specifically under Article 30.

---

[193] MANU/SC/0333/1993 : [1993]1SCR594

All citizens have a right to establish and administer educational institutions under Articles 19(1)(g) and 26, but this right is subject to the provisions of Articles 19(6) and 26(a). However, minority institutions will have a right to admit students belonging to the minority group, in the manner as discussed in this judgment.

6.17. Islamic Academy Of Education Anr. v State Of Karnataka And Others[194]

Five Judges Bench consisting of V.N. Khare CJI, S. N. Variava, K. G. Balakrishnan, Arijit Pasayat and S. B. Sinha.

V. N. Khare, CJI delivered a majority judgment for himself and for S. N. Variava, K. G. Balakrishnan and Arijit Pasayat.

After the judgment of T. M. A. Pai's case, the Union of India, various State Governments and the educational institutions understood the majority judgment in different perspectives. Different statutes/regulations were enacted/framed by different State Governments. These led to litigations in several Courts. The matters came up before a Bench of Supreme Court, the parties to the writ petitions and special leave petitions attempted to interpret the majority decision in their own way as suited to them and therefore at their request all these matters were placed before a Bench of five Judges. It is under these circumstances that the Bench was constituted so that doubts/anomalies, if any, could be clarified.

In view of the rival submissions the following questions arose for consideration:

1) Whether the educational institutions are entitled to fix their own fee structure;

[194] AIR 2003 SC 3724, (2003) 6 SCC 697

2) Whether minority and non minority educational institutions stand on the SAME footing and have the same rights;

3) Whether private unaided professional colleges are entitled to fill in their seats, to the extent of 100% and if not to what extent; and

4) Whether private unaided professional colleges are entitled to admit students by evolving their own method of admission;

Question No. 1. So far as the first question is concerned, the Court held that the majority view in T. M. A. Pai's case is clear; there can be no fixing of a rigid fee structure by the government. Each institute must have the freedom to fix its own fee structure taking into consideration the need to generate funds to run the institution and to provide facilities necessary for the benefit of the students. They must also be able to generate surplus which must be used for the betterment and growth of that educational institution. In paragraph 56 of the judgment it has been categorically laid down that the decision on the fees to be charged must necessarily be left to the private educational institutions that do not seek and which are not dependent upon any funds from the Government. Each institute will be entitled to have its own fee structure. The fee structure for each institute must be fixed keeping in mind the infrastructure and facilities available, the investments made, salaries paid to the teachers and staff, future plans for expansion and/or betterment of the institution etc. Of course there can be no profiteering and capitation fees cannot be charged. It thus needs to be emphasized that as per the majority judgment imparting of education is essentially charitable in nature. Thus the surplus/profit that can be generated must be only for the benefit/use of that educational institution. Profits/surplus cannot be diverted for any other use or purpose and cannot be used for personal gain or for any other business or enterprise. The Court held that all statutes/regulations which govern the fixation of fees had not yet been considered for the validity of those statutes/regulations, Court directed that in order to give effect to the judgment

in T. M. A Pai's case the respective State Governments concerned authority shall set up, in each State, a committee headed by a retired High Court judge who shall be nominated by the Chief Justice of that State. The other member, who shall be nominated by the Judge, should be a Chartered Accountant of repute. A representative of the Medical Council of India (in short 'MCI') or the All India Council for Technical Education (in short 'AICTE'), depending on the type of institution, shall also be a member. The Secretary of the State Government in charge of Medical Education or Technical Education, as the case may be, shall be a member and Secretary of the Committee. The Committee should be free to nominate/co-opt another independent person of repute, so that total number of members of the Committee shall not exceed five.

Each educational Institute must place before this Committee, well in advance of the academic year, its proposed fee structure. Along with the proposed fee structure all relevant documents and books of accounts must also be produced before the committee for their scrutiny. The Committee shall then decide whether the fees proposed by that institute are justified and are not profiteering or charging capitation fee. The Committee will be at liberty to approve the fee structure or to propose some other fee which can be charged by the institute. The fee fixed by the committee shall be binding for a period of three years, at the end of which period the institute would be at liberty to apply for revision. Once fees are fixed by the Committee, the institute cannot charge either directly or indirectly any other amount over and above the amount fixed as fees. If any other amount is charged, under any other head or guise e.g. donations the same would amount to charging of capitation fee. The Governments/appropriate authorities should consider framing appropriate regulations, if not already, framed, where under if it is found that an institution is charging capitation fees or profiteering that institution can be appropriately penalized and also face the prospect of losing its recognition/affiliation.

It must be mentioned that during arguments it was pointed out to in the court that some educational institutions are collecting, in advance, the fees for the entire course i.e. for all the years. It was submitted that this was done because the institute was not sure whether the student would leave the institute midstream. It was submitted that if the student left the course in midstream then for the remaining years the seat would lie vacant and the institute would suffer. In our view an educational institution can only charge prescribed fees for one semester/year, if an institution feels that any particular student may leave in midstream then, at the highest, it may require that student to give a bond/bank guarantee that the balance fees for the whole course would be received by the institute even if the student left in midstream. If any educational institution has collected fees in advance, only the fees of that semester/year can be used by the institution. The balance fees must be kept invested in fixed deposits in a nationalized bank. As and when fees fall due for a semester/year only the fees falling due for that semester/year can be withdrawn by the institution. The rest must continue to remain deposited till such time that they fall duo. At the end of the course the interest earned on these deposits must be paid to the student from whom the fees were collected in advance.

Question No. 2 The next question for consideration was whether minority and non minority educational institution stand on the same footing and have the same rights under the Judgment. In support of the contention that the minority and non minority educational institutions had the same rights reliance was placed upon paragraphs 138 and 139 of the Judgment. These read as follows;

"138. As we look at it, Article 30(1) is a sort of guarantee or assurance to the linguistic and religious minority institutions of their right to establish and administer educational institutions of their choice. Secularism and equality being two of the basic features of the Constitution, Article 30(1) ensures

protection to the linguistic and religious minorities; thereby preserving the secularism of the country. Furthermore, the principles of equality must necessarily apply to the enjoyment of such rights. No law can be framed that will discriminate against such minorities with regard to the establishment and administration of educational institutions vis-a-vis other educational institutions. Any law or rule or regulation that would put the educational institutions run by the minorities at a disadvantage when compared to the institutions run by the others will have to be struck down. At the same time, there also cannot be any reverse discrimination. It was observed in St Xaviers College case, at page 192, that "the whole object of conferring the right on minorities under Article 30 is to ensure that there will be equality between the majority and the minority. If the minorities do not have such special protection, they will be denied equality." In other words, the essence of Article 30(1) is to ensure equal treatment between the majority and the minority institutions. No one type or category of institution should be disfavoured or, for that matter receive more favourable treatment than another. Laws of the land, including rules and regulations, must apply equally to the majority institutions as well as to the minority institutions. The minority institutions must be allowed to do what the non- minority institutions are permitted to do."

"Like any other private unaided institutions, similar unaided educational institutions administered by linguistic or religious minorities are assured maximum autonomy in relation thereto; e.g., method of recruitment of teachers, charging of fees and admission of students. They will have to comply with the condition of recognition, which cannot be such as to whittle down the right under Article 30."

Undoubtedly at first blush it does appear that these paragraphs equate both types of educational institutions. However on a careful reading of these paragraphs it is evident that the essence of what has been laid down is that the minority educational institutions have a guarantee or assurance to establish

and administer educational institutions of their choice. These paragraphs merely provide that laws, rules and regulations cannot be such that they favour majority institutions over minority institutions. We do not read these paragraphs to mean that non minority educational institutions would have the same rights as those conferred on minority educational institutions by Article 30 of the Constitution of India. Non minority educational institutions do not have the protection of Article 30. Thus, in certain matters they cannot and do not stand on similar footing as minority educational institutions. Even though the principle behind Article 30 is to ensure that the minorities are protected and are given an equal treatment yet the special right given under Article 30 does give them certain advantages. Just to take a few examples, the Government may decide to nationalize education. In that case it may be enacted that private educational institutions will not be permitted. Non minority educational institutions may become bound by such an enactment. However, the right given under Article 30 to minorities cannot be done away with and the minorities will still have a fundamental right to establish and administer educational institutions of their choice. Similarly even though the government may have a right to take over management of a non minority educational institution the management of a minority educational institution cannot be taken over because of the protection given under Article 30. Of course we must not be understood to mean that even in national interest a minority institute cannot be closed down. Further minority educational institutions have preferential right to admit students of their own community/language. No such rights exist so far as non minority educational institutions are concerned.

In answer to question 3 and 4 the Court had held

It was clarified that a minority professional college can admit, in their management quota, a student of their own community/language in preference to a student of another community even though that other student is more

meritorious. However, whilst selecting/admitting students of their community/language the inter-se merit of those students cannot be ignored. In other words whilst selecting/admitting students of their own community/language they cannot ignore the inter-se merit amongst students of their community/language. Admission, even of members of their community/language, must strictly be on the basis of merit except that in case of their own students it has to be merit inter-se those students only. Further if the seats cannot be filled up from members of their community/language, then the other students can be admitted only on the basis of merit based on a common entrance test conducted by government agencies.

It is brought to our notice of the Court that several institutions, have since long, had their own admission procedure and that even though they have been admitting only students of their own community no finger has ever been raised against them and no complaints have been made regarding fairness or transparency of the admission procedure adopted by them. These institutions submit that they have special features and that they stand on a different footing from other minority non-aided professional institutions. It is submitted that their cases are not based only on the right flowing from Article 30(1) but in addition they have some special features which requires that they be permitted to admit in the manner they have been doing for all these years. A reference was made to few such institutions i.e. Christian Medical College, Vellore, St. Johns Hospital, Islamic Academy of Education etc. The claim of these institutions was disputed. However the Court did not think it necessary to go into those questions. The Court left it open to the institutions which have been established and who have had their own admission procedure for, at least, the last 25 years to apply to the Committee set out hereinafter.

The Court directed that the respective State Government to appoint a permanent Committee which will ensure that the tests conducted by the association of colleges to fair and transparent. For each State a separate

Committee shall be formed. The Committee would be headed by a retired Judge of the High Court. The Judge to be nominated by the Chief Justice of that State. The other member, to be nominated by the Judge, would be a doctor or an engineer of eminence (depending on whether the institution is medical or engineering/technical). The Secretary of the State in charge of Medical or Technical Education, as the case may be, shall also be a member and act as Secretary of the Committee. The Committee will be free to nominate/co-opt an independent person of repute in the field of education as well as one of the Vice Chancellors of University in that State so that the total numbers of persons on the Committee do not exceed five. The Committee shall have powers to oversee the tests to be conducted by the association. This would include the power to call for the proposed question paper/s, to know the names of the paper setters and examiners and to check the method adopted to ensure papers are not leaked. The Committee shall supervise and ensure that the test is conducted in a fair and transparent manner. The Committee shall have power to permit an institution, which has been established and which has been permitted to adopt its own admission procedure for the last, at least, 25 years, to adopt its own admission procedure and if the Committee feels that the needs of such an institute are genuine, to admit, students of their community, in excess of the quota allotted to them by the State Government. Before exempting any institute or varying in percentage of quota fixed by the State, the State Government must be heard before the Committee. It is clarified that different percentage of quota for students to be admitted by the management in each minority or non-minority unaided professional college/s shall be separately fixed on the basis of their need by the respective State Governments and in care of any dispute as regards fixation of percentage of quota, it will be open to the management to approach the Committee. It was also clarified that no institute, which has not been established and which has not followed its own admission procedure for the last, at least, 25 years, shall be permitted to apply for or be granted exemption from admitting students in the manner set out hereinabove.

6.18. P. A. Inamdar and Ors. v State of Maharashtra and Ors.[195]

Seven Judges bench consisting of R. C. Lahoti, Y. K. Sabharwal, D. M. Dharmadhikari, Arun Kumar, G. P. Mathur, Tarun Chatterjee and P. K. Balasubramanyan JJ.

The Supreme Court delivered an unanimous judgment by 7 judges on August 12, 2005 declaring that the State can't impose its reservation policy on minority and non-minority unaided private colleges, including professional colleges.

This judgment was an attempt to bring clarity to two previous judgments by the Supreme Court viz, *T. M. A Pai Foundation and Ors v State of Karnataka and Ors*. delivered on 31st October, 2002 and Islamic Academy of Education and Anr. V State of Karnataka and Ors delivered on 14th August 2003.

The Supreme Court in its judgment on 12th August, 2005 ruled on the following issues in relation to minority and non-minority unaided higher education institutions.

- Reservation policy,
- Admission policy,
- Fee structure,
- Regulation and control by the State and
- The role of committees dealing with admission and fees,

Reservation policy

[195] AIR2005SC3226, (2004)8SCC139, MANU/SC/0482/2005

Neither the policy of reservation can be enforced by the State nor any quota or percentage of admissions can be carved out to be appropriated by the State in a minority or non-minority unaided educational institution.

Minority institutions are free to admit students of their own choice including students of non-minority community as also members of their own community from other States, both to a limited extent only and not in a manner and to such an extent that their minority educational institution status is lost.

So far as appropriation of quota by the State and enforcement of its reservation policy is concerned, the Court did not see much of difference between non-minority and minority unaided educational institutions. The State cannot insist on private educational institutions which receive no aid from the State to implement State's policy on reservation for granting admission on lesser percentage of marks, i.e. on any criterion except merit.

Merely because the resources of the State in providing professional education are limited, private educational institutions, which intend to provide better professional education, cannot be forced by the State to make admissions available on the basis of reservation policy to less meritorious candidate. Unaided institutions, as they are not deriving any aid from State funds, can have their own admissions if fair, transparent, non-exploitative and based on merit.

A limited reservation of seats, not exceeding 15%, in our opinion, may be made available to NRIs depending on the discretion of the management subject to two conditions. First, such seats should be utilized bona fide by the NRIs only and for their children or wards. Secondly, within this quota, the merit should not be given a complete go-by. The amount of money, in whatever form collected from such NRIs, should be utilized for benefiting students such as from economically weaker sections of the society, whom, on well defined criteria, the educational institution may admit on subsidized payment of their fee. To prevent misutilization of such quota or any malpractice referable to

NRI quota seats, suitable legislation or regulation needs to be framed. So long as the State does not do it, it will be for the Committees (constituted pursuant to the judgment in the Islamic Academy of Education case) to regulate.

Admission policy

Up to the level of undergraduate education, the minority unaided educational institutions enjoy total freedom**.**

Presumably this means upto and including undergraduate education in non-technical or non-professional courses, since the Court treats technical and professional education differently below.

However, different considerations would apply for graduate and post-graduate level of education, as also for technical and professional educational institutions**.** Such education cannot be imparted by any institution unless recognized by or affiliated with any competent authority created by law, such as a University, Board, Central or State Government or the like. Excellence in education and maintenance of high standards at this level are a must. To fulfill these objectives, the State can and rather must, in national interest, step in. The education, knowledge and learning at this level possessed by individuals collectively constitute national wealth.

In minority educational institutions, aided or unaided, admissions shall be at the State level. Transparency and merit shall have to be assured**.** The State can also provide a procedure of holding a common entrance test in the interest of securing fair and merit-based admissions and preventing mal-administration.

Whether minority or non-minority institutions, there may be more than one similarly situated institutions imparting education in any one discipline, in any State. The same aspirant seeking admission to take education in any one discipline of education shall have to purchase admission forms from several institutions and appear at several admission tests conducted at different places

on same or different dates and there may be a clash of dates. If the same candidate is required to appear in several tests, he would be subjected to unnecessary and avoidable expenditure and inconvenience. There is nothing wrong in an entrance test being held for one group of institutions imparting same or similar education. Such institutions situated in one State or in more than one State may join together and hold a common entrance test or the State may itself or through an agency arrange for holding of such test. Out of such common merit list the successful candidates can be identified and chosen for being allotted to different institutions depending on the courses of study offered, the number of seats, the kind of minority to which the institution belongs and other relevant factors**.** Such an agency conducting Common Entrance Test (CET, for short) must be one enjoying utmost credibility and expertise in the matter. This would better ensure the fulfillment of twin objects of transparency and merit**.**

The Court seems to be recommending an entrance test like Common Admission Test (CAT) conducted by the IIMs for management admissions, which is accepted as the criteria for admissions by over 80 institutions apart from the IIMs. This works very well for management courses and could well be extended to other domains.

Pai Foundation has held that minority unaided institutions can legitimately claim unfettered fundamental right to choose the students to be allowed admissions and the procedure therefore subject to its being fair, transparent and non-exploitative**.** The same principle applies to non-minority unaided institutions**.**

Fee Structure

To set up a reasonable fee structure is also a component of "the right to establish and administer an institution" within the meaning of Article 30(1) of the Constitution, as per the law declared in the Pai Foundation case. Every institution is free to devise its own fee structure subject to the limitation that

there can be no profiteering and no capitation fee can be charged directly or indirectly, or in any form.

According to the Constitution bench in the Islamic Academy Case, a provision for reasonable surplus can be made to enable future expansion. The relevant factors which would go into determining the reasonability of a fee structure, in the opinion of majority in the judgment in the Islamic Academy Case are:

(i) the infrastructure and facilities available,

(ii) the investments made,

(iii) salaries paid to the teachers and staff,

(iv) future plans for expansion and betterment of the institution etc.

S.B. Sinha, in his opinion in the judgment in the Islamic Academy Case defined what is 'capitation' and 'profiteering', quoting Black's Law Dictionary, Fifth edition as: "Taking advantage of unusual or exceptional circumstances to make excessive profits" and also said that reasonable surplus should ordinarily vary from 6 per cent to 15 per cent for utilization in expansion of the system and development of education.

Presumably the Court in this judgment concurs with Justice Sinha's opinion in the Islamic Academy Case on anything up to 15% being a reasonable surplus. Justice Sinha in his opinion also stated "Future planning or improvement of facilities may be provided for. An institution may want to invest in an expensive device (for medical colleges) or a powerful computer (for technical college). These factors are also required to be taken care of."

Despite the legal position, this Court cannot shut its eyes to the hard realities of commercialization of education and evil practices being adopted by many institutions to earn large amounts for their private or selfish ends. If capitation fee and profiteering is to be checked, the method of admission has to be regulated so that the admissions are based on merit and transparency and the

students are not exploited. It is permissible to regulate admission and fee structure for achieving the purpose just stated.

Regulation and Control by the State

The judgment in the Pai Foundation Case is unanimous on the view that the right to establish and administer an institution, the phrase as employed in Article 30(1) of the Constitution (Right of minorities to establish and administer educational institutions), comprises of the following rights:

(a) to admit students;

(b) to set up a reasonable fee structure;

(c) to constitute a governing body;

(d) to appoint staff (teaching and non-teaching); and

(e) to take action if there is dereliction of duty on the part of any of the employees.

A minority educational institution may choose not to take any aid from the State and may also not seek any recognition or affiliation. Such institutions cannot indulge in any activity which is violative of any law of the land. They are free to admit all students of their own minority community if they so choose to do. (para 145, Pai Foundation)

Affiliation or recognition by the State or the Board or the University competent to do so, cannot be denied solely on the ground that the institution is a minority educational institution. However, the urge or need for affiliation or recognition brings in the concept of regulation by way of laying down conditions consistent with the requirement of ensuring merit, excellence of education and preventing mal-administration**.** For example, provisions can be made indicating the quality of the teachers by prescribing the minimum qualifications that they must possess and the courses of studies and curricula. The existence of infrastructure sufficient for its growth can be

stipulated as a pre-requisite to the grant of recognition or affiliation. However, there cannot be interference in the day-to-day administration.

The essential ingredients of the management, including admission of students, recruiting of staff and the quantum of fee to be charged, cannot be regulated.

Apart from the generalized position of law that right to administer does not include right to mal-administer, an additional source of power to regulate by enacting condition accompanying affiliation or recognition exists. Balance has to be struck between the two objectives:

(i) that of ensuring the standard of excellence of the institution, and

(ii) that of preserving the right of the minority to establish and administer its educational institution.

Subject to reconciliation of the two objectives, any regulation accompanying affiliation or recognition must satisfy the triple tests:

1) the test of reasonableness and rationality,

2) the test that the regulation would be conducive to making the institution an effective vehicle of education for the minority community or other persons who resort to it, and

3) that there is no in-road on the protection conferred by Article 30(1) of the Constitution, that is, by framing the regulation the essential character of the institution being a minority educational institution, is not taken away. (para 122, Pai Foundation)

Role of Committees dealing with Admissions and Fees

The two committees for monitoring admission procedure and determining fee structure in the judgment of Islamic Academy, are in our view, permissive as regulatory measures aimed at protecting the interest of the student community as a whole as also the minorities themselves, in maintaining required

standards of professional education on non-exploitative terms in their institutions. The suggestion made on behalf of minorities and non-minorities that the same purpose for which Committees have been set up can be achieved by post-audit or checks after the institutions have adopted their own admission procedure and fee structure, is unacceptable for the reasons shown by experience of the educational authorities of various States. Unless the admission procedure and fixation of fees is regulated and controlled at the initial stage, the evil of unfair practice of granting admission on available seats guided by the paying capacity of the candidates would be impossible to curb.

Non-minority unaided institutions can also be subjected to similar restrictions which are found reasonable and in the interest of student community. Professional education should be made accessible on the criterion of merit and on non-exploitative terms to all eligible students on a uniform basis.

A fortiori, we do not see any impediment to the constitution of the Committees as a stopgap or adhoc arrangement made in exercise of the power conferred on this Court by Article 142 of the Constitution until a suitable legislation or regulation framed by the State steps in. Such Committees cannot be equated with Unni Krishnan Committees which were supposed to be permanent in nature.

However, we would like to sound a note of caution to such Committees. It was pointed out by citing concrete examples that some of the Committees have indulged in assuming such powers and performing such functions as were never given or intended to be given to them by Islamic Academy.

We expect the Committees, so long as they remain functional, to be more sensitive and to act rationally and reasonably with due regard for realities. They should refrain from generalizing fee structures and, where needed, should go into accounts, schemes, plans and budgets of an individual institution for the purpose of finding out what would be an ideal and reasonable fee structure for that institution.

We make it clear that in case of any individual institution, if any of the Committees is found to have exceeded its powers by unduly interfering in the administrative and financial matters of the unaided private professional institutions, the decision of the Committee being quasi-judicial in nature, would always be subject to judicial review.

6.19 Overview

Researcher studied the cases dealt by Supreme Court interpreting the rights of minority educational institutes. It has been observed that the Court in Sidhrajbhai's Case[196] held that the rights under Article 30(1) were absolute and regulations in the interest of the institution can be imposed. In the St. Stephan's College case[197] and there after the Court has held that the rights were not absolute and regulations in the interest of nation can also be imposed.

-x-x-x-x-x-

[196] AIR 1963 SC 540
[197] AIR 1992 SC1630

CHAPTER VII

Minority Rights: Establishment of University

7.1. Introduction

In *Azeez Basha v Union of India*,[198] the Supreme Court has delivered an important judgment deciding over the extent of Constitutional Protection available to Pre- Constitution Minority University.

In most of the cases Courts have upheld the rights of religious and linguistic Minorities under Articles 29 and 30 of Constitution of India. As an ultimate interpreter of the Constitutional rights of the people the Courts have performed its duty as preserver of minority rights against possible violations. It is appreciating to observe that the Courts have been consistent in upholding the minority rights and have been committed to social cause. To substantiate the view point researcher would like to cite a case of *Bombay Education Society v State of Bombay*[199] were High Court of Bombay held that minority rights preserve freedom of choice in education and concomitant right of a parent to direct the education of his child. *In re Kerala Education Bill, 1957 Case*[200] Hon'ble Chief Justice Shri S. R. Das emphasized:

"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 (of the minorities) and thereby honour our sacred obligation to the minority communities who are our own."

Azeez Basha's Case[201] relating to Aligarh Muslim University has been an exception. This is the case in which Supreme Court on narrow, technical

[198] AIR 1968 SC 662
[199] AIR 1954 Bom. 468
[200] AIR 1958 SC 956
[201] AIR 1968 S.C. 662

grounds, held that the Muslim community that strived to establish the Aligarh Muslim University with its property, money and considerable endowments had not establish the University, and that provisions of the 1920 Act did not vest the administration in Muslims

H. M. Seervai, a leading Constitutional lawyer, who was also the member of Minority commission, expressed his regret over the view taken by Supreme Court in Azeez Basha's Case –

"It is the first case in which the Supreme Court has departed from the broad spirit in which it had decided cases on cultural and educational rights of minorities... It is submitted that the decision is clearly wrong and productive of grave public mischief and it should be overruled."[202]

Researcher hereunder discusses the History of establishment of Aligarh Muslim University, important provisions of 1920 Act, Amendments of 1951 and 1965 which were challenged in the Court, contentions of the parties and the decision of the Court. The decision has been critically analyzed taking into consideration the views of eminent jurist and Constitutional experts. Aligarh Muslim University Act was amended in 1981.The amendments are elaborated for brevity. Relying on the 1981 amendment Aligarh Muslim University reserved 50 per cent seat in for Post Graduate medical Courses for muslims, this was challenged in Allahabad High Court, Where the Court held that Judgment of Azeez Basha still hold good even after 1981 amendment. Double bench too held the same view. The matter is pending in the Supreme Court. While this matter regarding Aligarh Muslim University is yet to be decided by the Apex court, the newly formed National Commission of Minority Education Institute has declared Jamia Milia Islamia University as Minority University. Researcher has discussed the developments leading to such declaration.

[202] H.M. Seervai, *Constitutional Law of India,* Universal Law Publishing Co. Pvt. Ltd, Fourth Edition, 1993. Reprint 2007.

7.2. History of Establishment of Aligarh Muslim University

In1870 Sir Syed Ahmed Khan thought that, the backwardness of the Muslim community was due to their neglect of modern education. He therefore conceived the idea of imparting liberal education to Muslims in literature and science while at the same time instruction was to be given in Muslim religion and traditions also. With this object in mind, he organized a Committee to devise ways and means for educational regeneration of Muslims and in May 1872 a society called the Muhammadan Anglo-Oriental College Fund Committee was started for collecting subscriptions to realize the goal that Sir Syed Ahmed Khan had conceived. In consequence of the activities of the committee a school was opened in May 1873. In 1876, the school became a High School and in 1877 Lord Lytton, then Viceroy of India, laid the foundation stone for the establishment of a college. The Muhammadan Anglo Oriental College, Aligarh was established thereafter and was, it is said a flourishing institution by the time Sir Syed Ahmed Khan died in 1898.

It is said that thereafter the idea of establishing a Muslim University gathered strength from year to year at the turn of the century and by 1911 some funds were collected and a Muslim University Association was established for the purpose of establishing a teaching University at Aligarh. Long negotiations took place between the Association and the Government of India, which eventually resulted in the establishment of the Aligarh University in 1920 by the 1920-Act. It may be mentioned that before that a large sum of money was collected by the Association for the University as the Government of India had made it a condition that rupees thirty lakhs must be collected for University before it could be established. Further it seems that the existing Muhammadan Anglo Oriental College was made the basis of the University and was made over to the authorities established by the 1920-Act for the administration of the University along with the properties and funds attached to the college, the major part of

which had been contributed by Muslims though some contributions were made by other communities as well.

7.2.1. Major provisions of Aligarh University Act 1920

It is necessary now to refer in some detail to the provisions of the 1920-Act to see how the Aligarh University came to be established. The long title of the 1920-Act is in these words: "An Act to establish and incorporate a teaching and residential Muslim University at Aligarh".

The preamble says that "it is expedient to establish and incorporate a teaching and residential Muslim University at Aligarh, and to dissolve the Societies registered under the Societies Registration Act, 1860, which are respectively known as the Muhammadan Anglo-Oriental College, Aligarh and the Muslim University Association, and to transfer and vest in the said University all properties and rights of the said Societies and the Muslim University Foundation Committee". It will be seen from this that the two earlier societies, one of which was connected with the Muhammadan Anglo Oriental College and the other had been formed for collecting funds for the establishment of the University at Aligarh, were dissolved and all their properties and rights and also of the Muslim University Foundation Committee, which presumably collected funds for the proposed University were transferred and vested in the University established by the 1920-Act.

Section 3 of the 1920-Act laid down that "the First Chancellor, Pro-Chancellor and Vice-Chancellor shall be the persons appointed in this behalf by a notification of the Governor General in Council in the Gazette of India and the persons specified in the schedule [shall be] the first members of the Court" and they happened to be all Muslim. Further s. 3 constituted a body corporate by the name of the Aligarh Muslim University and this body corporate was to have perpetual succession and a Common Seal and could sue and be sued by that name. Section 4 dissolved that Muhammadan Anglo Oriental College and the

Muslim University Association and all property, movable and immovable, and all rights, powers and privileges of the two said societies, and all property, movable and immovable, and all rights, powers and privileges of the Muslim University Foundation Committee were transferred and vested in the Aligarh University and were to be applied to the object and purposes for which the Aligarh University was incorporated. All dates, liabilities and obligations of the said societies and Committee were transferred to the University, which was made responsible for discharging and satisfying them. All references in any enactment to either of the societies or to the said Committee were to be construed as references to the University. It was further provided that any will, deed or other documents, whether made or executed before or after the commencement of the 1920-Act, which contained any bequest, gift or trust in favor of any of the said societies or of the said Committee would, on the commencement of the 1920-Act be construed as if the University had been named therein instead of such society or Committee. The effect of this provision was that the properties endowed for the purpose of the Muhammadan Anglo Oriental College were to be used for the Aligarh University after it came into existence. These provisions will show that the three previous bodies legally came to an end and everything that they were possessed of was vested in the University as established by the 1920-Act. Section 5 provides for the powers of the University including the power to hold examinations and to grant and confer degrees and other academic distinctions.

Section 6 is important. It laid down that "the degrees, diplomas and other academic distinctions granted or conferred to or on person by the University shall be recognised by the Government as are the corresponding degrees, diplomas and other academic distinctions granted by any other University incorporated under any enactment". Section 7 provided for reserve funds including the sum of rupees thirty lakhs. Section 8 provided that "the University shall, subject to the provisions of this Act and the Ordinances, be open to all persons of either sex and of whatever race, creed or class"; which

shows that the University was not established for Muslim alone. Under section 9 the Court was given the power to make Statutes providing that instruction in the Muslim religion would be compulsory in the case of Muslim students. Sections 10, 11 and 12 made other provisions necessary for the functioning of a University but they are not material for our purpose.

Section 13 is another important section. It provided that "the Governor General shall be the Lord Rector of the University". Further sub-section (2) of S. 13 provided that "the Lord Rector shall have the right to cause an inspection to be made by such person or persons as he may direct, of the University, its buildings, laboratories, and equipment, and of the institution maintained by the University, and also of the examinations, teaching and other work conducted or done by the University, and to cause an inquiry to be made in like manner in respect of any matter connected with the University. The Lord Rector shall in every case give notice to the University of his intention to cause an inspection or inquiry." After the enquiry, the Lord Rector had the power to address the Vice-Chancellor with reference to the result of such inspection and inquiry and the Vice-Chancellor was bound to communicate to the Court the views of the Lord Rector with such advice as the Lord Rector might offer upon the action to be taken thereon. The Court was then required to communicate through the Vice-Chancellor to the Lord Rector such action if any as was proposed to be taken or was taken upon the result of such inspection or inquiry. Finally the Lord Rector was given the power where the Court did not, within reasonable time, take action to the satisfaction of the Lord Rector to issue such directions as he thought fit after considering any explanation furnished or representation made by the Court and the Court was bound to comply with such directions. There provisions clearly bring out that the final control in the matter was with the Lord Rector who was the Governor-General of India.

Then comes S. 14 which is again an important provision, which provided for the Visiting Board of the University, which consisted of the Governor, the members of the Executive Council the Ministers, one member nominated by the Governor and one member nominated by the Minister in charge of Education. The Visiting Board had the power to inspect the University and to satisfy itself that the proceedings of the University were in conformity with the Act, Statutes and Ordinances, after giving notice to the University of its intention to do so. The Visiting Board was also given the power, by order in writing, to annul any proceedings not in conformity with the Act, Statutes and Ordinances, provided that before making such and order, the Board had to call upon the University to show cause why such an order should not be made, and to consider such cause if shown within reasonable time. This provision, though not so all - pervasive as the provision in s. 13 of the 1920-Act, shows that the Visiting Board had also certain over-riding power in case the University authorities acted against the Act, Statutes and Ordinances. There is no condition that the Lord Rector and the members of the Visiting Board must belong to the Muslim community.

Sections 15 to 21 are not material for our purposes. They made provisions for officers of the University and Rectors and laid down that "the Powers of officers of the University other than the Chancellor, the Pro-Chancellor, the Vice-Chancellor and the Pro-Vice-Chancellor shall be prescribed by the Statutes and the Ordinances". Section 22 provided for the authorities of the University, namely, the Court, the Executive Council and the Academic Council and such other authorities as might be declared by the Statutes to be authorities of the University. Section 23 provided for the constitution of the Court, and the proviso to sub-section (1) has been greatly stressed on behalf of the petitioners which laid down that "no person other than a Muslim shall be a member thereof". It may be added here that the Select Committee which went into the Bill before the 1920-Act was passed was not very happy about this proviso and observed that :

"In reference to the Constitution of the Court we have retained the provision that no person other than Muslim shall be a member thereof. We have done this as we understand that such a provision is in accordance with the preponderance of Muslim feeling though some of us are by no means satisfied that such a provision is necessary."

By section 23(2), the Court was to be the supreme governing body of the University and would exercise all the powers of the University, not otherwise provided for by the 1920-Act, the Statutes, the Ordinances and the Regulations. It was given the power to review the acts of the Executive and the Academic Councils, save where such Councils had acted in accordance with powers conferred on them under the Act, the Statutes or the Ordinances and to direct that necessary action be taken by the Executive or the Academic Council, as the case might be, on any recommendation of the Lord Rector. The power of making Statutes was also conferred on the Court along with other powers necessary for the functioning of the University.

Section 24 dealt with the Executive Council, s. 25 with the Academic Council and s. 26 with other authorities of the University. Section 27 laid down what the Statues might provide. Section 28 dealt with the question of the first Statutes and how they were to be amended, repealed and added to. There is an important provision in s. 28 which laid down that "no new Statute or amendment or repeal of an existing Statute shall have any validity, until it has been submitted through the Visiting Board (which may record its opinion thereon) to the Governor General in Council, and has been approved by the latter, who may sanction, disallow or remit it for further consideration." This provision clearly shows that the final power over the administration of the University rested with the Governor General in Council. Section 29 dealt with Ordinances and what they could provide and s. 30 provided which authorities of the University could make Ordinances. Section 30(2) provided that, "the first Ordinances shall be framed as directed by the Governor General in

Council....." and sub-s. (3) thereof laid down that "no new Ordinances, or amendment or repeal of an existing Ordinance shall have any validity until it has been submitted through the Court and the Visiting Board (which may record its opinion thereon) to the Governor General in Council, and has obtained the approval of the latter, who may sanction, disallow or remit it for further consideration". This again shows that even Ordinances could not be made by the University without the approval of the Governor General in Council. If any dispute arose between the Executive and the Academic Council as to which had the power to make an Ordinance, either Council could represent the matter to the Visiting Board and the Visiting Board had to refer the same to a tribunal consisting of three members, one of whom was to be nominated by the Executive Council, one by the Academic Council, and one was to be a Judge of the High Court nominated by the Lord Rector. This again shows that in the matter of such disputes, the Court which is called the supreme governing body of the University did not have the power to resolve it. Section 31 provided for the making of Regulations, which had to be consistent with the Statutes and Ordinances. It is only the Regulations which did not require the approval of the Governor General before they came into force. Section 32 provided for admission of students to the University and sub-s. (4) thereof provided that "the University shall not save with the previous sanction of the Governor General in Council recognize (for the purpose of admission to a course of study for a degree) as equivalent to its own degrees, any degree conferred by any other University or as equivalent to the Intermediate Examination of an Indian University, any examination conducted by any other authority". This shows that in the matter of admission the University could not admit students of other institutions unless the Governor General in Council approved the degree or any other examination of the institutions other than Indian Universities established by law. Section 33 provided for examinations, s. 34 for annual report and s. 35 for annual accounts. Section 36 to 38, provided for supplementary matters like, conditions of service of officers and teachers, provident and pension funds, filling of casual vacancies and are not material

for our purposes. Section 39 laid down that "no act or proceeding of any authority of the University shall be invalidated merely by reason of the existence of vacancy or vacancies among its members". Section 40 is important and laid down that "if any difficulty arises with respect to the establishment of the University or any authority of the University or in connection with the first meeting of any authority of the University, the Governor General in Council may by order make any appointment or do anything which appears to him necessary or expedient for the proper establishment of the University or any authority thereof or for the first meeting of any authority of the University." This again shows the power of the Governor General in Council in the matter of establishment of the University.

This brings us to the end of the sections of the 1920-Act. There is nothing anywhere in any section of the Act which vests the administration of the University in the Muslim community. The fact that in the proviso to s. 23(1) it is provided that the Court of the University shall consist only of Muslims does not necessarily mean that the administration of the University was vested or was intended to be vested in the Muslim minority. If anything, some of the important provisions to which we have already referred show that the final power in almost every matter of importance were in the Lord Rector, who was the Governor General or in the Governor General in Council.

This was followed with the schedule which provided for the first Statutes of the Aligarh University. These Statutes provided for the Rectors of the University, the Vice-Chancellor, Pro-Vice-Chancellor, Treasurer, Register, Proctor and Librarian, the Court, constitution of the Court, the first Court, meetings of the Court and the powers of the Court, the Executive Council, the powers of the Executive Council, the Academic Council and its powers, departments of studies, appointments, register of graduates, convocations, Committees and so on. The Annexure to the 1920-Act gave the names of the Foundation Members

of the Court numbering 124 who were all Muslims and who were to hold office for five years from the commencement of the Court.

7.2.2. Amendments of 1951 and 1965

In 1951, the 1951-Act was passed. It made certain changes in the 1920-Act mainly on account of the coming into force of the Constitution. Here reference is made in regards only to such changes as are material for research purposes. The first material change was the deletion of s. 9 of the 1920-Act which gave power to the Court to make Statutes providing for compulsory religious instruction in the case of Muslim students. This amendment was presumably made in the interest of the University in view of Art.28(3) of the Constitution which lays down that "no person attending any educational institution recognized by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto." It was necessary to delete s. 9 as otherwise the University might have lost the grant which was given to it by the Government of India. Further s. 8 of the 1920-Act was amended and the new section provided that "the University shall be open to persons of either sex and of whatever race, creed, caste, or class, and it shall not be lawful for the University to adopt or impose on any person, any test whatsoever of religious belief or profession in order to entitle him to be admitted therein, as a teacher or student, or to hold any office therein, or to graduate thereat, or to enjoy or exercise any privilege thereof, except in respect of any particular benefaction accepted by the University, where such test is made a condition thereof by any testamentary or other instrument creating such benefaction." The new s. 8 had also a proviso laying down that "nothing in this section shall be deemed to prevent religious instruction being given in the manner prescribed by the Ordinances to those who have consented to receive it". Clearly section 9 was

deleted and s. 8 was amended in this manner to bring the law into conformity with the provisions of the Constitution and for the benefit of the University so that it could continue to receive aid from the Government. Some amendment was also made in s. 13 in view of the changed constitutional set-up and in place of the Lord Rector, the University was to have a Visitor. Section 14 was also amended and the power of the Visiting Board was conferred on the Visitor by addition of a new sub-s. (6).

The next substantial change was that the proviso to s. 23(1) which required that all members of the Court would only be Muslims was deleted. Other amendments are not material for our purpose as they merely relate to administrative details concerning the University.

It will thus be seen that by virtue of the 1951-Act non-Muslims could also be members of the Court. But the Court still remained the supreme governing body of the University as provided by s. 23(1) of the 1920-Act. It is remarkable that though the proviso to s. 23(1) was deleted as far back as 1951, there was no challenge to the 1951 Act till after Ordinance No. II of 1965 was passed. The reason for this might be that there was practically no substantial change in the administrative set-up of the 1920-Act and it was only when a drastic change was made by the Ordinance of 1965, followed by the 1965-Act, that challenge was made not only to the 1965 Act but also to the 1951 Act in so far as it did away with the proviso to s. 23(1).

This brings us to the changes made in the 1965-Act which have occasioned the present challenge. The main amendment in the 1965-Act was in s. 23 of the 1920-Act with respect to the composition and the powers of the Court of the University. Sub-sections (2) and (3) of the 1920-Act were deleted, with the result that the Court no longer remained the supreme governing body and could no longer exercise the powers conferred on it by Sub-ss. (2) and (3) of s. 23. In place of these two sub-sections, a new sub-section (2) was put in which reduced the functions of the Court to three only, namely,

"(a) to advise the Visitor in respect of any matter which may be referred to the Court for advise;

(b) to advise any other authority of the University in respect of any matter which may be referred to the Court for advise; and

(c) to perform such other duties and exercise such other powers as may be assigned to it by the Visitor or under this Act".

It further appears from the amendments of Sections 28, 29, 34 and 38 that the powers of the Executive Council were correspondingly increased. The Statutes were also amended and many of the powers of the Court were transferred by the amendment to the Executive Council. Further the constitution of the Court was drastically changed by the amendment of the 8th Statute and it practically became a body nominated by the Visitor except for the Chancellor, the Pro-Chancellor, the members of the Executive Council who were ex-officio members and three members of Parliament, two to be nominated by the speaker of the House of the People and one by the Chairman of the Council of States. Changes were also made in the constitution of the Executive Council. Finally the 1965-Act provided that "every person holding office as a member of the Court or the Executive Council, as the case may be, immediately before the 20th day of May 1965 (on which date Ordinance No. II of 1965 was promulgated) shall on and from the said date cease to hold office as such". It was also provided that until the Court or the Executive Council was reconstituted, the Visitor might by general or special order direct any officer of the University to exercise the powers and perform the duties conferred or imposed by or under the 1920-Act as amended by the 1965-Act on the Court or the Executive Council as the case may be.

7.2.3. Major Contention of petitioners

In this case the point at issue was the constitutional validity of the Aligarh Muslim University Amending Acts of 1951 and 1965. The contention of the petitioners was that by these drastic amendments in 1965 the Muslim minority was deprived of the right to administer the Aligarh University and that this deprivation was in violation of Article 30(1) of the Constitution.

The main provisions of the Amending Acts under dispute were that

(a) the 1951 Act deleted section 9 of the 1920 Act under which the university court had power to make statutes providing for compulsory religious instructions in case of Muslim students;

(b) it amended section 8 of 1920 Act to the effect, in the main, that it would be unlawful for the university "to adopt or to impose on any person, any test whatsoever of religious belief or profession' for the sake of securing admission in the university;

(c) and deleted proviso to section 23(1) of 1920 Act which required that all members of the court would only be Muslims;

(d) the 1965 Act drastic took away their right to administer guaranteed in Article 30(l) of the Constitution.

7.2.4. Contention of Respondents

The respondents, however, contended that the Aligarh University was established not only by the Muslims but by the Government of India by virtue of a Statute and, therefore, the Muslim minority could not claim any fundamental right to administer the Aligarh University under Article 30(1).

The words in Article 30(1) "Establish and Administer" to be read conjunctively.

Under 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 Court proceeded on the assumption that Muslims were a minority based on religion and Article 30(1) conferred on religious minority community to establish and administer educational institutions of their choice meaning

thereby that where a religious minority establishes an educational institution, it will have the right to administer that.

It was argued that even though the religious minority may not have established the educational institution, it will have the right to administer it, if by some process it had been administering the same before the Constitution came into force.

The Court was of the opinion, that the minority will have the right to administer educational institutions of their choice provided they have established them, but not otherwise. The Article cannot be read to mean that even if the educational institution has been established by somebody else, any religious minority would have the right to administer it because, for some reason or other, it might have been administering it before the Constitution came into force. The words "establish and administer" in the Article must be read conjunctively and so read it gives the right to the minority to administer an educational institution provided it has been established by it. The Court opined that the two words in Article 30(1) must be read together and so read the Article gives the right to the minority to administer institutions established by it. If the educational institution has not been established by a minority it cannot claim the right to administer it under Article 30 (1).

Crucial Question was: Whether the Aligarh University was established by the Muslim minority?

If it was established by Muslim minority, the minority would certainly have the right to administer it and not otherwise.

The Court began with the presumption that the words "educational institutions" are of very wide import and would include a university also. This was not disputed on behalf of the Union of India and therefore it may be accepted that a religious minority had the right to establish a university under Article 30(1)

Court held That: Aligarh Muslim university was established by the Central Legislature by the 1920-Act and not by Muslim minority.

The position with respect to the establishment of Universities before the Constitution came into force in 1950 was this. There was no law in India which prohibited any private individual or body from establishing a university and it was therefore open to a private individual or body to establish a university. Thus in law in India there was no prohibition against establishment of universities by private individuals or bodies and if any university was so established it must of necessity be granting degrees before it could be called a university. But though such a university might be granting degrees it did not follow that the Government of the country was bound to recognize those degrees. As a matter of fact as the laws stood up to the time the Constitution came into force, the Government was not bound to recognize degrees of universities established by private individuals or bodies and generally speaking the Government only recognized degrees of universities established by it by law. No private individual or body could before 1950 insist that the degrees of any university established by him or it must be recognized by Government. Such recognition depended upon the will of Government generally expressed through statue. The importance of the recognition of Government in matters of this kind cannot be minimized. This position continued even after the Constitution came into force. It was only in 1956 that by sub-. (1) of S. 22 of University Grants Commission Act, (No. 3 of 1956) it was laid down that "the right of conferring or granting degrees shall be exercised only by a University established or incorporated by or under a Central Act, a Provincial Act or a State Act or an institution deemed to be a University under section 3 or an institution specially empowered by an Act of Parliament to confer or grant degrees". Sub-section (2) thereof further provided that "save as provided in sub-s. (1), no person or authority shall confer, or grant, or hold himself or itself as entitled to confer or grant any degree". Section 23 further prohibited the use of the word "university" by an educational institution unless it is established by

law. It was only thereafter that no private individual or body could grant a degree in India. Therefore it was possible for the Muslim minority to establish a university before the Constitution came into force, though the degrees conferred by such a university were not bound to be recognized by Government.

Therefore when the Aligarh University was established in 1920 and by S. 6 its degrees were recognized by Government, an institution was brought into existence which could not be brought into existence by any private individual or body for such individual or body could not insist upon the recognition of the degrees conferred by any university established by it. The enactment of S. 6 in the 1920-Act is a very important circumstance which shows that the Aligarh University when it came to be established in 1920 was not established by the Muslim minority, for the minority could not insist on the recognition by Government of the degrees conferred by any university established by it.

There was no Aligarh University existing till the 1920-Act was passed. It was brought into being by the 1920-Act and therefore Court held to have been established by the Central Legislature which by passing the 1920-Act incorporated it. The fact that it was based on the Muhammadan Anglo Oriental College would make no difference to the question as to who established the Aligarh University. The Court was clear as to who established the Aligarh University that is that ***it was the Central Legislature by enacting the 1920-Act that the established the said University.*** The Court had said that the Muslim minority could not establish a university whose degrees were bound to be recognized by Government as provide by s. 6 of 1920-Act; that one circumstance along with the fact that without the 1920-Act the University in the form that it had, could not come into existence shows clearly that the Aligarh University when it came into existence in 1920 was established by the Central Legislature by the 1920-Act. It may be that the 1920 Act was passed as a result of the efforts of the Muslim minority. But that does not mean that the

Aligarh University when it came into being under the 1920-Act was established by the Muslim minority.

Court interpreted the word “establish” in Article 30(1) as "to bring into existence".

The Court referred to many dictionaries to ascertain the meaning of the word “Establish”. In Bouvier's Law Dictionary, Third Edition, Vol. I, it has been said that the word "establish" occurs frequently in the Constitution of the United States and it is there used in different meanings; and five such meanings have been given, namely (1) to settle firmly, to fix unalterably, as to establish justice; (2) to make or form : as, to establish a uniform rule of naturalization; (3) to found, to create, to regulate; as, Congress shall have power to establish post offices; (4) to found, recognize, confirm or admit : as, Congress shall make no laws respecting an establishment of religion; (5) to create, to ratify, or confirm, as We, the people, etc., do ordain and establish this Constitution. Thus it cannot be said that the only meaning of the word "establish" is to found in the sense in which an institution is founded and court wanted to see in what sense the word has been used in our Constitution in the Article. In Shorter Oxford English Dictionary, Third Edition, the word "establish" has a number of meanings i.e. to ratify, confirm, settle, to found, to create. Here again founding is not the only meaning of the word "establish" and it includes creation also. In Webster' Third New International Dictionary, the word "establish" has been given a number of meanings, namely, to found or base squarely, to make firm or stable, to bring into assistance, create, make, start, originate. It will be seen that here also founding is not the only meaning; and the word also means "to bring into existence". The court was of the opinion that for the purpose of Art30 (1) the word meant "to bring into existence", and so the right given by Art. 30(1) to the minority is to bring into existence an educational institution, and if they do so, to administer it. We have therefore to see what happened in 1920 and who brought the Aligarh University into existence.

Court held that: Aligarh Muslim University was established by a 1920 -Act passed by Central legislature and not by muslim minority and therefore no amendment of the Act can be struck down as unconstitutional under Article 30(1).

From the history we have set out above, it will be clear that those who were in-charge of the Muhammadan Anglo Oriental College, the Muslim University Association and the Muslim University Foundation Committee were keen to bring into existence a university at Aligarh. There was nothing in laws then to prevent them from doing so, if they so desired without asking Government to help them in the matter. But if they had brought into existence a university on their own, the degrees of that university were not bound to be recognised by Government. It seemed to the court that it must have been felt by the persons concerned that it would be no use bringing into existence a university, if the degrees conferred by the said university were not to be recognised by Government. That could have been the reason why they approached the Government for bringing into existence a university at Aligarh, whose degrees would be recognised by Government and that is why according to the court, S. 6 of the 1920-Act laying down that "the degrees, diplomas and other academic distinctions granted or conferred to or on persons by the university shall be recognised by the Government....." It may be accepted for present purposes that the Muhammadan Anglo Oriental College and the Muslim University Association and the Muslim University Foundation Committee were institutions established by the Muslim minority and two of them were administered by Societies registered under the Societies Registration Act, (No. 21 of 1860). But if the Muhammadan Anglo Oriental College was to be covered into a university of the kind whose degrees were bound to be recognised by Government, it would not be possible for those who were in-charge of the Muhammadan Anglo Oriental College to do so. That is why the three institutions to which we have already referred approached the Government to bring into existence a university whose degrees would be recognised by Government. The 1920-Act

was then passed by the Central Legislature and the University of the Type that was established there under, namely, one whose degrees would be recognized by Government, came to be established. It was clearly brought into existence by the 1920-Act for it could not have been brought into existence otherwise. It was thus the Central Legislature which brought into existence the Aligarh University and must be held to have established it. It would not be possible for the Muslim minority to establish a university of the kind whose degrees were bound to be recognized by Government and therefore it must be held that the Aligarh University was brought into existence by the Central Legislature and the Government of India. If that is so, the Muslim minority cannot claim to administer it, for it was not brought into existence by it. Article 30(1), which protects educational institutions brought into existence and administered by a minority, cannot help the petitioners and any amendment of the 1920-Act would not be *ultra vires* to Article 30 (1) of the Constitution. The Aligarh University not having been established by the Muslim minority, any amendment of the 1920-Act by which it was established, would be within the legislative power of Parliament subject of course to the provisions of the Constitution. The Aligarh University not having been established by the Muslim minority, no amendment of the Act can be struck down as unconstitutional under Article 30(1).

Referring to various provisions of 1920 Act the Court held that Aligarh Muslim University was not administered by Muslims

It was not Muslims only who were administrating Aligarh University. It is true that the proviso to s. 23(1) of 1920-Act said that "no person other a Muslim shall be member of the Court", which was declared to be the supreme governing body of the Aligarh University and was to exercise all the powers of the University, not otherwise provided for by that Act. We have already referred to the fact that the Select Committee was not happy about this provision and

only permitted it in the Act out of deference to the wishes of preponderating Muslim opinion.

It appeared from paragraph 8 of the Schedule that even though the members of the Court had to be Muslims, the electorates were not exclusively Muslims. For example, sixty members of the Court had to be elected by persons who had made or would make donations of five hundred rupees and upwards to or for the purposes of the University. Some of these persons were and could be non-Muslims. Forty persons were to be elected by the Registered Graduates of the University, and some of the Registered Graduates were and could be non-Muslims, for the University was open to all persons of either sex and of whatever race, creed or class. Further fifteen members of the Court were to be elected by the Academic Council, the membership of which was not confined only to Muslims.

Besides there were other bodies like the Executive Council and the Academic Council which were concerned with the administration of the Aligarh University and there was no provision in the constitution of these bodies which confined their members only to Muslims. It will thus be seen that beside the fact that the members of the Court had to be all Muslims, there was nothing in the Act to suggest that the administration of the Aligarh University was in the Muslim minority as such. Besides the above, we have already referred to S. 13 which showed how the Lord Rector, namely, the Governor General had overriding powers over all matters relating to the administration of the University. Then there was S. 14 which gave certain over-riding powers to the Visiting Board. The Lord Rector was then the Viceroy and the Visiting Board consisted of the Governor of the United Provinces, the members of his Executive Council, the Ministers, one member nominated by the Governor and one member nominated by the Minister in charge of Education. These people were not necessarily Muslims and they had over-riding powers over the administration of the University. Then reference may be made to s. 28(2)(c) which laid down

that no new Statute or amendment or repeal of an existing Statute, made by the University, would have any validity until it had been approved by the Governor General in Council who had power to sanction, disallow or remit it for further consideration. Same powers existed in the Governor General in Council with respect to Ordinances. Lastly reference may be made to S. 40, which gave power to the Governor General in Council to remove any difficulty which might arise in the establishment of the University. These provisions in our opinion clearly show that the administration was also not vested in the Muslim minority; on the other hand it was vested in the statutory bodies created by the 1920-Act, and only in one of them, namely, the Court, there was a bar to the appointment of anyone else except a Muslim, though even there some of the electors for some of the members included non-Muslims. The Court was therefore of opinion that the ***Aligarh University was neither established nor administered by the Muslim minority*** and therefore there is no question of any amendment to the 1920-Act being unconstitutional under Article 30(1) for that Article does not apply at all to the Aligarh University.

7.2.5. Decision

According to the Court there was no dispute that the 1951 and 1965 Acts were within the competence of Parliament unless they are hit by any of the constitutional provisions which were referred above. As they were not hit by any of those provisions, these Acts were good and were not liable to be struck down *as ultra vires* to the Constitution. The petitions therefore fail and hereby dismissed. In the circumstances no order was made as to costs.

7.2.6 Critical analyses:

As per Mr H. M. Seervai[203] the meaning given by the court to the word "establish" was not correct. It was not disputed that "to found" is one of the

[203] H. M. Seervai; *Constitutional Law of India,* Universal Law Publishing Co. Pvt. Ltd. Vol. 2 Fourth Edition 1991, Reprint in 2007.

meanings of the verb “to establish”, and it is submitted that in the context, it is the correct meaning as it is clear from the definition of the verb “to found” namely, “set up or establish (esp. with endowments)”. The Muslim community established the University and provided it with its total endowments. Even if the definition given by court were correct, namely, “to bring the University into existence”, it is submitted that the Muslim community brought the University into existence, namely, by invoking the exercise by the sovereign authority of its legislative power. The Muslim Community provided lands, buildings, Colleges and endowments for the University and, without these, the University as a body corporate would be an unreal abstraction.

Researcher is of the opinion that following dictionary approach to ascertain the meaning of the word “establish” in Article 30(1) made the entire process mechanical. The Court instead could have interpreted the word in reference to Constitution, as an instrument of democracy.

When the Court had already concluded that the Aligarh Muslim University was established by Central legislature’s Act of 1920 then holding that “establish” in Article 30(1) means to “bring into existence” was preformed meaning and seems mere formality.

This case raises very pertinent question: Whether the University incorporated by law at the instance of a minority will become a State-institution?
The Court's opinion that the Aligarh University has been established by the Act of 1920, is a State-institution, and that that Act was a result of the efforts of the minority was immaterial, gives an affirmative answer.

According to the established procedure already incorporated into the University Grants Commission Act, 1956,—a university has to be incorporated by law. Sections 22 and 23 of this Act provide that only a university incorporated by law is entitled to be called a university and to award degrees. Section 24 makes

contravention of these two sections punishable with fine. Therefore a minority too, must get its university incorporated by law.

A minority then, has a right but not the necessary capacity to establish a university. Besides, if the minority runs an "unincorporated university," it is liable to punishment under section 24 of the University Grants Commission Act, and if it gets the university incorporated by law, its minority character has to be surrendered to the State.

All this conflicts with the Court's advisory opinion in *re Kerala Education Bill case*[204] where the Court held that, while granting aid and recognition to a minority institution, the government cannot demand to surrender of its minority character.

1981 Amendment

The 1981 amendment to the AMU Act, which *inter alia* talks of promoting "especially the educational and cultural advancement of the Muslims of India,"

Since, 1920 onwards, the long title and the preamble of the successive versions of the AMU Act read as follows: "An act to establish and incorporate a teaching and residential Muslim university at Aligarh". In 1981there was a significant alteration, with the much disputed word establish omitted, while it appeared in an altogether different section, namely, clause 1 in section 2. This clause is in fact a definition, a comprehensive definition of the word university which, in the "AMU case, means the educational institution of their choice established by the Muslims of India, which originated as the Muhammedan Anglo-Oriental College, Aligarh, and which was subsequently incorporated as the Aligarh Muslim University".

Subsequent to the Azeez Basha's Case judgment of the Hon'ble Supreme Court the Parliament enacted the Aligarh Muslim University Amendment Act 1981 (Act No. 62 of 1981) whereby amongst others the long title as well as Section 2

[204] AIR 1958 SC 956

(1) and 5 (2) (c) and Section 23 were substituted. The amended sections are reproduced below:--

Section 2 (l) "University" means the educational institution of their choice established by the Muslims of India, which originated as the Muhammadan Anglo-Oriental College, Aligarh and which was subsequently incorporated as the Aligarh Muslim University.

Section 5 (2) (c) to promote especially the educational and cultural advancement of the Muslims of India;

Section 23. The Court – (1) The Court shall consist of the Chancellor the Pro-Chancellor, the Vice-Chancellor and the Pro-Vice-Chancellor (if any) for the time being, and such other persons as may be specified in the Statutes.

(2) The Court shall be the supreme governing body, of the University and shall exercise all the powers of the University not otherwise provided for by this Act, the Statutes, the Ordinances and the Regulations and it shall have power to review the acts of executive and the Academic Councils (save where such Councils have acted in accordance with powers conferred on them under this Act, the Statutes or the Ordinances).

(3) Subject to the provisions of this Act, the Court shall exercise the following powers and perform the following duties, namely:-

(a) to make statutes and to amend or repeal the same;

(b) to consider Ordinances;

(c) to consider and pass resolutions on the annual report, the annual accounts and the financial estimates;

(d) to elect such persons to serve on the authorities of the University and to appoint such officers as may be prescribed by this Act or the Statutes; and

(e) to exercise such other powers and perform such other duties as may be conferred or imposed upon it by this Act or the Statutes."

The amendment made it clear that the Aligarh Muslim University not been "established" by-an act, whether in 1920 or 1951, but only "incorporated". Since, on the other hand, it could be argued that the AMU had been "established by the Muslims", nobody could dispute seriously that the said university thus came under the category of minority institutions provided for in Article 30 of the Constitution**.**

Two other provisions of the 1981 AMU Amendment were seemingly most satisfactory. Firstly, the Court was again recognized as the supreme governing body of the university, and it was considerably enlarged so as to make room for various Muslim constituencies. Secondly, the specific mission of, AMU was formally and clearly recognized. Sub-clauses c of section 5 (2) stated that (the university had the powers) “to promote especially the educational and cultural advancement of the Muslims- of India".

7.2.7. AMU admission policy challenged

Five connected writ petitions was filed by 34 petitioners who had obtained a degree of MBBS and claimed a right to be considered for admission to Post Graduate Medical Courses of Aligarh Muslim University. For admission to Post Graduate Medical Courses of Aligarh Muslim University three modes had been determined (a) 25% of the total seats were to be filled on the basis of All India Entrance Examination conducted by the All India Institute of Medical Sciences, New Delhi, commonly known as All India Entrance Examination; (b) The remaining 75% of the total seats had been divided to be filled as follows :

(I) 25% of the total sets are required to be filled on the basis of entrance examination conducted by the Aligarh Muslim University in respect of its

internal students commonly known as Entrance Examination for Internal Candidates; and

(II) The remaining 50% of the total seats are to be filled from external as well as Internal candidates on the basis of entrance examination to be conducted by the Aligarh Muslim University. These 50% seats which are required to be filled from internal as well as external candidates on the basis of entrance examination to be conducted by the Aligarh Muslim University was been reserved under resolution of the Admission Committee / Executive Council of Aligarh Muslim University in respect of Muslim candidates only. No reservation has been made for the SC- ST students. This 50 per cent reservation had been effected for 36 different postgraduate courses and involved 2000 seats.

Reservation of the entire 50% of the total seats to be filled on the basis of entrance examination conducted by the Aligarh Muslim University, had given rise to the writ proceedings. The reservation so made by the Aligarh Muslim University in favour of Muslim candidates only on the strength of it being a minority University entitled to the benefit of Article 30 of the Constitution of India was the bone of contention between the parties to these petitions.

In view of the rival contentions raised by the parties which have been briefly noticed herein above the following issues arise for determination by this Court in the present writ petitions:-

1. Whether the Aligarh Muslim University is a minority Institution entitled to protection under Article 30(1) of the Constitution of India and therefore it can provide for reservation of seats for Muslim candidates only. The said issue is to be decided with reference to the following sub-issues:-

(1) Whether the judgment and order of the Hon'ble Supreme Court in the case of Azeez Basha, AIR 1968 Supreme Court 662, is no more a good law in view of the change affected in the statutory provisions, vide amending Act 62 of 1981?

Whether the provisions of Act 62 of 1981 especially Section 2(1) and Section 5 (2) are retrospective in nature and have the effect of declaring Aligarh Muslim University as a minority institution within the meaning of Article 30 of the Constitution?

2. Whether the amended Section 2(1) and 5 (2) (c) are within the legislative competence of the Parliament and whether the said amendments are a brazen attempt to overrule the judgment of the Hon'ble Supreme Court in the case of Azeez Basha?

3. Whether the reservation of the entire 50% seats for Muslims required to be filled on the basis of entrance examination candidates is arbitrary and violative of Article 14 and Article 29(2) of the Constitution of India?

4. Whether the petitioner had any locus to maintain the present writ petitions, and whether the petitions have become in fructuous in view of the subsequent developments?

The effect of Section 3, Section 4 read with Section 6 of the original Act vis-a-vis the University being brought in existence by a legislative Act are the main basis for the decision of the Hon'ble Supreme Court in Azeez Basha. The said sections had not been amended and holds ground even today.

Mere deletion of the word "Establish" from the long title and amendment to Section 2(1), whereby the University has been defined to be an educational institution of their choice, established by the Muslims of India, which originated as M.A.O. college, Aligarh and which was subsequently incorporated as Aligarh Muslim University in itself is not sufficient to hold that the Aligarh Muslim University, which was a creation of a legislative Act, has not been so created. The entire Act has to be read as a whole, amendment in the long title and few sections of the Act are not themselves sufficient for record a finding

that the Aligarh Muslim University is a minority Institution covered by Article 30 of the Constitution of India.

In view of the aforesaid, the Court was of the opinion that the judgment of the Hon'ble Supreme Court in the case of Azeez Basha was based on over all consideration of the provisions of the Act and the historical background, in which Aligarh Muslim University was brought in existence. Such basis, on which the aforesaid judgment was founded, has not been so fundamentally altered under Act of 1981 so as to create a situation that in the changed circumstances the Court could not have rendered said judgment.

The declaration in that regard under ***Section 2(1) is on the face of it is an attempt to negate the judgment of the Hon'ble Supreme Court*** specifically when such declaration has been made without altering the foundation / basis on which the judgment in the case of Azeez Basha was based.

It is held that the judgment of the Hon'ble Supreme Court in the case of Azeez Basha still holds good even subsequent to the Aligarh Muslim University Amendment Act, 1981 (Act No. 62 of 1981). Aligarh Muslim University is not a minority Institution within the meaning of Article 30 of the Constitution of India. Therefore, the University cannot provide any reservation in respect of the students belonging to a particular religious community.

7.2.8. Appeal by all Parties: All parties were aggrieved and the Judgment was appealed in the High court of judicature of Allahabad-----Double Bench

Major issue: The short basic issue in all these appeals is whether the Aligarh Muslim University is a minority Institution. The point arises because suddenly some eighty five years after incorporation, they chose for the first time to reserve a Muslim quota, by way of a 50% reservation of post-graduate course seats meant for qualified MBBS doctors.

The Court upheld his Lordship's main and primary decision in these matters, which is that Basha still holds the field and the 1981 Act must give way before it wherever the two come in conflict.

Appeal to the Supreme Court ---Ordered “Status Quo”

The Supreme Court ordered that `status quo' on the minority status of Aligarh Muslim University be maintained but asked it not to enforce 50 per cent reservation for Muslims in admissions to MD and MS during the pendency of appeals.

A Bench passed this order while admitting appeals filed by AMU and the Centre challenging an Allahabad High Court judgment that it was not a Muslim minority institution within the meaning of Article 30 of the Constitution. Status quo as on the date of filing of the petitions before the High Court would be maintained, said the Bench, consisting of Justices K.G. Balakrishnan and D.K. Jain, implying that AMU would continue to be a minority institution in terms of the 1981 Constitution amendment.

The Court, while issuing notice to the respondent students, referred the matter to a five-judge Constitution Bench.

Matter is pending in the Court.

7.3. Jamia Millia Islamia University declared as minority Institution

Recently, The National Commission for Minority Educational Institutions (NCMEI) has declared Jamia Millia Islamia, a Central University in New Delhi, to be a minority institution. Its order, issued on February 22, 2011, empowers the university to do away with all existing quota policies for the Scheduled Castes and the Scheduled Tribes and Other Backward Classes (OBCs) and reserve 50 per cent of the seats for Muslim students in all its programmes.

The quasi-judicial body, created by the first United Progressive Alliance (UPA) government to expedite issues relating to minority educational institutions, noted in its order that historical facts established beyond doubt that Jamia Millia Islamia was an institution established and managed by the Muslim community and hence fulfilled the basic criteria of being a minority educational institution under Article 30(1) of the Constitution.

The three-member NCMEI, which is headed by Justice M.S.A. Siddiqui and has Mohinder Singh and Cyriac Thomas as its members, noted: “We have no hesitation in holding that the Jamia was founded by the Muslims for the benefit of Muslims and it never lost its identity as a Muslim minority educational institution. For the foregoing reasons we find and hold that the Jamia Millia Islamia is a minority educational institution covered under Article 30(1) of the Constitution read with Section 2(g) of the National Commission for Minority Educational Institutions Act. A certificate be issued accordingly.”

The NCMEI passed the order on a petition filed before it in 2006 by the Jamia Teachers Association, the Jamia Students Union, the Jamia Old Boys' Association and some local community members following the Central government's directive to all institutions of higher education to reserve 27 per cent of the seats for OBCs.

The NCMEI Act makes it clear that the NCMEI was created to bring into existence a new dispensation for expeditious disposal of cases relating to the grant of affiliation by affiliating universities, the violation/deprivation of constitutionally mandated educational rights of minorities, the determination of minority status of an educational institution and grant of no objection certificate (NoC), and so on. It is a quasi-judicial tribunal and has the jurisdiction, powers, and authority to adjudicate upon disputes without being bogged down by the technicalities of the Code of Civil Procedure.

7.3.1. Criticism over the NCMEI decision declaring Jamia Millia Islamia as minority Institution:

Critics of the order argue that the character of a Central University can be changed only by Parliament through an amendment to the Act that created it in the first place. Besides, the NCMEI Act is silent on whether the government is bound by the NCMEI's recommendations, especially in a case where the basic University.

Critics are of the opinion the decision has been announced appears to be extremely naive and it will not stand strict judicial scrutiny if the case reaches the High Court. It seems obvious that the decision will be challenged in the High Court.

7.4. Researcher's observation:

In Azeez Basha's Case the fact that Aligarh Muslim University, a Central University was an Educational Institution was not disputed by any contesting party. Therefore, the Court held the words "educational institutions" are of very wide import and would include a university also. This was not disputed on behalf of the Union of India and therefore it was accepted that a religious minority had the right to establish a university under Article 30(1).

Section 11 refers to Functions of NCMEI. Section 11, Functions of Commission — Notwithstanding anything contained in any other law for the time being in force, the Commission shall----(f) decide all questions relating to the status of any institution as a Minority Educational Institution and declare its status as such.

Thus *prima facie* it seems that NCMEI has performed its function under section 11(f).

7.5. Testing of the Hypothesis

The Researcher began the study with eight hypotheses. Researcher will hereby test the hypothesis on the basis of the outcome of her research.

Hypothesis 1: The Constitution of India consists of adequate provisions to safe guard the interest of minorities; the positive spirit is lacking in their implementation.
The hypothesis has been positive as the State authorities have not enacted any law for enforcement of educational rights of minorities.

Hypothesis 2: Government Rules and Regulations infringe the minority rights guaranteed under Article 30(1) to establish and administer educational institutions of their choice.
Minorities' institutions in most of the cases have challenges the rules and regulations of the governing authority that infringe their educational rights. Thus it is evident that minority rights have been curtailed due to various rules and regulations by the Government.

Hypothesis 3: The Rules and Regulation of various bodies like Universities, U.G.C., State Board, etc interferes with the minority rights.
The rules and regulations of various regulatory authorities have not incorporated rules to accommodate the dictates of Article 30(1). The rules and regulations imposed are universally applicable for all the institutes including minorities. Minorities' educational rights to establish and administer institutions of their choice are infringed.

Hypothesis 4: Acquiring affiliation, recognition or approval by minority educational institution *is* Herculean task.
Offices of State and National minorities' commissions have been receiving many complaints of denial of permission or refusal to issue "NOC" for establishing

educational institutions for technical and professional training and for regularization of already set institutions. Recognition of existing minority institutions or granting of minority status becomes difficult task.
The Kerala legislature has passed a law which requires two additional criteria, beyond the population of minority to be less than 50 % of the State, for according minority status. These additional criteria is that the number of the professional college or institutions run by the linguistic or religious minority community in the State to which to which the college or institution belongs shall be proportionately lesser than the number of professional college or institutions run by the non-minority community in that state. The other additional criterion is that the number of students belonging to the linguistic or religious minority community to which the college or institution belongs undergoing professional education in all professional colleges or institutions in the state shall be proportionately lesser than the number of students belonging to the non –minority community undergoing professional education in all professional colleges or institutions in the State. It is mandatory to fulfill all the conditions to avail minority status. Thus seeking implementation of Constitutional guarantee has been a herculean task.

Hypothesis 5: There are various provisions for the benefit of the minorities but incidents of infringement by State authorities are common.
Two sets of guidelines for the recognition, affiliation, granting of minority status, etc were issued in 1986 and 1989 respectively, but the State government did not take cognizance of the guidelines.

Hypothesis 6: Judicial interpretation and trend has changed considerably with time, which at times has not been in favour of minority educational institutions
Earlier judicial trend recognised minority educational rights as absolute and held that regulations can be imposed in the interest of the minority educational institution and not in the interest of nation. Since St Stephan's case the court has held that regulations can be imposed in the interest of Nation even though it

amounts to curtailment of minority rights. Thus the hypothesis is found to be correct.

Hypothesis 7: At the global level the term 'minority' has a wider meaning whereas in India it is limited to a few sections of the society.

At the global level minority relates to as ' a group numerically inferior to the rest of the population of the State, in a non dominant position, whose members posses ethnic, religious, or linguistic characteristics differing from the rest of the population'.

The Constitution of India does not define 'minority' and give no clue for the level of determination of minority status. It speaks two category of minorities viz .religious and linguistic, but does not provide list of minorities. There is no parliamentary legislation either specifying the religious or linguistic minorities in the country. The National Commission for minorities Act 1992 enables the central government to notify the five religious communities' viz. Muslims, Christians, Sikhs, Buddhists and Parsis as minorities for the purpose of Act only. Thus the hypothesis was found correct.

Hypothesis 8: The scope of Article 30 of the Constitution guaranteeing educational autonomy to minorities has become uncertain and diluted due to the impact of inadequate legal provisions and complicated judicial interpretations.

Diluting of minorities rights has resulted mainly from the Supreme Court decisions. The Apex Court decisions have lead to whittling down of rights of minority educational institutions in the following manner:

i) *It has provided for reservation of seats for non minority students in aided minority educational institutions.*

ii) *The Court has upheld the provision for external appellate tribunals.*

iii) *It has restricted the transferring of funds from educational institution to parent society.*

iv) The Court has recognised State as a unit to determine minority status.

v) The Court has allowed forcing of languages on minority institutions.

vi) The Court has curtailed trans- border admissions and has allowed State's interference with admission process.

Thus it can be said that the inadequate legal provisions and complicated judicial pronouncements has lead to diluting of rights of minority educational institutions.

-x-x-x-x-x-x-x-

CHAPTER VIII

Conclusion and Suggestions

8.1 Introduction:

All Democratic States ensure Constitutional Protection for Minority Rights. They can, however, be enforced only by an independent judiciary, comprising judges with a broad, liberal outlook when politicians in the Executive and the Legislature trammel on the rights of minorities.

India is a party to the International Covenant on Civil and Political Rights. Article 27 of the Covenant explicitly recognizes the rights of "Ethnic, religious, or linguistic minorities". India is bound to report on its enforcement of the Covenant to the United Nations Secretary-General and is answerable to the Human Rights Committee set up under it.

The United Nations General Assembly unanimously adopted on December 18, 1992, a Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.

International guarantees, though helpful, are not enough. It is the country's ethos that matters. Judges reflect it. In 1958, the Chief Justice of India, S. R. Das, said in the *re Kerala Education Bill case*[205]: "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 our sacred obligation to the minority communities who are of our own."

In India, the safeguards for minorities under Constitution of India are in the form of fundamental rights. Firstly the Constitution nowhere discriminates among the citizens of India on grounds of religion, race, caste, etc and secondly, the rights conferred under Article 25 to Article 30 are fundamental rights. The state is duty bound to protect the fundamental rights.

[205] AIR 1958 SC 956

If fundamental right is infringed the remedy is given under Article 32 and Article 226. A person can directly approach to Supreme Court under Article 32 and High Court under Article 226 in case of violation of his fundamental rights. So, the true spirit and intention of the Constitution is to provide a very formal and water tight arrangement for safeguarding the interest of minorities.

In other words the basic tenet of protection of minorities is that each minority has concurrently the right to full equality with the majority and to preservation of its separate identity.

8.2. Effect of incorporation/ recognition on the Status of Minority Institutions.

Referring to the *Aligarh Muslim University case*[206] decided in 1968, H.M. Seervai remarked that "This is the first case in which the Supreme Court has departed from the broad spirit in which it had decided cases on Cultural and Educational rights of minorities which was reflected in the words of Das C. J."[207]. The "first case" was followed by not a few in which the court whittled down Article 30. In the Aligarh Muslim University's case[208], it ruled, incredibly, that "*The University was not established by Muslims*".

If incorporation of Minority University leads to deprivation of its minority character of Educational Institution as held in Azeez Basha's case and according to the sections 22 to 24 of University Grant Commission Act, 1956 then it can be said that the fundamental rights are given to minorities by one hand and is taken away by other.

Suggestion: *The incorporation of the University should not transform a Minority University into State University.* The act of incorporation under University Grant

---

[206] AIR 1968 SC 662
[207] H.M. Seervai, *Constitutional Law of India,* Universal Law Publishing Co. Pvt. Ltd, Fourth Edition, 1993. Reprint 2007.
[208] *Azeez Basha v Union of India* [AIR 1968 SC 662]

Commission should be treated as procedural formalities and should have no bearing on the minority character of the institution. Without incorporation the University and without recognition the school will not be eligible to receive grants from the government and students passing out from them will not be eligible for entering the public services as the State will not recognize the examinations conducted by such institutions. The Act of incorporation being a governmental function, should not contravene any fundamental rights. The University Grant Commission may, frame rules imposing reasonable restrictions on the right to establish University. In this manner the Nation's interested will also be safeguarded without destroying minority rights to Establish and Administer Educational Institutions.

8.3 Stephen's Decision based on 'Melting Pot' theory

Judges at times have based their decision on theories than on Law. In *Stephan's Case*[209] the court held that under Article 30(1), the Minority aided Educational institutions are entitled to prefer their community candidates to maintain the minority character of their institutions subject to, of course, in conformity with the University standards. The State may regulate the intake, with due regards to the need of the community in the area which the institute is intended to serve. But in no case shall exceed 50 percent of the annual admission to the members of the communities other then the minority community. The admission of other community candidates shall be done purely on the basis of merit.

The judgment of the Supreme Court is diametrically opposed to the right of Minorities to preserve their separate identity and consequently runs counter to minority rights. The Court has adopted pragmatic approach rather than Constitutional approach. Neither the Constitution nor the voluminous debate of the Constituent Assembly nor in any earlier decision there is any reference of

[209] AIR 1992 SC 1630

'Melting Pot theory'. *'The melting pot theory' is not about what the law says but what the Judges believe the law should have said.* Supreme Court itself has time and again observed that Judgments cannot be based on theories.

Putting Articles 29(2) and 30(1) together further reduces benefits promised to the minorities through Article 30. The conjunctive use of the two Articles has resulted in quota fixing in the seats for the students from the community in the minority education institutions. The wording of Article 29(2) makes it essentially a fundamental right provided to individuals, hence, not having much scope for quota fixing. The need for a cosmopolitan atmosphere in minority education institution is the stated reason for juxtaposing the two Articles. One agrees in principle with the court judgments that admission should not be denied to any individual if s/he meets the eligibility criteria set by the institution. Nevertheless, the rigid fixing of a ratio of 50:50 in Stephen's Case frustrates the spirit of Article 30.

It has been more than 60 years, since the Constitution of India has come to being. By now the law regarding legal status of minority institutions under Article 30 need to be settled. Even today the Fundamental Rights provided to the minorities under the Constitution are not automatically available. Minorities have been forced to approach the courts to assert those rights. Journey through the landmark cases show different Judicial trends in interpretation of Article 30. At times judgments reflect personal convictions of the judges; this has led to constant struggle between minorities and the State. Further it has been observed that there if a trend in gradual reduction of scope of rights under Article 30 leading to more regulation by State.

8.4. Minority Right to Establish and Administer Educational Institution

In 1935, the Permanent Court of International Justice, in its Advisory opinion on 'Minority school in Albania' defining the essence of International Protection of Minorities system held:

'The idea underlying the treaties for the protection of minorities is to secure for certain elements incorporated in a State, the population of which differs from them in race, language or religion, the possibility of living peaceably alongside that population and co-operating amicably with it, while at the same time preserving the characteristics which distinguish them from majority, and satisfying the ensuing special needs'.[210]

According to the Court, the International Protection of Minorities System was primarily designed to attain two objectives: first, complete equality between nationals of the State belonging to racial, religious or linguistic minorities and other nationals (related to majority) and secondly, "to ensure for the minority elements suitable means for preservation of their racial peculiarities, their traditions and their national characteristics". These two objectives, said the Court were closely interlocked, for there could be no true equality between the majority and a minority if the latter was deprived of the institutions enabling it to preserve its special characteristics.

In a vast country like India in order to provide equality and unity among its citizens, as there is a wide difference between the minority and the majority, special rights have been endowed to minorities so that they can develop their personality to the maximum. In accordance to this view various Articles in the Constitution are enshrined and Acts have been enacted, so that the minorities can compete with majority. Among these Articles, Article 30(1) and National Commission for Minority Educational Institutions Act, 2004 provides minorities right to establish and administer educational institutes. Various lacunas have been observed since the birth of these Rights. It has been observed that these Articles and Acts are unable to clear various facets like –

(1) Is there any right to create educational institutes for minorities and if so under which provision?

[210] Minority Schools in Albania (AB/64) 17 (1935)

(2) To what extent can the rights of aided private minority institutions to administer be regulated?

Still answers to these questions are ambiguous in nature. Even National Commission for Minority Educational Institutions Act, 2004 defines, 'Minority Educational Institute' means college or an Educational Institution established and administered by Minority or Minorities. *Thus, just on account of the minority identity of the management, an institute is to be accorded the minority status, irrespective of whether or not that particular institute is serving the interests of the minority community in its entirety. Thus it is imperative to ensure that Minority Institutions admit students on the basis of minority identity and merit.*

8.5. Minority's right to Establish and Administer Educational Institution as fundamental right

Article 30(1) of the Constitution of India gives linguistic and religious minorities a fundamental right to establish and administer educational institutions of their choice. These rights are protected by a prohibition against their violation. The prohibition is contained in Article 13 of the Constitution which declares that any law in breach of the fundamental rights would be void to the extent of such violation. It is well-settled that Article 30(1) cannot be read in a narrow and pedantic sense and being a fundamental right, it should be given its widest amplitude. The width of Article 30(1) cannot be cut down by introducing in it considerations which are destructive to the substance of the right enshrined therein.

8.5.1. Minorities have a Right to Establish –

The Supreme Court has pointed out in Ahmedabad *St. Xavier's College v State of Gujarat* [211] that the spirit behind article 30(1) is the conscience of the nation that the minorities, religious as well as linguistic, are not prohibited from

[211] AIR 1974 SC 1389

establishing and administering educational institutions of their choice for the purpose of giving their children the best general education to make them complete men and women of the country.

There have been instances when Minority Community wanted to start a school in a certain locality but the State disallowed it. Such issue came up before the full bench of Kerala High Court in *Fr Mathew MC Vicar v State of Kerala*[212]. Kerala Education Rules prescribe the procedures for determining the areas where new schools were to be opened. The Petitioner wanted to start an educational school in a particular area since it did not have a Catholic school but as per the rules no schools could be opened till the Director of Education gave a report indicating the areas where schools can be opened. The Petitioner claimed infringement of minority rights under Article 30 (1) and went to Court. Supporting the government decision the Court observed "Regulation of the right, in time as well as space, must, it appears be permissible".

A different approach was adopted by the Karnataka High Court in *Socio Legal Advancement Society vs. State of Karnataka*[213] where a society founded for the benefit of the Malayali minority community has been denied the recognition of a Teachers Training Institute established by the Society. The State felt that allowing another institute would lead to unhealthy competition and bring about a dilution of the Teachers Training Programme. The Court held that a *minority institute could not be stopped from establishing such an educational institution.*

8.5.2. Even a single member of minority community may establish an Educational Institution for the benefit of the community.

In, *State of Kerala v Mother Provincial*[214], Supreme Court has clarified the position that a Society or Trust consisting of members of a minority

[212] AIR 1978 KER 227
[213] AIR 1989 KAR 217
[214]AIR 1970 SC 2079

community, or even a single member of minority community, may establish an educational institution.

The Supreme Court observed, "Establishment means bringing into being of an institution and it must be by a minority community. It matters not if a single philanthropic individual with his own means, institution or the community at large founds the institution or the community at large contributes the funds. The position in law is the same and the intention in either case must be to found an institution for the benefit of a minority community by a member of that community. It is equally irrelevant to this right that in addition to the minority community, others from other minority communities or even from the majority community can take advantage of these institutions.

8.5.3. Minorities right to Administer

The provision of Article 30(1) does not however mean that the State can impose no regulations on the minority institutions. In the *Kerala Education Bill*[215], the Supreme Court has observed: "The right conferred on the religious and linguistic minorities to administer educational institutions of their choice is not an absolute right". It has to be read with regulatory power of the State. Regulations which do not affect the substance of the guaranteed rights, but ensure the excellence of the institutions and its proper functioning in educational matters, are permissible.

Rights though protected by the Constitution have been a bone of contention since the commencement of the Constitution. The cases on Minority Rights, from the State of Madras v S. Srimati Champakam Dorairaj[216] (1951) to P. A. Inamdar v State of Maharashtra[217] (2005) the issues questioned are almost the same. The issues are regarding

a. Government grants, Affiliation or Recognition

[215] AIR 1958 SC 956
[216] (1959)1SCR995
[217] AIR 1954 SC 561

b. Conditions for Grants, Affiliation and Recognition
c. Composition of Managing Bodies
d. Appointment of teachers
e. Disciplinary Action against the Staff and Salary of Teachers
f. Admission of students and fee structure
g. Medium of Instruction

(a) Government Grants, Affiliation or Recognition

At present, the situation is such that an educational institution cannot possibly hope to survive, and function without government grants, nor can it confer degrees without affiliation to a University. Although minorities establish and run their educational institutions with a view to educate their children in an atmosphere congenial to the conservation of their language or culture, yet that is not their only aim. They also desire that their students are well equipped for useful careers in life. The students of unrecognized institutions can neither get admission in institutions of higher learning nor can they enter public service. Therefore, without recognition, a minority run institution cannot fulfill its role effectively and the right conferred by Article 30(1) would be very much diluted. A meaningful or real exercise of the right under Article 30(1) must, therefore, mean the right to establish effective educational institutions which may sub serve the real needs of the minorities and the scholars who resort to them. This necessarily involves recognition or affiliation of minority institutions, for without this the institutions cannot play their role effectively and the right conferred on the minorities by Article 30(1) would be denuded of much of its efficacy. Article 30(2) debars the State from discriminating against minority institutions in the matter of giving grants. In *Managing Board, M.T.M v. State of Bihar*[218], the Supreme Court has emphasized that the right to establish educational institutions of their choice must mean the right to establish real institutions which will effectively serve the needs of their

[218] AIR 1984 SC 1757

community and the scholars who resort to them. Clarifying the position as regards the question of affiliation of, or grant to, minority institutions, the Court observed: “There is, no doubt, no such thing as Fundamental Right to recognition by the State but to deny recognition to the educational institutions except upon terms tantamount to the surrender of their Constitutional right of administration of the educational institutions of their choice is in truth and in effect to deprive them of their rights under Article 30(1). The legislative power is subject to the Fundamental Rights and the legislature cannot indirectly take away or abridge the Fundamental Rights which it could not do directly.”

Do Minorities also have a fundamental right to claim affiliation, recognition and aid from the University or Government?

Article 30 (2) is very categorical," The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it was under the management of a minority, whether based on religion or language". On recognitions or affiliation though regulatory measures can be imposed they cannot be such to erode the core of minority rights.

The issue of recognition came up for discussion before the Supreme Court in Sidhrajbhai’s Case[219]. The State argued that recognition was not a fundamental right. The Court said this was true but "manifestly, in the absence of recognition by the government, teachers’ training in the college will have little practical utility".

In *All Saints High Schools Case*[220] the Supreme Court observed “Although Article 30 does not speak of the conditions under which minority educational institution can be affiliated to a College or University yet the Article by its very nature implies that when an affiliation is asked for, the University cannot be

[219] AIR 1963 SC 540
[220] 1980 2 SCC 478

refused without sufficient reason or try to impose such conditions as would completely destroy the autonomous administration of the institution".

Section 10A of the National Commission for Minority Educational Institutions Act, 2004 confers a right on a minority educational institution to seek affiliation to any University of its choice. Section10A is as under: -

"Right of a Minority Educational Institution to seek affiliation. –

(1) A Minority Educational Institution may seek affiliation to any University of its choice subject to such affiliation being permissible within the Act under which the said University is established.

(2) Any person who is authorised in this behalf by the Minority Educational Institution, may file an application for affiliation under sub-section (1) to a University in the manner prescribed by the Statute, Ordinance, rules or regulations, of the University: Provided that such authorised person shall have right to know the status of such application after the expiry of sixty days from the date of filing of such application."

Recognition is a facility, which the State grants to an educational institution. No educational institution can survive without recognition by the State Government. Without recognition the educational institutions can not avail any benefit flowing out of various beneficial schemes implemented by the Central Government. Affiliation is also a facility which a University grants to an educational institution.

In, *Managing Board of the Milli Talimi Mission Bihar & ors. v State of Bihar & ors*[221] the Supreme Court has clearly recognized that running a minority institution is also as fundamental and important as other rights conferred on the citizens of the country. If the State Government declines to grant recognition or a University refuses to grant affiliation to a minority educational institution without just and sufficient grounds, the direct consequence would be to destroy the very existence of the institution itself. Thus, refusal to grant recognition or affiliation by the statutory authorities without just and sufficient

[221] 1984 (4) SCC 500,

grounds amounts to violation of the right guaranteed under Article 30(1) of the Constitution. The right of the minorities to establish educational institutions of their choice will be without any meaning if affiliation or recognition is denied.

It has been held by a Constitutional Bench of the Supreme Court in *St. Xavier's College, Ahmedabad v State of Gujarat*[222] that "Affiliation must be a real and meaningful exercise of right for minority institutions in the matter of imparting general secular education. Any law which provides for affiliation on terms which will involve abridgment of the right of linguistic and religious minorities to administer and establish educational institutions of their choice will offend Article 30(1): The educational institutions set up by minorities will be robbed of their utility if boys and girls cannot be trained in such institutions for University degrees. Minorities will virtually lose their right to equip their children for ordinary careers if affiliation be on terms which would make them surrender and lose their rights to establish and administer educational institutions of their choice under Article 30. The primary purpose of affiliation is that the students studying in the minority institutions will have qualifications in the shape of degrees necessary for a useful career in life. The establishment of a minority institution is not only ineffective but also unreal unless such institution is affiliated to a University for the purpose of conferment of degrees on students."

It has been held in *T.M.A. Pai foundation Case v State of Karnataka*[223] that affiliation and recognition has to be available to every institution that fulfils the conditions for grant of such affiliation and recognition. The right of the minorities to establish and administer educational institutions of their choice under Article 30(1) of the Constitution is subject to the regulatory power of the State for maintaining and facilitating the excellence of the standard of education. Reference may, in this connection be made to following observations of their lordships in the clarifying the Apex court verdict in T. M. A. Pai's case, in judgment rendered by a Constitutional Bench of the Supreme Court in *P.A.*

[222] 1974 (1) SCC 717
[223] (2002) 8 SCC 481

Inamdar vs. State of Maharashtra[224] "Affiliation or recognition by the State or the Board or the University competent to do so, cannot be denied solely on the ground that the institution is a minority educational institution. However, the urge or need for affiliation or recognition brings in the concept of regulation by way of laying down conditions consistent with the requirement of ensuring merit, excellence of education and preventing maladministration. For example, provisions can be made indicating the quality of the teachers by prescribing the minimum qualifications that they must possess and the courses of studies and curricula. The existence of infrastructure sufficient for its growth can be stipulated as a prerequisite to the grant of recognition or affiliation. However, there cannot be interference in the day-to-day administration. The essential ingredients of the management, including admission of students, recruiting of staff and the quantum of fee to be charged, cannot be regulated.

Apart from the generalized position of law that the right to administer does not include the right to mal administer an additional source of power to regulate by enacting conditions accompanying affiliation or recognition exists. A balance has to be struck between the two objectives:

i) To ensure the standard of excellence of the institution, and

ii) To preserving the right of the minority to establish and administer its educational Institution of their choice.

Subject to a reconciliation of the above two objectives, any regulation accompanying affiliation or recognition must satisfy the triple tests:

i) The test of reasonableness and rationality,

ii) The test that the regulation would be conducive to making the institution an effective vehicle of education for the minority community or other persons who resort to it, and

iii) The test that there is no inroad into the protection conferred by Article 30(1) of the Constitution, that is by framing the regulations the

[224] (2005) 6 SCC 537

essential character of the institution being a minority educational institution, is not taken away.

A minority educational institution seeking recognition or affiliation must fulfill the statutory requirements concerning the academic excellence, the minimum qualifications of eligibility prescribed by the statutory authorities for Head Master, Principal, teachers, lecturers and the courses of studies and curriculum. It must have sufficient infrastructural and instructional facilities as well as financial resources for its growth. No condition should be imposed for grant of recognition or affiliation, which would, in truth and in effect, infringe the right guaranteed under Article 30(1) of the Constitution or impinge upon the minority character of the institution concerned. If an utter surrender of the right guaranteed under Article 30(1) is made a condition of recognition or affiliation, the denial of recognition or affiliation would be violative of Article 30(1).

(b) Conditions for Grants, Affiliation and Recognition

What conditions can be imposed on these institutions as a requisite to giving grants, or according affiliation or recognition to them? This has proved to be a complex and controversial problem. These conditions may be of two kinds. One type of conditions may relate to such matter as syllabi, curriculum, courses, minimum qualifications of teachers, their age of superannuation, library, conditions concerning sanitary, health and hygiene of students, etc. The underlying purpose of such conditions is to promote educational standards and uniformity and help the institutions concerned achieve efficiency and excellence and are imposed not only in the interest of general secular education but also are necessary to maintain the educational character and content of minority institutions. Such conditions cannot be regarded as violative of Article 30(1) and therefore, it is mandatory to be followed by all educational institutions. A right to administer cannot be a right to mal administer. The matter has been succinctly explained by the Supreme Court in *re Kerala*

Education Bill[225]: "The right to administer cannot obviously include the right to mal administer. The minority cannot surely ask for aid or recognition for an educational institution run by them in unhealthy surroundings. Without any competent teachers possessing any semblance of qualification, and which does not maintain even a fair standard of teaching or which teaches matters subversive of the welfare of the scholars. It stands to reason, then, that the Constitutional right to administer an educational institution of their choice does not necessarily militate against the claim of the state to insist that in order to grant aid the state may prescribe reasonable regulations to ensure the excellence of the institutions to be aided.... Reasonable regulations may certainly be imposed by the state as a condition for aid or even for recognition."

c) Composition of Managing Bodies

Minority Institutions have the right to choose its governing body in which the founders of the institution have faith and confidence to conduct and manage the affairs of the institution. The freedom to choose the persons to be nominated as members of the governing body has always been recognized as a vital facet of the right to administer the educational institution. Any rule which takes away this right of the management has been held to be interfering with the right guaranteed by Article 30(1) of the Constitution. The management can induct eminent or competent persons from other communities in the managing Committees or Governing Bodies. The management can induct a sprinkling of non-minority members in the managing Committees or Governing Bodies. By inducting a non-minority member into the Managing Committee or Governing Body of the minority educational institution does not shed its character and cease to be a minority institution. The minority character of a minority educational institution is not impaired so long as the Constitution of the Managing Committee or Governing Body provides for an effective majority to the members of the minority community.

[225] AIR 1958 SC 956

The State Government or Statutory authorities cannot induct their nominees in the Managing Committee or Governing Body of a minority educational institution. The introduction of an outside authority, however high it may be, either directly or through its nominees in the Managing Committee or Governing Body of the minority educational institution to conduct the affairs of the institution would be completely destructive of the fundamental right guaranteed by Article 30(1) of the Constitution and would reduce the management to a helpless entity having no real say in the matter and thus destroy the very personality and individuality of the institution which is fully protected by Article 30 of the Constitution.

In the composition of the managing bodies Supreme Court has invariably invalidated provisions seeking to regulate the composition and personnel of the managing bodies of minority institutions. A provision interfering with the minorities' choice of managing body for an institution has been held to violate Article 30(1). The Gujarat University Act provided that the governing body of every college must include amongst its members a representative of the University nominated by the Vice-Chancellor, representatives of teaching and non-teaching staff and of the college students. In, *St. Xavier's College Case*,[226] the Supreme Court declared the provision as non-applicable to minority institutions because it displaced the management and entrusted it to a different agency; autonomy in administration was lost and new elements in the shape of representatives of different types were brought in. The court emphasized that while the University could take steps to cure maladministration in a college, the choice of personnel of management was a part of administration which could not be interfered with.

d) Appointment of Teachers

[226] AIR 1974 SC 1389

Minority Educational Institution has right to appoint teaching staff and also non-teaching staff; and to take action if there is dereliction of duty on the part of any of its employees.

Autonomy in administration means right to administer effectively and to manage and conduct the affairs of the institution. The State or any University or Statutory authority cannot under the cover or garb of adopting regulatory measures destroy the administrative autonomy of a minority educational institution or start interfering with the administration of the management of the institution so as to render the right of the administration of the institution concerned nugatory or illusory. The State Government or a University cannot regulate the method or procedure for appointment of Teachers, Lecturers, Headmasters, and Principals of a minority educational institution. Once a Teacher, Lecturer, Headmaster, Principal possessing the requisite qualifications prescribed by the State or the University has been selected by the management of the minority educational institution by adopting any rational procedure of selection, the State Government or the University would have no right to veto the selection of those teachers etc.

The State Government or the University cannot apply rules, regulations, ordinances to a minority educational institution, which would have the effect of transferring control over selection of staff from the institution concerned to the State Government or the University, and thus, in effect allow the State Government or the University to select the staff for the institution, directly interfering with the right of the minorities guaranteed under Article 30(1).

Composition of the Selection Committee for appointment of teaching staff of a minority educational institution should not be such as would reduce the management to a helpless entity having no real say in the matter of selection and appointment of staff and thus destroy the very personality and individuality of the institution which is fully protected by Article 30(1) of the Constitution.

The importance of the right to appoint Teachers, Lecturers, Head Masters, Principals of their choice by the minorities, as an important part of their

fundamental right under Article 30 was highlighted in *St. Xavier' case*[227] thus: "It is upon the principal and teachers of a college that the tone and temper of an educational institution depend. On them would depend its reputation, the maintenance of discipline and its efficiency in teaching. The right to choose the principal and to have the teaching conducted by teachers appointed by the management after an overall assessment of their outlook and philosophy is perhaps the most important facet of the right to administer an educational institution. So long as the persons chosen have the qualifications prescribed by the University, the choice must be left to the management. That is part of the fundamental right of the minorities to administer the educational institution established by them."

The aforesaid proposition of law enunciated in *St. Xavier* has been approved by the Supreme Court in *T.M.A. Pai Foundation's Case*. The State has the power to regulate the affairs of the minority educational institution also in the interest of discipline and academic excellence. But in that process the aforesaid right of the management cannot be taken away even if the Government is giving hundred percent grants. The fact that the post of the Teacher, Headmaster, Principal is also covered by the State aid will make no difference. It has been held by the Supreme Court in *Secretary, Malankara Syrian Catholic College v T. Jose*[228] that even if the institution is aided, there can be no interference with the said right. Subject to the eligibility conditions, qualifications prescribed by the State or Regulating Authority being met, the minority educational institution will have the freedom to appoint Teachers, Lecturers, Headmasters, Principals by adopting any rational procedure of selection. The imposing of any trammel thereon except to the extent of prescribing the requisite qualifications and experience or otherwise fostering the interests of the institution itself cannot but be considered as a violation of the right guaranteed under Article 30(1) of the Constitution.

---

[227] AIR 1974 SC 1389
[228] 2007 AIR SCW 132

In *A.M. Patroni v E.C. Kesavan*[229] it was held that, A rule requiring that the senior most teacher must be promoted to the Head Master's post cannot be binding on minority schools.

Minority institutions cannot be required to obtain prior approval of the Government or University for appointment of the staff.

e) Disciplinary Action against the Staff and Salary of Teachers

A significant facet of the administration of an educational institution is the maintenance of discipline among the members of its staff and to decide over the salary of the teaching staff. The right of the minority institution to take disciplinary action against the teachers and decide salary of teaching staff is a very vital aspect of the management's fundamental Right to administer the institution. Any rule taking away or interfering with this right cannot be regarded as compatible with article 30(1). Thus, while fair procedural safeguards may be laid down for the purpose, the final power to take disciplinary action and deciding the teaching staff must vest in the management of the institution and be not subjected to the control or veto of any outside body.

The State Government or the University is not empowered to require a minority educational institution to seek its approval in the matter of selection and appointment or initiation of disciplinary action against any member of its teaching or non-teaching staff. The role of the State Government or the University is limited to the extent of ensuring that teachers, lecturers, Headmasters, Principals selected by management of a minority educational institution fulfill the requisite qualifications of eligibility prescribed there for.
In, *Lily Kurian v Sr. Lewina*[230], a provision enabling an aggrieved member of the staff of a college to make an appeal to the Vice-Chancellor against an order of

[229] AIR 1965 Ker 75
[230] (1979) 2 SC 124

suspension and other penalties was held to be violative of Article 30(1). Again in *All Saints High School, Hyderabad vs. State of Andhra Pradesh*[231], a provision contained in Andhra Pradesh Private Educational institution Control Act, 1995 requiring prior approval of the competent authority of all orders of dismissal, removal or reduction in rank passed against a teacher by management of the college was held to be inapplicable to a minority institution.

In *Brahmo Samaj Education Society vs. State of West Bengal*[232] the Supreme Court has held that "the State Government shall take note of the declarations of law made by this Court in this regard and make suitable amendments to their laws, rules and regulations to bring them in conformity with the principles set out therein.

It has been brought to the notice of the National Minority Commission that by the memorandum no. 3-1/78/CP dated 12.10.1981, the University Grants Commission has directed all Universities that while framing their statutes, ordinances, regulations, they should ensure that these do not infringe with Article 30(1) of the Constitution relating to administration of minority educational institutions.

(f) Admission of Students and Fee structure

In the *St. Stephen's College v. University of Delhi*[233], the Court ruled out that college was established and administered by a minority community, viz., the Christian community which is indisputably a religious minority in India as well as in the union territory of Delhi where the college is located and hence enjoys the status of a minority institution. On the question of admission of students of the concerned minority community, the Court has ruled that, according to Article 30(1), the minorities whether based on religion or language have the right "to establish and administer" educational institutions of their choice and

[231] 1980 (2) SCC 478
[232] (2004) 6 SCC 224

[233] AIR 1992 SC 83

the right to select students for admission is a part of administration. On this point, the Court has observed: "It is indeed an important facet of administration. This power also could be regulated but the regulation must be reasonable just like any other regulation. It should be conducive to the welfare of the minority institution or for the betterment of those who resort to it."

Policy for Reservation in Minority Educational Institutions

The policy of reservation can neither be enforced by the State nor any quota or percentage of admissions can be carved out to be appropriated by the State in a minority educational institution. Minority institutions are free to admit students of their own choice including students of non minority community as also members of their own community from other States, both to a limited extent only and not in a manner and to such an extent that their minority educational institution status is lost. If they do so, they lose the protection of Article 30(1)."

In the case of *P.A. Inamdar*[234] one of the questions framed for being answered was whether private unaided professional colleges are entitled to admit students by evolving their own matter of admission procedure. While answering the question their Lordships have observed as under: - "So far as the minority unaided institutions are concerned to admit students being one of the components of "the right to establish and administer an institution", the State cannot interfere therewith. Up to the level of undergraduate education, the minority unaided educational institutions enjoy total freedom."

However, different considerations would apply for graduate and postgraduate level of education, as also for technical and professional educational institutions. Such education cannot be imparted by any institution unless recognised by or affiliated with any competent authority created by law, such as a university, Board, Central or State Government or the like. Excellence in education and maintenance of high standards at this level are a must. To fulfil these objectives, the State can and rather must, in national interest, step in.

[234] (2005) 6 SCC 537

The education, knowledge and learning at this level possessed by individuals collectively constitute national wealth.

T.M.A. Pai Foundation Case[235] has already held that the minority status of educational institutions is to be determined by treating the States as units. Students of that community residing in other States where they are not in minority, shall not be considered to be minority in that particular State and hence their admission would be at par with other non-minority students of that State. Such admissions will be only to a limited extent that is like a "sprinkling" of such admissions, the term used is borrowed from Kerala Education Bill, 1957. In minority educational institutions, aided or unaided, admissions shall be at the State level. Transparency and merit shall have to be assured.

Article 15(5) of the Constitution of India exempts an educational institution covered under Article 30(1) from the policy of reservation in admission. That being so, provisions of the Central Educational Institutions (Reservation in Admission) Act, 2006 cannot be made applicable to an educational institution covered under Article 30(1). Moreover, *P.A. Inamdar*[236] *is an authority on proposition of law that neither can the policy of reservation be enforced by the State nor can any quota or percentage of admission be carved out to be appropriated by the State in a minority educational institution.* The State cannot regulate or control admissions in minority educational institutions so as to compel them to give up a share of the available seats to candidates chosen by the State. This would amount to nationalization of seats which has been specifically disapproved in T.M.A. Pai. Such imposition of quota of State seats or enforcing reservation policy of the State on available seats in minority educational institutions are acts constituting a serious encroachment on the right enshrined in Article 30(1). Such appropriation of seats can also not be held to be a regulatory measure or a reasonable restriction within the meaning of Article 30(1) of the Constitution.

---

[235] (2002) 8 SCC 481
[236] (2005) 6 SCC 537

Students from adjoining States can be admitted but to the reasonable extent

In *T M A Pai v State of Karnataka*[237]the court held that, 'The Management can admit students from the adjoining States but the management of a minority institution cannot resort to the device of admitting the minority students of the adjoining state in which they are in majority to preserve minority status of the institution'.

The Supreme Court in *P. A. Inamdar Vs. State of Maharashtra*[238] held that the minority institutions are free to admit students of their choice including students of non-minority community and also members of their own community from other State. But admission of non minority students and their own community from other State should be to a reasonable extent only, otherwise the minority educational institution will lose the protection under Article 30(1). The reasonable extent would vary from the types of institution, the courses of education for which admission is being sought and other factors like educational needs.

The State Government to prescribe percentage governing admission in Minority Educational Institutions:

As regards the prescription of a percentage governing admissions in a minority educational institution, it would be useful to excerpt the following observations of their lordships of the Supreme Court in *T.M.A. Pai foundation Case v State of Karnataka*[239], ".....The situation would vary according to the type of institution and the nature of education that is being imparted in the institution. Usually, at the school level, although it may be possible to fill up all the seats with the students of the minority group, at the higher level, either in colleges or in technical institutions, it may not be possible to fill up all the seats with the students of the minority group. However, even if it is possible to

[237] (2002) 8 SCC 481
[238] (2005) 6 SCC 537
[239] (2002) 8 SCC 481

fill up all the seats with students of the minority group, the moment the institution is granted aid; the institution will have to admit students of the non minority group to a reasonable extent, whereby the character of the institution is not annihilated, and at the same time, the rights of the citizen engrafted under Article 29(2) are not subverted."

The State Government can prescribe percentage of the minority community to be admitted in a minority educational institution taking into account the population and educational needs of the area in which the institution is located. There cannot be a common rule or regulation or order in respect of types of educational institutions from primary to college level and for the entire State fixing the uniform ceiling in the matter of admission of students in minority educational institutions. Thus a balance has to be kept between two objectives – preserving the right of the minorities to admit students of their own community and that of admitting "sprinkling of outsiders" in their institutions subject to the condition that the manner and number of such admissions should not be violative of the minority character of the institution. It is significant to mention here that Section 12C (b) of the National Commission for Minority Educational Institution Act, 2004 also empowers the State Government to prescribe percentage governing admissions in a minority educational institution. Thus the State Government has to prescribe percentage governing admissions of students in the minority educational institutions in accordance with the aforesaid principles of law enunciated by their lordships of the Supreme Court in the cases of *T.M.A. Pai Foundation's case* and *P.A. Inamdar 's Case*.

Admission to NRI students

The management can admit Non-Resident Indian students in minority educational institution. A limited reservation of such seats not exceeding 15% may be made available to NRIs depending on the discretion of the management subject to two conditions. First, such seats should be utilized bonafide by NRIs

only and for their children or wards. Secondly, within this quota, merit should not be given a complete go-by.

There is also the question of fees chargeable by the unaided minority institutions from its students. It is clear that an unaided minority institution do charge high fees. The reason is that unaided institutions have to meet the cost of imparting education from their own resources and the main source can only be the fees collected from the students. But these institutions cannot be permitted to indulge in commercialization of education. Therefore, it would not be unconstitutional for the government to issue an order which places a restriction on the amount of fee chargeable by an institution, if, on facts, the minority institutions indulge in commercialization of education and maladministration of the educational institutions. This was held in *T.M.A. Pai Foundation & others v. State of Karnataka*[240].

Minority Institutions free to device their own fee structure

Among the law declared in the case of T.M.A. Pai Foundation every institution is free to devise its own fee structure subject to the limitation that there can be no profiteering and no capitation fee can be charged directly or indirectly. Reference may, in this connection be also made to the following observations of their Lordships in the case of *P.A. Inamdar*[241]

"The two Committees for monitoring admission procedure and determining fee structure in the judgment of Islamic Academy are in our view, permissible as regulatory measures aimed at protecting the interest of the student community as a whole as also the minorities themselves, in maintaining required standards of professional education on non exploitative terms in their institutions. Legal provisions made by the State Legislatures or the scheme evolved by the Court for monitoring admission procedure and fee fixation do not violate the right of minorities under Article 30(1) or the right of minorities

[240] (2002) 8 SCC 481
[241] (2005) 6 SCC 537

and non-minorities under Article 19(1)(g). They are reasonable restrictions in the interest of minority institutions permissible under Article 30(1) and in the interest of general public under Article 19(6) of the Constitution."

(g) **Medium of Instruction**

The right of a minority to establish and administer educational institutions of its choice also carries with it the right to impart instruction to its children in its own language. The result of reading Article 29(1) and 30(1) together is that the minority has the choice of medium of instruction and the power of the state to determine the medium of instruction has, therefore, to yield ground, to the extent it is necessary to give effect to this minority right. The most significant case on this point is the *D.A.V College, Bhatinada v. State of Punjab*[242]. By a notification, the Punjab Government compulsorily affiliated certain colleges to the Punjab University which prescribed Punjabi in the Gurumukhi script as the sole and exclusive medium of instruction and examination for certain courses. The Supreme Court declared that it violated the right of the Arya Samajists to use their own script in the colleges run by them and compulsorily affiliated to the University.

A particular State can validly take a policy decision to compulsorily teach its regional language[243]. The State Government takes the policy decision keeping in view the larger interest of the State, because the official and common businesses are carried on in that State in the regional language. A proper understanding of the regional language is necessary for easily carrying out the day to day affairs of the people living in that particular State and also for proper carrying out of daily administration. The learning of the regional language of the State would bridge the cultural barriers and will positively contribute for national integration. Hence a regulation imposed by the State upon the religious and linguistic minorities to teach its regional language is a

[242] AIR 1971 SC 1731
[243] English Medium Students Parent Association v State of Karnataka[(1994) 1 SCC 550]

reasonable one, which is conducive to the needs and larger interest of the State and it does not in any manner interfere with the right under Article 30(1) of the Constitution. The imposition of official language of a State as the sole medium of instruction cannot be said to be in the interest of general public and has no nexus to public interest. The medium of instruction is one aspect of freedom of speech and expression guaranteed under Article 19 of the Constitution and the State cannot enact a law or frame a rule commanding that a student should express himself in a particular regional language. In view of the clear mandate of Article 13 of the Constitution, the State cannot enact any law or frame a regulation to make the said fundamental right a mere illusion. Moreover, Article 30(1) of the Constitution gives vast discretion and option to the minorities in selecting the type of the institution which they want to establish. The said type of institution includes the type of medium of instruction in which they want to impart education. The question whether the right to choose medium of instruction is a fundamental right and the religious or linguistic minority has a right to choose medium of instruction of their choice has been clinched down by the Supreme Court in T.M.A. Pai's case. The Supreme Court has declared that the right to establish and administer educational institutions of their choice under Article 30(1) read with Article 29(1) would include the right to have choice of medium of instruction in imparting education. The medium of instruction is entirely choice of the management of the minority institution.

In *Associated Managements of (Government Recognised Unaided English Medium) Primary and Secondary Schools in Karnataka (KAMS) vs. State of Karnataka & Ors*[244] a Full Bench of the Karnataka High Court has declared that the right to choose medium of instruction of their choice is a fundamental right guaranteed under Articles 19(1) (a) (g), 21, 26, 29(1) and 30(1) of the Constitution. The Full Bench has also held that

[244] 2008 K. L. J. 1

"(i) it is a fundamental right of the parent and child to choose the medium of instruction even in primary school. The police power of the State to determine the medium of instruction must yield to the fundamental right of the parent and the child and that

(ii) the Government policy compelling children studying in Government recognised schools to have primary education in the mother tongue or the regional language is violative of Articles 19(1) (g), 26 and 30 (1) of the Constitution.

8.6. Are the rights under Article 30 (1) absolute?

The Supreme Court has repeatedly held that Article 30 is subject to regulatory measures. In the *re Kerala Education Bill*[245] the Supreme Court said, "The right to administer cannot obviously include the right to mal administer".

In *Sidhrajbhai's Case*[246] the Court laid down a very important proposition. It observed that, though the State has a right to impose regulatory measures, this right has to be exercised in the interest of the institution and not on the grounds of public interest or national interest. "If every regulatory order which while maintaining the formal character of a minority institution destroys the power of administration is held justifiable because it is in national or public interest, though not in its interest as an educational institution the right guaranteed under Article 30 (1) will be but a teasing illusion, a promise of unreality. Regulations must be towards making it effective as an educational institution".

In the *State of Kerala v Rev Mother Provincial*[247] the Supreme Court said "The Right of the State to regulate education, educational standards and allied matters cannot be denied".

[245] AIR 1958 SC 956
[246] AIR 1963 SC 540
[247] AIR 1970 SC 2079

In the case of *Nanda Ghosh v Guru Nanak Education Trust*[248], the Calcutta High Court held that the Education Board cannot interfere with the management of a minority institution by super ceding its managing committee and appointing an administrator to take charge of the school and administer it.

Thus it can be said that the Rights of Minorities under Article 30 (1) are not absolute. The State have right to regulate Minority Educational Institution but regulations must be towards making it effective as an educational institution

8.7. Does an institution lose the advantages of Article 30 (1) if non-minority students are admitted to it?

The Courts have held that this is not the case. In *re Kerala Education Bill Case*[249] the Supreme Court observed: 'The real import of Article 29 (2) and Article 30 (1) seems to us that they clearly contemplate a minority institution with a sprinkling of outsiders admitted into it'. Minority Institution does not lose its minority character and cease to be a minority institution by admitting a member of non minority into the minority institution.

In case of *State of Kerala v Rev. Mother Provincial*[250], the Supreme Court observed: "The first right is the initial right to establish institutions of the minority's choice. Establishment means bringing into being of an institution and it must be by a minority community. It is equally irrelevant that in addition to the minority community others take advantage of these institutions. Such other communities bring in income and they do not have to be turned away to enjoy protection".

In *St Stephen's College Case*[251] it was held that, "The minority institutions shall make available at least 50 % of the annual admission to members of

[248] AIR 1984 CAL 40
[249] AIR 1958 SC 956
[250] AIR 1970 SC 2079
[251] AIR 1992 SC 1630

communities other then the minority community. The admission of other community candidates shall be done purely on the basis of merit"

Analysis: Thus the Minority institution does not lose the benefit under Article 30 even if non-minority students are admitted to it.

8.8. Protection to Minority Institutional rights guaranteed through The National Commission for Minority Educational Act of 2004.

The National Commission for Minority Educational Institutions Act has been enacted to safeguard the educational rights of the minorities enshrined in Article 30(1) of the Constitution.

8.9. State as unit to determine Minority Status

It has been held by the Eleven Judges Bench of the Supreme Court in *T.M.A. Pai Foundation vs. State of Karnataka*[252] that a minority, whether linguistic or religious, is determinable only by reference to demography of the State and not by taking into consideration the population of the country as a whole. It ruled that as the reorganization of the States in India had been effected on linguistic lines, for the purpose of determining a minority, the unit would be the State and not the whole of India. Thus, religious and linguistic minorities, who have been placed on par in Article 30, have to be considered in terms of the State concerned. Not surprisingly, this issue surfaced again in *Bal Patil and another v Union of India and others*[253] and in *Anjuman Madarsa Noorul Islam, Dehra Kalan, Ghazipur v State of Uttar Pradesh*[254] where the judgment is delivered by Justice S. N. Srivastava (2007); these two judgments have further complicated the question of definition of minorities, as both these judgments relate, for the most part, to definitional issues. Bal Patil questioned the identity of Jains as a

[252] (2002) 8 SCC 481
[253] AIR 2005 SC 3172
[254] Writ petition No 34892 of 2004 decided on 5.4.2007 by single bench of Allahabad High Court.

religious minority while Srivastava J ruled that Muslims, by virtue of their numbers, cannot be considered a minority in Uttar Pradesh.

Such a State-specific conception of minorities will result in distortions in minority rights. If this rationale is extended, Hindus in Punjab who are a numerical minority there though they are a majority in relation to India as a whole will be entitled to minority protection there as indeed they would be in Jammu and Kashmir, Nagaland, Meghalaya, Mizoram, and Lakshadweep. Considering another example, as per the statistical test, Sikhs in Punjab and Christians in Nagaland, Mizoram and Meghalaya will be held to be a majority and consequently deprived of constitutionally sanctioned minority rights[255]. In Punjab, the minority Hindus will be able to set up educational institutions of their choice and apparently Hindus from other States will be eligible for admission to these institutions unless admission is to be limited to minorities domiciled in the State. By the same logic, Christian students will be ineligible for admission in minority educational institutions, such as St. Stephens College or Loyola College, as they will not have a domicile minority status there. In other words, eligibility for admissions to minority educational institutions will be limited to minorities domiciled in the States, and what is more, some minority community applicants will not be able to avail themselves of minority quotas outside their State(s) because they are not a minority in their own States. At the heart of the current controversy is confusion about which groups qualify as minorities.

Suggestion *A more meaningful conception of minority status would include sections of people who, on account of their non-dominant position in the country as a whole (not a specific State), and because of their religion, language, caste or gender, are targets of discrimination and therefore deserving of special*

[255] D.A.V. College v State of Punjab AIR 1971 SC 1731

consideration to be considered as minority and Minority communities to be notified at the central level.

8.10. Granting of Minority Status Certificate

As regards the indicia to be prescribed for grant of minority status certificate, a reference to Section 2(g) of The National Commission for Minority Educational Institutions Act of 2004 has become inevitable as it defines a Minority Educational Institution under Section 2 (g) as under: -

"Minority Educational Institution" means a college or institution (other than a University) established or maintained by a person or group of persons from amongst the minorities"

Conditions required to be fulfilled for the granting of Minority Status.

It needs to be highlighted that Sec. 2 (f) of the Central Educational Institutions (Reservation in Admission) Act, 2006, defines a minority educational institution as under: -"Minority Educational Institution" means an institution established and administered by the minorities under clause (1) of Article 30 of the Constitution and so declared by an Act of Parliament or by the Central Government or declared as a minority educational institution under the National Commission for Minority Educational Institutions Act, 2004; On a reading of Article 30(1) of the Constitution read with several authoritative pronouncements of the Supreme Court and the definitions of Minority Educational Institution in Section 2(g) of the Act and Section 2(f) of the Central Educational Institutions (Reservation in Admission) Act, 2006, the following facts should be proved for grant of minority status to an educational institution on religious basis:

(i) that the educational institution was established by a member/ members of the religious minority community;

(ii) that the educational institution was established for the benefit of the minority community; and
(iii) that the educational institution is being administered by the minority community.

The aforesaid facts may be proved either by direct or circumstantial evidence. There must be some positive index to enable the educational institution to be identified with religious minorities. There should be nexus between the means employed and the ends desired. If the minority educational institution concerned is being run by a trust or a registered society, then majority of the trustees of the trust or members of the society, as the case may be, must be from the minority community and the trust deed and Articles of Association or any other document duly executed in this regard must reflect the objective of sub-serving the interest of the minority community. In the absence of any documentary evidence some clear or cogent evidence must be produced to prove the aforesaid facts. In, *S. K. Patro v State of Bihar,*[256] The Court held that there is no bar to the members of other communities to extend their help to the member of a minority community to establish an educational institution of its choice.
In, *N. Ammad v Emjay High School,*[257] the Court held that, 'A minority educational institution continues to be so whether the Government declares it as such or not. When the Government declares an educational institution as a minority institution, it merely recognizes a factual position that the institution was established and is being administered by a minority community. The declaration is merely an open acceptance of the legal character of the institution which must necessarily have existed antecedent to such declaration.'

[256] AIR 1970 SC 259
[257] (1998) 6 SCC 674)

State Government not to review earlier order conferring Minority Status on a Minority Educational Institution

As it has been held by the Madras High Court in *T.K.V.T.S.S. Medical Educational & Charitable Trust v State of Tamil Nadu*[258] that a Minority Status cannot be conferred on a Minority Educational Institution for particular period to be renewed periodically like a driving license. It is not open for the State Government to review its earlier order conferring minority status on a minority educational institution unless it is shown that the institution concerned has suppressed any material fact while passing the order of conferral of minority status or there is fundamental change of circumstances warranting cancellation of the earlier order. Reference may, in this connection, be made to the following observations of their lordships : - ".....In conclusion, we hold that if any entity is once declared as minority entitling to the rights envisaged under Article 30(1) of the Constitution of India, unless there is fundamental change of circumstances or suppression of facts the Government has no power to take away that cherished constitutional right which is a fundamental right and that too, by an ordinary letter without being preceded by a fair hearing in conformity with the principles of natural justice."

It is now well settled that any administrative order involving civil consequences has to be passed strictly in conformity with the principles of natural justice.[259] If any order relating to cancellation of minority status granted to a minority educational institution has been passed without affording an opportunity of being heard to such educational institution, it gets vitiated. If a minority status certificate has been obtained by practicing fraud or if there is any suppression of any material fact or any fundamental change of circumstances warranting cancellation of the earlier order, the authority concerned would be within its powers to cancel the minority status certificate after affording an opportunity of being heard to the management of the institution concerned, in conformity with

[258] AIR 2002 Madras 42
[259] *Mohinder Singh Gill v The Chief Election Commissioner* [AIR 1978 SC 851]

the principles of natural justice.It is also relevant to note that the minority status certificate granted by this Commission or by any authority can be cancelled under Section 12C of the Act on violation of any of the conditions enumerated therein.

Section 12C is as under: - "12C. Power to cancel.-The Commission may, after giving a reasonable opportunity of being heard to a Minority Educational Institution to which minority status has been granted by an authority or Commission, as the case may be, cancel such status under the following circumstances, namely: -

(a) If the constitution, aims and objects of the educational institution, which has enabled it to obtain minority status has subsequently been amended in such a way that it no longer reflects the purpose, or character of a Minority Educational Institution;

(b) If, on verification of the records during the inspection or investigation, it is found that the Minority Educational Institution has failed to admit students belonging to the minority community in the institution as per rules and prescribed percentage governing admissions during any academic year."

The parliamentary paramount has been provided for by Articles 246 and 254 of the Constitution. In view of the mandate of these Articles of the Constitution, the National Commission for Minority Educational Institutions Act, 2004, being a Central law shall prevail over the State law. The State Government cannot add, alter or amend any provision of the Act by issuing executive instructions[260].

8.11. Establish and administer to be read conjunctively

[260] Bombay Co-op. Bank Ltd. v M/s. United Yarn Tex. Pvt. Ltd & Ors. [JT 2007 (5) SC 201).]

In Section 2(g), of National Commission of Minority Educational Institutions Act, (2010 amendment) "Minority Educational Institution" is defined as a college or an educational institution established and administered by minority or minorities.

Minority will have right to administer an educational institution only if the minority has established the educational institution. The word 'and' in between 'establish' and 'administer' is normally conjunctive.

In *Azeez Basha vs. Union of India*[261] a Constitutional Bench of the Supreme Court has held that the expression "establish and administer" used in Article 30(1) was to be read conjunctively that is to say, two requirements have to be fulfilled under Article 30(1), namely, that the institution was established by the community and its administration was vested in the community. The Court held that Aligarh University was established not only by the Muslims but by the Government of India by virtue of a Statute and therefore is not a Minority Educational Institution. In *S.P. Mittal v Union of India*[262], the Supreme Court has held that in order to claim the benefit of article 30(1), the community must show; (a) that it is a religious or linguistic minority, (b) that the institution was established by it. Without specifying these two conditions it cannot claim the guaranteed rights to administer it. Thus the word 'and' occurring in the definition of minority educational institution in Section 2(g) of the National Commission for Minority Educational Institutions Act, 2004 has to be read conjunctively as the context showed that it was the intention of the legislature.
In *St. Stephen's College vs. University of Delhi*[263], the Supreme Court has declared the St. Stephen's College as a minority educational institution on the ground that it was established and administered by members of the Christian

[261] AIR 1968 SC 662,
[262] AIR 1983 SC 1
[263] (1992) SCC 558

Community. Thus, these were the indicia laid down by the Supreme Court for determining the status of a minority educational institution and they have also been incorporated in Section 2(g) of the National Commission of Minority Educational Institutional Act, 2004. Article 30(1) of the Constitution postulates that members of religious or linguistic minority have the right to establish and administer educational institutions of their choice. It is a matter of proof through production of satisfactory evidence that the institution in question was established by the minority community claiming to administer it. The proof of the fact of the establishment of the institution is a condition precedent for claiming the right to administer the institution. The onus lies on one who asserts that an institution is a minority institution. It has been held by a Division Bench of the Madras High Court in *T.K.V.T.S.S. Medical Educational and Charitable Trust vs. State of Tamil Nadu*[264] that "once it is established that the institution has been established by a linguistic minority, and is administered by that minority, that would be sufficient for claiming the fundamental right guaranteed under Article 30(1) of the Constitution." The same principle applies to religious minority also.

The research unfolds a disappointing picture of the rights promised to the minorities through Article 30 and their implementation. The rights have not been automatically confirmed but time and again minorities had to assert their demands. As far as interpretation of Article 30 by the courts is concerned, one find that legal Status of Minority Educational institutions is vague and subject to a constant struggle between the minorities and the state. They reflect a trend towards gradually reducing the scope of the Article, giving space to the governmental regulations and control. Example can be given of conjunctive use of the terms 'establish' with 'administration'. Such an approach, it is needless to state, has deprived many minority communities the benefit of the rights due to them.

[264] AIR 2002 Madras 42

Suggestion: *If the Educational Institution is managed by the minority Community and is effectively contributing for the growth and development of minority community than taking into consideration the present factual situation the institution can be considered as minority Educational Institution.*

*8.*12. Government, the University and the Court can investigate and satisfy themselves, whether the claim of the institute is well founded

In *Andhra Pradesh Christian Medical Association vs. Government of Andhra Pradesh*[265], the Supreme Court has held that the Government, the University and ultimately the Court can go behind the claim that the institution in question is a minority institution and "to investigate and satisfy itself whether the claim is well founded or ill founded."

The Supreme Court has also held that "What is important and what is imperative is that there must be some real positive index to enable the institution to be identified as an educational institution of the minorities." Needless to add here that the right enshrined in Article 30(1) of the Constitution is meant to benefit the minority by protecting and promoting its interests. There should be a nexus between the institution and the particular minority to which it claims to belong. The right claimed by a minority community to administer the educational institutions depends upon the proof of establishment of the institution.

8.13. Minority has vast discretion and option in deciding the type of institute which they want to establish:

It has to be borne in mind the right guaranteed under Article 30(1) is a right not conferred on individuals but on religious denomination or section of such

[265] AIR 1986 SC 1490

denomination. It is also universally recognized that it is the parental right to have education of their children in the educational institutions of their choice. It has been held by a Full Bench of the Karnataka High Court in *Associated Managements of Primary and Secondary Schools in Karnataka v State of Karnataka and Ors.*[266] that the words of "their choice" which qualify "Educational institutions" shows the vast discretion and option which minorities have in selecting the type of the institution which they want to establish."

An educational institution is established to serve or advance the purpose for its establishment. Whereas the minorities have the right to establish and administer educational institutions of their choice with the desire that their children should be brought up properly and be eligible for higher education and go all over the world fully equipped with such intellectual attainments as it will make them fit for entering the public service, surely then there must be implicit in such a fundamental right the corresponding duty to cater to the needs of the children of their own community. The beneficiary of such a fundamental right should be allowed to enjoy it in the fullest measure. Therefore, the educational institutions of their choice will necessarily cater to the needs of the minority community which had established the institution.

8.14. Minority Educational Institutes primarily for the benefit of Minorities.

It was emphasized in the *P.A. Inamdar case*[267], that the minority educational institution is primarily for the benefit of minority. Sprinkling of the non-minority students in the student population of minority educational institution is expected to be only peripheral either for generating additional financial

[266] 2008 K.L.J 1 (Full Bench)
[267] (2005) 6 SCC 537

source or for cultural courtesy. Thus, a substantive section of student population in minority educational institution should belong to the minority.

8.15. In a Nut Shell: Right to Establish and Administer Educational Institutions

A stream of Supreme Court decisions commencing with the *Kerala Education Bill case* and climaxed by the Eleven Judges Bench case in *T.M.A. Pai Foundation* has settled the law for the present. The proposition of law enunciated in *T.M.A. Pai Foundation* is reiterated in the clarificatory judgment rendered by another Constitutional Bench of the Supreme Court in *P.A. Inamdar vs. State of Maharashtra.*[268] The general principles relating to establishment and administration of educational institution by minorities may be summarized thus:

(i) The right of minorities to establish and administer educational institutions of their choice guaranteed under Article 30(1) is subject to the regulatory power of the State for maintaining and facilitating the excellence of educational standard. The minority institutions cannot be allowed to fall below the standards of excellence expected of educational institutions, or under the guise of exclusive right of management, to decline to follow the general pattern. The essential ingredients of the management, including admission of students, recruitment of staff and the quantum of fee to be charged cannot be regulated.
(ii) The regulations made by the statutory authorities should not impinge upon the minority character of the institution.
The regulations must satisfy a dual test-that it is regulative of the educational character of the institution and is conducive to making the institution an effective vehicle of education for the minority community or other persons who

[268] 2005 (6) SCC 537

resort to it. Regulations that embraced and reconciled the two objectives could be considered reasonable.

(iii) All laws made by the State to regulate the administration of educational institutions, and grant-in-aid, will apply to minority educational institutions also. But if any such law or regulations interfere with the overall administrative control by the management over the staff, or abridges in any other manner, the right to establish and administer educational institutions, such law or regulations, to that extent, would be inapplicable to minority institutions.

(iv) The general laws of the land relating to national interest, national security, social welfare, public order, morality, health, sanitation, taxation etc. applicable to all, will equally apply to minority educational institutions also.

(v) The fundamental right guaranteed under Article 30(1) is intended to be effective and should not be whittled down by any administrative exigency. No inconvenience or difficulties, administrative and financial, can justify infringement of the fundamental right.

(vi) Receipt of aid does not alter the nature or character of the minority educational institution receiving aid. Article 30(1) clearly implies that any grant that is given by the State to the minority educational institution cannot have such conditions attached to it which will in any way dilute or abridge the rights of the minorities to establish and administer educational institutions. But the State can lay down reasonable conditions for obtaining grant-in-aid and for its proper utilization.

(vii) The State can regulate the service conditions of the employees of the minority educational institutions to ensure quality of education. Any law intended to regulate service conditions of employees of educational institutions will apply to minority educational institutions also, provided that such law does

not interfere with the overall administrative control of the managements over the staff. The State can introduce a mechanism for redressal of the grievances of the employees

8.16. Ensuring Minority Status: A futuristic Approach

Having the futuristic approach the researcher would like to devote the last few pages in discussing: How Minority Educational Institutions can ensure their legal status?

1. Problem of Implementation

Minority Institutions face the major problem in enforcement of their rights to establish and administer educational institutions of their choice. Anti minority prejudices, Lack of legal awareness, Political opportunism, Economic constraints, Delay in availability and at times non availability of judicial remedies, etc., are some of the serious problems which hinders the benefits of rights flowing to Minority educational Institutions.

Minorities have limited access to economic resources. Enormous funds are required to establish and administer an educational institute. The cost of establishing an institute of Higher Education is much more. After *T.M. A. Pai's case*[269] the competition has become much more stringent as the unaided non minority institutions are armoured with a new found fundamental rights under Articles 19(1) (g) and 26(a). Minorities have been approaching the High Courts and Supreme Courts to get their rights implemented and in the process spending their depleting resources on litigations.

Suggestion: Minority institutions should adopt ways and means to avoid litigation as far as possible.

2. Legal Awareness:

[269] (2002) 8 SCC 481

Minorities are not aware of their rights and there have been plethora of cases decided by various High Courts and Supreme Court delimiting Minorities rights. It is very difficult for the minorities to keep track of all the judicial pronouncements and the enacted laws. Since law is knowable, minorities should make a deliberate effort to know the extent of their rights and the limits of governmental restrictions. As before going in for major surgery, a prudent man will always go in for second opinion, similarly before going in for litigation minorities should make an effort to find out the available legal remedies. If the Governing body members of minority institutions are aware of the extent of their rights many problems will be solved without approaching the courts. If the members keep themselves well equipped with the relevant regulations and rulings of the High Courts and Supreme Court they would be in position to administer their institutions effectively. A well aware management need to sensitize Staff, Teacher, Students, and Parents about their minority rights and explain its importance.

Suggestion: Members of Managing Committee need to be legally aware about their legal rights and limitations. This will not only help them to run the educational institution effectively but will help nipping the problems in the bud.

3. Transparency and Accountability

In this era of Right to Information and where people are looking for just and non corrupt institutions, Minority Institutions should show transparency in all matters affecting, students, staff, parents and public at large. In most of the judgments courts have held that minority have a right to administer minority institutions but they do not have right to mal administer. If minority institutes ensure that they fix procedure for admissions, appointments and all educational matters and make it know to public at large it will cater to the requirement of transparency. It is necessary to maintain all the records

properly this will not only facilitate smooth functioning but would to a greater extent satisfy the requirement of transparency and accountability.

Suggestion: Transparency in all dealing will be backed with community support and effective functioning.

4. To be just and fair in all dealings

Justice should not only be done but it should be appeared to be done. In the present era of 'hire and fire' there have been many staff disciplinary matters in the court. The strict compliance with the principles of natural justice would prevent lots of litigations. Person should be given a right to hearing before detrimental consequences. Alternate dispute resolution mechanism such as arbitration, conciliation and mediation should be widely used in minority institutions

Suggestions: Following rules of natural justice will instill confidence in the management and there would be less chances of unrest.

5. Service to nation

Liberalization and open economic policies will provide minorities ample opportunities of establishing unaided, self financing, and autonomous educational institutes. Minorities can grab this opportunity for establishing institutes of excellence even with foreign collaboration. Despite of regulations and restrictions minorities should make all endeavours to establish aided educational institutes. Such aided institutes will facilitate in reaching out to members of their own communities but also to the other deprived communities.

Suggestion: Minority Education Institutes can be used as medium to serve the nation.

-x-x-x-x-x-x-

Bibliography

Books

(1) B. Shiva Rao, *The framing of India's Constitution – Select Documents,* Universal Law Publishing Co. Pvt. Ltd., Volume 4, First Published 1967, Reprint 2006.

(2) Bakshi P. M., *The Constitutional Law of India*, Universal Law Publishing Company, 8th edition. Delhi, 2001.

(3) Basu Durga Das Dr, *Commentary on the Constitution of India;* Lexis Nexis Butterworths Wadhwa- Nagpur, Eighth Edition 2008.

(4) Chandra Satish (Dr), *Minorities in National and International Laws;* Deep and Deep Publications, New Delhi. Published in 1985.

(5) Charles Wagley and Marvin Harris, *Minorities in the new world: six case studies,* Columbia University Press, New York. 1958.

(6) Claude Inis L., *National minorities; An international problem,* Harvard University Press, Cambridge, 1955.

(7) Desai, M., *Minority Educational Institutions and Law*, Akshar Prakashan, Mumbai. 1996

(8) Fischer Eric, *Minorities and Minority problems*, Vantage press, Chicago, 1980.

(9) Gittler, Joseph B, *Understanding minority groups*, John Wiley & Sons, New York. 1956.

(10) Henrard Kristin and Dunbar Robert, *Synergies in Minority Protection, Eupropean and International law perspectives,* Crambridege University Press, 2008.

(11) Hepburn A. C., *Minorities in History,* Wdward Arnold (Publishers) Ltd, London, 1978.

(12) Imam Mohammed, *Minorities and Law,* The Indian Law Institute, New Delhi and N M Tripathi Private Limited, Mumbai, First Edition, 1972.

(13) Jain M. P. (Prof.), *Indian Constitutional Law*, Wadhwa Publisher Nagpur, 5th edition reprint 2006.

(14) Kashyap Subhash C. Dr., *Constitutional Law of India;* Universal Law Publishing Co., Delhi. Edition 2008.

(15) Kymlicka Will and Patten Alan, *Language rights and political theory,* Oxford University Press, Mumbai, 2003.

(16) Laponce J. A., *The Protection of Minorities,* University of California, California, 1960.

(17) Lyal S Sunga, *International criminal Law: Protection of Minority Rights Beyond a one Dimensional state: An Emerging Right to Autonomy?* Ed Zelim Skurbaty (2004)

(18) Mahmood Tahir, *Politics of Minority Educational Institutions,* ImprintOne, Haryana, 2007.

(19) Malik Sumeet, *Supreme Court Educational Institutions Cases,* Eastern Book Company, Lucknow, Eighth Edition, 2008.

(20) Massey James, *Minorities in a democracy: the Indian experience*, Manohar Publishers & Distributors, New Delhi, 1999.

(21) Mohd. Shafiquz Zaman, *Problems of minorities' education in India*, Booklinks Corporation, Hyderabad, 2001.

(22) Moin Shakir, *Politics of minorities: some perspectives,* Ajanta Publications New Delhi (India), 1980.

(23) Pandey J.N. Dr., *Constitutional Law of India*, Central Law Agency, 43rd edition 2006.

(24) Raju M. P., *Minority Rights Myth or Reality-A Critical look at 11 Judge Verdict with full text;* Media House, Delhi. First Published in 2002.

(25) Ramesh Babu B., *Minorities and the American Political system,* South Asian Publishers, New Delhi, 1989.

(26) Seervai H. M., *Constitutional Law of India,* Universal Law Publishing Co. Pvt. Ltd. Volume 2, Fourth Edition, Reprint 2008.

(27) Sen Dhirendranath, *The Problem of Minorities;* Published by the University of Calcutta, 1940.

(28) Shukla V. N., *Constitution of India;* Eastern Book Company, Lucknow, Tenth Edition, 2001.

(29) Thompson Virginia and Adloff, Richard; *Minority problems in south-east Asia,* Stanford University Press, California. 1955.

(30) Wadhwa Kamlesh Kumar, *Minority safeguards in India: Constitutional provisions and their implementation,* Thomson Press (India) Ltd., Haryana, 1975.

(31) Wadhwa Kamlesh Kumar, *Minority Safeguards in India;* Thomson Press (India) Limited, Publication Division, 1975.

(32) Yaqin A., *Constitutional Protection of Minority Educational Institutions in India,* Deep and Deep Publications, New Delhi. 1986.

Articles

1. Ansari A. Iqbal, "*Minority Education Rights: Supreme Court Judgment*", Economic and Political Weekly, May 10, 2003.

2. Bajpai Rochana; "*Working Paper Number 30: Minority Rights in the Indian Constituent Assembly Debates", 1946-1949.* http://www3.qeh.ox.ac.uk/RePEc/qeh/qehwps/qehwps30.pdf (visited on 15th March 2011)

3. Bajpai Rochana, "*Constituent Assembly Debates and Minority Rights",* Economic and Political weekly, May 27, 2000.

4. Bakshi P. M., "*Minority Institutions and Majority Students",* Journal of the Indian Law Institute, Volume 32, Number 1, 1990.

5. Bishnoi Ajay, *"Minorities right to establish and administer educational institutions - a critique",* visited on 17th March 2011 http://www.legalserviceindia.com/article/l93-minorities-rights.html

6. Goyal K.N., "*Majorities Right to Establish and Administer Educational Institution",* Journal of Indian Law Institute, Volume 38, Number 3, July – September 1996.

7. Jain Ranu; *"Minority Rights in Education Reflections on Article 30 of the Indian Constitution"*, Economic and Political Weekly June 11, 2005
http://www.eledu.net/rrcusrn_data/Minority%20Rights%20in%20EducationReflections%20on%20Article%2030%20of%20the%20Indian%20Co

8. John Dayal; "*Defining India's Minorities",*
file:///C:/Documents%20and%20Settings/Administrator/My%20Documents/Ph.D%20work/defining-india-s-minorities.htm

9. Kamaluddin Khan, "*Educational Rights of Minorities",* visited on 15th March 2010.
http://www.twocircles.net/legal_circle/educational_rights_minorities_kamaluddin_khan.html visited on 15th March 2011.

10. Mahmood Tahir, *"Minority Matters",* The Times of India, April 11, 2007.

16. Mohammad Ghouse, *"A Minority University and the Supreme Court (A Critique of Azeez Basha v Union of India),"* Journal of the Indian Law Institute, Volume 10, 1968.

17. Molishree, "*Minority Educational Institution- A Critical analysis."* Visited on 25th February 2010
http://socialjustice.nic:in/obes/minority.htm

18. Noorani A. G., *"Protecting Minority Rights",* Economic and Political Weekly, March 18, 2000.

19. Paliwal Anand Dr.; "*Minority rights and Nationalist Opinion,*" Journal Section, AIR August 2009.
http://airwebworld.com/articles/index.php?article=897, Visited on 15th March 2010.

20. Patel Akhilesh, "*Concept of 'Minority' and 'Minority Status' under Indian Constitution".* Visited on 4th June 2011
http://jurisonline.in/2011/04/conceptof%E2%80%98minority%E2%80%99-and-%E2%80%98minority-status%E2%80%99-under-indian-constitution

21. Saxena Priti Dr., *Judiciary on Educational Rights of Minorities,* Indian Bar Review, Vol. XXXII (3 & 4) 2005

22. Singh Parmanand, *Academic and Administrative Freedom of Minority Institutions in India,* Journal of the Indian Law Institute, Volume 19, Number 3, 1977.

23. Violette Graff; *"Aligarh's Long Quest for Minority Status AMU (Amendment) Act, 1981",* Economic and Political Weekly August 11, 1990.

24. Virendra Kumar, *"Minorities Right to run Educational Institutions: T. M. A. Pai Foundation in Perspective",* Journal of Indian Law Institute, Volume 45, 2003.

Websites

1. *Constituent Assembly Debates (Proceedings)*, http://parliamentofindia.nic.in/ls/debates/debates.htm, last visited on 20th April 2011

2. *National Commission for Minorities* [NCM Website] http://ncm.nic.in, visited on 15th March 2011

3. National Commission for Minority Educational Institutions. http://ncmei.gov.in/index.aspx?clt=1, Visited on 27th December 2010.

4. *Information of India-Religions in India-Zoroastrianism,* http://adaniel.tripod.com/parsi.htm, visited on 12th September 2010

5. United Nation, Office of the High Commissioner of Human Rights, *Minorities under international law;* E/CN.4/Sub.2/384/Rev.1, para. 568. [http://www.ohchr.org/EN/Issues/Minorities/Pages/internationallaw.aspx] visited on 31 March 2012.

6. The Ultimate outsider! Reported on website www.atheists.org, visited on 25th March, 2006

7. *National Commissioner Linguistic Minorities,* http://nclm.nic.in/index1.asp?langid=2, Visited on 17th December 2011,

8. National Commission for religious and linguistic minorities, http://en.wikipedia.org/wiki/National_Commission_for_Religious_and_Linguistic_Minorities, Visited on 20th December 2011.

9. Minority Population,

http://ncm.nic.in/minority_population.pdf, last visited on 25th November 2011.

10. Islam in India.
http://en.wikipedia.org/wiki/Islam_in_India, last visited on 10th Nov. 2011

11. History of Buddhism
http://www.buddhist-temples.com/history-of-buddhism.html, visited on September 2011

-x-x-x-x-x-

APPENDIX A

National Commission for Minorities Act, 1992

National Commission for Minorities Act, 1992

Act XIX of 1992, passed on 17.5.1992, enforced w.e.f 17.5.1993; amended by National Commission for Minorities (Amendment) Act 1995 [Act XLI of 1995 passed on 8.9.1995] for creating the post of a Vice-Chairman out of the originally six Members.

An Act to constitute a National Commission for Minorities and to provide for matters connected therewith or incidental thereto.

Be it enacted by Parliament in the Forty-third year of the Republic of India as follows:-

CHAPTER I : PRELIMINARY

1. Short title, extent and commencement

i. This Act may be called the National Commission for Minorities Act, 1992.
ii. It extends to the whole of India except the State of Jammu and Kashmir.
iii. It shall come into force on such date as the Central Government may, by notification in Official Gazette, appoint.

2. Definitions.-

In this Act, unless the context otherwise requires.

i. “Commission” means the National Commission for Minorities constituted under section 3.
ii. “Member” means a Member of the Commission [and includes the Vice Chairperson].
iii. “Minority”, for the purposes of this Act, means a community notified as such by the Central Government.
iv. “prescribed” means prescribed by Rules made under this Act.

CHAPTER II : THE NATIONAL COMMISSION FOR MINORITIES

3. Constitution of the National Commission for Minorities.-

i. The Central Government shall constitute a body to be known as the National Commission for Minorities to exercise the powers conferred on, and to perform the functions assigned to, it under this Act.
ii. The Commission shall consist of a Chairperson, [a Vice Chairperson and five] Members to be nominated by the Central Government from amongst persons of eminence, ability and integrity; Provided that five Members including the Chairperson shall be from amongst the Minority communities.

4. Term of office & conditions of service of Chairperson & Members.-

i. The Chairperson and every Member shall hold office for a term of three years from the date he assumes office.
ii. The Chairperson or a Member may, by writing under his hand addressed to the Central Government, resign from the office of Chairperson or, as the case may be, of the Member at any time.
iii. The Central Government shall remove a person from the office of Chairperson or a Member referred to in sub-section (2) if that person -
    a. becomes an undischarged insolvent.
    b. is convicted and sentenced to imprisonment for an offence which in the opinion of the Central Government involves moral turpitude.
    c. becomes of unsound mind and stands so declared by a competent court.
    d. refuses to act or becomes incapable of acting.
    e. is, without obtaining leave of absence from the Commission, absent from three consecutive meetings of the Commission.
    f. has, in the opinion of the Central Government, so abused the position of Chairperson, or Member, as to render that person's continuance in office detrimental to the interests of Minorities or the public interest: Provided that no person shall be removed under this clause until that person has been given a reasonable opportunity of being heard in the matter.
iv. A vacancy caused under sub-section (2) or otherwise shall be filled by fresh nomination.
v. The salaries and allowances payable to, and the other terms and conditions of service of, the Chairperson and Members shall be such as may be prescribed.

5. Officers and other employees of the Commission.-

i. The Central Government shall provide the Commission with a Secretary and such other officers and employees as may be necessary for the efficient performance of the functions of the Commission under this Act.
ii. The salaries and allowances payable to, and the other terms and conditions of service of, the officers and other employees appointed for the purpose of the Commission shall be such as may be prescribed.

6. Salaries and allowances to be paid out of grants.-

The salaries and allowances payable to the Chairperson and Members and the administrative expenses, including salaries, allowances and pensions payable to the officers and other employees referred to in section 5, shall be paid out of the grants referred to in sub-section (1) of section 10.

7. Vacancies, etc. not to invalidate proceedings of the Commission.-

No act or proceeding of the Commission shall be questioned or shall be invalid merely on the ground of the existence of any vacancy or defect in the constitution of the Commission.

8. Procedure to be regulated by the Commission.-

i. The Commission shall meet as and when necessary at such time and places as the Chairperson may think fit.
ii. The Commission shall regulate its own procedure.
iii. All orders and decisions of the Commission shall be authenticated by the Secretary or any other officer of the Commission duly authorized by the Secretary on his behalf.

CHAPTER III : FUNCTIONS OF THE COMMISSION

9. Functions of the Commission.-

i. The Commission shall perform all or any of the following functions, namely:-
    a. evaluate the progress of the development of Minorities under the Union and States.
    b. monitor the working of the safeguards provided in the Constitution and in laws enacted by Parliament and the State Legislatures.
    c. make recommendations for the effective implementation of

safeguards for the protection of the interests of Minorities by the Central Government or the State Governments.

d. look into specific complaints regarding deprivation of rights and safeguards of the Minorities and take up such matters with the appropriate authorities.
e. cause studies to be undertaken into problems arising out of any discrimination against Minorities and recommend measures for their removal.
f. conduct studies, research and analysis on the issues relating to socio-economic and educational development of Minorities.
g. suggest appropriate measures in respect of any Minority to be undertaken by the Central Government or the State Governments.
h. make periodical or special reports to the Central Government on any matter pertaining to Minorities and in particular the difficulties confronted by them.
i. any other matter which may be referred to it by the Central Government.

ii. The Central Government shall cause the recommendations referred to in clause (c) of sub-section (1) to be laid before each House of Parliament along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the Union and the reasons for the non-acceptance, if any, of any of such recommendations.

iii. Where any recommendation referred to in clause (c) of sub-section (1) or any part thereof is such with which any State Government is concerned, the Commission shall forward a copy of such recommendation or part to such State Government who shall cause it to be laid before the Legislature of the State along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the State and the reasons for the non-acceptance, if any, of any of such recommendation or part.

iv. The Commission shall, while performing any of the functions mentioned in sub-clauses (a), (b) and (d) of sub-section (1), have all the powers of a civil court trying a suit and, in particular, in respect of the following matters, namely:-

a. summoning and enforcing the attendance of any person from any part of India and examining him on oath.
b. requiring the discovery and production of any document.
c. receiving evidence of affidavits.
d. requisitioning any public record or copy thereof from any court or office.
e. issuing commissions for the examination of witnesses and documents; and
f. any other matter which may be prescribed.

CHAPTER IV : FINANCE, ACCOUNTS AND AUDIT

10. Grants by the Central Government.-

i. The Central Government shall, after due appropriation made by Parliament by law in this behalf, pay to the Commission by way of grants such sums of money as the Central Government may think fit for being utilized for the purposes of this Act.
ii. The Commission may spend such sums as it thinks fit for performing the functions under this Act, and such sums shall be treated as expenditure payable out of the grants referred to in sub-section (1).

11. Accounts and audit.-

i. The Commission shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.
ii. The accounts of the Commission shall be audited by the Comptroller and Auditor-General at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Commission to the Comptroller and Auditor-General.
iii. The Comptroller and Auditor-General and any person appointed by him in connection with the audit of the accounts of the Commission under this Act shall have the same rights and privileges and the authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Commission.

12. Annual Report.-

The Commission shall prepare, in such form and at such time, for each financial year, as may be prescribed, its annual report, giving a full account of its activities during the previous financial year and forward a copy thereof to the Central Government.

13. Annual Report and audit report to be laid before Parliament.-

The Central Government shall cause the Annual Report together with a memorandum of action taken on the recommendations contained therein, in so far as they relate to the Central Government, and the reasons for the

non-acceptance, if any, of any of such recommendations and the audit report to be laid, as soon as may be after the reports are received, before each House of Parliament.

CHAPTER V : MISCELLANEOUS

14. Chairperson, Members & staff of Commission to be public servants;-

The Chairperson, Members and employees of the Commission shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code.

15. Power to make rules.-

(i) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

(ii) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:-

a. salaries and allowances payable to, and the other terms and conditions of service of, the Chairperson and Members under sub-section (5) of section 4 and of officers and other employees under sub-section (2) of section5;
b. any other matter under clause (f) of sub-section (4) of section 9.
c. the form in which the annual statement of accounts shall be maintained under sub-section (1) of section 11.
d. the form in, and the time at, which the Annual Report shall be prepared under section 12.
e. any other matter which is required to be, or may be, prescribed.

(iii) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule, or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be-so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

16. Power to remove difficulties.-

i. If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient for removing the difficulty: Provided that no such order shall be made after the expiry of a period of two years from the date of commencement of this Act.

ii. Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament

-x-x-x-x-x-x-

APPENDIX B

The National Commission for Minority Educational Institutions Act, 2004

(2 of 2005)

as amended by

The National Commission for Minority Educational Institutions (Amendment) Act, 2006

(18 of 2006)

and

The National Commission for Minority Educational Institutions (Amendment) Act, 2010

(20 of 2010)

The National Commission for Minority Educational Institutions Act, 2004

(2 of 2005)

as amended by
The National Commission for Minority Educational Institutions (Amendment) Act, 2006
(18 of 2006)
and
The National Commission for Minority Educational Institutions (Amendment) Act, 2010
(20 of 2010)

The National Commission for Minority Educational Institutions Act, 2004

THE NATIONAL COMMISSION FOR MINORITY EDUCATIONAL INSTITUTIONS ACT, 2004

(2 of 2005)

[6th January, 2005]

An Act to constitute a National Commission for Minority Educational Institutions and to provide for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Fifty-fifth Year of the Republic of India as follows: -

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement.— (1) This Act may be called the National Commission for Minority Educational Institutions Act, 2004.

(2) It extends to the whole of India except the State of Jammu & Kashmir.

(3) It shall be deemed to have come into force on the 11th day of November, 2004.

2. Definitions.— In this Act, unless the context otherwise requires,—

(a) "affiliation" together with its grammatical variations, includes, in relation to a college, recognition of such college by, association of such college with, and admission of such college to the privileges of, a [1] [***] University;

[2] [(aa) "appropriate Government" means,—

(i) in relation to an educational institution recognized for conducting its programmes of studies under any Act of Parliament, the Central Government; and

(ii) in relation to any other educational institution recognized for conducting its programmes of studies under any State Act, a State Government in whose jurisdiction such institution is established;]

(b) [3] [***]

(c) "Commission" means the National Commission for Minority Educational Institutions constituted under section 3;

[2] [(ca) "Competent authority" means the authority appointed by the appropriate Government to grant no objection certificate for the establishment of any educational institution of their choice by the minorities;]

(d) "degree" means any such degree as may, with previous approval of the Central Government, be specified in this behalf by the University Grants Commission, by notification in the Official Gazette;

---

1. The word "Scheduled" omitted by Act 18 of 2006, Sec. 2 (w.e.f. 23.1.2006).
2. Ins. by Act 18 of 2006, sec. 2 (w.e.f. 23.1.2006).
3. Omitted by Act 20 of 2010 (w.e.f. 01.09.2010); before omission clause (b) stood as under:
"(b) "college" means a college or teaching institution (other than a University) established or maintained by a person or group of persons from amongst a minority community;

[1] (da) "educational rights to minorities" means the rights of minorities to establish and administer educational institutions of their choice;

(e) "Member" means a member of the Commission and includes the Chairperson;

(f) "minority", for the purpose of this Act, means a community notified as such by the Central Government;

[2] (g) "Minority Educational Institution" means a college or an educational institution established and administered by a minority or minorities;

(h) "prescribed" means prescribed by rules made under this Act;

(i) "qualification" means a degree or any other qualification awarded by a University;

(j) [3][***]

(k) "technical education" has the meaning assigned to it in clause (g) of section 2 of the All India Council for Technical Education Act, 1987 (52 of 1987);

(l) "University" means a university defined under clause (f) of section 2 of the University Grants Commission Act, 1956 (3 of 1956), and includes an institution deemed to be a University under section 3 of that Act, or an institution specifically empowered by an Act of Parliament to confer or grant degrees.

CHAPTER II
THE NATIONAL COMMISSION FOR MINORITY EDUCATIONAL INSTITUTIONS

3. Constitution of National Commission for Minority Educational Institutions.— (1) The Central Government shall, by notification in the Official Gazette, constitute a body to be known as the National Commission for Minority Educational Institutions to exercise the powers conferred on, and to perform the functions assigned to, it under this Act.

(2) The Commission shall consist of a Chairperson and three [**][4] members to be nominated by the Central Government.

4. Qualifications for appointment as Chairperson or other Member.—

(1) A person shall not be qualified for appointment as the Chairperson unless he,—

(a) is a member of a minority community; and

(b) has been a Judge of a High Court.

---

1. Ins. By Act 18 of 2006, sec. 2 (w.e.f. 23.1.2006).

2. Substituted by Act 20 of 2010 (w.e.f. 01.09.2010). Earlier (g) stood as under:

"(g) "Minority Educational Institution" means a college or institution (other than a University) established or maintained by a person of group of persons from amongst the minorities;"

3. Clause (j) omitted by Act 18 of 2006, sec. 2 (w.e.f. 23.1.2006); before omission, clause (j) stood as under:

"(j) "Scheduled University" means a University specified in the Schedule."

4. ** Substituted by Act 20 of 2010 (w.e.f. 01.09.2010). Earlier it was "two"

(2) A person shall not be qualified for appointment as a Member unless he,—

(a) is a member of a minority community; and

(b) is a person of eminence, ability and integrity.

5. Term of office and conditions of service of Chairperson and Members.—

(1) Every Member shall hold office for a term of five years from the date on which he assumes office.

(2) A Member may, by writing under his hand addressed to the Central Government, resign from the office of Chairperson or, as the case may be, of Member at any time.

(3) The Central Government shall remove a person from the office of Member if that person

(a) becomes an undischarged insolvent;

(b) is convicted and sentenced to imprisonment for an offence which, in the opinion of the Central Government, involves moral turpitude;

(c) becomes of unsound mind and stands so declared by a competent court;

(d) refuses to act or becomes incapable of acting;

(e) is, without obtaining leave of absence from the Commission, absent from three consecutive meetings of the Commission; or

(f) in the opinion of the Central Government, has so abused the position of Chairperson or Member as to render that person's continuance in office detrimental to the public interest:

Provided that no person shall be removed under this clause until that person has been given an opportunity of being heard in the matter.

(4) A vacancy caused under sub-section (2) or otherwise shall be filled by fresh nomination and a person so nominated shall hold office for the unexpired period of the term for which his predecessor in office would have held office if such vacancy had not arisen.

(5) The salaries and allowances payable to, and the other terms and conditions of service of, the Chairperson and Members shall be such as may be prescribed.

6. Officers and other employees of Commission.—(1) The Central Government shall provide the Commission with a Secretary and such other officers and employees as may be necessary for the efficient performance of the functions of the Commission under this Act.

(2) The salaries and allowances payable to, and the other terms and conditions of service of, the Secretary, officers and other employees appointed for the purpose of the Commission shall be such as may be prescribed.

7. Salaries and allowances to be paid out of grants.—The salaries and allowances payable to the Chairperson and Members and the administrative expenses, including salaries, allowances and pensions payable to the Secretary,

officers and other employees referred to in section 6, shall be paid out of the grants referred to in sub-section (1) of section 14.

8. Vacancies, etc., not to invalidate proceedings of Commission.— No act or proceeding of the commission shall be questioned or shall be invalid on the ground merely of the existence of any vacancy or defect in the constitution of the Commission.

9. Procedure to be regulated by Commission.—(1) The Commission shall meet as and when necessary at such time and place as the Chairperson may think fit.

(2) The Commission shall regulate its own procedure.

(3) All orders and decisions of the Commission shall be authenticated by the Secretary or any other officer of the Commission duly authorized by the Secretary in this behalf.

[1] *[CHAPTER III*

RIGHTS OF A MINORITY EDUCATIONAL INSTITUTION

10. Right to establish a Minority Educational Institution.— *(1) Subject to the provisions contained in any other law for the time being in force, any person, who desires to establish a Minority Educational Institution may apply to the competent authority for the grant of no objection certificate for the said purpose."

(2) The Competent authority shall,—

(a) on perusal of documents, affidavits or other evidence, if any; and

(b) after giving an opportunity of being heard to the applicant, decide every application filed under sub-section (1) as expeditiously as possible and grant or reject the application, as the case may be:

Provided that where an application is rejected, the Competent authority shall communicate the same to the applicant.

(3) Where within a period of ninety days from the receipt of the application under sub-section (1) for the grant of no objection certificate,—

(a) the Competent authority does not grant such certificate; or

(b) where an application has been rejected and the same has not been communicated to the person who has applied for the grant of such certificate, it shall be deemed that the Competent authority has granted a no objection certificate to the applicant.

---

1. Chapter III subs. by Act 18 of 2006, sec. 3 (w.e.f. 23.1.2006); before substitution, Chapter III stood as under:

"CHAPTER III

RIGHT OF A MINORITY EDUCATIONAL INSTITUTION

10. Right of a Minority Educational Institution to seek affiliation to a Scheduled University.—

(1) Notwithstanding anything contained in any other law for the time being in force, a Minority Educational Institution may seek recognition as an affiliated college of a Scheduled University of its choice.

(2) The Scheduled University shall consult the Government of the State in which the minority educational institution seeking affiliation under sub-section (1) is situate and views of such Government shall be taken into consideration before granting affiliation."

*Further substituted by Act 20 of 2010 (w.e.f. 01.09. 2010). Earlier it stood as under:-

"(1) Any person who desires to establish a Minority Educational Institution may apply to the Competent authority for the grant of no objection certificate for the said purpose."

(4) The applicant shall, on the grant of a no objection certificate or where the Competent authority has deemed to have granted the no objection certificate, be entitled to commence and proceed with the establishment of a Minority Educational Institution in accordance with the rules and regulations, as the case may be, laid down by or under any law for the time being in force.

Explanation.—For the purposes of this section,—

(a) "applicant" means any person who makes an application under sub-section (1) for establishment of a Minority Educational Institution;

(b) "no objection certificate" means a certificate stating therein, that the Competent authority has no objection for the establishment of a Minority Educational Institution.

10A. Right of a Minority Educational Institution to seek affiliation.— (1) A Minority Educational Institution may seek affiliation to any University of its choice subject to such affiliation being permissible within the Act under which the said University is established.

(2) Any person who is authorized in this behalf by the Minority Educational Institution, may file an application for affiliation under sub-section (1) to a University in the manner prescribed by the Statute, Ordinance, rules or regulations, of the University:

Provided that such authorized person shall have right to know the status of such application after the expiry of sixty days from the date of filing of such application.]

CHAPTER IV

FUNCTIONS AND POWERS OF COMMISSION

11. Functions of Commission.— Notwithstanding anything contained in any other law for the time being in force, the Commission shall—

(a) advise the Central Government or any State Government on any question relating to the education of minorities that may be referred to it;

[1] [(b) enquire, *suo motu* or on a petition presented to it by any Minority Educational Institution, or any person on its behalf into complaints regarding deprivation or violation of rights of minorities to establish and administer educational institutions of their choice and any dispute relating to affiliation to a University and report its finding to the appropriate Government for its implementation;

(c) intervene in any proceeding involving any deprivation or violation of the educational rights of the minorities before a court with the leave of such court;

---

1. Subs. by Act 18 of 2006, sec. 4, for

"(b) look into specific complaints regarding deprivation or violation of rights of minorities to establish and administer educational institutions of their choice and any dispute relating affiliation to a Scheduled University and report its findings to the Central Government for its implementation; and

(c) to do such other acts and things as may be necessary, incidental or conducive to the attainment of all or any of the objects of the Commission" (w.e.f. 23.1.2006).

(d) review the safeguards provided by or under the Constitution, or any law for the time being in force, for the protection of educational rights of the minorities and recommend measures for their effective implementation;

(e) specify measures to promote and preserve the minority status and character of institutions of their choice established by minorities;

(f) decide all questions relating to the status of any institution as a Minority Educational Institution and declare its status as such;

(g) make recommendations to the appropriate Government for the effective, implementation of programmes and schemes relating to the Minority Educational Institutions; and

(h) do such other acts and things as may be necessary, incidental or conducive to the attainment of all or any of the objects of the Commission.

12. Powers of Commission.— (1) If any dispute arises between a minority educational institution and[1] a [***] University relating to its affiliation to such University, the decision of the Commission thereon shall be final.

(2) The Commission shall, for the purposes of discharging its functions under this Act, have all the powers of a civil court trying a suit and in particular, in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person from any part of India and examining him on oath;

(b) requiring the discovery and production of any document;

(c) receiving evidence on affidavits;

(d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, (1 of 1872) requisitioning any public record or document or copy of such record or document from any office;

(e) issuing commissions for the examination of witnesses or documents; and

(f) any other matter which may be prescribed.

[2] [(3) Every proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196, of the Indian Penal Code (45 of 1860) and the Commission shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).].

[3] [12A. Appeal against orders of the Competent authority.— (1) Any person aggrieved by the order of refusal to grant no objection certificate under sub-section

---

1. The word "Scheduled" omitted by Act 18 of 2006, sec. 5 (w.e.f. 23.1.2006).

2. Ins. by Act 18 of 2006, sec. 5 (w.e.f. 23.1.2006).

3. Ins. by Act 18 of 2006, sec. 6 (w.e.f. 23.1.2006)

(2) of section 10 by the Competent authority for establishing a Minority Educational Institution, may prefer an appeal against such order to the Commission.

(2) An appeal under sub-section (I) shall be filed within thirty days from the date of the order referred to in sub-section (I) communicated to the applicant:

Provided that the Commission may entertain an appeal after the expiry of the said period of thirty days, if it is satisfied that there was sufficient cause for not filing it within that period.

(3) An appeal to the Commission shall be made in such form as may be prescribed and shall be accompanied by a copy of the order against which the appeal has been filed.

(4) The Commission, after hearing the parties, shall pass an order as soon as may be practicable, and give such directions as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of justice.

(5) An order made by the Commission under sub-section (4) shall be executable by the Commission as a decree of a civil court and the provisions of the Code of Civil Procedure, 1908 (5 of 1908), so far as may be, shall apply as they apply in respect of a decree of a civil court.

12B. Power of Commission to decide on the minority status of an educational institution.—(1) Without prejudice to the provisions contained in the National Commission for Minorities Act, 1992 (19 of 1992), where an authority established by the Central Government or any State Government, as the case may be,for grant of minority status to any educational institution rejects the application for the grant of such status, the aggrieved person may appeal against such order of the authority to the Commission.

(2) An appeal under sub-section (1) shall be preferred within thirty days from the date of the order communicated to the applicant:

Provided that the Commission may entertain an appeal after the expiry of the said period of thirty days, if it is satisfied that there was sufficient cause for not filing it within that period.

(3) An appeal to the Commission shall be made in such form as may be prescribed and shall be accompanied by a copy of the order against which the appeal has been filed.

(4) On receipt of the appeal under sub-section (3), the Commission may, after giving the parties to the appeal an opportunity of being heard, [**] decide on the minority status of the educational institution and shall proceed to give such direction as it may deem fit and, all such directions shall be binding on the parties.

Explanation— For the purposes of this section and section 12C, "authority means any authority or officer or commission which is established under any law for the time being in force or under any order of the appropriate Government, for the purpose of granting a certificate of minority status to an educational institution.

** the words "and in consultation with the State Government" omitted by Act 20 of 2010 (w.e.f. 01.09.2010).

12C. Power to cancel.—The Commission may, after giving a reasonable opportunity of being heard to a Minority Educational Institution to which minority status has been granted by an authority or Commission, as the case may be, cancel such status under the following circumstances, namely:-

(a) if the constitution, aims and objects of the educational institution, which has enabled it to obtain minority status has subsequently been amended in such a way that it no longer reflects the purpose or character of a Minority Educational Institution;

(b) if, on verification of the records during the inspection or investigation, it is found that the Minority Educational Institution has failed to admit students belonging to the minority community in the institution as per rules and prescribed percentage governing admissions during any academic year.

12D. Power of Commission to investigate matters relating to deprivation of educational rights of minorities.— (1) The Commission shall have the power to investigate into the complaints relating to deprivation of the educational rights of minorities.

(2) The Commission may, for the purpose of conducting any investigation pertaining to a complaint under this Act, utilize the services of any officer of the Central Government or any State Government with the concurrence of the Central Government or the State Government, as the case may be.

(3) For the purpose of investigation under sub-section (1), the officer whose services are utilized may, subject to the direction and control of the Commission,-

(a) summon and enforce the attendance of any person and examine him;

(b) require the discovery and production of any document; and

(c) requisition any public record or copy thereof from any office.

(4) The officer whose services are utilized under sub-section (2) shall investigate into any matter entrusted to it by the Commission and submit a report thereon to it within such period as may be specified by the Commission in this behalf.

(5) The Commission shall satisfy itself about the correctness of the facts stated and the conclusion, if any, arrived at in the report submitted to it under sub-section (4) and for this purpose the Commission may make such further inquiry as it may think fit.

12E. Power of Commission to call for information, etc.— (1) The Commission, while enquiring into the complaints of violation or deprivation of educational rights of minorities shall call for information or report from the Central Government or any State Government or any other authority or organization subordinate thereto, within such time as may be specified by it:

Provided that: —

(a) if the information or report is not received within the time stipulated by the Commission, it may proceed to inquire into the complaint;

(b) if, on receipt of information or report, the Commission is satisfied either that no further inquiry is required, or that the required action has been initiated or taken by the concerned Government or authority, it may not proceed with the complaint and inform the complainant accordingly.

(2) Where the inquiry establishes violation or deprivation of the educational rights of the minorities by a public servant, the Commission may recommend to the concerned Government or authority, the initiation of disciplinary proceedings or such other action against the concerned person or persons as may be deemed fit.

(3) The Commission shall send a copy of the inquiry report, together with its recommendations to the concerned Government or authority and the concerned Government authority shall, within a period of one month, or such further time as the Commission may allow, forward its comments on the report, including the action taken, or proposed to be taken thereon, to the Commission.

(4) The Commission shall publish its inquiry report and the action taken or proposed to be taken by the concerned Government or authority on the recommendations of the Commission.

12F. Bar of jurisdiction.— No court (except the Supreme Court and a High Court exercising jurisdiction under articles 226 and 227 of the Constitution) shall entertain any suit, application or other proceedings in respect of any order made under this Chapter.]

13. Financial and administrative powers of Chairperson.— The Chairperson shall exercise such financial and administrative powers as may be vested in him by the rules made under this section:

Provided that the Chairperson shall have authority to delegate such of the financial and administrative powers as he may thinks fit to any Member or Secretary or any other officer of the Commission subject to the condition that such Member or Secretary or officer shall, while exercising such delegated powers, continue to act under the direction, control and supervision of the Chairperson.

CHAPTER V

FINANCE, ACCOUNTS AND AUDIT

14. Grants by Central Government.— (1) The Central Government shall, after due appropriation made by Parliament by law in this behalf, pay to the Commission by way of grants such sums of money as the Central Government may think fit for being utilized for the purposes of this Act.

(2) The Commission may spend such sums of money as it thinks fit for performing the functions under this Act, and such sums shall be treated as expenditure payable out of the grants referred to in sub-section (1).

15. Accounts and audit.— (1) The Commission shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of the Commission shall be audited by the Comptroller and Auditor-General at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Commission to the Comptroller and Auditor-General.

(3) The Comptroller and Auditor-General and any person appointed by him in connection with the audit of the accounts of the Commission under this Act shall have the same rights and privileges and the authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Commission.

16. Annual Report.— The Commission shall prepare, in such form and at such time, for each financial year, as may be prescribed, its annual report, giving a full account of its activities during the previous financial year and forward a copy thereof to the Central Government.

17. Annual report and audit report to be laid before Parliament.—The Central Government shall cause the annual report, together with a memorandum of action taken on the advice tendered by the Commission under section 11 and the reasons for the non-acceptance, if any, of any such advice, and the audit report to be laid as soon as may be after they are received before each House of Parliament.

CHAPTER VI
MISCELLANEOUS

18.[1][***]

19. Chairperson, Members, Secretary, employees, etc., of Commission to be public servants.— The Chairperson, Members, Secretary, officers and other employees of the Commission shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code. (45 of 1860).

20. Directions by Central Government.—(1) In the discharge of its functions under this Act, the Commission shall be guided by such direction on questions of policy relating to national purposes, as may be given to it by the Central Government.

(2) If any dispute arises between the Central Government and the Commission as to whether a question is or is not a question of policy relating to national purposes, the decision of the Central Government shall be final.

21. Protection of action taken in good faith.— No suit, prosecution or other legal proceeding shall lie against the Central Government, Commission,

---

1. Section 18 omitted by Act of 2006, sec. 7 (w.e.f. 23-1-2006); before omission, section 18 stood as under:

"18. Power to amend Schedule.—(1) The Central Government if deems it fit may, by notification in the Official Gazette, amend the Schedule by including therein any other University or omitting therefrom any University already specified therein and on the publication of such notification, such University shall be deemed to be included in or, as the case may be, omitted from the Schedule.

2. Every notification issued under sub-section (1), shall be laid before each House of Parliament.".

Chairperson, Members, Secretary or any officer or other employee of the Commission for anything which is in good faith done or intended to be done under this Act.

22. Act to have overriding effect.—The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

23. Returns or information.— The Commission shall furnish to the Central Government such returns or other information with respect to its activities as the Central Government may, from time to time, require.

24. Power to make rules.— (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:-

(a) the salaries and allowances payable to, and the other terms and conditions of the service of, the Chairperson and Members under sub-section (5) of section 5 and of the Secretary, officers and other employees under sub-section (2) of section 6;

[1] [(aa) the forms in which appeal under sub-section (3) of the section 12A and sub-section (3) of section 12B shall be made;]

(b) the financial and administrative powers to be exercised by the Chairperson under section 13;

(c) the form in which the annual statement of accounts shall be prepared under sub-section (1) of section 15;

(d) the form in, and the time at, which the annual report shall be prepared under section 16;

(e) any other matter which is required to be, or may be, prescribed.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

25. Power to remove difficulties.— (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient, for removing the difficulty:

---

1. Ins. By Act 18 of 2006, sec. 8 (w.e.f. 23.1.2006)

Provided that no such order shall be made after the expiry of a period of two years from the date of commencement of this Act.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

26. Repeal and saving.— (1) The National Commission for Minority Educational Institutions Ordinance, 2004 (Ord. 6 of 2004) is hereby repealed.

(2) Notwithstanding the repeal of the said Ordinance, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Act.

THE SCHEDULE

[1] [***]

1.The Schedule omitted by Act 18 of 2006, sec. 9 (w.e.f. 23.1.2006); before omission, the Schedule stood as under:

"THE SCHEDULE

[*See* section 2(j)]

Sl. No. Name of the University

1. University of Delhi
2. North-Eastern Hill University
3. Pondicherry University
4. Assam University
5. Nagaland University
6. Mizoram University."

THE NATIONAL COMMISSION FOR MINORITY EDUCATIONAL INSTITUTIONS ACT, 2004

INTRODUCTION

The long felt demand of the Minority communities to establish a Commission for Minority Educational Institutions that will provide direct affiliation for minority professional institutions to Central Universities, was underscored in a series of meetings held by the Ministry of Human Resource Development with educationist, eminent citizens and community leaders associated with minority education. In a meeting of the National Monitoring Committee for Minority Education held in August, 2004 similar views were voiced by many experts. In view of the commitment of the Government in the National Common Minimum Programme, the issue of setting up of a National Commission was a matter of utmost urgency. In view of the considerable preparatory work that would be involved to make the National Commission's functioning effective on and from the next academic session, recourse was taken to create the National Commission through the promulgation of the National Commission for Minority Educational Institutions Ordinance, 2004. To replace the said Ordinance by an Act of Parliament the National Commission for Minority Educational Institutions Bill was introduced in the Parliament.

STATEMENT OF OBJECTS AND REASONS

In one of the Sections of the National Common Minimum Programme, there is a provision to establish a Commission for Minority Educational Institutions (hereinafter referred to as the National Commission) that will provide direct affiliation for minority professional institutions to Central Universities. This long felt demand of the Minority communities was also underscored in a series of meetings held by the Ministry of Human Resource Development with educationists, eminent citizens and community leaders associated with Minority education. Among the various issues raised by the representatives of the Minority communities was the difficulty faced by them in establishing and running their own educational institutions, despite the Constitutional guarantees accorded to them in this regard. The major problem was the issue of securing affiliation to a university of their choice. The territorial jurisdiction of the State Universities, and the concentration of minority populations in some specific areas invariably meant that the institutions could not avail the opportunity of affiliation with the universities of their choice.

2. Subsequently, in a meeting of the National Monitoring Committee for Minority Education held on August 27, 2004, similar views were voiced by many experts. Participants from the various minority communities affirmed the need to provide access to such affiliation in view of the often restrictive conditions imposed by the existing statutes of the Universities, relating to the affiliation of such institutions. They felt that these conditions affected the rights granted to them on

account of their Minority status. The fact that there was no effective forum for appeal and quick redressal only aggravated the sense of deprivation of the minority communities.

3. In view of the commitment of the Government in the National Common Minimum Programme, the issue of setting up of a National Commission was a matter of utmost urgency. As the Parliament was not in session and in view of the considerable preparatory work that would be involved to make the National Commission's functioning effective on and from the next academic session, recourse was taken to create the National Commission through promulgation of the National Commission for Minority Educational Institutions Ordinance, 2004 on 11th November, 2004.

4. The salient features of the aforesaid Ordinance are as follows:—

(i) it enables the creation of a National Commission for Minority Educational Institutions;

(ii) it creates the right of a minority educational institution to seek recognition as an affiliated college to a Scheduled University, notwithstanding anything contained in any other law for the time being in force;

(iii) it allows for a forum of dispute resolution in the form of a Statutory Commission, regarding matters of affiliation between a minority educational institution and a Scheduled University and its decision shall be final and binding on the parties;

(iv) the Commission shall have the powers of a civil court while trying a suit for the purpose of discharging its functions under it, which would provide the decisions of the Commission the legal sanction necessary for such purpose; and

(v) it empowers the Central Government to amend the Schedule to add in, or omit from, any University.

5. The Bill seeks to replace the above Ordinance.

ACT 2 OF 2005

The National Commission for Minority Educational Institutions Bill, 2004 was passed by both the Houses of Parliament and received the assent of the President on 6th January, 2006. It came on the Statute Book as THE NATIONAL COMMISSION FOR MINORITY EDUCATIONAL INSTITUTIONS ACT, 2004 (2 of 2005).

AMENDING ACTS

1. The National Commission for Minority Educational Institutions (Amendment) Act, 2006 (18 of 2006).

2. The National Commission for Minority Educational Institutions (Amendment) Act, 2010 (20 of 2010).