CHAPTER V

THE JUDICIAL SCRUTINY OF MINORITY AND MINORITY RIGHTS
DEFINITION OF MINORITY

The word minority is not defined nor the scope of the concept of minority is limited in the constitution of India. Some of the members of the Constituent Assembly used the term 'minority' often to mean the Muslims because they constituted the predominant religious minority. There were occasions when the learned members used the term minority to refer to various religious groups other than the Hindus. However for most of the Muslim representatives in the Constituent Assembly minority meant only Muslims. There are some exceptions though, such as Maulana Hasrat Mohani a member of the Constituent Assembly who gave importance to linguistic minorities and he in his speeches used the word minority to refer to linguistic groups. His amendment for article 29 is a clear indication for this. Sardar Vallabhai Patel understood the term minority in a very broad sense even to include the backward communities.

1. Dr. P.S. Deshmukh, C.A.D. Vol. V p.201
2. Jerome D'Souza, ibid. p.231
   J.J.M.N. Roy, ibid 237
3. Pocker Saheb Bahadur, ibid 211
   Nasuriddin Ahmed, ibid 267
Dr. P. R. Ambedkar preferred a still wider scope for the term minority. He remarked in the Constituent Assembly "the word is used not merely to indicate the minority in the technical sense of the word, it is also used to cover minorities which are not minorities in the technical sense but which are none the less minorities in the cultural and linguistic sense". By this statement Ambedkar indirectly admitted that many of the members of the Constituent Assembly most often used the word minority in a technical sense to include practically the Muslims and on certain occasions the scheduled castes. He was advising the fellow members to use the expression in a still broader sense. In fact the entire discussion on minority rights in the Constituent Assembly on 7th and 8th December 1948 is in a way biased by this limited notion of minority which most of the members knowingly or unknowingly took overboard.

During the discussions in the Constituent Assembly, the absence of unanimity is reflected on different occasions. One such occasion was when Mr. Z. H. Lari preferred to retain the use of the term 'minority' in the article 29. However B. R. Ambedkar argued to omit that particular word and instead to use "any section of the

According to him by omitting the word 'minority' they have "very greatly improved upon the protection "such as was given in the original article as it stood in the fundamental rights given in the draft. Moreover he doubted that the word minority may be taken in a very technical sense and therefore he recommended the use of a wider term " any section of citizens".

There is no wonder if most of the members of the Constituent Assembly were 'allergic' to the use of expressions like "minority", 'communal representation', and 'separate electorate'. The Assembly was meeting in a surcharged atmosphere of communal violence which was there almost throughout the country. The flareup was more or less restricted to the Hindu and Muslim communities. Hence the members were practically constrained to limit the scope of minority to Muslims and majority to Hindus. Their attitude was naturally biased or vitiated by the nightmare of partition. This peculiar predicament indirectly encouraged the members almost to ignore or atleast sideline the other types of minorities, such as cultural or ethnic.

1. ibid p.923.
2. ibid p.924
THE CONCEPTION OF MINORITY:-

THE APPROACH OF THE JUDICIARY IN INDIA:-

Therefore for a clearer understanding of the legal concept of minority as defined in India we have to depend heavily on the interpretations given by the highest judiciary of the country. We will consider them with special reference to those pertaining to Kerala, where our field work is undertaken. On various occasions issues pertaining to the minority rights were brought to the Supreme Court. But it was in 1958 that the Supreme Court has made an attempt to define the scope of minority as it was envisaged in articles 29 and 30. It was occasioned by the President asking the advice of the Supreme Court regarding the constitutional validity of the provisions of the Kerala Education Bill 1957.

The Supreme Court in its final orders, posed the question and sought its answer as follows. "What is a minority? That is a term which is not defined in the

1. Kerala Education Bill 1957, introduced by Mundasserry, the education minister in the Communist Government was aimed at eradicating corruption, communal bias and maladministration and was aimed to provide for the better organisation and development of educational institutions in Kerala. The Government sought to regulate the appointment and service conditions of teachers, ensure proper records and provide take over of management which failed to comply with the act. The bill was bitterly opposed by the Catholic managements. The President of India referred the bill to the Supreme Court for its opinion. On May 17, 1958 the Court reported that some clauses were destructive of minority rights as defined in article 30(1).
constitution. It is easy to say that a minority means a community which is numerically less than 50%, but then the question is not fully answered, for part of the question is yet to be answered namely 50 percent of what? Is it 50 percent of the population of a state forming part of the union?. The state of Kerala contends that Christians are not a minority in the state. It is no doubt true that Christians are not a mathematical majority in the whole state, they constitute about one fourth of the population. The Christians form a majority community in certain areas of the state. The state of Kerala contends that in order to constitute a minority which may claim the fundamental rights under article 30(1), persons must numerically be a minority in the particular region in which the educational institution is situated. A little reflection will at once show that this is not a satisfactory test. Are we to take as a unit a District or a subdivision or a taluk or a town or a municipality or its wards? The existence of a minority community should in all circumstances and for purposes of all laws of that state be determined on the basis of the population of the whole state. The minority must be decided with reference to the entire population of the state. By
this test Christians, Muslims, and Anglo Indians will certainly be minorities in Kerala.

Accordingly as far as state legislations are concerned the population of the state is to be considered. A minority in the nation as a whole may constitute the majority in a particular state. As the Supreme Court has stated, it is not necessary that a minority must numerically constitute a minority of the population in the particular region in which the (educational) institution is situated. When a state legislation is challenged that it violates the fundamental right of the minorities under article 29 and 30 the persons whose rights are said to have been violated, must be minority with reference to the entire population of the state, and not with reference to the entire population of a particular region, district or area.

As for minority its prefix 'religious' too was ambiguous, especially, in a country like India with the manifold differentiations and sects formed under the umbrella term 'religion'. The courts have ruled that the words 'based on religion' in article 30 meant that the only basis of a religious minority must be their adherence

1. AIR 1957 SC p.975.
2. AIR 1958 SC 956.
to a particular religion which is different from other
religions. A sect or a part of a religion cannot
constitute a minority. Hence a caste among Hindus cannot
claim the privileges under article 30.

As for religion, language too is not uniform. In
fact there have been recurrent debates in India whether a
spoken tongue was dialect or an independent language.
Again the Courts have ruled that the expression based on
language refers to a linguistic minority. The language in
question must at least, be a spoken language. It is not
necessary that the language should also have a distinct
script. Hence Konkani and Tulu, though they do not have a
separate script can claim the privileges under article 29
and 30.

"There are numerous denominations in India who have
often claimed that they are independent religions. This
is especially true with the reformist and revivalist sects
that came up in the 19th and 20th centuries such as

1. AIR 1976 Delhi p.207.

It is interesting to note that as per the interpretations
given by the Supreme Court and by various High Courts in
India (a) the Brahma Samaj is a minority based on religion.
AIR 1963 Pat. 54, (b) Theosophical Society is not a minority
based on religion. AIR 1974 Pat. p.187, (c) In the Union
territory of Delhi the Arya Samaj is not a minority AIR 1977
Delhi 240, (d) The Arya Samajists are a minority in Punjab
AIR 1971 SC 1733.
Ramakrishna Mission, Brahma Samaj and Arya Samaj. Such sects and organisations too demanded the protection under Art 29 and 30 for the institutions run by them. The courts in India have often granted the same but without specifically going into the question of their minority status. The considered opinion of the Supreme Court is that the constitution of a religious or linguistic minority is to be judged in relation to the state in the case of a state act and in relation to the whole of India in the case of a central law. In this view the Supreme Court rejected the contention that the Hindus being a majority in India are not a religious minority in Punjab and held that the Arya Samajists who are part of the Hindu community in Punjab are a religious minority and that they had a distinct script of their own, the Devanagri, which entitled them to invoke the guarantees under the aforesaid provisions of the constitution.

Are the rights conferred by these articles confined merely to the citizens or extend to all the residents of India. Judicial interpretation has upheld that the protection under article 29 may be claimed only by the citizens of India. It is because the article clearly states, "Any section of the citizens residing in the territory of India ----". Where as article 30 does not

1. AIR 1971 SC 1733.
make any reference to citizenship. The article begins with "All minorities whether based on religion or language----". Hence citizenship is not a necessary qualification for the enjoyment of the privileges given under article 30. But the minority competent to claim the protection of Article - 30 and on that account the privilege of establishing and maintaining educational institutions of its choice must be a minority of persons residing in India.

A narrow reading of article - 29 while guaranteeing minority rights may deny the same to the majority. Though articles 29 and 30 are those that deal with minority rights, the section(2) of article 29 is not limited to minority groups. We can compare it to article 15. The latter protects all citizens against discrimination generally, but article 29(2) is a protection against a particular species of wrong namely denial of admission into educational institutions on specific grounds. It confers a special right on citizens for admission into educational institutions maintained or aided by the state. To limit this right only to citizens of minority group is to hold that the citizens of majority groups have no educational rights in the nature of a right to be admitted into an educational institution for the maintenance of which they make contributions by way of taxes. There is
no reason for such discrimination.

These provisions however do not prevent certain other forms of discriminations. Article 29(2) is a guarantee for all citizens against discrimination. Here the major issue is admission of students to either Government or Government aided educational institutions. Discrimination on the basis of religion, caste, race or language is prohibited. However it is permissible to discriminate on the basis of residence or place of birth. A Government can reserve seats for the students hailing from one or other district. Another ground on which discrimination is not unconstitutional is sex. Hence a principal may admit only boys or only girls to a particular institution and refusal of admission to girl students in a college is not

1. The Supreme Court makes these remarks in its judgements invalidating an order of the Government of Bombay directing that Hindi or any Indian Language must be the medium of instruction in schools and that the non Anglo Indians must not be admitted into English Medium schools. The Supreme Court states "The object of promoting the national language cannot be achieved by denying to all pupils whose mother tongue was not English, admission into any school, where the medium of instruction was English". (1954 SC 561). The demand of certain linguistic protagonists that one or other regional language must be the sole medium of instruction is quite clearly unconstitutional. Ultimately it is for the parents to decide in which medium they have to get their children educated.

It has been frequently observed that a large number of minority institutions admit students from the majority communities. Courts have ruled that although article 30(1) is clearly and directly for the benefit of the minorities based on religion or language, other minority communities or even the majority community also may derive some benefit out of the same. The fact that the majority community takes advantage of the right of the minorities is not an argument against the minorities enjoying the same right nor on this basis the enjoyment of the right can be denied to these minorities. For example the members of the majority community may get admitted to a school run by a minority community. This does not invalidate the very existence of minority rights.

In 1969 the State of Kerala pleaded in the Supreme Court that since the minority educational institutions admitted students from majority community article 30(1) must not be made applicable to such institutions. But the then Chief Justice Hidayathullah and Judges J.C. Shah, K.S. Hegde, A.N. Grover, A.N. Ray and I.D. Dua did not agree.

1. AIR 1954 Madras 67
   There is an inherent right for the University/Principal to refuse admission to the students who are likely to indulge in indiscipline or questionable behaviour. AIR 1971 Punjab 341.
to this line of argument and declared certain provisions of the University Act 1969 as unconstitutional.

It is again interesting to examine whether the majority can claim equality with minority communities. It is pertinent in the case of establishment and administration of educational institutions especially where the minority's presence is significant.

The constitution classifies the minority communities into separate entities for special protection which is denied to the majority community. This is not considered by legal experts, as a case of giving some benefits to minority communities which in reason must also go to the majority community institutions, but as a special kind of protection for which the constitution singles out the minority communities. Though this issue was raised in the Supreme Court in 1970 by the State of Kerala the Supreme Court did not go into this question since the State of Kerala at the hearing announced that it did not intend to enforce those provisions of law which are against the majority community institutions, if they could not be enforced against the minority institutions.

1. AIR 1970 SC 2079.
2. AIR 1970 SC 2081.

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Another major issue which has wider socio-economic ramifications is the question who should exercise this right: whether the individual or the community or a group of individuals in the community?. The question becomes more pertinent since the community is not treated as a legal person and it cannot exercise the right, for, all the rights must inhere in some person natural or legal.

Judicial classification on this issue has been, "when a right is conceded to a community it really means that every individual of that community has that right. It follows that the right can be claimed or ascerted by a group in the community or by their head and representative".

An instance for such clarification was when the Government of Kerala challenged in 1967 the right of the Bishop to act on behalf of the Christian community. The order which was challenged in the High Court pertained to the training institutions run by the Bishops, who in turn claimed protection under the minority rights. The Advocate General argued that "the Bishop does not mean the community. He cannot be treated as the representative of the community". But the court did not agree to this view. It's considered judgement was "the right conceded to

minority community under article 30 belongs to and can be exercised by every member of the community or an association or body of such members”.

This means that the Bishop can exercise the right either as the representative of the Christian community or as a member of that community. Often Bishops act on behalf of and for the benefit of the community. Hence it has not turned out to be a major contentious issue. The problem in this judicial interpretation lies elsewhere. It arises in such instances as when a member or a single family from a particular religion or linguistic minority claims the benefit under article 30(1) and strives for blatantly aggrandizing his own personal interests. Under such an instance a similar opportunity is denied to other citizens since they belong to majority community. How far is it proper and just? The makers of the constitution perhaps did not visualize such a predicament. This is the case with most of the individual management schools in Kerala and some of the professional colleges in Karnataka state where those institutions get the benefit under article 30 and the benefit of article 30(2) is often


2. A.B. Shety Dental College, in Mangalore is a registered Tulu minority institution. The T.M.A. Pai Foundation, Manipal which runs The Kasturba Medical College and Manipal Institute of Technology is Konkani Minority establishment.
cornered conveniently for filling the coffers of those individuals or families.

One of the major problems with respect to minority rights has been whether they are merely meant to uphold religious and linguistic proclivities or impart comprehensive rights. A simple reading of article 30(1) may encourage us to conclude that the minorities' right to establish and administer educational institutions is only for the preservation of their religion or language. But this assumption is not appreciated by the Supreme Court in any of its judgements. In fact 1968 C.K. Daphtary, the then Attorney General of India, ably assisted by V.P. Singh pleaded in the Supreme Court for getting this connection established. But the then Chief Justice M. Hidayathullah and other Judges of the constitution bench, J.C. Shah, V. Ramaswamy, G.K. Mitter and A.N. Grover did not agree to this point of view. The various other pronouncements of the Supreme Court also clearly express the view that the right to establish and administer educational institutions is absolute and it is not restricted by the purpose of preserving the language or religion. We can find the following explanation from the Supreme Court "the right conferred on such minorities is to establish educational institutions of their choice. It does not say that minorities based on religion should establish educational institutions for teaching religion only, or that
linguistic minorities should have the right to establish educational institutions for teaching their language only. What the article says and means is that the religious and linguistic minorities should have the right to establish educational institutions of their choice. There is no limitation placed on the subjects to be taught in such educational institutions. As such minorities will ordinarily desire that their children should be brought up properly and efficiently and be eligible for higher University educations 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. It is said that the dominant word is "choice" and the content of that article is as wide as the choice of the particular minority community may make it".

The ambiguity is still left unanswered. What then is

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1. AIR 1957 SC 978.
the exact purpose of the right in article 30(1) if it is not necessarily for the preservation of a language or a particular religion, then for what it is? If the purpose can be something other than preservation of language or religion then why is it not applicable to the majority?

There is a lot of heart burning among the majority community on account of "misuse" of the minority rights. Some feel that such misuses can be eliminated if those rights are made use of specifically for the purpose of preservation of the religion or language. If the objective is clearly specified in that fashion, then only those institutions with such avowed objectives come under the purview of article 30(1). The chances of misuse by individuals for extraneous purposes will be very much limited.

But this requires a reinterpretation of minority rights by the Supreme Court and also a review of its hitherto given Judgements.

Some people have tended to read articles 29 and 30 as a single block and sequentially. The courts have however differed. According to them articles 29 and 30 are to be taken separately i.e article 30 is not necessarily a consequence of article 29. In other words the protection under article 30 cannot be cut down by considerations on which article 29 is based. The latter article is a
general protection which is given to minorities to conserve their language culture or script. The former is a special right to minorities to establish educational institutions of their choice. This choice is not limited to institutions 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. Such circumstances are irrelevant for application of article 30 since no such limitations are 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".

MINORITY RIGHTS IN OPERATION

For the purpose of article 30 the word "establish" means to bring into existence and so the right given by the article to the minority is to bring into existence an educational institution and if they do so, to administer it.

For the purpose of article 30 the word establish means to set up or bring into existence an institution.

2. AIR 1968 SC 662

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It is not necessary to prove that the building housing the institution has been put up by the minority. An institution is not a building. It can even run in a rented building and yet be entitled to the privilege under article 30. It is not necessary that the institute must have been constructed by the minority community itself. Thus even if an institution previously run by some other organisation is subsequently taken over by a minority community and run by it, it must be held that it was established by the minority community.

The words 'establish' and 'administer' are to be taken together. The minority will have the right to administer educational institutions of their choice provided they have established them but not otherwise. If an institution is established by somebody else, a religious minority cannot get the right to administer it even though it might have been administering it before the constitution came into force.

The right to administer means the right to manage the affairs of the institution. As far as the administration of the educational institution is concerned it includes

1. AIR 1970 Ker L.J. 273
2. AIR 1974 Ker 197
3. AIR 1968 SC 674
the right of the minority to form its own managing committee, its own committee for the selection of its employees and its own disciplinary authority for taking action against erring employees. The government can regulate the procedure of these bodies in the interest of the efficiency of their functioning.

The right to administer does not mean the right to maladminister. Under the guise of exclusive right of management, a minority institution cannot be allowed to fall below the standards of excellence expected of educational institutions. The minority institutions cannot resist regulations which are conducive to maintain that standard. Such regulations do not directly affect the right to management though they may do indirectly. It means that though the article 30(1) gives absolute right to minority communities to establish and administer educational institutions of their choice, they cannot in the course of their management lower down the standard of education in those institutions.

The right to administer an educational institution invariably includes the right to choose the principal and to have the teaching conducted by the teachers appointed

1. AIR 1958 SC 956
2. AIR 1974 SC 1389
by the management after an overall assessment of their outlook and philosophy. It is perhaps the most important fact of the right to administer an educational institution. The University or the Government can fix the minimum qualifications for a principal. But the selection is the exclusive power of the minority Management. Since the office of the principal is an administrative post and since administration is the prerogative of the management, it need not look into such claims of the employees as seniority, nor the government can direct to nominate the seniormost as the principal.

For the management of the educational institution a Governing Council or Managing Committee is needed. It is for the minority community to have its own Managing Committee. But the University or the Government is fully within its rights to direct that the Managing Committee should include the principal of the college or one or two members of the staff even elected. Such a direction from the Government is not an interference in the right of the minorities. In 1975 Gandhi Faiz-e-am College, Shahajahanpur challenged the order of the Agra

University. On this issue the Supreme Court in its majority Judgement (V.R. Krishna Iyer and A.C. Gupta) declared that article 30 does not invalidate provisions of a regulatory character which are intended to secure the better administration of an institution. In their opinion the principal and the seniormost member of the staff were not outsiders but insiders already appointed by the governing body and their presence in the Managing Committee could only ensure the better administration of the College.

V.R. Krishna Iyer spoke of a "beningnantly regulated liberty" in his judgement in the G.F. College case. Such regulations according to him promote better performance. He further stated in the same judgement that "to regulate is not to restrict, but to facilitate effective exercise of the very right". He justified the control by the University/State as a 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

1. Which directed the inclusion of the principal and the seniormost member of the staff in the Managing Committee
2. AIR 1975 SC 1824
3. Ibid para 10
4. Ibid para 11
minorities or to the requirements of the teachers and the students.

However, the government cannot nominate a member or members to the Managing Committee. They are "outsiders". The provisions of the Kerala University Act 1969 was declared ultravires since through it the Kerala Government tried to create a Managing Committee for the private colleges with a provision to include one representative from the government and another from the University. The Supreme Court held that it is an interference in the rights of minorities.

The right conferred by article 30(1) is empty unless minority institutions can secure affiliation to a University. On the other hand it does not give an absolute right to minorities for getting recognition or affiliation. It is necessary for the University to impose conditions even on minority institutions for maintaining certain standards. This includes such conditions as the qualifications of teachers to be appointed, conditions of service including dismissal, the age of retirement, qualifications for the entry of students and course of study.

1. AIR 1970 SC 2083
These are in the larger interest of the institution and these conditions are necessary to maintain a specific standard of education. So they do not violate the right under Article 30(1). Hence it is necessary that the institution must meet the requirements required by the university.

But these requirements must not be such that the basic right under article 30(1) is denied to the minority. In other words the power to affiliate cannot be used by the University to interfere with the day to day administration of the institution. The University cannot ask that all appointments or dismissals by the governing body must be subject to its approval. Also it is not for the Government or the University to constitute or reconstitute the governing body of the college. The management has full powers for constituting the governing body. It is true that the minority institutions also need aid from the Government. It is also true that while granting aid, the Government can stipulate conditions. But in the case of minority institutions the conditions must not be such that they will not seek state aid for

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1. A. I. R. 1974 pat. 341 para 33
running the institution. In short the rules of affiliation or grant in-aid must not be destructive of the content of article 30(1). They must not be restrictive, but regulative of the educational character of the institution and conducive to making the institution an effective vehicle of education for the minority community. A regulation will be reasonable if there is a balance between the two objectives of ensuring a standard of excellence of the institution and of preserving the right of the minority to administer the institution as a minority institution. Even if the regulations are conducive to the interests of the general public but are not consistent with the minority rights, they are unconstitutional.

It is needless to state that the Government has the power to prescribe the minimum qualifications for the teachers in the minority institutions also. But the choice of a teacher in a minority school need not be guided only by the qualifications prescribed for the generality of schools. It must also be tested by suitability for employment consistent with the article 30(1).

The fundamental freedom guaranteed to minority communities is for conserving the community's religion or language and also for giving general education to their
children. To serve such double purpose the management must have considerable freedom of choice of teachers to be employed in their schools. If the management is compelled to appoint teachers even if they are otherwise qualified irrespective of their express aversion for the religion and culture of the community that has established the school, the right guaranteed by article 30(1) will be but a 'teasing illusion' or 'a promise of unreality'.

To effectuate the guarantee of article 30(1) it is not enough if the teacher of a school maintained by a religious minority possesses the educational qualifications or even the character suitable for appointment in the Government schools, but also be suitable for employment in the institution with a set purpose of conserving the religious culture of the minority community. This being the case the management can very well prescribe additional qualifications especially related to religion or language. For example if the corporate manager of the Christian schools directs that the future appointees to them must possess a catechism certificate they cannot escape from fulfilling this requirement.

It is one of the most sensitive issues in relation to the right of the minorities to administer their educational institutions.

The right given in article 30(1) is absolute and the management is free to run the institution as it likes. The control over the discipline of the teachers forms an integral part of the administrative power. Hence it is for the managing committee or the Governing body to initiate disciplinary actions against its employees. Any outside agency be it the Government or the University cannot decisively interfere in this matter. That is why the Supreme Court struck down certain sections of the Kerala University act 1969, which inter alia, included provision for an affected teacher to give an appeal to the Syndicate whose decision was to be accepted by the managing council as final. The same act provided for the reinstatement of a 'dismissed' teacher by the Syndicate. No teacher according to the said act, could be reduced in rank removed or dismissed by the governing body without the previous sanction of the Vice Chancellor. But all these provisions were declared unconstitutional. In fact the disciplinary power of the

1. Kerala University Act 1967 section 56 (4)
2. AIR. 1970 SC P. 2085
managing council was the major bone of contention in the Lilly Kurian Vs. Sr. Lewina case. Lilly Kurian was the Principal of St. Joseph's college, Ernakulam who was removed from service for a proved misbehaviour. She as per provisions of the Kerala University Act 1969, appealed to the Vice Chancellor who in turn asked the management to reinstate her. Finally the Supreme Court accepted the contention of the management that there cannot be any outside interference in its power to administer the institution.

The Supreme Court in All Saints H. S. Vs Government of Andhra Pradesh, while invalidating many of the provisions of the Andhra Pradesh Recognised Private Educational Institutions Control Act speaks approvingly of the rights of the employees for natural justice.

The Supreme Court validated some of the regulations in the same act regarding the disciplinary procedure. Such as 'a teacher can be placed under suspension only when an enquiry into a gross misconduct of such teacher contemplated,' 'no such suspension shall remain in force for more than a period of two months and if the enquiry is not completed within that period the teacher shall without

1. The then Marxist Government in Kerala with its pronounced bias against Christian institutions, could not approve of the managements action taken against a proved misbehaviour is another corollary to the entire episode.
prejudice to the inquiry be deemed to have been restored as a teacher' and 'The retrenchment of any teacher --- to be with prior approval of the competent authority'.

The minority institutions have almost complete freedom with regard to the admission of students. Naturally the students from those minority communities get preference so that they are not thrown into a general competition with all the other communities. Though the students from other communities can be admitted they cannot as a matter of right claim admission, nor the admission of such outsiders make the institution to lose its minority status. In brief, it is for the management to select the students for various courses.

Now the question is, if there are more candidates from the minority community itself for a few limited seats, then how should be the selection? The management has to look into the merit of the candidates and the selection from among them must be on the basis of merit. Another question is, if the management admits 'outsiders' for extraneous reasons, ignoring the rightful claims of

1. Andhra Pradesh Recognised Private Educational Institutions Control Act Sect. 3 (3) a, 3 (3) b, 6, 7, are declared as valid by the Supreme Court. see, AIR 1980 Sc P. 1050.
2. AIR - 1971 Madras - 440
the candidates of the minority community, what remedial action is available to the community? At present nothing. It is another mockery of minority rights.

A minority community running an educational institution is entitled to have as the medium of instruction any language which it deems to be best suited to conserve its culture. It means that the state cannot impose any particular language as the medium of instruction.

In this connection it is worth examining the situation that arose in Punjab when the state Government by an order dated 15th June 1970 made Punjabi language as the exclusive medium of instruction as well as for examination. The D. A. V. Batinda college challenged this order. Finally the Supreme Court, allowing the appeals, made the following remarks.

"Such a directive for the exclusive use of a language and script as the medium of instruction and for examination in all colleges affects the petitioners colleges which are institutions maintained by a religious minority and directly infringes their right to conserve

1. This is the prevalent practice in some of the Professional Colleges in Karnataka.

2. AIR 1954 Sc P. 561
their script and administer their institutions. If, as is contended that teaching in the regional language which means in the mother-tongue accelerates the pace of educational and cultural development and makes for improvement and excellence of educational standards this criteria is equally applicable to the religious or linguistic minorities or to any other section of the citizens 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. 1

The right of the minorities to establish and administer educational institutions of their choice would also include the right to have a choice of the medium of instruction which would be the result of reading article 30(1) with Article 29(1). But if the University compulsorily affiliates such colleges and prescribes the medium of instruction and examination to be in a language which is not their language or requires examination to be taken in a script which is not their own, then it interferes with their fundamental rights.

"It is true that no linguistic minority can claim that the university shall conduct its examinations in the

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1.AIR 1971 Sc. 7134

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language or script which the minority institutions have a right to adopt. But in such a case it must not force those institutions to compulsorily affiliate themselves and impose on them a medium of instruction and script which is not their own".

The state must therefore harmonise its power to prescribe the medium of instruction with the rights of the religious or linguistic minorities. They must be permitted 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 by allowing them to affiliate to those Universities where the medium of instruction is that which is adopted by the minority institutions. 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 or religious minorities giving instruction in the medium of language adopted by the Universities in other states to affiliate to them. Or if a University insists that all the colleges in its jurisdictional area must be affiliated to it, it must make provision for allowing instruction to be given and examination to be conducted in the media and script of minorities when it imposes a regional language as the medium of instruction.

1. AIR 1971 Sc P. 1735
for the University. No inconvenience or difficulties administrative or financial can justify the infringement of the guaranteed rights. "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 list I to coordinate and determine the standards in such institutions".

There are other interesting issues to be considered here. One is the question how a minority can effectively enjoy the right if the government decides as a matter of policy to grant aid only to those schools which opt for a particular language as medium of instruction. The minorities in such a predicament will be forced to fall in line with the majority and the fundamental rights given to the minorities become redundant. Hence the decision of a state Government to grant aid only to those schools with a particular language as medium of instruction is unconstitutional.

1. AIR - 1975 Sc P. 1735

2. The English Medium Schools in Karnataka State especially those which are established after 1980, do not come under the 'grant in aid' of Karnataka government. The Kannada Medium Schools get aid.
Another issue is the apparent denial of fundamental right to the majority. As in Karnataka, where, as a policy, the government grants recognition only to Kannada medium schools, a minority community may go to the High Court and get an order for recognition for their schools with a medium other than Kannada. But if a thousand parents from the majority community would like to educate their children in English medium they cannot get recognition for a new school let alone aid from the government. The irony is that in such an eventuality they cannot approach the High Court because there is no constitutional sanction behind their request for the recognition of the School.

The right of the minority institutions to receive aid from the Government is explained in article 30(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".

1. Here the constitutional rights get intertwined with linguistic chauvinism and regional fanaticism so that the freedom to learn any language, through any language and the right to decide the medium of instruction is denied by linguistic fanatics and by petty politicians. What is conveniently forgotten in this controversy is the fact that any language is to be treated only as a means and only from an utilitarian point of view, and a language can never be the 'mother' or 'God' as the poets portray.
The minority institutions are protected against discrimination. It does not mean that all minority institutions have a right to claim state aid. It only states that the state must not discriminate, i.e. if the state gives aid to other similar institutions, then the minority institutions also can get the same. It also means that the Government must not put conditions in such a way that the minority institutions are denied aid from it. If so, it becomes an infringement on minority rights. For example the Government cannot demand a certain percentage of seats, as a condition for claiming grant or aid.

Article 30(2) is specific about discrimination in granting aid. However it does not indirectly mean that there can be discrimination in other respects such as affiliation and recognition.

A very pertinent question is whether the government can take over the minority educational institutions. The answer is a very simple and clear "NO". The wording of the article 29, 30(1) & 30(2) are quite clear that the constitution does not envisage such a predicament.

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1. AIR - 1963 S.C. P. 540
2. AIR 1963 S.C. p. 545
Naturally one may be reminded of certain situations wherein the government may be compelled to take over one or other minority institutions. The Kerala University Act 1969 speaks of various situations when the Government can take over private colleges. "As a grave situation has arisen in which the working of a private college cannot be carried out - default of payment of salaries to staff for not less than three months - closing down the college for a period not less than one month other than vacation - default of the management to carry out the orders of the Government". These situations may appear as justifiable reasons for the Government to take over private colleges. But as far as minority institutions are concerned, these are not valid or sufficient reasons. Hence the Supreme Court has declared these provisions of the University Act as unconstitutional. But unfortunately neither the wording of articles 29 and 30 nor the pronouncements of the Supreme Court, anticipate all the problems and possible difficulties. The constitution does not envisage an answer for certain predicaments such as a blatant misuse of the right; a clear case of victimisation; or the management’s disregard to the needs even of the minority community itself.

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1. The Kerala University Act 1969 Sec. 63(1).
On a very substantial issue article 30(1) differs from article 19(1). The former is not subject to any restrictions, whereas there can be reasonable restrictions in the case of the article 19(1). Thus the fundamental right in article 30(1) is in a way superior to the rights referred in other articles. Justice Jagamohan Reddy’s observation is worth remembering. "Unlike article 19 the freedom under article 30(1) is absolute in terms. It is not made subject to any reasonable restriction of the nature the fundamental freedoms enunciated in article 19 may be subjected to. All minorities, whether linguistic or religious have by article 30 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 the right under article 30 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 state can make regulations in the true interests of such objectives as efficiency of instructions, discipline, health, sanitation morality, and public order. The Government can give regulations to see that funds are spent for the betterment of education and not for extraneous purposes. "There can be effective

1.AIR 1971 S.C 1748
regulations to prevent antinational activities. It is needless to say that the Government can enforce the general laws of the land applicable to all persons such as taxation, social welfare and public order. 

Another thing to be specially remembered here is that the regulations or interference by the Government in the administration of minority institutions must be only in the interests of the minority concerned and not for the interests of the general public.

The constitution of India 1950 did not provide for the compulsory acquisition of the property of any minority institution. But in 1971 (25th amendment) such a provision was inserted as article 30(1)A with effect from 20th April 1972. The addition reads as follows "In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority referred to in clause (1), 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."

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1. AIR 1963 S.C 850
2. AIR 1979 S.C 53
By this amendment i.e. addition of 30(1)A the minority community is free to challenge the acquisition of property claiming that their right is violated. It means that the Government must be careful in acquiring the property of minority educational institutions, where as it is not that difficult to acquire, if necessary, the property of an educational institution run by the majority community. Many constitutional experts consider that it is apparently discriminatory against the majority.

In practical terms, though a state Government has the power to nationalise the educational institutions, and can take over the educational institutions run by the majority community it cannot that easily nationalise the educational institutions run by the minority communities. In the case of such institutions the Government must be ready to pay compensation and the quantum of compensation must be such that it would not restrict or abrogate the right. This again means that the minority with the amount it receives as compensation can establish such an institution as it had earlier.
We have been analysing the scope of articles 29 and 30 as it is interpreted by the High Courts and the Supreme Court of India. The various cases that have come to the highest judiciary of the land, challenging one or other State or Central legislation have given an opportunity for an in-depth exploration of the meaning and scope of these two articles. However, indirectly, this analysis turned out to be a detailed explanation of the educational rights of the minorities. This transformation was inevitable because, the minority rights get the practical expression today only through the establishment of educational institutions. The fact is, though the constitution does not give any extra right to the minorities in the field of religion, it gives extra rights in the field of education. Moreover this is the right used by the minorities or in the name of the minorities and this is the right which is creating a lot of heartburn for some of the State Governments and for some from the majority community as well. These are the rights which are often criticised as misused by the minorities. Finally these are the only rights which can be considered as a criterion for reconsidering whether the minorities need specific safeguards and if they need, to what extent. Hence this elaborate analysis of these articles.