CHAPTER-4

ESTABLISHMENT OF MINORITIES EDUCATIONAL INSTITUTIONS UNDER
INDIAN CONSTITUTION

Introduction

The object of Articles 251 to 30 is to preserve the rights of religious and linguistic minorities, to place them on a secure pedestal and withdraw them from the vicissitudes of political controversy. These provisions enshrine a befitting pledge to the minorities in the Constitution of the country whose greatest son had laid down his life for the protection of the minorities. As long as the Constitution stands as it is today, no tampering with those rights can be countenanced. Any attempt to do so would be not only an act of breach of faith; it would be constitutionally impermissible and liable to be struck down by the Courts. Although the words Secular State is not expressly mentioned in the Constitution, there can be no doubt that our Constitution-makers wanted establishment of such a State. The provisions of the Constitution were designed accordingly. There is no mysticism in the secular character of the state. Secularism is neither anti-God, nor pro-God; it treats alike the devout, the agnostic and the atheist. It eliminates God from the matters of the State and ensures that no one shall be discriminated against on the ground of religion. The Constitution at the same time expressly guarantees freedom of conscience and the right freely to profess, practise and propagate religion. The Constitution makers were conscious of the deep attachment the vast masses of our country had towards religion, the sway it had on their minds and the significant role it played in their lives. To allay all apprehensions of interference by the legislature and the executive in matters of religion, the rights mentioned in articles 25 to 30 were made a part of the fundamental rights and religious freedom contained in those articles was guaranteed by the Constitution. As in the case of religion so in the case of language, the importance of the matter and the sensitivity of the people on this issue was taken note of by the Constitution-makers.

Language has a close relationship with culture. According to the Royal Commission on Bilingualism and Biculturalism (1965), the vitality of the language is an essential condition for the preservation of a culture and an attempt to provide for cultural equality is primarily an attempt to make provisions for linguistic equality.

1. Article 25 (1) states, “Subject to public order, morality and health and to the other provisions of this part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise 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 religious practice;
(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.
Explanation I.- The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion.
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.”
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.

The unrestricted nature of the right connotes freedom in the exercise of the right.
Even the words "freedom" and "free" have certain limitations. In James v. The Common
wealth,² the Privy Council dealt with the meaning of the words "absolutely free" in
section 92 of the Constitution of Australia It was said:

"Free' in itself is vague and indeterminate. It must take its colour from the context.
Compare for instance, its use in, free speech, free love, free dinner and free trade. Free
speech does not mean free speech; it means speech hedged in by all the law and against
defamation, blasphemy, sedition and so forth; it means freedom governed by law...."

In West Virginia State Board of Education v. Bernette,³ Justice Frankfurter observed as
follows:-

"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 possess and
which distinguish them from the majority of the population. The protection applies
equally to individuals belonging to such groups and wishing the same protection. It
follows that differential treatment of such groups or of individuals belonging to such
groups is justified when it is exercised in the interest of their contentment and the welfare
of the community as a whole."

Article 30 of the Constitution provides a fundamental right to linguistic and
religious minorities to establish and administer educational institutions of their choice.
The use of the phrase "of their choice" in Article 30(1) clearly postulates that the
religious and linguistic minorities can establish and administer any type of educational
institution, whether it is a school, a degree college or a professional college; it is argued

². 1936 AC 578.
³. 319 US 624.
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) is meant to ensure that these minority institutions are not denied aid on the ground that they are managed by minority institutions, it is submitted that no condition which curtailed or took away the minority character of the institution while granting aid could be imposed. To establish and administer educational institutions is considered a religious and charitable object. The right to establish and administer an educational institution broadly 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 employees.

In the Ahmedabad St. Xaviers College Society case, Khanna, J. examined Article 30, and observed as follows:

"Clause (1) of Article 30 gives right to all minorities, whether based on religion or language, to establish and administer educational institutions of their choice. Analyzing that clause it would follow that the right which has been conferred by the clause is on two types of minorities. Those minorities may be based either on religion or on language. The right conferred upon the said minorities is to establish and administer educational institutions of their choice. The word "establish" indicates the right to bring into existence...The words of "of their choice" qualify the educational institutions and show that the educational institutions established and administered by the minorities need not be of some particular class; the minorities have the right and freedom to establish and administer such educational institutions as they choose. Clause (2) of Article 30 prevents the State from making discrimination in the matter of grant of aid to any educational institution on the ground that the institution is under the management of a minority, whether based on religion or language."


It is a common ground that all minorities, whether based on religion or language, are bestowed the right to establish and to administer educational institutions of their choice in Clause (1) of Article 20. The following aspects of the right conferred therein on the minorities need to be noticed: (1) to establish educational institutions; (2) which are of their choice; and (3) to administer them. The choice of educational institutions may vary from religious instruction to temporal education or a combination of both. Having regard to the width of Entry 25 of the Concurrent List, the choice of educational institutions may be understood to include places for imparting education of their choice and at all levels—primary, secondary, university, vocational and technical, medical etc. The expression "of their choice" includes not only the choice of the institution to be established and administered by the minorities, like institutions for elementary, primary, secondary, university, vocational and technical and medical education, but also the choice of students who have to be imparted education in such institutions. The expression "to establish" means to set up on permanent basis.

Rationale behind Article 30: Judicial Perspective

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 education will open doors of perception and act as the, natural light of mind for our countrymen to live in the whole. Article 30 (1) is a sort of guarantee or assurance to the linguistic and religious minority of their right to establish and administer educational institutions of their choice. Secularism and equality being tow 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

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7. Supra n. 5 at 622.
8. Ibid.
9. Ibid.
10. Ibid.
11. Ibid.
12. Ibid.
13. Supra n. 6 at 744.
14. Ibid.
15. Ibid.
16. Ibid.
17. Ibid.
18. Ibid.
19. Id at 748.
20. Ibid.

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enjoyment of such rights.\(^\text{21}\) No law can be framed that will discriminate against such minorities with regard to the establishment and administration of educational institutions vis-à-vis other educational institutions.\(^\text{22}\) 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 struck down.\(^\text{23}\) At the same time, there also cannot be any reverse discrimination.\(^\text{24}\)

Explaining the rationale behind Article 30, the Court observed as follows:\(^\text{25}\)

"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."

In the same case, Justice Khanna, observed as follows:

"Before we deal with the contentions advanced before us and the scope and ambit of article 30 of the Constitution, it may be pertinent to refer to the historical background. 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-

\(^{21}\) Ibid.
\(^{22}\) Ibid.
\(^{23}\) Ibid.
\(^{24}\) Ibid.
\(^{25}\) Id at 772.
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."

This was the basis on which minority rights were guaranteed. The rights were created so that minorities need have no apprehension that they would not be able, either in the religious or in the educational fields, to do what the politically powerful majority could do. In matters of education what the politically powerful majority could do was to establish and administer educational institutions of their choice at their own expense. Principles of equality required that the minorities be given the same rights. The protection/special right was to ensure that the minorities could also establish and administer educational institutions of their choice at their own expense. The demand for separatism and separate electorates was given up as principles of secularism and equality were considered more important. The principle of secularism and equality meant that State would not discriminate on grounds of religion, race, caste, language or any of them. Thus once State aid was given and/or taken then, whether majority or minority, all had to adhere to principles of equality and secularism.

In P.A. Inamdar's case,26 the Court observed that the real purpose of Article 30 is to prevent discrimination against members of the minority community and to place them on an equal footing with non-minority. Reverse discrimination was not the intention of Article 30. If running of educational institutions cannot be said to be at a higher plane than the right to carry on any other business, reasonable restriction similar to those placed on the right to carry on business can be placed on educational institutions conducting professional courses. For the purpose of these restrictions both minorities and non-minorities can be treated at par and there would not be any violation of Article 30(1), which guarantees only protection against oppression and discrimination of the minority from the majority Activities of education being essentially charitable in nature, the educational institutions both of non-minority and minority character can be regulated and controlled so that they do not indulge in selling seats of learning to make money. They can be allowed to generate such funds as would be reasonably required to run the institute and for its further growth.

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 education will open doors of perception and act as the natural light of mind for our countrymen to live in the whole.

Scope of Article 30: Judicial Trends

In Re: Kerala Education Bill, the scope and ambit of right conferred by Article 30(1) came up for consideration. In that case a reference under Article 143(1) of the Constitution was made by the President of India to obtain the opinion of the Hon’ble Supreme Court on certain questions relating to the constitutional validity of some of the provisions of the Kerala Education Bill, 1957, which had been passed by the Kerala Legislative Assembly, but had been reserved by the Governor for the consideration of the President. Clause 3(5) of the Bill, made the recognition of new schools subject to the other provisions of the Bill and the rules framed by the Government under clause 3 (6); clause 15 authorized the Government to acquire any category of schools; clause 8(3) made it obligatory on all aided schools to hand over the fees to the Government; clauses 9 to 13 made provisions for the regulation and management of the schools, payment of salaries to teachers and the terms and conditions of their appointment, and clause (33) forbade the granting of temporary injunctions and interim orders in restraint of proceedings under the Act.

The Court held that Article 30(1) does not require that minorities based on religion should establish educational institutions for teaching religion only or that linguistic minority should establish educational institution for teaching its language only. The object underlying Article 30(1) is to see the desire of minorities being fulfilled that their children should be brought up properly and efficiently and acquire eligibility for higher university education and go out in the world fully equipped with such intellectual attainments as will make them fit for entering public services, educational institutions imparting higher instructions including general secular education. The object of Article 30 is to enable children of minorities to go out in the world fully equipped. Thus, the twin objects sought to be achieved by Article 30(1) in the interest of minorities are: (i) to enable such minority to conserve its religion and language and (ii) to give a thorough good general education to the children belonging to such minority. So long as the institution retains its minority character by achieving and continuing to achieve the above said two objectives, the institution would remain a minority institution. The Court held that “Article 30(1) of the Constitution made no distinction between minority institutions

27. Supra n. 5 at 672, Per Justice Variava.
28. Ibid.
30. Ibid.
31. Ibid.
32. Ibid.
existing from before the Constitution or established thereafter and protected both. It did not require that a minority institution should be confined to the members of the community to which it belonged and a minority institution could not cease to be so by admitting a non-member to it. Nor did Article 30 (1) in any way limit the subject to be taught in a minority institution, and its crucial words 'of their own choice', clearly indicated that the ambit of the rights it conferred was determinable by the nature of the institutions that the minority communities chose to establish and, the three categories into which such institutions could thus be classified were (1) those that sought neither aid nor recognition from the State, (2) those that sought aid, and (3) those that sought recognition but not aid. The impugned Bill was concerned only with institutions of the second and third categories."

The Court further held as follows:

"The right of the minorities to administer their educational institutions under Article 30(1) was not inconsistent with the right of the State to insist on proper safeguards against mal-administration by imposing reasonable regulations as conditions precedent to the grant of aid. That did not however, mean that State Legislature could, in the exercise of its powers of legislation under Arts. 245 and 246 of the Constitution, override the fundamental rights by employing indirect methods, for what it had no power to do directly, it could not do indirectly."

In State of Kerala v. Very Rev. Mother Provincial, the challenge was to various provisions of the Kerala University Act, 1969, the provisions inter alia affected private colleges, particularly those founded by minority communities in the State of Kerala. The said provisions, inter alia, sought to provide for the manner in which private colleges were to be administered through the constitution of the governing body or managing councils in the manner provided by the Act. Dealing with Article 30, the Court observed as follows:

"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 Court had occasion to consider again the ambit of Article 30(1) of the Constitution. It was pointed out that Article 30(1) has two distinct spheres of protection separated in point of time from each other: the first relating to the initial right of establishment, and the second embracing the right of administration of the institution which has been established. Administration was equated with management of affairs of the institution and it was observed:  

"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."

Evidently, what was meant was that the right to exclusive management of the institution is separable from the right to determine the character of education and its standards. This may explain why "standards" of education were spoken of as "not part of management" at all. It meant that the right to manage, having been conferred in absolute terms, could not be interfered with at all although the object of that management could be determined by a general pattern to be, laid down by the State which could prescribe the syllabi and standards of education.

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 Articles 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. 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

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35. Id at 740.
36. Supra n. 5 at 556.
37. Ibid.
38. Ibid.
39. Id at 552.
linguistic minority, it would be the same in relation to a religious minority.\(^{40}\) India is divided into different linguistic states.\(^{41}\) The States have been carved out on the basis of the language of the majority of persons of that region.\(^{42}\) 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.\(^{43}\) 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".\(^{44}\) This will clearly be contrary to the concept of linguistic states.\(^{45}\) 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.\(^{46}\)

In Lily Kurian v. Sr. Lewina\(^{47}\) another Constitution Bench of this Court considered the scope, ambit and the nature of right of linguistic and religious minorities under Article 30(1) of the Constitution. Justice A. P. Sen, speaking for the court held that it is clear beyond doubt that Article 30 (1) though couched in absolute and spacious terms in marked contrast with other fundamental rights in Part III has to be read subject to the regulatory power of the State.\(^{48}\) Though this Court has consistently recognized this power of the State as constituting an implied limitation upon the right guaranteed under Article 30 (1), the entire controversy has centred around the extent of its regulatory power over minority educational institutions.\(^{49}\) Protection of the minorities is an article of faith in the Constitution of India.\(^{50}\) The right to the administration of institutions of minority's choice enshrined in Article 30(1) means 'management of the affairs' of the institution.\(^{51}\) This right is, however, subject to the regulatory power of the State.\(^{52}\) Article 30(1) is not a charter for maladministration; regulation, so that the right to administer may be better exercised for the benefit of the institution, is permissible; but the moment one goes beyond that and imposes, what is in truth, not a mere regulation but an impairment of the right to administer, the article comes into play and the interference cannot be justified by pleading the interests of the general public; the interests justifying interference can only be the interests of the minority concerned.\(^{53}\)

\(^{40}\) Ibid.
\(^{41}\) Ibid.
\(^{42}\) Ibid.
\(^{43}\) Ibid.
\(^{44}\) Ibid.
\(^{45}\) Ibid.
\(^{46}\) Ibid (para 76).
\(^{47}\) (1979) 2 SCC 124.
\(^{48}\) Id at 134.
\(^{49}\) Id at 135.
\(^{50}\) Id at 137.
\(^{51}\) Ibid.
\(^{52}\) Ibid.
\(^{53}\) Ibid.
In Rev. Sidhajbhai Sabhai case, the Court overruled the contention that article 30(1) is limited to conserve only the language, script or culture of religious and linguistic minorities.

Justice Shah said:-

"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). The clause is moulded in terms negative: the State is thereby enjoined not to discriminate in granting aid to educational institutions on the ground that the management of the institution is in the hands of a minority, religious or linguistic, but the form is not susceptible of the inference that the State is competent otherwise to discriminate so as to impose restrictions upon the substance of the right to establish and administer educational institutions by minorities, religious or linguistic. Unlike Article 19, the fundamental freedom under clause (1) of Article 30 is absolute in terms; it is not made subject to any reasonable restrictions of the nature of the fundamental freedoms enunciated in Article 19 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 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."

The Court held that:-

"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 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 is held justifiable because it is in the public or national interest, 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.

55. Id at 849-50.
56. Id at 856-57.
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 regulations must satisfy a dual test—the test of reasonableness, and the test that 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."

In Very Rev. Mother Provincial case, the Supreme Court held that Article 30 (1) declares it to be a fundamental right of the minorities, whether based on religion or language, to establish and administer educational institutions of their choice. In the St. Stephen's College case, the Supreme Court observed that the minorities who are based on religion or language have the right to establish and administration 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 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. The Supreme Court observed that 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-à-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.

57. Supra n. 33.
58. Id at 420.
60. Id at 596.
61. Ibid.
62. Ibid.
63. Ibid.
64. Ibid.
65. Ibid.
At the same time, there also cannot be any reverse discrimination. The minorities whether based on religion or language have the right to establish and administer educational institutions of their choice.\textsuperscript{66} The administration of educational institutions of their choice under Article 30(1) means 'management of the affairs of the institution'.\textsuperscript{67} 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.\textsuperscript{68} But the standards of education are not a part of the management as such.\textsuperscript{69} The standard concerns the body politic and is governed by considerations of the advancement of the country and its people.\textsuperscript{70} Such regulations do not bear directly upon management although they may indirectly affect it.\textsuperscript{71} The State therefore, has the right to regulate the standard of education and allied matters.\textsuperscript{72} Minority institutions cannot be permitted to fall below the standards of excellence expected of educational institutions.\textsuperscript{73} They cannot decline to follow the general pattern of education under the guise of exclusive right of management.\textsuperscript{74} While the management must be left to them, they may be compelled to keep in step with others...\textsuperscript{75} It was further noticed 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.

In this regard, the Court observed as follows:\textsuperscript{76}-

"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)."

\textsuperscript{66} Ibid. 
\textsuperscript{67} Ibid. 
\textsuperscript{68} Ibid. 
\textsuperscript{69} Ibid. 
\textsuperscript{70} Ibid. 
\textsuperscript{71} Ibid. 
\textsuperscript{72} Ibid. 
\textsuperscript{73} Ibid. 
\textsuperscript{74} Ibid. 
\textsuperscript{75} Ibid. 
\textsuperscript{76} Id at 598-99.
The Court further observed that the minorities cannot be treated in a religious neutral way in the educational institutions established and administered by them. Clearly that was not the aim of Article 30 (1). Article 30 (1) was incorporated to secure to the minorities a fair deal in the name of religion only. It was guaranteed to them as a fundamental right after a great deal of deliberation by the Framers. It should not be nullified by narrow judicial interpretation or crabbed pedantry. There must be a broad approach and the statesmanlike vision. The catholic approach that led to the drafting of the provisions dealing with the minority rights, as discussed earlier, should not be set at naught. It must be ensured that nothing is done to deprive the minorities of a sense of belonging and of a feeling of security.

In The Ahmedabad St. Xaviers College Society case, the Court observed as follows: -

"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. 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 or 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. Article 30(1) of the Constitution made no distinction between minority institutions existing from before the Constitution or established thereafter and protected both. It did not require that a minority institution should be confined to the members of the community to which it belonged and a minority institution could not cease to be so by admitting a non-member to it. Nor did Article 30 (1) in any way limit the subject to be taught in a minority institution, and its crucial words 'of their own choice', clearly indicated that the ambit of the rights it conferred was determinable by the nature of the institutions that the minority communities chose to establish and, the three categories into which such institutions could thus be classified were (1) those that sought neither aid nor recognition from the State, (2) those that sought aid, and (3) those that sought recognition but not aid"
In that case Justice Khanna held that Clause (1) of Article 30 confers a right on all minorities, whether they are based on religion or language, to establish and administer educational institutions of their choice.\(^{85}\) The right referred by the clause is in absolute terms and is not subject to restrictions, as in the case of rights conferred by Article 19 of the Constitution.\(^{86}\) The right of the minorities to administer educational institutions does not, however, prevent the making of reasonable regulations in respect of those institutions.\(^{87}\) The regulations have necessarily to be made in the interest of the institution as minority educational institution.\(^{88}\) They have to be so designed as to make it an effective vehicle for imparting education.\(^{89}\) The right to administer educational institutions can plainly not include the right to maladminister.\(^{90}\) Regulations can be made to prevent the housing of an educational institution in unhealthy surroundings as also to prevent the setting up or continuation of an educational institution without qualified teachers.\(^{91}\) The State can prescribe regulations to ensure the excellence of the institution.\(^{92}\) Prescription of standards for educational institutions does not militate against the right of the minority to administer the institutions.\(^{93}\) Regulations made in the true interests of efficiency of instruction, discipline, health, sanitation, morality, public order and the like may undoubtedly be imposed.\(^{94}\) 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.\(^{95}\) A regulation which is designed to prevent maladministration of an educational institution cannot be said to offend clause (1) of Article 30.\(^{96}\) At the same time it has to be ensured that under the power of making regulations nothing is done as would detract from the character of the institution as a minority educational institution or which would impinge upon the rights of the minorities to establish and administer educational institutions of their choice.\(^{97}\) The right conferred by Article 30 (1) is intended to be real and effective and not a mere pious and abstract sentiment; it is a promise of reality and not a teasing illusion.\(^{98}\) Such a right cannot be allowed to be whittled down by any measure masquerading as regulation.\(^{99}\)

In that case Justice K.K. Mathew observed that because Article 30 (1) is couched in absolute terms, it does not follow that the right guaranteed is not subject to regulatory laws which would not amount to its abridgement.\(^{100}\) It is a total misconception to say that

\(^{85}\) Id at 781.
\(^{86}\) Id at 782.
\(^{87}\) Ibid.
\(^{88}\) Ibid.
\(^{89}\) Ibid.
\(^{90}\) Ibid.
\(^{91}\) Ibid.
\(^{92}\) Ibid.
\(^{93}\) Ibid.
\(^{94}\) Ibid.
\(^{95}\) Ibid.
\(^{96}\) Id at 783.
\(^{97}\) Ibid.
\(^{98}\) Ibid.
\(^{99}\) Ibid.
\(^{100}\) Id at 810.
because the right is couched in absolute terms, the exercise of the right cannot be regulated or that every regulation of that right would be an abridgment of the right.101

In that case Justice M.H. Beg observed that the essence of the right guaranteed by Article 30 (1) of the Constitution is a free exercise of their choice by minority institutions of the pattern of education as well as of the administration of their educational institutions.102 Both these, taken together, determine the kind or character of an educational institution which a minority has the right to choose.103 Where these patterns are accepted voluntarily by a minority institution itself, even though the object may be to secure certain advantages for itself from their acceptance, the requirement to observe these patterns would not be a real violation of rights protected by Article 30 (1).104 Indeed, the acceptance could be more properly viewed as an assertion of the right to choose which may be described as the “core” of the right protected by Article 30 (1).105

In a case in which the pattern is accepted voluntarily by a minority institution, with a view to taking advantage of the benefits conferred by a statute, it seems to me that it cannot insist upon an absolutely free exercise of the right of administration.106 Here, the incidental fetters on the right to manage the institution, which is only a part of the fundamental right, would be consequences of an exercise of the substance or essence of the right which, as I see it, is freedom of choice.107 No doubt, the rights protected by Article 30 (1) are laid down in “absolute” terms without the kind of express restrictions found in Articles 19, 25 and 26 of the Constitution.108 But, if a minority institution has the option open to it of avoiding the statutory restrictions altogether, if it abandons, with it, the benefits of a statutory right, I fail to see how the absoluteness of the right under Article 30 (1) of the Constitution is taken away or abridged.109 All that happens is that the statute exacts a price in general interest for conferring its benefits.110 It is open to the minority institution concerned to free itself from any statutory control or fetters if freedom from them is considered by it to be essential for the full exercise of its fundamental rights under Article 30 (1) of the Constitution.111 This Article, meant to serve as a shield of minority educational institutions against the invasion of certain rights protected by it and declared fundamental so that they are not discriminated against, cannot be converted by them into a weapon to exact unjustifiable preferential or discriminatory treatment for minority institutions so as to obtain the benefits but to reject the obligations of statutory rights.112 It is only when the terms of the statute necessarily compel a minority institution to abandon the core of its fundamental rights under Article 30 (1) that it could amount to taking away or abridgement of a fundamental right within

101. Ibid.
102. Ibid.
103. Ibid.
104. Ibid.
105. Ibid.
106. Ibid.
107. Ibid.
108. Ibid.
109. Ibid.
110. Ibid.
111. Ibid.
112. Ibid.
the meaning of Article 13 (2) of the Constitution. It is only then that the principle could apply that what cannot be done directly cannot be achieved by indirect means.

In T.M.A. Pai Foundation case, the Supreme Court held that Article 30 (1) deals with religious minorities and linguistic minorities. The opening words of Article 30 (1) make it clear that religious and linguistic minorities have been put on a par, insofar as that article is concerned. Article 30 (1) bestows on the minorities, whether based on religion or language, the right to establish and administer an 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. The Supreme Court held that 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. The amplitude of the right is couched in very wide language. It is also a group right but any individual belonging to minorities, linguistic or religious, may exercise this right for the benefit of his own group. It is significant to note that the right conferred under Article 30 is not subjected to any limitations. The Article speaks of 'their choice'. The right to establish and administer educational institutions is of the choice of the minorities. The expression "institutions of their choice" means institutions for the benefit of the minorities; the word 'choice' encompasses both of the students as well as of the type of education to be imparted in such educational institutions. The protection under Article 30 is against any measure, legislative or otherwise, which infringes the rights granted under that article. The right is not claimed in a vacuum—it is claimed against a particular legislative or executive measure and the question of minority status must be judged in relation to the offending piece of legislation or executive order. If the source of the infringing action is the State, then the protection must be given against the State and the status of the individual or group claiming the protection must be determined with reference to the territorial

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113. Ibid.
114. Ibid.
115. Supra n. 5.
116. Id at 552, Per Kirpal C.J. (for himself and pattanaik, Rajendra Babu, Balakrishnan, Venkatarama Reddi and Pasayat, J.J.).
117. Ibid.
118. Id at 555.
119. Ibid.
120. Id at 587-88.
121. Ibid.
122. Id at 620 (As per Justice Syed Shah Mohammed Quadri).
123. Ibid.
124. Ibid.
125. Ibid.
126. Ibid.
127. Ibid.
128. Id at 648 (As per Justice Ruma Pal).
129. Ibid.
limits of the State. If however the protection is limited to State action, it will leave the group which is otherwise a majority for the purpose of State legislation, vulnerable to Union legislation which operates on a national basis. When the entire nation is sought to be affected, surely the question of minority status must be determined with reference to the country as a whole.

In Islamic Academy case, Justice S.B. Sinha observed that minorities, whether based on religion or language, however, have a fundamental right to establish and administer educational institutions of their own choice. The right under clause (1) of Article 30 is not absolute, and subject to reasonable regulations which inter alia may be framed having regard to the public interest and national interest of the country. Regulations can also be framed to prevent maladministration as also for laying down the standard of education, teaching, maintenance of discipline, public order, health, morality etc. He further observed that from the decisions of this court, it is evident that though the right engrafted under Article 30 (1) of the Constitution does not lay down any limitations or restrictions upon the right of a minority to administer its educational institutions, yet the right cannot be used absolutely and unreasonably. He further observed that Article 30 (1) of the Constitution does not confer an absolute right. The exercise of such right is subject to permissible State regulations with an eye on preventing maladministration. Broadly stated, there are “permissible regulations” and “impermissible regulations”. The Court held that 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 right. 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. 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

130. Ibid.
131. Ibid.
133. Id at 738.
134. Ibid.
135. Ibid.
136. Id at 740.
137. Id at 765.
138. Ibid.
139. Ibid.
down the right under Article 30. 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 the nationalise 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 majority 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 P.A. Inamdar case, the Supreme Court held that Article 30 (1) does not require that minorities based on religion should establish educational institutions for teaching religion only or that a linguistic minority should establish educational institution for teaching its language only. The object underlying Article 30 (1) is to see the desire of minorities being fulfilled that their children should be brought up properly and efficiently and acquire eligibility for higher university education and go out in the world fully equipped with such intellectual attainments as will make them fit for entering public services, educational institutions imparting higher instructions including general secular education. Thus, the twin objects sought to be achieved by Article 30 (1) in the interest of minorities are: (i) to enable such minority to conserve its religion and language, and (ii) to give a thorough, good, general education to children belonging to such minority. So long as the institution retains its minority character by achieving and continuing to achieve the above said two objectives, the institution would remain a minority institution. A State Legislation, primary or delegated, cannot favour non-minority institution over minority institution. The difference arises because of Article 30, the protection whereunder is available to minority educational institutions only. The majority opinion called it a "special right" given under Article 30. In the opinion of Justice S.B. Sinha, minority educational institutions do not have a higher right in terms of Article 30(1); the rights of minorities and non-minorities are equal. What is conferred by Article 30(1) of the Constitution is "certain additional protection" with the object of bringing the minorities on the same platform as that of non-minorities, so that the minorities are protected by establishing and administering educational institutions for the benefit of their own community, whether based on religion or language.

140 Supra n. 26.
141 Id at 591.
142 Ibid.
143 Ibid.
144 Ibid.
145 Ibid.
146 Ibid.
147 Ibid.
148 Ibid.
In Mlankara Syrian Catholic College case, the Court held that the right conferred on minorities under Article 30 is only to ensure equality with the majority and not intended to place the minorities in a more advantageous position vis-à-vis the majority. There is no reverse discrimination in favour of minorities. The general laws of land relating to national interest, national security, social welfare, public order, morality, health, sanitation, taxation, etc. applicable to all, will equally apply to minority institutions also. The right to establish and administer educational institutions is not absolute. Nor does it include the right to maladminister. There can be regulatory measures for ensuring educational character and standards and maintaining academic excellence.

Relation between Articles 29 and 30: Judicial Approach

In Re: Kerala Education Bill case, this Court had the occasion to consider the interplay of Articles 29 and 30 of the Constitution. Dealing with Articles 29 and 30, the Court observed as follows:

"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 citizens 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) which has hereinbefore been quoted in full..."

It had been, inter alia, contended on behalf of the state that if a single member of any other community is admitted in a school established for a particular minority community, then the educational institution would cease to be an educational institution established by that particular minority community. It was contended that because of Article 29(2), when an educational institution established by a minority community gets aid, it would be precluded from denying admission to members of other communities

150. Ibid.
151. Ibid.
152. Ibid.
153. Ibid.
154. Ibid.
155. 1959 SCR 995.
156. Id at 1046.
157. Id at 1050.
because of Article 29(2), and that as a consequence thereof, it would cease to be an educational institution of the choice of the minority community that established it.\footnote{158}

Repelling this argument, the Court observed as follows\footnote{159}:-

"This argument does not appear to us to be warranted by the language of the Article itself. There is no such limitation in Article 30(1) and to accept this limitation will necessarily involve the addition of the words "for their own community" in the Article which is ordinarily not permissible according to 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 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, 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 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. Indeed the object of conservation of the distinct language, script and culture of a minority may be better served by propagating the same amongst non-members of the particular minority community. In our opinion, it is not possible to read this condition into Article 30(1) of the Constitution." Das, C.J. speaking for the majority of 6 to 1 said in a Presidential reference under article 143(1) that the key to the understanding of the true meaning and implication of article 30(1) is, the words "of their own choice" in the article and that the article leaves it to the choice of those minorities to establish such educational institutions as will serve both purposes, namely, the purpose of conserving their religion, language or culture, and the purpose of giving a thorough, good general education to their children.

In The State of Bombay vs. Bombay Education Society,\footnote{160} a Society consisting of members of Anglo-Indian community whose mother tongue was English set up an institution in the then State of Bombay. The State of Bombay in the year 1955 issued an Order that no school shall admit to class where English is used as a medium of instruction any pupil other than a pupil belonging to a section of citizens the language of which is English namely, Anglo-Indians and citizens of non-Asiatic descent. One of the members of the Christian community sought admission in the school on the premise that this mother tongue was English. He was refused admission in view of the aforesaid Government Order, as the student was neither an Anglo-Indian whose mother tongue was English nor a citizen of non-Asiatic descent. This was challenged by means of a petition under Article 226 before the Bombay High Court and the Govt. order was struck down.

\footnote{158} Ibid.  
\footnote{159} Id 1051-52.  
\footnote{160} (1955) 1 SCR 568.
On appeal to the Apex Court, the Court held thus:

"Article 29(1) gives protection to any section of the citizens having a distinct language, script or culture by guaranteeing their right to conserve the same. Article 30(1) secures to all minorities whether based on religion or language, the right to establish and administer educational institutions of their choice. Now, suppose the State maintains an educational institutions to help conserving the distinct language, script or culture of a section of the citizens or makes grants-in-aid of an educational institution established by a minority community based on religion or language to conserve their distinct language, script or culture who can claim the protection of Article 29(2) in the matter of admission into any such institution? Surely, the citizens of the very section whose language, script or culture is sought to be conserved by the institution or the citizen who belonged to the minority group which has established and in administering the institution, do not need any protection against themselves and therefore, Article 29(2) is not designed for the protection of this section or this minority. Nor do we any reason to limit article 29(2) to citizens belonging to a minority group other than the section or the minorities referred to in article 29(1) or article 30(1), for the citizens, who do not belong to any minority group, may quite conceivably need this protection just as much as the citizens of such other minority groups. If it is urged that the citizens of the majority group are amply protected by article 15 and do not require the protection of article 29(2), then there are several obvious answers to that argument. The language of article 29(2) is wide and unqualified and may well cover all citizens whether they belong to the majority or minority group. Article 15 protects all citizens against the State whereas the protection of article 29(2) extents against the State or any body who denies the right conferred by it. Further article 15 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 of the specified kind. In the next place article 15 is quite general and wide in its terms and applies to all citizens, whether they belong to the majority or minority groups, and gives protection to all the citizens against discrimination by the State on certain specific grounds. 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 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 way of taxes. We see no cogent reason for such discrimination."

Articles 29 and 30 are a group of articles relating to cultural and educational rights. Article 29(1) gives the right to any section of the citizens residing in India or any part thereof, and having a distinct language, script or culture of its own, to conserve the same. Article 29(1) does not refer to any religion, even though the marginal note of the Article mentions the interests of minorities. Article 29(1) essentially refers to sections of citizens who have a distinct language, script or culture, even though their religion may

161. Id at 579-80.
162. Supra n. 5 at 555.
163. Ibid.
The common thread that runs through Article 29(1) is language, script or culture, and not religion. For example, if in any part of the country, there is a section of society that has a distinct language, they are entitled to conserve the same, even though the persons having that language may profess different religions. Article 29(1) gives the right to all sections of citizens, whether they are in a minority or the majority religions, to conserve their language, script or culture.

In the exercise of this right to conserve the language, script or culture, that section of the society can set up educational institutions. The right to establish and maintain educational institutions of its choice is a necessary concomitant to the right conferred by Article 30. 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. The Supreme Court observed 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 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 education, 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 Articles 29 and 30 in particular, on the

164 Ibid.
165 Ibid.
166 Ibid.
167 Id at 556.
168 Ibid.
169 Ibid.
170 Ibid.
171 Ibid.
172 Ibid.
173 Id at 585.
174 Ibid.
175 Ibid.
176 Ibid.
177 Id at 586.
presumption that the State will normally not act in the interest of the general public or in the interests of the sections concerned of the society.\textsuperscript{178}

The Supreme Court held that the grant of aid is not a constitutional imperative.\textsuperscript{179} Article 337 only gives the right to assistance by way of grant to the Anglo-Indian community for a specified period of time.\textsuperscript{180} 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) illusory.\textsuperscript{181} 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)?\textsuperscript{182} Article 30 (2) only means what it states viz. that a minority institution shall not be discriminated against where aid to a religious or linguistic minority institution only on the ground that the management of that institution is with the minority.\textsuperscript{183} We would, however, like to clarify that if an abject surrender of the right to management is made a condition of aid, the denial of aid would be violative of Article 30 (2).\textsuperscript{184} 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 facet of administration.\textsuperscript{185} If, however, aid were denied on the ground that the educational institution is under management of a minority, then such a denial would be completely invalid.\textsuperscript{186}

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.\textsuperscript{187} 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.\textsuperscript{188} Of course, the State cannot be compelled to grant aid, but the receipt of aid cannot be a reason for altering the nature or character of the recipient educational institution.\textsuperscript{189} 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.\textsuperscript{190} 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

\textsuperscript{178} Ibid.
\textsuperscript{179} Id at 579.
\textsuperscript{180} Ibid.
\textsuperscript{181} Ibid.
\textsuperscript{182} Ibid.
\textsuperscript{183} Ibid.
\textsuperscript{184} Ibid.
\textsuperscript{185} Ibid.
\textsuperscript{186} Ibid.
\textsuperscript{187} Id at 580.
\textsuperscript{188} Ibid.
\textsuperscript{189} Ibid.
\textsuperscript{190} Ibid.
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.

The Supreme Court held that 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 educational 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 of 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 instruction 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

191 Ibid.
192 Ibid.
193 Ibid.
194 Ibid.
195 Ibid.
196 Ibid.
197 Ibid.
198 Ibid.
199 Ibid.
200 Ibid.
201 Ibid.
202 Ibid.
203 Ibid.
204 Ibid.
205 Ibid.
206 Id at 581.
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." 206 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. 207 It is true that one of the rights to administer an educational institution is to grant admission to the students. 208

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. 209 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. 210 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. 211 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). 212 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. 213 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). 214 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. 215 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. 216 Therefore, the contention that the institutions covered by Article 30 are outside the injunction of Article 29(2) cannot be accepted. 217

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 rights of administration of the minorities would be eroded to some extent. 218 Article 30(2) is an injunction against the state not to discriminate against the

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206. Ibid.
207. Ibid.
208. Ibid.
209. Ibid.
210. Ibid.
211. Ibid.
212. Ibid.
213. Ibid.
214. Ibid.
215. Ibid.
216. Ibid.
217. Ibid.
218. Id at 582.
minority educational institution and prevent it from receiving aid on the ground that the institution is under the management of a minority.\textsuperscript{219} While, therefore, a minority educational institution receiving grant-in-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.\textsuperscript{220} It is in this context that some interplay between Article 29(2) and Article 30(1) is required.\textsuperscript{221} The word "only" used in Article 29(2) is of considerable significance and has been used for some avowed purpose.\textsuperscript{222} 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).\textsuperscript{223} 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.\textsuperscript{224}

What would be a reasonable extent would depend upon variable factors, and it may not be advisable to fix any specific percentage.\textsuperscript{225} The situation would vary according to the type of institution and the nature of education that is being imparted in the institution.\textsuperscript{226} 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.\textsuperscript{227} 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.\textsuperscript{228} 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 guarantees enshrined in both Article 29(2) and Article 30.\textsuperscript{229} Article 30 (1) is subject to Article 29 (2) of the Constitution.\textsuperscript{230}

The Supreme Court held that Articles 29 and 30 of the Constitution are grouped under the heading "Culture and educational rights."\textsuperscript{231} Article 29 (1) deals with right of

\begin{footnotesize}
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\item \textsuperscript{219} Id at 583.
\item \textsuperscript{220} Ibid.
\item \textsuperscript{221} Ibid.
\item \textsuperscript{222} Ibid.
\item \textsuperscript{223} Ibid.
\item \textsuperscript{224} Ibid.
\item \textsuperscript{225} Ibid.
\item \textsuperscript{226} Ibid.
\item \textsuperscript{227} Ibid.
\item \textsuperscript{228} Ibid.
\item \textsuperscript{229} Ibid.
\item \textsuperscript{230} Id at 612, per Justice V.N. Khare.
\item \textsuperscript{231} supra n. 6 at 742.
\end{itemize}
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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 managed by 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).

The Court further held that 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(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.

232. Ibid.
233. Ibid.
234. Ibid.
235. Ibid.
236. Ibid.
237. Ibid.
238. Ibid.
239. Ibid.
240. Ibid.
241. Supra n. 6 at 742.
242. Ibid.
243. Ibid.
244. Ibid.
245. Ibid.
246. Ibid.
247. Ibid.
If the scope of Article 30 (1) is to establish and administer educational institutions to conserve language, script or culture of minorities, it will render Article 30 redundant. 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 majority 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 the minorities to establish and administer educational institutions of their choice will be taken away.

Question was posed during the course of arguments whether, the educational institutions referred to in clause (1) of article 30 must only be those institutions which have been established with a view to conserve language, script or culture of a minority. To put it in other words, the question is whether clause (1) of article 30, is subject to the provisions of clause (1) of article 29. In this respect I am of the view that clause (1) of article 29 and clause (1) of article 30 deal with distinct matters, and it is not permissible to circumscribe or restrict the right conferred by clause (1) of Article 30 by reading in it any limitation imported from clause (1) of article 29. Article 29(1) confers a right on any section of citizens having a distinct language, script or culture of its own to conserve the same. It is not necessary, as mentioned earlier, for invoking this clause that the section of citizens should constitute a minority. As against that, the right conferred by article 30(1) is only upon minorities which are based either on religion or language. The right conferred by article 29(1) is for the conservation of language, script or culture, while that guaranteed by article 30(1) is for the establishment and administration of educational institutions of the choice of minorities. Had it been the intention of the Constitution-makers that the educational institutions which can be established and administered by minorities should be only those for conservation of their language, script or culture, they would not have failed to use words to that effect in article 30(1). In the absence of those words, it is difficult to subscribe to the view that educational institutions mentioned in article 30(1) are only those which are intended to conserve language, script

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248 supra n. 6 at 743.
249 Ibid.
250 Ibid.
251 Ibid.
252 Ibid.
253 Id at 785, per Justice H.R. Khanna.
254 Ibid.
255 Ibid.
256 Ibid.
257 Ibid.
258 Ibid.
259 Ibid.
or culture of the minority. Clause (1) of article 30 also contains the words "of their choice". These words which qualify "educational institutions" show the vast discretion and option which the minorities have in selecting the type of institutions which they want to establish. In case an educational institution is established by a minority to conserve its distinct language, script or culture, the right to establish and administer such institution would fall both under article 29(1) as well as under article 30(1). The minorities can, however, choose to establish an educational institution which is purely of a general secular character and is not designed to conserve their distinct language, script or culture. The right to establish and administer, such an institution is guaranteed by article 30(1) and the fact that such an institution does not conserve the distinct language, script or culture of a minority would not take it out of the ambit of article 30(1).

Article 29(1) confers on any section of citizens resident in the territory of India, the right to conserve its language, script or culture. It does not speak of any minority, religious or otherwise. Whereas Article 29(1) confers the right not only upon a minority as understood in its technical sense but also upon a section of the citizens resident in the territory of India which may not be a minority in its technical sense, the beneficiary of the right under Article 30 is a minority, either religious or linguistic. That is one distinction between Article 29(1) and Article 30(1). The second distinction to be noted is that whereas Article 29(1) confers rights in respect of three subjects viz., language, script or culture, Article 30(1) deals only with the right to establish and administer educational institutions. It is true that under Article 29(1) a section of the citizens having a distinct language, script or culture, might establish an educational institution for conserving the same. But, under Article 30(1), the right conferred on the religious or linguistic minority is not only the right to establish an educational institution for the purpose of conserving its language, script or culture, but any educational institution of its choice. Whereas Article 29 does not deal with education as such, Article 30 deals only with the establishment and administration of educational institutions. It might be that in a given case, the two Articles might overlap. When a linguistic minority establishes an educational institution to conserve its language, the linguistic minority can invoke the protection of both the Articles. When Article 30(1) says that a linguistic minority can establish and administer educational institutions of its choice, it means that it can establish only an educational

260 Ibid.
261 Ibid.
262 Ibid.
263 Ibid.
264 Ibid.
265 Ibid.
266 Ibid.
267 Id at 786.
268 Ibid.
269 Ibid.
270 Ibid.
271 Ibid.
272 Ibid.
273 Ibid.
274 Ibid.
275 Ibid.
276 Id at 797, per K.K. Mathew.
institution to conserve its language, then the expression 'of their choice' in Article 30 (1) is practically robbed of its meaning.\textsuperscript{276}

Even if Article 30(1) of the Constitution is held to confer absolute and unfettered rights of management upon minority institutions, subject only to absolutely minimal and negative controls in the interests of health and law and order, it could not be meant to exclude a greater degree of regulation and control when a minority institution enters the wider sphere of general secular and non-denominational education, largely employs teachers who are not members of the particular minority concerned, and when it derives large parts of its income from the fees paid by those who are not members of the particular minority in question. Such greater degree of control could be justified by the need to secure the interests of those who are affected by the management of the minority institution and the education it imparts but who are not members of the minority in management. In other words, the degree of reasonably permissible Control must vary from situation to situation.

A glance at the context and scheme of Part III of the Constitution would show that the Constitution makers did not intend to confer absolute rights on a religious or linguistic minority to establish and administer educational institutions. The associate Article 29(2) imposes one restriction on the right in Article 30(1). No religious or linguistic minority establishing and administering an educational institution which receives aid from the State funds shall deny admission to any citizen to the institution on grounds only of religion, race, caste, language or any of them. The right to admit a student to an educational institution is admittedly comprised in the right to administer it. This right is partly curtailed by Article 29 (2).The right of admission is further curtailed by Article 15(4) which provides an exception to Article 29(2). Article 15(4) enables the State to make any special provision for the advancement of any socially and educationally backward class of citizens or for the scheduled caste and scheduled tribes in the matter of admission in the educational institutions maintained by the State or receiving aid from the State. Article 28(3) imposes a third restriction on the right in Article 30(1). It provides that no person attending any educational institution recognised or receiving aid by the State 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. Obviously, Article 28(3) prohibits a religious minority establishing and administering an educational institution which receives aid or is recognised by the State from compelling any citizen reading in the institution to receive religious instruction against his wishes or if minor against the wishes of his guardian. It cannot be disputed that the right of a religious minority to impart religious instruction in an educational institution forms part of the right to administer the institution. And yet Article 28(3) curtails that right to a certain extent.

Justice Beg said that I am in entire agreement with the view that, although, Articles 29 and 30 may supplement each other so far as certain rights of minorities are

\textsuperscript{276} Ibid.
concerned, yet, Article 29 of the Constitution does not, in any way, impose a limit on the kind or character of education which a minority may choose to impart through its Institution to the children of its own members or to those of others who may choose to send their children to its schools. In other words, it has a right to impart a general secular education. I would, however, like to point out that, as rights and duties are correlative, it follows, from the extent of this wider right of a minority under Art. 30(1) to impart even general or non-denominational secular education to those who may not follow its culture or subscribe to its beliefs, that, when a minority Institution decides to enter this wider educational sphere of national education, it, by reason of this free choice itself, could be deemed to opt to adhere to the needs of the general pattern of such education in the country, at least whenever that choice is made in accordance with statutory provisions. Its choice to impart an education intended to give a secular orientation or character to its education necessarily entails its assent to the imperative needs of the choice made by the State about the kind of "secular" education which promotes national integration or the, elevating objectives set out in the preamble to our Constitution, and the best way of giving it. If it is part of a minority's rights to make such a choice it should also be part of its obligations, which necessarily follow from the choice, to adhere to the general pattern.

The logical basis of such a choice is that the particular minority Institution, which chooses to impart such general secular education, prefers that higher range of freedom where, according to the poet Rabindranath Tagore, "the narrow domestic walls" which constitute barriers between various sections of the nation will crumble and fall. It may refuse to accept the choice made by the State of the kind of secular education the State wants or of the way in which it should be given. But, in that event, should it not be prepared to forego the benefits of recognition by the State? The State is bound to permit and protect the choice of the minority Institution whatever that might be. But, can it be compelled to give it a treatment different from that given to other Institutions making such a choice? Turning to the first and the more complex question, I think it is difficult to answer the argument of the Additional Solicitor General, appearing on behalf of the State of Gujarat, that, where a minority Institution has, of its own free will, opted for affiliation under the terms of a statute, it must be deemed to have chosen to give up, as a price for the benefits resulting from affiliation, the exercise of certain rights which may, in another context, appear to be unwarranted impairments of its fundamental rights.

277 Id at 819.
278 Ibid.
279 Ibid.
280 Ibid.
281 Ibid.
282 Ibid.
283 Id at 820.
284 Ibid.
285 Ibid.
286 Ibid.
287 Ibid.
It is true that, if the object of an enactment is to compel a minority Institution, even indirectly, to give up the exercise of its fundamental rights, the provisions which have this effect will be void or inoperative against the minority Institution.\textsuperscript{288} The price of affiliation cannot be a total abandonment of the right to establish and administer a minority Institution conferred by Article 30(1) of the Constitution.\textsuperscript{289} This aspect of the matter, therefore, raises the question whether any of the provisions of the Act are intended to have that effect upon a minority institution.\textsuperscript{290} Even if that intention is not manifest from the express terms of statutory provisions, the provisions may be vitiated if that is their necessary consequence or effect.\textsuperscript{291} I shall endeavour to show that the view which this Court has taken whenever questions of this kind have arisen before it on the effect of the provisions of a statute, though theoretically and logically perhaps not quite consistent always on propositions accepted, has the virtue of leaving the result to the balancing of conflicting considerations to be carried out on the particular provisions and facts involved in each case.\textsuperscript{292}

The interplay of Article 29 and Article 30 came up for consideration again before the Supreme Court in the D.A.V. College case,\textsuperscript{293} the provisions of the Guru Nanak University Act established after the reorganization of the State of Punjab in 1969 inter-alia provided for the manner in which the governing body was to be constituted; the body was to include a representative of the University and a member of the College.\textsuperscript{294} These and some other provisions were challenged on the ground that they were violative of Article 30.\textsuperscript{295}

In this connection the Court observed as follows\textsuperscript{296}:-

"It will be observed that Article 29(1) is wider than Article 30(1), in that, while any Section of the citizens including the minorities, can invoke the rights guaranteed under Article 29(1), the rights guaranteed under Article 30(1) are only available to the minorities based on religion or language. It is not necessary for Article 30(1) that the minority should be both a religious minority as well as a linguistic minority. It is sufficient if it is one or the other or both. A reading of these two Articles together would lead us to conclude 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 clause (2) of Article 29 which provides that no citizen shall be denied admission into any educational institution which is maintained by the State or receives

\textsuperscript{288} Ibid.
\textsuperscript{289} Ibid.
\textsuperscript{290} Ibid.
\textsuperscript{291} Ibid.
\textsuperscript{292} Ibid.
\textsuperscript{294} Ibid.
\textsuperscript{295} Ibid.
\textsuperscript{296} Id at 273.
aid out of State funds, on grounds only of religion, race, caste, language or any of them. While this is so these two articles are not inter-linked nor does it permit of their being always read together."

The crucial phrase in article 30(1) is "of their choice", that the ambit of the freedom of choice conferred by the article is therefore as wide as the choice of the particular community may make it and that it is open to a religious minority to establish educational institutions for the purpose of conserving its religion, language or culture, and also for the purpose of giving a thorough good secular education to their children as the article applies to both these classes of institutions. Article 29(1) confers on any section of citizens resident in the territory of India, the right to conserve its language, script or culture. It does not speak of any minority, religious or otherwise. Whereas article 29(1) confers the right not only upon a minority as understood in its technical sense but also upon a section of the citizens resident in the territory of India which may not be a minority in" its technical sense, the beneficiary of the right under article 30 is a minority, either religious or linguistic. That is one distinction between article 29(1) and article 30(1).

The second distinction to be noted is that whereas article 29(1) confers in respect of three subjects' viz., language, script or culture, article 30(1) deals only with the right to establish and administer educational institutions. It is true that under article 29(1) a section of the citizens having a distinct language, script or culture, might establish an educational institution for conserving the same. But, under article 30(1), the right conferred on the religious or linguistic minority is not only the right to establish an educational institution for the purpose of conserving its language, script or culture, but any educational institution of its choice. Whereas article 29 does not deal with education as such, article 30 deals only with the establishment and administration of educational institutions. It might be that in a given, case, the two articles might overlap. When a linguistic minority establishes an educational institution to conserve its language, the linguistic minority can invoke the protection of both the articles. When article 30 does not deal with education as such, article 30 deals only with the establishment and administration of educational institutions. It might be that in a given, case, the two articles might overlap. When a linguistic minority establishes an educational institution to conserve its language, the linguistic minority can invoke the protection of both the articles. When article 30(1) says that a linguistic minority can establish and administer educational institutions of its choice, it means that it can establish and administer any educational institution. If a linguistic minority can establish only an educational institution to conserve its language, then the expression of their choice in article 30(1) is practically robbed of its meaning. A mere look at the two articles would be sufficient to show that article 29(1) cannot limit the width of article 30(1). There are religious minorities in this country which have no distinct language, script or culture, as envisaged in article 29(1). For these religious minorities, article 29(1) guarantees no right. Yet, article 30(1) gives them the right to establish and administer educational institutions of their choice. That article does not say that only religious minorities having a distinct language, script or culture can establish educational institutions of their choice. What then are the educational institutions which they are entitled to establish and administer under the article? Ex hypothesi, these religious minorities have no distinct language, script or culture. So, the educational institutions which they are entitled to, establish and administer cannot be, those to conserve their language, script or culture. Therefore, it is clear that the right guaranteed to a religious or linguistic minority under article 30(1) is the right to establish any educational institution of its choice.
In Rev. Father W. Proost v. State of Bihar, the inter-relation of articles 29(1) and 30(1) was examined by a bench of five judges of this Court presided over by Hidayatullah, C.J. The petitioners, Jesuits of Ranchi, maintained St. Xavier's College which was affiliated to the Patna University. With effect from 1st March, 1962 Section 48-A was introduced. Under this Section a University Service Commission was established for affiliated colleges. Sub-clause (6) of Section 48-A provided that appointments, dismissals, removals, termination of service or deduction in rank of teachers of an affiliated college should be made by the Governing body of the college on the recommendation of the Commission. Further, sub-clause (11) provided that all disciplinary actions could be taken only in consultation with the Commission. The petitioners challenged the virus of the provision and claimed that it affected their rights under Article 30(1) of the Constitution. Whilst the Petition was pending in this Court; Section 48-B was introduced in the Bihar State Universities Act, which provided that appointments, dismissals, removals, termination of service or reduction in rank of teachers or disciplinary measures could only be taken with the approval of the Commission and the Syndicate of the University. This was also challenged. Thus in this case the interplay of Sections 29(2) and 30(1) did not come into question at all. In this case it was an admitted position that the college was open to non-Catholics also. One of the arguments raised on behalf of the State was that since the admissions were not reserved only for students of the Jesuits community the college did not qualify for protection under Article 30(1). The Court rejected the argument by holding that merely because members of other communities were admitted into the institution did not mean the institution lost its minority character.

While conceding that the Jesuits of Rachi who were a religious minority established the petitioner Institution the St. Xaviers College which was admitting students of other communities also, the Attorney General had contended that as the protection to minorities in Article 29 (1) is only a right to conserve a distinct language, script or culture of its own the College did not qualify for the protection of Article 30 (1) because (i) it was not founded to conserve them, and (ii) it was open to all sections of people. An attempt was made to read into the protection granted by Article 30 (1) a corollary taken from Article 29 (1). While conceding that the Jesuit community is a minority community based on religion and therefore it has a right to establish and administer educational institutions of its choice, it was contended that as the protection to minorities in Article 29 (1) is only a right to conserve the distinct language, script or culture of its own, the College does not qualify for the protection of Article 30 (1) because it is not-founded to conserve them. Chief Justice Hidayatullah rejected the interpretation sought to be placed on Articles 29 (1) and 30 (1) as if they have to be read together. He said:

"In our opinion, the width of Article 30(1) cannot be cut down by introducing in it considerations on which Art. 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 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

298. Ibid.

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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 Art. 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 also considered the question whether the protection guaranteed under Article 30(1) is a corollary to the right guaranteed under Article 29(1).299 A contention was advanced that protection to minorities in Article 29(1) was only a right to conserve a distinct language, script, or culture of its own, and, therefore, the educational institutions which imparted general education did not qualify for protection of Article 30.300 This Court 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, is a special right to minorities to establish educational institutions of their choice.301 This Court said that the two Articles create two separate rights though it is possible that the rights might meet in a given case.302

In the St. Stephen's College case,303 the Supreme Court held that the access to academic institutions maintained or aided by the State funds is the special concern of Article 29 (2).304 It recognises the right of an individual not to be discriminated under the aegis of religion, race, caste, language or any of them.305 This is one of the basic principles of a secular State.306 The discrimination based solely on the ground of a citizen's particular religion, race, caste, or having any particular language is absolutely prohibited in educational institutions maintained by the State or receiving aid out of State funds.307 It applies to minorities as well as to non-minorities.308 When other qualifications being equal the religion, race, caste, language of a citizen shall not be a ground of preference or disability.309 Similarly, the words "any of them" as used in Article 29 (2) are intended to give further emphasis that none of the grounds mentioned in the article can be made the sole basis of discrimination.310

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). Article 29 (2) deals with non-discrimination and it is available only to individuals.311

299. Id at 471.
300. Ibid.
301. Id at 475.
302. Ibid.
303. Supra n. 59.
304. Id at 608.
305. Ibid.
306. Ibid.
307. Ibid.
308. Ibid.
309. Ibid.
310. Ibid.
311. Ibid.
Justice K. Jagannatha Shetty observed as follows:312-

"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 implies 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. To be blunt, black men do not wish to be white. Jew do not wish to be Protestants. Serbs do not want to be Croats. French Canadians do not want to lose their French heritage. There are many other instances, including the Corsicans in France, the Irish Catholics in Ulster, the French Canadians in Quebec, the Albanians in Kosovo, Yugoslavia, the Tamils in Sri Lanka, the Islamic separatists in the Phillipines, and the Animist and Christian minorities in southern Sudan. The problem in India is not quite different. India is a multicultural and multi-religious society. It is an extraordinary pluralistic and complex society with different religious minorities. Besides, there are linguistic aspirations and caste considerations. There may be individuals in the minority group who want to assimilate into the majority, but the group itself has a collective interest for non-assimilation. It is interested in its preservation and promotion as a community. This appears to be the chief reason for which Article 30 (1) was incorporated as a fundamental right."

The Court observed that under Article 29 (1) every section of the citizens having a distinct language, script or culture of its own has the right to conserve the same.313 Under Article 29 (1), the minorities -religious or linguistic--are entitled to establish and administer educational institutions to conserve their distinct language, script or culture.314 However, it has been consistently held by the courts that the right to establish an educational institution is not confined to purposes of conservation of language, script or culture.315 The rights in Article 30 (1) are of wider amplitude.316 The width of Article 30 (1) cannot be cut down by the considerations on which Article 29 (1) is based.317 The words "of their choice" in Article 30 (1) leave vast options to the minorities in selecting the type of educational institutions which they wish to establish.318 They can establish institutions to conserve their distinct language, script or culture or for imparting general secular education or for both purposes.319

The Supreme Court held that it is quite true that there is no entitlement to State grant for minority educational institutions.320 There was only a stop-gap arrangement

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312. Id at 608.
313. Id 606.
314. Ibid.
315. Ibid.
316. Ibid.
317. Ibid.
318. Ibid.
319. Ibid.
320. Id at 609.
under Article 337 for the Anglo-Indian community to receive State grants.\textsuperscript{321} There is no similar provision for other minorities to get grant from the State.\textsuperscript{322} But under Article 30 (2), the State is under an obligation to maintain equality of treatment in granting aid to educational institutions.\textsuperscript{323} Minority institutions are not to be treated differently while giving financial assistance.\textsuperscript{324} They are entitled to get the financial assistance much the same way as the institutions of the majority communities.\textsuperscript{325} Second, the receipt of State aid does not impair the rights in Article 30 (1).\textsuperscript{326} The State can lay down reasonable conditions for obtaining grant-in-aid and for its proper utilisation.\textsuperscript{327} The State has no power to compel minority institutions to give up their rights under Article 30 (1).\textsuperscript{328} The rights under Article 30 (1) remain unaffected even after securing financial assistance from the government.\textsuperscript{329}

Justice N.M. Kasliwal in his dissenting opinion observed that the right conferred on minority to establish and administer educational institutions under Article 30 (1) of the Constitution is not absolute and is always subject to reasonable regulations.\textsuperscript{330} If a minority has established and is administering educational institution without receiving any aid out of the State funds the clause (2) of Article 29 will not come into play.\textsuperscript{331} However, if such educational institution is receiving aid out of the State funds then it would be subject to the rigour of clause (2) of Article 29 and it cannot deny admission on grounds only of religion, race, caste, language or any of them.\textsuperscript{332} If such institution gives preference or makes reservations for the candidates belonging to its own religion, then it is bound to cause inequality and discrimination with a candidate belonging to another religion and it would be a denial of admission on the ground of religion and would be hit by Article 29 (2).\textsuperscript{333} The right conferred under Article 30 is general right granted to all minorities, but if any educational institution established and administered by such minority also gets the benefit of grant in aid out of the State funds then it has to fall in line equally with all other educational institutions in the matter of admitting students in such institution and cannot prefer or reserve any seats for students of its won religion.\textsuperscript{334}

Dealing with the interplay of Article 29 (2) with Article 30 (1) two Articles, the Court observed as follows: \textsuperscript{335} "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 needed to strike a balance between the two

\textsuperscript{321} Ibid.
\textsuperscript{322} Ibid.
\textsuperscript{323} Ibid.
\textsuperscript{324} Ibid.
\textsuperscript{325} Ibid.
\textsuperscript{326} Ibid.
\textsuperscript{327} Ibid.
\textsuperscript{328} Ibid.
\textsuperscript{329} Ibid.
\textsuperscript{330} Id at 631.
\textsuperscript{331} Ibid.
\textsuperscript{332} Ibid.
\textsuperscript{333} Ibid.
\textsuperscript{334} Ibid.
\textsuperscript{335} Id at 612.
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 contentions 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 right of a religious or linguistic
minority to establish and administer educational institutions of its choice under Article
30(1) is subject to the regulatory power of the State for maintaining and facilitating the
excellence of its standards. This right is further subject to Article 29(2), which
provides that no citizen shall be denied admission into any educational institution which
is maintained by the State or receives aid out of State funds, on grounds only of religion,
race, caste, language or any of them.

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..."

In T.M.A. Pai Foundation case, the court observed 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 rights 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-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 in this context that some interplay between Article 29(2) and

336. Id at 610.
337. Ibid.
338. Id at 613-14.
339. Supra n. 5.
340. Id at 582-83 (para 149).
341. Ibid.
342. Ibid.
Article 30(1) is required. 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.343 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 guarantees enshrined in both Article 29(2) and Article 30. The ratio laid down in St. Stephen's College case is not correct.344 Once State aid is taken and Article 29(2) comes into play, then no question arises of trying to balance Articles 29(2) and 31. Article 29(2) must be given its full effect.345

Basis of Minority Status: National or State Level

In Re: Kerala Education Bill case346, the questions who are minorities arose for the first time.347 In the said decision it was contended by the State of Kerala that in order to constitute a minority who may claim protection of Article 30(1) persons or group of persons must numerically by minority in the particular region in which the educational institution in question is or is intended to be situated.348 Further according to State of Kerala, Anglo-Indians or Christians or Muslims of that locality taken as a unit, will not be a minority within the meaning of the Article and will not, therefore, be entitled to establish and maintain educational institutions of their choice in that locality, but if some of the members belonging to the Anglo Indian or Christians community happen to reside in another ward of the same municipality and their number be less than that of the members of other communities residing there, then those numbers of Anglo-Indian or

342. Ibid.
343. Id at (As per Justice S.N. Variava).
344. Ibid.
345. Supra n. 29 at 1047.
346. Ibid.
347. Id at 1048.
Christians community will be a minority within the meaning of Article 30 and will be entitled to establish and maintain educational institution of their choice in that locality.\textsuperscript{349}

Repelling the argument the Court held thus:\textsuperscript{350}.

"We need not however, on this occasion go further into the matter and enter upon a discussion and express a final opinion as to whether education being a State subject being item 11 of List II of the Seventh Schedule to the Constitution subject only to the provisions of entries 62, 63, 64 and 66 of List I and entry 25 of List III, 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 or whether it should be determined on the basis only when the validity of a law extending to the whole State is in question or whether it should be determined on the basis of the population of a particular locality when the law under attack applies only to that locality, for the Bill before us 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. By this test Christians, Muslims and Anglo-Indians will certainly be minorities in the State of Kerala."

In that case 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.\textsuperscript{351} 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 educational 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 A.M. Patroin v. E.C. Kesavan,\textsuperscript{353} "the petitioners contended that they have an exclusive right to administer the institution under Article 30(1) of the Constitution and that the order of the Director of Public Instruction constitutes violation of that right. Clause (1) of Article 30 provides that all minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice; and clause (2) that 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. The Court held that the word "minority" is not defined in the Constitution; and in the absence of any special definition we must hold that any community, religious or linguistic, which is numerically less than fifty per cent of the population of the State is entitled to the fundamental right guaranteed by the article ".

\textsuperscript{349} Ibid.
\textsuperscript{350} Id at 1049-50.
\textsuperscript{351} Id at 1047.
\textsuperscript{352} Id at 1050.
\textsuperscript{353} AIR 1965 Kerala, 75 (FB).
In The Right Rev. Bishop S. K. Patro case, the Supreme Court held that the guarantee of protection under Article 30 is not restricted to educational institutions established after the Constitution; institutions which had been established before the Constitution and continued to be administered by minorities either based on religion or language qualify for the protection of the right of minorities declared by Article 30 of the Constitution. It was the case of the State and the parties intervening in the writ petition before the High Court that the school was established by the Church Missionary Society, London, which they claimed was a corporation with an alien domicile and "such a society was not a minority based on religion or language" within the meaning of Article 30 of the Constitution. On behalf of the appellants in the appeal and the petitioners in the two writ petitions filed in this Court it is claimed that the School was stated in 1854 by the local Christian residents of Bhagalpur. They concede that the Church Missionary Society of London did extend financial aid in the establishment of the School, but they contend that on that account, the School did not cease to be an educational institution established by a religious minority in India.

The Supreme Court held that it is unnecessary to dilate upon these matters at length, for, in our judgment, the conclusion that the School was established not by the local Christian of Bhagalpur, but by the Church Missionary Society, London, is not justified on the evidence. The extracts from the Record Book clearly show that the local residents of Bhagalpur had taken a leading role in establishing and maintaining the school. Assistance was undoubtedly obtained from other bodies including the Church Missionary Society, London. But the School was set up by the Christian Missionaries and the local residents of Bhagalpur with the aid of funds part of which were contributed by them.

It is unnecessary to enter upon an enquiry whether all the persons who took part in establishing the school in 1854 were "Indian citizen". Prior to the enactment of the Constitution there was no settled concept of Indian citizenship, and it cannot be said that Christian Missionaries who had settled in India and the local Christian residents of Bhagalpur did not form a minority community. It is true that the minority competent to claim the protection of Article 30 (1) and on that account the privilege of establishing and maintaining educational institutions must be resident in India and they must form a well-defined religious or linguistic minority. It is however predicated that protection of the right guaranteed under Article 30 may be availed only in respect of an institution

355. Id at 865.
356. Ibid.
357. Ibid.
358. Ibid.
359. Id at 867.
360. Ibid.
361. Ibid.
362. Ibid.
363. Id at 868.
364. Ibid.
365. Ibid.
366. Ibid.
established before the Constitution by persons born and resident in British India. We are unable to agree with the High Court that before any protection can be claimed under Article 30 (1) in respect of the Church Missionary Society Higher Secondary School it was required to be proved that all persons or a majority of them who established the institution were “Indian citizens” in the year 1854. There being no 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.

In D.A.V. College, Bhatinda v. State of Punjab, the petitioners’ 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 University had been constituted in 1961 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 April 30, 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 May 13, 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 University exercised its power and under sub-section (3) 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 September 12, 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 June 15, 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-

366 Ibid.
367 Ibid at 869.
368 Ibid.
369 (1971) 2 SCC 261.
370 Ibid at 261.
371 Ibid.
372 Ibid.
373 Ibid.
374 Ibid.
375 Ibid.
376 Ibid.
University even for Science group with effect from the Academic Session 1970-71”.377

The petitioners contended that in so far as the medium of instruction in Punjabi with Gurmukhi as the script is sought to be imposed on the educational institutions established by the Arya Samajis a religious denomination, they also offend Articles 26 (1), 29 (1) and 30 (1) of the Constitution.378 The Court held that a linguistic or religious minority must be judged in relation to the State inasmuch as the impugned Act is a State Act and not in relation to the whole of India.379 The Court rejected the several contentions which are also urged in these petitions namely that Hindus being a majority in India are not a religious minority in Punjab and held that the 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 the aforesaid provisions of the Constitution.380

In D.A.V. College case,381 it was stated that “What constitutes a linguistic or religious minority must be judged in relation to the State inasmuch as the impugned Act is a State Act and not in relation to the whole of India.” The 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. The Court held that 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 in relation to the population of the State.382

In T.M.A. Pai Foundation case,383 the Supreme Court held that Linguistic and religious minorities are covered by the expression "minority" under Article 30 of the Constitution.384 The opening words of Article 30 (1) make it clear that religious and linguistic minorities have been put on a par, insofar as that article is concerned.385 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.386 India is divided into different linguistic States.387 The States have been carved out on the basis of the language of the majority of persons of that region.388 For example, Andhra Pradesh was established on the basis of the language of that religion viz. Telugu.389 “Linguistic
minority” can, therefore, logically only 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-à-vis Article 30, then with “religious minority” being on the same footing, it is the State in relation to which the majority or minority status will have to be determined. The Court held that Linguistic and religious minorities are covered by the expression "minority" under Article 30 of the Constitution. Since reorganization of the States in India has been on linguistic lines, therefore, for the purpose of determining the minority, the unit will be the State and not the whole of India. Thus, religious and linguistic minorities, who have been put at par in Article 30, have to be considered State-wise. 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.

It may be remembered that various entries in three list of the Seventh Schedule are not powers of legislation but field of legislation. These entries are mere legislative heads and demarcate the area over which the appropriate legislatures are empowered to enact law. The power to legislate is given to the appropriate legislature by Article 246 and other articles. Article 245 provides that subject to the provisions of the Constitution, Parliament may make laws for the whole or any part of the territory of India and the legislature of a State may make laws for whole or any part of the State. Under Article 246 Parliament has exclusive power to make law with respect to any of the matters enumerated in List in the Seventh Schedule. Further under clause (2) of Article 246 Parliament and subject to clause (1) the legislature of any State are empowered to make law with respect to any of the matters enumerated in List III Seventh Schedule and under clause (3) of Article 246 the legislature of any State is empowered to enact law with respect to any of the matters enumerated in List II in the Seventh Schedule subject to clauses (1) and (2). From the aforesaid provisions it is clear that it is Article 246 and other Articles which either empowers Parliament or State Legislature to enact law and not the Entries finding place in three Lists of Seventh Schedule. Thus, the function of entries in three lists of the Seventh Schedule is to demarcate the area over which the appropriate legislatures can enact laws but do not confer power either on Parliament or State Legislatures to enact laws. It may be remembered, by transfer of Entries, the character of entries is not lost or destroyed. In this view of the matter by transfer of contents of entry

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390. Ibid.
391. Ibid.
392. Ibid.
393. Ibid.
394. Id at 587.
395. Ibid.
396. Ibid.
397. Id at 552.
398. Ibid.
399. Id at 597 (As per Justice V.N. Khare in his concurring judgement).
400. Ibid.
11 of List II to List III as entry 25 has not denuded the power of State Legislature to enact law on the subject 'Education' but has also conferred power on Parliament to enact law on the subject 'Education'.

Article 30 confers fundamental right to linguistic and religious minorities to establish and administer educational institutions of their choice. The test who are linguistic or religious minorities within the meaning of Article 30 would be one and the same either in relation to a State legislation or Central legislation. There cannot be two tests on in relation to central legislation and other in relation to State legislation. Therefore, the meaning assigned to linguistic or religious minorities would not be different when the subject "Education" has been transferred to the Concurrent List from the State List. The test who are linguistic or religious minorities as settled In" Kerala Education Bill's case continues to hold good even after the subject "Education" was transposed into Entry 25 List III of Seventh Schedule by the 42nd Amendment Act. If we give different meaning to the expression "minority" occurring in Article 30 in relation to a central legislation, the very purpose for which protection has been given to minority would disappear. As a result of the insertion of Entry 25 into List III by the Forty-Second Amendment to the Constitution, 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 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. The matter can be examined from another angle. It is not

401. Supra n. 29.
402. Supra n. 5.
403. The entries 11 and 25 of List II of Seventh Schedule relating to Education and Vocational and Technical Training Labour respectively were transferred to the Concurrent List as Entry No. 25. In the Constitution of India as enacted Entries 11 and 25 of List II were as under:
   Entry 11: "Education including Universities subject to the provisions of Entries 63, 64, 65 and 66 of List I and Entry 25 of List III".
   Entry 25; "Vocational or Technical training of labour".
   By the Constitution (42nd Amendment) Act, 1976 Entry 25 of List III was substituted by the following entry viz:
   Entry 25; "Education including technical education, medical education and universities subject to the provisions of Entries 63, 64, 65 and 66 of List I; vocational and technical training of Labour".
   And Entry 11 of List II was omitted.
404. Supra n. 5 at 553.
405. Ibid.
406. Ibid.
disputed that there can be only one test for determining minority status of either linguistic or religious minority. It is, therefore, not permissible to argue that the test to determine the status of linguistic minority would be different than the religious minorities. If it is not so, each linguistic State would claim protection of Article 30 in its own State in relation to a central legislation which was not the intention of framers of the Constitution nor the same is borne out from language of Article 30. I am, therefore, of the view that the test for determining who are the minority, either linguistic or religious, has to be determined independently of which is the law, Central or State.

Dr. Rajendra Prasad, President of the Constituent Assembly pointed out during discussion on language:

"There is no other item in the whole Constitution of the Country which will be required to be implemented from day to day, from hour to hour, I might even say, from minute to minute, in actual practice...Therefore, when any member rises to speak on this language question, I would request him most earnestly to remember that he should not let fall in a single word or expression which might hurt or cause offence. Whatever has to be said in moderate language so that it might appeal to reason and there should be no appeal to feelings or passion in a matter like this?"

Religion, Religious Denomination and Linguistic Minorities

Articles 25 to 28 of the Constitution safeguard the rights of the citizen to freedom of religion. Article 30 (1) protects religious or linguistic minorities. Therefore, it is relevant to know firstly what religion is. The United States Supreme Court said: "The term 'religion' has reference to one's views of his relations to his creator and to the obligations they impose for reverence for His Being and character and of obedience to His will."

408. Article 25 (1) states, "Subject to public order, morality and health and to the other provisions of this part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion. (2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law-
(c) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;
(d) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.
Explanation I.- The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion.
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 states, "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 moveable and immovable property;
(d) to administer such property in accordance with law."


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As per Dr. L.M. Singhvi:

“It would be difficult, if not impossible to devise a definition of religion which would satisfy the adherents of all the many and various religions which exist, or have existed, in the world. There are those who regard religion as consisting principally in a system of belief or statement of doctrine. So viewed religion may be either true or false. Others are more inclined to regard religion as prescribing a Code of Conduct. So viewed a religion may be good or bad. There are others who pay greater attention to religion as involving some prescribed form of ritual or religious observance. Many religious conflicts have been concerned with matters of ritual and observance...Religion is a social system in the name of God laying down the code of Conduct for the people in society. Religion is a way of life in India and it is an unending discovery into unknown world. People living in society have to follow some sort of religion. It is a social institution and society accepts religion in a form which it can easy practice.”

George Barnard Shaw stated:

“There is nothing that people do not believe if only it be presented to them as science and nothing they will not disbelieve if it is presented to them as religion.”

In Lakshmindra case, the Supreme Court has observed: “Religion is certainly a matter of faith with individuals or communities and it is not necessarily theistic. There are well known religions in India like Budhism and Jainism which do not believe in God or in any Intelligent First Cause.”

In P.M.A. Metropolitan case, the Supreme Court has observed: "Religion is the belief which binds spiritual nature of men to super-natural being.' It includes worship, belief, faith, devotion, etc. and extends to rituals. Religious right is the right of a person believing in a particular faith to practice it, preach it and profess it.”

As per M.P. Jain, “Religion is a matter of faith. A religion, undoubtedly, has its basis in a system of belief and doctrines which are regarded by those who profess that religion as conducive to their spiritual well-being, but it is also something more than merely doctrine or belief. A religion may not only lay down a code of ethical rules for its followers to accept, but may also prescribe rituals and observances, ceremonies and modes of worship which are regarded as an integral part of that religion. These forms and observances might extend even to matters of food and dress.”

In famous Shrirur Matt case, a locus classious on constitutional religion and protection of Articles 25 and 26 of the Constitution, the Supreme Court had laid down

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411. Id at 1281.
that a religion may not only lay down a code of ethical rules for its followers to accept, it
might prescribe rituals and observances, ceremonies and mode of worship which are
essential part of secularism and they need measured in that perspective.

In Sardar Syedna v. State of Bombay,416 Chief Justice Sinha had held, in his
separate but concurring judgment, that what were matters of religion and what were not
was an easy question to decide. It must vary each individual case according to tenets of
the religious denomination concerned. In Devraja case417, the Madras High Court held
that the word 'denomination' means 'a collection of individuals classed together under
the same name; a religious sect or body having a common faith and organization and
designated by distinctive name.

In Shirur Math case418, the Supreme Court held that the term religious
denomination means a collection of individuals, classed together under the same name; a
religious sects or body having a common faith and organization and designated by a
distinctive name. Similarly, in Sardar Syedna Taher Saifudddeen case419, the Supreme
Court observed that identity of a religious denomination consists in the identity of its
doctrine, creeds and tenets which are intended to ensure the unity of the faith which its
adherents profess, and the identity of the religious views are the bonds of the union which
binds them together as one community.

Justice P. Jaganmohan Reddy defined linguistic minorities as:420

"A linguistic minority for the purpose of Article 30 (1) is one which must at least
have a separate spoken language."

There is nothing either in Article 29 or 30 to point out that the language of the
minority group be one of the twenty-two languages recognised by the eighth schedule to
the Constitution of India.

The Constitution of India in its eighth schedule421 recognises twenty-two languages
as languages of India and Article 343 recognises Hindi as the National and the official
language of the Union of India.

Minority Educational Institution: Meaning and Scope

Section 2(f) of the Central Educational Institutions (Reservation in Admission)
Act, 2006 defined "Minority Educational Institution" as follows:-

418. Supra n. 415.
419. Supra n. 416.
420. Supra n. 6.
"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."

Section 2 (g) of the National Commission for Minority Educational Institutions Act, 2004 defined "Minority Educational Institution" as follows:-

"Minority Educational Institution" means a college or institution (other than a University) established or maintained by a person or groups of persons from amongst the minorities."

Article 30 (1) provides protection to the educational institution established by the religious or linguistic minority or both. In S.P. Mittal case,422 the Supreme Court observed that the benefit of Article 30(1) can be claimed by the community only on proving that it is a religious or linguistic minority. There may be two types of cases before a Court, one, where the opposite party did not object the minority character of the educational institution, and two, where opposite party objected the minority character of the educational institution. It is only in the latter type of cases the Court had first to examine and decide on the fact of establishment then to proceed further.

First types of cases includes Bombay Education Society case423, a Society was a joint was a joint stock company incorporated under the Indian Companies Act, 1913 and was represented by the Anglo-Indian community whose mother tongue was English was held to be a linguistic minority. In Sidhajbhai Sabhai case,424 the Supreme Court accepted as true the fact that the petitioners professed Christian faith, belonged to the United Church of Northern India, and were members of a society called Gujarat and Kathiawar Presbyterian which maintained forty-two primary schools and a Training College for teachers in State of Gujarat. The Court held that petitioners are a religious minority under Article 30 (1).

In Gandhi Faiz-e-Am College, Agra case,425 the claim of the petitioners that it was established by the Muslim minority was accepted by the Allahabad High Court as well as the Supreme Court when the case came up in appeal before it. In D.A.V. College cases,426 the Supreme Court accepted, when the State of Punjab conceded that Hindus were in minority in the State of Punjab, that D.A.V. College was established by Arya Samaj which was a religious as well as a linguistic minority.

423 Supra n. 160.
424 Supra n. 54.
The first case in second types of cases was Ramani Kanta Bose v. Guahati University,427 in which the opposite party, i.e. the Guahati University, objected that the educational institute was established by a minority. In this case, the petitioner challenged resolution of the Executive Council of the Guahati University dated July 5, 1950 ordering the re-organisation of governing bodies of non government colleges affiliated to the University as violative of Article 30(1) of the Constitution. The Registrar of the Guahati University pleaded that the petitioner’s college was not a minority institution; it was not even contended by the petitioner that it was managed by any minority community; the college was established from donations on the understanding that it would be for the benefit of all communities. Justice Ram Labhaya held that the Constitution of the governing body of the college was not before the Court; name of the college did not suggest that it was founded for the benefit of any linguistic minority; the members constituting the governing body did not suggest it to be a minority institution; no linguistic minority was responsible for its establishment and it was also not contended that it was for the benefit of linguistic minority.

In the opinion of Dr. Arun Kumar, Justice Ram Labhaya was wrong when on the basis of the aforesaid reasoning he came to the conclusion that the college was not a minority educational institution.428 According to Dr. Arun Kumar, what is necessary to claim the protection of Article-30(1) of the Constitution is that the petitioner belongs to either a religious or linguistic minorities and that he has established the educational institution.429 The name of the institution; or as to how the governing body was constituted or how the college was established and whether it was for the benefit of the minorities or was for the benefit of all the communities are irrelevant considerations.430

In Rajershi Memorial Basic Training School case,431 the petitioner sought a writ of mandamus against the State of Kerala and the Director of Public Instruction for infringement of Article 30 (1). The State of Kerala opposed the petition and contended that the school was not a minority educational institute simply because it was established by one Mr. K.P. Pathrose in his individual capacity. The Court denied the right guaranteed to the petitioner by Article 30 (1) of the Constitution on the reasoning that institution must be shown to be one established and administered by or on behalf of particular minority community; name of the school was of some significance; institution was one intended for the general benefit of all the citizens and that no activity was carried on in the institution to promote the object of conserving the religion or culture of the particular minority.

In Chikkala Samuel case,432 the petitioner contended that the main aim and purpose of organizing this educational institute was to give education to the local backward classes, particularly the Christians of the locality...with this purpose, a society was

427. AIR 1951 Assam 163.
429. Ibid.
430. Id at 65.
432. Chikkala Samuel v. District Educational Officer, Hyderabad, AIR 1982 A.P. 64.
registered with No. 23/1957-58 under the name S.N.P Elementary School as per the provisions of Hyderabad Public Societies Registration Act. All the Managing Committee members and President were Christians. The sole object was to maintain and protect the minority character of the institution. Hence, this educational institution was started by Christian community alone.\textsuperscript{433} The respondent disputed the minority character of the institution on the ground that it was imparting secular education: it was getting grant-in-aid and that it gave a declaration that it would strictly follow the conditions of recognition laid down in the Andhra Pradesh Education Rules.

Jeevan Reddy, J. posed a host of questions. What does one mean by minority institution? When does an educational institution become a minority institution? Whether a single member of a minority community is entitled to establish an educational institution and claim that it is a minority institution? Further, while running the educational institution as a business proposition, is he still entitled to claim that it is a minority institution, entitled to all the special rights which go with it? Similarly, would it be permissible for the members of one or two families to form into a committee and establish an educational institution, running it for their own benefit and still claim all the benefit which are available to a minority institution? Then again, would it be permissible for a few members of a minority community to come together, form a society, get it registered under the Societies Registration Act, and claim that it is a minority institution.\textsuperscript{434} His Lordship held that:

“For answering these questions, it is necessary to reiterate that the right guaranteed by Article 30 of the Constitution is the right given to the minority as such and not to an individual member, or individual members of the minority and that the right is meant to benefit the minority by protecting and promoting its interests. Where an educational institution is established and maintained exclusively or predominantly for teaching or promoting the religious tenets of a given religious minority, or for promoting and developing the language and literature of a given linguistic minority, there can be little doubt that it is an educational institution serving and promoting the interests of such minority, and hence a minority institution. But where an educational institution is established and maintained for imparting general secular education, where admission is not restricted to the members of that minority alone, the question arises whether, merely because the person or the persons who established it belong to a minority ... can the institution itself be treated as a minority institution? On this aspect, it should be remembered that it is not necessary that the minority community as such should establish the institution; it is open even to a single member of a minority community to establish and maintain an educational institution, but it should not be forgotten that such educational institution must, in some manner, serve or promote the interests of the minority. It should be shown that the minority concerned, or a considerable section thereof is benefited by that institution, otherwise there would be no nexus between the institution and the minority as such.

Take the case of an educational institution by an individual ‘A’ belonging to a minority community, in the State. The institution established by him imparts purely

\textsuperscript{433} Id at 65.
\textsuperscript{434} Id at 67.
secular education as seems to be the position today generally. The institution is not meant to preserve and promote the religion or language of the minority. The person runs the institution for his own private benefit and promotions. The majority of the students do not belong to the minority community to which the person establishing it, belongs. What is the conceivable connection, in such a case, between the institution and the minority community and what is the basis for calling it a minority institution? It is not a 'minority institution,' but an institution belonging to an individual who happens to belong to a minority community ... These are the several anomalies and abuses which are likely to result, if the law does not insist upon a nexus between the institution and the particular minority to which it claims belong ... Therefore, it cannot be said that, merely because the members of a society which establishes an educational institution, belong to a particular minority community, the institution established by them automatically becomes a minority institution. In each case, the same test must be applied, that is, whether the institution does in any manner serve or promote the interests of the minority to which it claims to belong.⁴³⁵

His Lordship relying on the name of the school and on the fact that the institution was one intended for the general benefit of the citizens of the locality and that no activity was carried on in the institution which was intended to promote the object of conserving the religion or culture of the particular minority held that:

"On the material now available before this Court I do not find it possible to conclude that the petitioner's institution is a minority institution entitled to protection under Article 30 (1) of the Constitution. The original petition is dismissed on this limited ground..."⁴³⁶

In this case it was also not contended by the respondents that the institution was not established by the minority community. The argument of the District Education officer was that by imparting secular education, that by getting grant-in-aid and that as it agreed to abide by the condition of recognition laid down in the Andhra Pradesh Education Rules, it had not remained a minority institution.

According to Dr. Arun Kumar⁴³⁷, what the Court in these cases was required to examine was whether the school was established by a minority? It was an irrelevant consideration for the purposes of Clause (1) of Article 30 of the Constitution whether the minority was an individual or a group of persons belonging to a minority group.⁴³⁸

Their Lordships had further gone wrong when the name of the school was looked into to decide if it was a minority institution.⁴³⁹ It was also wrong for their Lordships in order to test the minority character of the institution to see whether the institution was established 'for the benefit of all citizens' or whether any activity to promote the object of conserving the religion or culture of the particular minority was carried on in the school that whether there was any nexus between the institution and the minority by

⁴³⁵ Id at 68-69.
⁴³⁶ Ibid.
⁴³⁷ Supra n. 428 at 67.
⁴³⁸ Ibid.
⁴³⁹ Ibid.
which the minority or a considerable section thereof was benefited.\textsuperscript{440} All these were extraneous consideration and were not in consonance with the judicial precedents.\textsuperscript{441}

**Aligarh Muslim University: Whether Minority Educational Institution**

In Azeez Basha case\textsuperscript{442}, popularly known as Aligarh Muslim University case, the Supreme Court for the first time was faced with the issue of whether Aligarh Muslim University was established by a minority or not? The petitioner in this case challenged the constitutional validity of the Aligarh Muslim University (Amendment) Act, 1951 and the Aligarh Muslim University (Amendment) Act, 1965 as violative of Article 30(1) of the Constitution. The petitioner contended that Aligarh Muslim University was a minority institution within the meaning of Article 30(1) of the Constitution, as it was established by them. The Government of India opposed the petition. The main argument of the Government of India was that the Aligarh Muslim University was established by “The Aligarh Muslim University Act, 1920” and not by the Muslims. Therefore, the Muslim minority could not claim any fundamental right to administer the Aligarh Muslim University under Article 30(1) of the Constitution of India.

K.N. Wanchoo, C.J., in this case pointed out:

“The Article in our opinion clearly shows 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 word ‘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.”\textsuperscript{443}

The question before their Lordships was whether the Muslim minority had established the Aligarh Muslim University? The Supreme Court looked into the long history of the establishment of Aligarh Muslim University. The Court observed that in the year 1870, Sir Syed Ahmed Khan had organised a committee to devise ways and means for educational regeneration of Muslims. In May, 1872 a society named ‘The Muhammadan Anglo-Oriental College Fund Committee’ was started to collect funds for the purpose. In May, 1873 a school was opened. In 1876 the school was upgraded and become a High School. In 1877 Lord Lytton, then Viceroy of India, laid the foundation stone for the establishment of a college. The, Muhammadan Anglo-Oriental College at Aligarh was then established. Sir Syed Ahmed Khan died in 1898. Thereafter, an idea to establish a Muslim University gathered momentum. In 1911 funds were collected and a Muslim University Association was established to take up the matter with the then Government to establish a teaching University at Aligarh. As a result of long negotiations between the Muslim University Association and the then British Government not only a sum of rupees thirty lakhs, a major part of which was contributed

\textsuperscript{440} Ibid.
\textsuperscript{441} Ibid.
\textsuperscript{442} Azeez Basha v. Union of India, AIR 1968 SC 662 (Befor K.N. Wanchoo, C.J., R.S. Bachawat, V. Ramaswami, G.K. Mitter and K.S. Hegde, JJ.).
\textsuperscript{443} Id at 670.
by Muslims, was deposited as a reserve fund to establish the University, with the Government, but also the existing Muhammadan Anglo-Oriental College was made the nucleus of the University and it was agreed to be handed over to the authorities to be established under the Act, along with the properties and funds attached to it. After all these formalities were gone through the Aligarh Muslim University Act, 1920 was enacted which eventually resulted in the establishment of Aligarh Muslim University at Aligarh.

Title

The title of the Aligarh Muslim University Act, 1920 was, "An Act to establish and incorporate a teaching and residential Muslim University at Aligarh."

Preamble

The Preamble to the Act reads, "It is expedient to establish and incorporate a teaching and residential Muslim University at Aligarh, and 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 of the Muslim University Foundation Committee."

Sections

Section 3 of the Aligarh Muslim University Act, 1920 provided that, "That 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 as the first members of the Court." Further Section 3 constituted a body corporate by the name of the Aligarh Muslim University and it was to have a perpetual succession and a common seal and could sue and be sued by that name.

Section 4 dissolved Muhammadan Anglo-Oriental College, Muslim University Association and Muslim University Foundation Committee and all their moveable and immovable property and their rights and powers vested in the Aligarh Muslim University and were to be applied to the objects and purposes for which Aligarh University was incorporated. Section 5 gave power to the University to hold examination and to confer degrees. Section 6 recognised degrees. Section 7 provided for a reserve fund for the University. 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," Section 9 gave power to the 'Court to make statutes providing that instruction in the Muslim religion would be compulsory in the case of Muslim students. Section 13 provided that "Governor-General shall be the Lord Rector of the University." and Sub-section (2) of Section 13 provided that "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, its equipment and of any 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 inquiry, 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 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 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.

Section 14 provided for the Visiting Board of the University, which consisted of the Governor, the Members of the Executive Council, the Ministers 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 an 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.

Section 15 to 21 made provisions for the officers of the University and Rectors and laid down that “the powers of officers of the University other than the Chancellor, Pro-Chancellor, the Vice-Chancellor and the Pro-Vice-Chancellor-or- shall be prescribed by the Statutes and Ordinances.” Section 22 provided for the Court, the Executive Council and he 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) laid down that “no person other than a Muslim shall be a member thereof.” 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 Ordinance and the Regulations. It was given the power to review the acts of the Executive and 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 functioning of the University.

Section 24 dealt with the Executive Council and Section 25 with the Academic Council. Section 28 dealt with the question of the first Statutes and how they were to be mended, replaced and new Statutes added. Section 28 also laid down that “no new statute or amendment or repel 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.”
Section 29 dealt with Ordinances and what they could provide for an Section 30 provided which authorities of the University could make Ordinances. Sub-section (2) of Section 30 provided that “the first Ordinance shall be framed as directed by the Governor-General in Council” and Sub-section (3) of the same Section laid down that “no new Ordinance, 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.”

Section 40 is important. It 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 be 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.”

Aligarh Muslim University (Amendment) Act, 1951

After the Constitution of India came into force, the Parliament enacted Aligarh Muslim University (Amendment) Act, 1951 by which certain changes were made in the 1920-Act. It is proposed to concentrate only on such changes as are material for the present study.

The first important change related to Section 8 of the 1920-Act which was amended and substituted by a new section which 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 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 amendment or other instrument creating such benefaction.”

Proviso to Section 8 provided 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.” Section 9 was repealed as it had become violative of Article 28(3) of the Constitution. Section 13 was amended and in place of Lord Rector the University was to have Visitor. Section 14 was also amended and the powers of the Visiting Board were conferred on the Visitor by addition of a new Sub-section (6) to Section 14. Proviso to Section 23(1) which required that all members of the Court would only be Muslims was deleted.

The Aligarh Muslim University Act, 1920 was again amended in 1965. The main amendment brought in by the Amending Act of 1965 was in Section 23 of the Act of 1920 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 could no longer exercise the powers conferred on it by Sub-sections (2) and (3) of Section 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 advice the Visitor in respect of any matter which may be referred to the Court for advice;

(b) to advice any other authority of the University in respect of any matter which may be referred to the Court for advice; 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.”

The powers of the Executive Council were correspondingly increased by the Aligarh Muslim University (Amendment) Act, 1965 by amending Sections 28, 29, 34 and 38 of the Act of 1920. The University Statutes were also amended and many of the powers of the Court were transferred by the amendment to the Executive Council. The result of all these amendments was that the Court no longer remained the supreme governing body of the University. Further, the Constitution of the Court was also drastically changed 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 of whom were nominated by the Speaker of the House of the People and one by the Chairman of the Council of States.

It cannot be denied that nucleus of the Aligarh Muslim University was Muhammadan Anglo-Oriental College but a close look at the provisions of the Aligarh Muslim University Act, 1920 would go to prove that the University was established not by the Muslim minority but by an Act of the Central Legislature.

The Preamble and Section 4 of the 1920-Act proves that the Muhammadan Anglo-Oriental College Fund Committee which was connected with the Muhammadan Anglo-Oriental College, the Muslim University Association and the Muslim University Foundation Committee were dissolved and all the rights and the property vested in the University by the 1920-Act.

It is true that at present, the University Grants Commission Act, 1956 though prevents a private person or an association to either establish a University or confer degrees but in 1920 there was nothing to prevent the Muslims to establish a University; but it is also true that no individual or group whether belonging to a minority community or otherwise could insist the Government to also recognise the degrees granted by it. This could be the reason why the Muslims had to approach the Government for bringing into existence a University at Aligarh whose degrees could be recognised by the Government. That is why Section 6 of the 1920-Act lays down, “The degrees diplomas and other academic distinctions granted or conferred to or on persons 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.”

K.H. Wanchoo, C.J., stated:

“The enactment of Section 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 the Government of the degrees conferred by any University established by it."

Section 8 clearly states that the University was open to all persons of either sex and of whatever race, creed or class and it was, therefore, not established for Muslims alone. Sections 13, 28, 29 and 30 further clearly bring out that the final control in the matter of administration of the University was with the Lord Rector who was the Governor-General in India, and even Ordinances could not be made by the University without the approval of the Governor-General in Council. Section 14 provided for the Visiting Board. The Visiting Board had over-riding powers in case the University authorities noted against the Act, Statutes and Ordinances. It was also not a condition that the Lord Rector and the members of Visiting Board must belong to the Muslim Community.

In spite of the fact that the original Section 23 provided that in the Court “no person other than a Muslim shall be a member thereof” and that the power of making Statutes was also conferred on the Court along with other powers necessary for the functioning of the University, the framers of the 1920-Act were not too happy with these provisions. They conceded to them only in deference to the wishes of the Muslim Community in India at that time. K.N. Wanchoo, C.J., has referred to the opinion expressed by the Select Committee 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 felling though some of us are by no means satisfied that such a provision is necessary.”

His Lordship then held as follows:

“Nor do we think that the provisions of the Act can bear out the contention that it was the Muslim minority which was administering the Aligarh University, after it was brought into existence. It is true that the Proviso to Section 23(1) of the 1920-Act said that ‘no person other than a Muslim shall be a 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 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 ... 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 any one else except a Muslim...”

K.N. Wanchoo, C.J., held as follows:

“We are therefore of opinion that the Aligarh University was neither established nor administered by the Muslim minority and therefore there is no question fo

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444. Id at 671.
445. Id at 667.
446. Id at 673.
any amendment to the 1920-Act being unconstitutional under Article 30(1) for that Article does not apply at all to the Aligarh University.\footnote{447}

The Supreme Court, thus, held that Aligarh Muslim University was not a minority institution within the meaning of Article 30(1) of the Constitution.

In Rev. Bishop S.K. Patro case,\footnote{448} a writ petition was filed in the High Court of Patna invoking the protection of Article 30(1) of the Constitution. The High Court held that 'the 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 since recently managed by the School not being an educational institution established by a minority, protection was not afforded thereto by Article 30 of the Constitution.' In appeal J.C. Shah, J., did look into the history of the institution to find out whether the school was established by the minority or not?

Justice J.C. Shah, pointed out:

"There is on the record important evidence about establishment in 1854 of the Lower Primary School at Bhagalpur. It is unfortunate that sufficient attention was not directed to that part of the evidence in the High Court "The Record Book" of the Church Missionary Association at Bhagalpur... furnishes evidence of vital importance having a bearing on the establishment of the school. It contained copies of the letters written from Bhagalpur and minutes of the meetings held and the resolutions passed by the Local Council of Bhagalpur. On June 1, 1848, Rev. Vaux informed the Calcutta Corresponding Committee of the Church Missionary Society by a letter that if the Calcutta Society were to establish a school at Champanagar, “local assistance shall be wanting to the 1000 or 1200 rupees a year, besides providing a school house and residence for the master ... On June 26, 1848, Rev. Vaux by another letter informed the Calcutta Corresponding Committee that a Special Service was held in the Church on June 22, 1848 and thereafter on Friday June 23, 1848 a meeting was held and the contributions were invited from persons present including Indian residents, that monthly subscription of Rs. 202 for the “salary of the masters” and other expenses were promised, and that an amount of Rs. 1647 was donated for building the school..."\footnote{449}

Justice J.C. Shah, concluded:

"The extracts from the Record Book clearly show that the local residents of Bhagalpur had taken a leading role in establishing and maintaining the school. Assistance was undoubtedly obtained from other bodies including the Church Missionary Society, London. But the school was set up by the Christian Missionaries and the local residents of Bhagalpur with the aid of funds part of which was contributed by them."\footnote{450}

The Supreme Court, thereafter held that the school was established by the Local Council of Bhagalpur.

\footnote{447} Id at 674.  
\footnote{448} Supra n. 354.  
\footnote{449} AIR 1970 SC 159 at 262-63.  
\footnote{450} Ibid.
Similarly in Deccan Model Education Society Bangalore v. State of Karnataka and another\textsuperscript{451}, a certified copy of the Memorandum of Association of the petitioner—society was made available to the Court. According to the certificate issued by the Registrar of societies in Karnataka, Bangalore the objects of the society were:

(a) To run educational institutions like Nursery, Primary and High schools in Bangalore.

(b) To introduce, adopt and follow such plans as are conducive to the moral growth of Christian children of school going age in Bangalore.

(c) To carry on such other cultural activities for the benefit of the Christians in Bangalore to help the poor and Jobless Christian ladies.

In the list of Managing Committee members who were seven in number, it was seen that they were all Christians. Referring to the aforesaid facts, Justice M.P. Chandrakanaraj Urs, held that therefore one has to come to the conclusion on the facts of this case that the petitioner is a minority institution and therefore entitled to assert its fundamental rights under Article 30(1) of the Constitution.\textsuperscript{452}

In the St. Stephen's College case,\textsuperscript{453} it was specifically urged by the council for the petitioner that St. Stephen College was established not by Indian residents, but by foreign Mission from Cambridge and therefore, it is not entitled to claim the benefit of Article 30(1).\textsuperscript{454} From the counter-affidavit filed by the Principal of the College and form the publication of "The History of the College" the following facts and circumstances could be noted: The College was founded in 1881 as a Christian Missionary College by the Cambridge Mission in Delhi in collaboration with the Society for the Propagation of the Gospel [SPG] whose members were residents in India.\textsuperscript{455} The College was founded in order to impart Christian religious instruction and education based on Christian values to Christian students as well as others who may opt for the said education.\textsuperscript{456} The Cambridge Brotherhood with plans of establishing the Christian College in Delhi sent the Cambridge Mission whose members were: Rev. J.D. Murray, Rev. E. Bickarsteth, Rev. G.A. Lefroy, Rev. H.T. Blackett, Rev. H.C. Carlyon and Rev. S.S. Allnutt. Of the said members of the Cambridge Mission, Rev. Allnutt, Rev. Blackett and Rev. Lefroy teamed up with Rev. R.R. Winter of the SPG to establish the College.\textsuperscript{457} It will be seen that Cambridge Mission alone did not establish the College.\textsuperscript{458} The Cambridge Mission with the assistance of the members of the SPG who were residents in India established the

\textsuperscript{451} AIR 1984 Kant. 207.
\textsuperscript{452} Id at 210.
\textsuperscript{453} Supra n. 59.
\textsuperscript{454} Id at 587.
\textsuperscript{455} Id at 588.
\textsuperscript{456} Ibid.
\textsuperscript{457} Ibid.
\textsuperscript{458} Ibid.

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The contention to the contrary urged by counsel for the petitioner is incorrect. 460

The purpose of starting the College could be seen from the Report of 1878 to the Cambridge Brotherhood and it states “the students after leaving St. Stephen’s Mission School joined non-Christian Colleges and lost touch with Christian teachings...the case would be otherwise if we were able to send them from our school to a College, where the teachings would be given by Christian professors and be permeated with Christian ideas.” 461 In October 1879 the Cambridge Committee expressed the desirability of imparting instruction also in secular subjects. 462 “It was also felt that the influence of missionaries would be greatly increased if they held classes in some secular subjects and did not conform their teachings to strict religious instruction”. 463

Originally, the College building was housed in hired premises paid for by the SPG. 464 A new building was eventually constructed by the society for the propagation of Gospel wherein the foundation stone bore the following inscription: 465

To the Glory of God
And the Advancement of Sound Learning
And Religious Education

The new building of the College was eventually opened on December 8, 1881, by Rev. Allnutt. On the said building on the front of the porch, at the top of the parapet, a ‘cross’ in bas-relief was placed and immediately under the bracket the words “Ad Dei Gloriam” had been inscribed which have since been adopted as the College motto. 466

To day the new College building in the University campus has also a large ‘cross’ at the top of the main tower and in the front porch is inscribed the St. Stephen’s motto “Ad Dei Gloriam” to perpetuate and remind the students the motive and objective of the College, namely, “The Glory of God”. 467

There is also a chapel in the College campus where religious instruction in the Christian Gospel is imparted for religious assembly in the morning. 468

The Court held that since its foundation in 1881, St. Stephen’s College has apparently maintained its Christian character and that would be evident from its very

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459 Ibid.
460 Ibid.
461 Ibid.
462 Ibid.
463 Ibid.
464 Ibid.
465 Ibid.
466 Id at 589.
467 Ibid.
468 Ibid.
name, emblem, motto, the establishment of a chapel and its religious instruction in the Christian Gospel for religious assembly.469 These are beyond the pale of controversy.470

It is said that during the early part of the College history, it was managed by the Mission Council- a totally Christian body.471 Late in 1913 it was registered as a society and a constitution was formulated on November 6, 1913 which was adopted by the SPG Standing Committee and by the Cambridge Committee.472 The Constitution as it stands today again maintains the essential character of the College as a Christian College without compromising the right to administer it as an educational institution of its choice.473 The Constitution of the College consists of Memorandum of the Society and Rules. Clause 2 of the Memorandum states that “the object is to prepare students of the College for University degrees and examinations and to offer instruction in doctrines of Christianity which instruction must be in accordance with the teachings of the Church of North India”.474 Clause 4 sets out the original members of the Society who were mostly Christians.475 The composition of the Society also reflects its Christian character inasmuch as the Bishop of the Diocese of Delhi is the Chairman of the Society [Rule 1 (a)].476 Further, two persons appointed by the Bishop of the Diocese, shall be members of the Society [Rule 1 (b)].477 One person to be appointed y the Church of North India Synodical Board of Higher Education shall also be a member of the Society [Rule 1 (g)].478 Similar is the position of a person to be appointed by the Executive Committee of the Diocese, one of whom shall be a Presbyter, shall also be members of the Society [Rule 1 (i)].479 The composition of the Society, therefore, indicates the presence of a large number of Christian members of the Church of North India on it.480

The management of the College is being looked after by the Supreme Council and the Governing Body.481 The Supreme Council consists of some members of the Society, all of whom must be members of the Church of North India or some other church in communion therewith, or any other duly constituted Christian Church.482 They are:

(a) The Bishop of the Diocese of Delhi, who shall be the Chairman.

(b) Two persons appointed by the Bishop of the Diocese [under Rule 1 (b)].

(c) The person appointed by the Church of North India Synodical Board of Higher Education [under Rule 1 (g)].

(d) The person appointed by the Diocese Board of Education [under Rule 1 (h)].

469 Id at 589.
470 Ibid.
471 Ibid.
472 Ibid.
473 Ibid.
474 Ibid.
475 Ibid.
476 Ibid.
477 Ibid.
478 Ibid.
479 Ibid.
480 Ibid.
481 Id at 590.
482 Ibid.
Rule 3 of the Society provides that the Supreme Council mostly looks after the religious and moral instruction to students and matters affecting the religious character of the College. The Principal of the College is the Member-Secretary of the Supreme Council. Rule 4 provides that the Principal shall be a member of the Church of North India or of a Church that is in communication with the Church of India. The Vice-Principal shall be appointed annually by the Principal. He shall also be a member of the Church of North India or of some other church in communication therewith.

True, Rule 5 provides that the Supreme Council of the College has no jurisdiction over the administration of the college and it shall be looked after by the Governing Body. But the Governing Body is not a secular body as argued by learned counsel for the University. Rule 6 provides that the Chairman of the Society (Bishop of Diocese of Delhi) shall be the Chairman of the Governing Body. The members of the Society as set out in categories, (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l) and (m) of clause (1) shall be the members of the Governing Body. The Chairman and the Vice-Chairman of the Governing Body shall be the members of the Church of North India. Out of categories (a) and (m) in clause (1), only category (k) may be a member of the teaching staff who may not be a Christian. Two members referred under category (l) to be appointed by the Delhi University may not be Christian. But the remaining members shall be Christians. Out of thirteen categories, only three categories might be non-Christians and therefore, it makes little difference in the Christian character of the Governing Body of the College.

It was contended that St. Stephen's College after being affiliated to the Delhi University has lost its minority character. The argument was based on some of the provisions in the Delhi University Act and the Ordinances made thereunder. It was said that the students are admitted to the University and not to the College as such. But we find no substance in the contention. The Court observed that the State or any instrumentality of the State cannot deprive the character of the institution.
(1) is a special right to minorities to establish educational institutions of their choice. The minority institution has a distinct identity and the right to administer with continuance of such identity cannot be denied by coercive action. Any such coercive action would be void being contrary to the constitutional guarantee. The right to administer is the right to conduct and manage the affairs of the institution. This right is exercised by a body of persons in whom the founders have faith and confidence. Such a management body of the institution cannot be displaced or reorganized if the right is to be recognised and maintained. Reasonable regulations however, are permissible but regulations should be of regulatory nature and not of abridgment of the right guaranteed under Article 30 (1).

The Court found no provision in the Delhi University Act with overriding powers precluding the management of the College from exercising its right to administer the College as a minority institution. Section 2 (a) of the Delhi University Act defines 'college' to mean "an institution maintained or admitted to its privilege by the University and includes an affiliated college and a Constituent College". Under Section 4, the University has power to hold examinations and to grant to, and confer degrees and other academic distinctions on, persons who have pursued a course of study in the University or in any college. Section 6 provides that the University shall be open to all persons of either sex and of whatever race, creed, caste or class. Under Section 7 it is necessary that all recognised teaching in connection with the University courses shall be conducted under the control of the Academic Council. By Section 23, the Academic Council has been constituted as the Academic Body of the University, and it shall, subject to the provisions of the Act, Statutes and Ordinance, have the control and general regulation, and be responsible for the maintenance of standards of instruction etc.

Section 30 provides power to promulgate Ordinances which may provide procedure for the admission of students to the University and their enrollment as such. Ordinance 1 prescribes qualification for admission. Clause 4 of Ordinance 1 states that the candidates seeking admission to a course of study must satisfy the rules and conditions made in that behalf.

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501 Ibid.
502 Ibid.
503 Ibid.
504 Ibid.
505 Ibid.
506 Ibid.
507 Id at 592.
508 Ibid.
509 Ibid.
510 Ibid.
511 Ibid.
512 Ibid.
513 Ibid.
514 Ibid.
Ordinance II provides for constitution of Admission Committees and procedure for admission for different courses. Clause 2 (ii) of this Ordinance is important and so far as is relevant reads:515

"2. (ii) Applications for admission/registration shall be made on a prescribed form. Applications by students seeking admission to Master's courses in Faculties of Arts, Mathematical Sciences, Social Sciences, Music and Science shall be sent to the Deans of Faculties, concerned direct. Applications for admission to courses other than those mentioned above shall be made to the Principal of the college concerned."

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Clause 3 of the Ordinance II is equally relevant and it provides:516

"3. Admission shall be finalized by the Principals of colleges and Deans of Faculties concerned, as the case may be, not later than such last date as may be prescribed by the Academic Council from time to time:

Provided that the Vice-Chancellor may, at his discretion, allow admission to any courses after the prescribed date as aforesaid, for very exceptional reasons, such as late declaration of results or such other reasons considered satisfactory by the Vice-Chancellor up to the dates thought reasonable by him in each case:

Provided further that no admissions will be made by a College prior to the date to be fixed by the Academic Council each year:

* * *

Ordinance XVIII clause 6-A (1) provides that there shall be a Staff Council in every College. Subject to the provisions of the Act, the Statutes and the Ordinances of the University, the Staff Council shall take a decision in respect of matters, among others, organizing admission of students.517

The Court observed that from these and other relevant provisions of the Act and Ordinances, we have not been able to find any indications either in the general scheme or in other specific provisions which would enable us to say that the College is legally precluded from maintaining its minority character.518 That in matters of admission of students to Degree courses including Honours courses, the candidates have to apply to the College of their choice and not to the University and it is for the Principal of the College or Dean of Faculties concerned to take decision and make final admission.519 It is, therefore, wrong to state that there is no admission to the College but only for the University.520 The procedure for admission to Post Graduate courses is of course, different but we are not concerned with that matter in these cases.521

515 Ibid.
516 Ibid.
517 Ibid at 593.
518 Ibid.
519 Ibid.
520 Ibid.
521 Ibid.
It is submitted that, whether a particular institution is a minority institution or not, is a question of fact. A law can neither confer the status of minority nor can it destroy it if the facts prove that an educational institution was established either by the religious or linguistic minority.

**Aligarh Muslim University (Amendment) Act, 1981—Can it Confer a Minority Status?**

The Aligarh Muslim University Act, 1920 was again amended by the Parliament, in 1972 and again in 1981. The Aligarh Muslim University (Amendment) Act, 1981 made substantial changes in the 1920-Act. The 1920-Act, as modified up to 1st August, 1972, and as amended by 181-Act have been put side by side to enable us to make a quick reference to the amendment made.

The question is whether the Aligarh Muslim University (Amendment) Act, 1981 can confer a ‘minority status’ as mentioned in Clause (1) of Article 30 of the Constitution on the Aligarh Muslim University?

A legislature can modify, amend or repeal an Act if it had enacted it or has the legislative jurisdiction to enact it. Because of the ‘right to equality’ guaranteed by Article 14 of the Constitution no single educational institution can be either ‘discriminated for’ by the legislature by conferring a minority status on it; or can be ‘discriminated against’ by depriving it of the minority status. The aforesaid contention is fortified by the decision of the Supreme Court in Ameerunisa Begum v. Mahboob Begum. In this case the Hyderabad State Legislature enacted ‘The Aliuddowla Succession Act, 1950’ with the object of putting an end to disputes that existed regarding succession to the personal estate of a wealthy nobleman of Hyderabad. The Act in substance dismissed the claim of succession put forward by two ladies alleged to be his wives and by their children.

The Supreme Court pointed out, ‘the Legislature has singled out two ladies and their children out of all those who claim to be related to the late Nawab and has prevented them from getting any share of the Nawab’s property to which they may be entitled under their personal laws. The Act denies them the valuable right to enforce their claim through a Court of law under the general law of the land. To deprive specified persons of valuable rights, which are enjoyed by all other persons occupying the same position as themselves, plainly offended Article 14.’

It is conceded that a reasonable classification provided it has a reasonable nexus with the object sought to be achieved is permitted under Article 14 of the Constitution. But the point to be noted is that Article 14 requires that all persons in similarly circumstances shall be treated alike both in privileges conferred and liabilities imposed. Thus, if an Act opts to confer a minority status on one educational institution the other

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522. Supra n. 428 at 77.
523. Ibid.
524. Supra n. 428 at 79.
525. Ibid.
526. AIR 1953 SC 91.

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educational institutions similarly placed cannot be discriminated against. It was held in S. Azeez Basha case\(^{527}\) that,

"It (Aligarh Muslim University) was brought into being by the 1920-Act and must therefore be held to have been established by the Central Legislature which by passing the 1920-Act incorporated it... we are therefore of opinion that the Aligarh University was neither established nor administered by the Muslim minority and therefore there is no question of amendment to the 1920-Act being unconstitutional under Article 30(1) to the Aligarh University."\(^{528}\)

The Aligarh Muslim University (Amendment) Act, 1981, if has sought to confer 'the minority status' on the Aligarh University, will have to satisfy the test of intelligible classification which has a reasonable nexus with the object sought to be achieved, otherwise it is liable to be struck down as violative of Article 14 of the Constitution, for the reasons that the other institutions which also may claim to have a minority status cannot be discriminated against by the Parliament.

It is a fact that Aligarh Muslim University was established as a result of enactment by the Central Legislature of the Aligarh Muslim University Act, 1920. Entry 63 in List 1 of the VII Schedule of the Constitution of India also declares Aligarh Muslim University to be an institution of national importance. Article 246 (1) of the Constitution confers exclusive power on the Parliament to make laws with respect to any of the matters enumerated in List 1 in the VII Schedule of the Constitution. Thus the Parliament has exclusive power to enact a law either amending, modifying or repealing the Aligarh Muslim University Act, 1920.

In exercise of the legislative powers, the Parliament has enacted Aligarh Muslim University (Amendment) Act, 1981, most probably to satisfy the political aspirations of Muslims in India, who had contended in S. Azeez Basha case\(^{529}\) that, "the Aligarh Muslim University was established by the Muslim minority and, therefore, the Muslim had the right to administer it and so far as the Aligarh Muslim University (Amendment) Act, 1951 and Aligarh Muslim University (Amendment) Act, 1965 take away or abridge any part of that right they are ultra vires of Article 30(1) of the Constitution.\(^{530}\)

The Aligarh Muslim University (Amendment) Act, 1981 has deleted the words "establish and" from the title and preamble of the Aligarh Muslim University Act, 1920. However, the fact still remains that if the 'Title' 'the Preamble' and Section 4 of the Act are read together the conclusion is inevitable that Aligarh Muslim University was established at Aligarh by dissolving the Muhammadan Anglo-Oriental College, the Muslim University Association and the Muslim University Foundation Committee and by transferring their properties and rights in the Aligarh Muslim University. Further the deletion of words "establish and" do not make any difference as far as factual situation is concerned, that the University was established by the 1920-Act.

\(^{527}\) Supra n. 442.
\(^{528}\) Ibid.
\(^{529}\) Supra n. 442.
\(^{530}\) Id at 662-63.
The expression "to incorporate" proves the incorporation of the University by the 1920-Act. The expression "to incorporate" means "constituted as a body corporate legally authorised to act as a single person." The expression "Incorporation" means "the action of forming into a body corporate legally authorised to act as a single person; the merging of one thing in another so that the two form a single whole." The expression "Corporate" means "legally united into a body so as to act as an individual; belonging to a corporation; united." According to Mozley and Whiteley's Law Dictionary the word "Incorporate" means, "(1) to declare that one document shall be taken as a part of the document in which the declaration is made as much as if it were set out at length therein. (2) To establish as a corporation by grant from the Crown or Act of Parliament."

Thus the words "to incorporate" mean a body on which legal personality is conferred by an Act. Section 3 of the 1920-Act conclusively proves the contention that Aligarh Muslim University is a body incorporated by Aligarh Muslim University Act, 1920. An important change in the 1920-Act is made by substitution of Clause (1) of Section 2 by a new clause, which reads:

"University means the educational institution of their choice established by the Muslims of India, which organised as the Muhammadan Anglo-Oriental College, Aligarh, and which was subsequently incorporated as the Aligarh Muslim University."

The expression "incorporated" means, as already submitted to bring into existence by law and the expression "establish" means "to bring into existence". An educational institution can be brought into existence either by a law or by a person or group of persons. As to how the institution was established, therefore, is a question of fact.

If the Muslim minority had either stopped at Muhammadan Anglo-Oriental College or if they had converted it into a University, without dissolving it, then certainly there could be no doubt, that it had remained a minority educational institution with the meaning of Article 30(1) of the Constitution. The addition of the words "established by the Muslims" in Clause (1) of Section 2 by 1981 Amending Act, cannot change the factual situation recognised by the Title, the Preamble and by Section 4 of the Act that Muhammadan Anglo-Oriental College, Muslim University Association and Muslim University Foundation Committee were "dissolved". The expression "dissolve" means "to undo; to separate or break up; to put an end to." The word "dissolution" means, "the Act of breaking up", "the relaxation of any tie, band or binding power, the

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532. Ibid.
535. Gazette of India Extraordinary Part-II-Sec. 1 No. 71 Dated 31-12-1981, Section 3.
536. Supra n. 442 at 672.
537. Supra n. 464 at 306.
538. Supra n. 465 at 115.
breaking up of any constituted body of persons." The discussion proves, to use the expression of K.N. Wanchoo, C.J., in S. Azees Basha case,

"... 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 1920-Act."

Thus the nucleus of the Aligarh Muslim University though was Muhammadan Anglo-Oriental College, but it was dissolved and the Aligarh Muslim University was brought into existence by the Aligarh Muslim University Act, 1920.

Section 5 provided for the powers of the University including the power to hold examinations and to grant and confer degrees and other academic distinctions. By 1981-Amending Act, Sub-Clause (c) to Clause (2) of Section 5 has been added which reads:

"to promote especially the educational and cultural advancement of the Muslims of India."

Section 5(2)(c) of the Aligarh Muslim University Act, 1920 as amended by 1981 amendment Act is almost similar in nature to Section 4(3) of the Guru Nanak University, Amritsar, Act, 1969 and should, therefore, be of not much significance.

Section 8 of the 1920-Act provided that, "the University shall, subject to the provisions of this Act and the Cordinances be open to all persons of either sex and of whatever race, creed or class." Section 8 was first substituted by Aligarh Muslim University (Amendment) Act, 1951 and it read, "The University shall be open to all 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 there at, or to enjoy or exercise any privilege thereof ..." Section 8 again has been substituted by Aligarh Muslim University (Amendment) Act, 1981 and it reads:

"The University shall be open to all persons (including the teacher and taught) of either sex and of whatever race, religion, creed, caste or class."

Provided ...

Section 8, as it was originally enacted by the 1920-Act, in the words of K.N. Wanchoo, C.J., in S. Azees Basha case,

"... University was not established for Muslims alone."

It is submitted, neither the 1951 Amendment nor the 1981 Amendment has made any change in this position. Change has also been made in Section 16 of the 1920-Act by the Aligarh Muslim University (Amendment) Act, 1981. Section 16 deals with the
officers of the University and by addition of Clause (38) the office of the Honorary Treasurer has been created.

Section 17 and 18 of the 1920-Act deal with the offices of the Chancellor and Pro-Chancellor. Before the Aligarh Muslim University (Amendment) Act, 1981 the Chancellor and Pro-Chancellor were appointed by the Visitor. To understand the substitution of Clause (1) of Section 17 and Clause (1) of Section 18 by the 1981 Amendment Act, it is also necessary to refer to Section 23 of the 1920-Act. Section 23 deals with the powers and functions of the ‘Court’. Proviso to Clause (1) of Section 23 of the 1920-Act as it originally stood provided that,

“no person other than a Muslim shall be a member thereof.”

The 1951 Amendment Act deleted this provision and the 1965 Amendment Act reduced the powers of the Court. The powers of the Executive Council were increased by amending Sections 28, 29 and 34. The petitioners in S. Azeez Basha case\textsuperscript{545} had contended that, “... by these drastic amendments in 1965 the Muslim minority was deprived of the right to administer the Aligarh University...” In view of these facts, the powers of the Court have been substantially increased by the Aligarh Muslim University (Amendment) Act, 1981, and it has been declared not only “the supreme governing body” but its “power to review the acts of Executive and the Academic Councils...” has also been restored. Section 17(1) and Section 18(1) as substituted by the Aligarh Muslim University (Amendment) Act, 1981 are the instances of the increase in the power of the Court. Section 17(1) as amended reads:

“The Chancellor of the University shall be elected by the Court in such manner and for such terms as may be prescribed by the Statute.”

Section 18(1) as amended reads:

“The Pro-Chancellor shall be elected by the Court in such manner and for such term as may be prescribed by the Statutes.”

Now, the Chancellor and Pro-Chancellor instead of being appointed by the Visitor, would be elected by the Court. However, it need be mentioned here that still a non-Muslim can be the member of the Court and so can be the Chancellor and Pro-Chancellor. Section 14 of the Aligarh Muslim University (Amendment) Act, 1981 itself provides for the constitution of the Court, and at no place it provides that only Muslim can be a member of it. Section 14 of the 1981-Amending Act reads:

“14(1) The Court shall consist of the following members, namely:

Ex-officio members

(i) Chancellor;

(ii) Pro-Chancellor;

\textsuperscript{545} Supra n. 442' at 669.
(iii) Vice-Chancellor;
(iv) Pro-Vice-Chancellor;
(v) Honorary Treasurer;
(vi) All Ex-Vice-Chancellors;
(vii) All Deans of Faculties;
(viii) Dean of Students' Welfare;
(ix) Librarian;
(x) Registrar;
(xi) Five Provosts by rotation according to seniority;
(xii) Proctor;

Representatives of the Departments and Colleges

(viii) Twenty Chairmen of Departments, by rotation according to seniority;
(xiv) Principals of Colleges;

Representatives of teachers other than Chairmen of Departments and Principals of Colleges

(xv) Two Professors, who are not Chairman of Departments, to be elected from amongst themselves;
(xvi) Three Readers to be elected amongst themselves;
(xvii) Five Lecturers to be elected from amongst themselves;

Representatives of the Schools maintained by the University

(xviii) Two Principals of Schools maintained by the University by rotation according to seniority;

Representatives of non-teaching staff

(xix) Twenty-five representatives of non-teaching staff, to be elected from amongst themselves;

Representatives of ex-students

(xx) Twenty-five representatives of ex-students to be elected by the Alumni (Old Boys') Association;
Representatives of donors

(xxi) Ten representatives of donors who have donated at least a sum of ten thousand rupees or transferred property worth at least ten thousand rupees to the University, to be elected from amongst themselves;

Representatives of learned professions, industry and commerce

(xxii) Ten persons representing the learned professions, industry and commerce, to be elected in the Court;

Representatives of the All-India Muslim Education Conference

(xxiii) Five representatives of the All-India Muslim Education Conference;

Representatives of Parliament

(xxiv) Ten members of Parliament, six to be elected by the House of the People (Lok Sabha) from amongst its members and four to be elected by the Council of States (Rajya Sabha) from amongst its members;

Representatives of Muslim Culture and learning

(xxv) Fifteen persons representing Muslim culture and learning to be elected by the Court, of whom ten shall be persons residing outside the State of Uttar Pradesh;

(xxvi) Six persons representing Muslim Colleges of Oriental Learning in India, to be elected by the Court;

(xxvii) Four persons from amongst the Chairmen (including Presidents) of the Wakf Boards constituted under Wakf Act, 1954 (29 of 1954), or under any other law in force in a State, to be elected by the Court;

(xxviii) Two persons representing Urdu Language and literature, to be elected by the Court;

Representatives of Students

( xxx) (a) President, Vice-President, Secretary and one nominee of the Executive Council of the Students' Union ex-officio;

(b) Eleven students to be elected by a simple majority by students of the various faculties classified into groups in the manner prescribed by the Ordinances;

Nominated persons

(xxxi) Five persons to be nominated by the Visitor;

(xxxii) One person to be nominated by the Chief Rector;

(xxxiii) One person to be nominated by the Chancellor;
Provided that in making nominations under items (xxxi) to (xxxiii), due regard shall be had to the representation of the different areas of the Country in view of the all-India character of the University. Provided further that no employees of the University shall be eligible to be a member under items (xx) to (xxix) or under items (xxxi) to (xxxiii).

(2) All the members of the Court, other than ex-officio members and members representing students, shall hold office for a term of three years.

(3) An ex-officio member shall cease to be member of the Court as soon as he vacates the office by virtue of which he is such a member.

(4) Members representing students shall hold office for a period of one year or till such time as they continue to be students, whichever is earlier.

Thus, the powers of the Court though have been increased by Sections 17(1), 18(1) 23 and 28 of the Aligarh Muslim University (Amendment) Act, 1981 but Section 14 conclusively proves that the administration of the University has not been exclusively handed over to any particular minority.

A reference to Sections 28 and 29 of the 1920-Act immediately leads us to a conclusion that in the matter of enactment of Statutes a system of checks and balances has been created, with an overall control of the Visitor. Section 28 of the 1920-Act has been substituted by the Aligarh Muslim University (Amendment) Act, 1981. This Section enhances the powers of the Court in the matter of framing the Statutes of the University. According to Sub-section (3) of Section 28, the draft proposal of any Statute or of any amendment of Statutes must come from Executive Council. Sub-section (4) of Section 28 provides that the Court has a power to approve or reject or return the draft proposal to Executive Council. However, the fact remains that the Court without the draft proposal from Executive Council cannot undertake a statute making function. The assertion is affirmed by Sub-section (5) of Section 28 of the Act. It provides,

"Any member of the Court may propose to the Court, the draft of any Statute and the Court may reject the proposal or refer such draft for consideration to the Executive Council, which may either reject the proposal or submit the draft to the Court in such form as the Executive Council may approve and the provisions of this section shall apply in the case of any draft so submitted as they apply in the case of a draft proposed by the Executive Council."

Sub-section (6) Section 28 provides that no new Statutes or amendment or addition or repeal would come in force unless it is approved by the visitor. Under Section 29(2), the Executive Council has been given the power to amend, repeals or add an Ordinance. However, the Ordinance in respect of the matters enumerated in Sub-section (1) of Section 29 (except those enumerated in Clause (k) and (p) of Sub-section (1) of Section 29) the Executive Council can act only on the recommendation of the Academic Council. If the Executive Council does not agree with the draft proposals of the Academic Council, it can either reject them or return them for reconsideration of Academic Council. If Academic Council reaffirms its draft proposal by 2/3 majority then Executive Council can either adopt it or refer it to the visitor whose decision shall be final.
The Ordinance made by the Executive Council though comes into effect immediately but Sub-clause (6) of Section 29 requires that the Ordinance made by the Executive Council shall be submitted to the visitor within two weeks and the visitor within four weeks of the receipt of Ordinance can suspend it. The visitor thereafter informs his objection to the Ordinance to the Executive Council. On the receipt of the comments from the University the visitor can either revoke his order of suspending the Ordinance or disallow the Ordinance.

A perusal of Sections 28 and 29 proves that Court though can enact Statutes but only after the draft proposals are received by the Executive Council. Similarly, the Executive Council though can enact Ordinances but only after a draft proposal is received from the Academic Council. In both the cases the approval of the visitor is a condition precedent for its being enforced.

The Aligarh Muslim University (Amendment) Act, 1981 has undoubtedly increased the powers of the Court. But Court is neither manned exclusively by a particular minority nor is the exclusive independent administrative agency. It would, therefore, be wrong to say that the 1981-Act confers a minority status on the Aligarh Muslim University. The minority status of an institution is a question of fact and not one of legislation. The fact remains that Aligarh Muslim University was established by the Aligarh Muslim University Act, 1920 hence it can never be said to be an institution established by a minority and there is no question of its alleged minority character being restored by the Amending Act of 1921.

Grant for Minority Educational Institutions: Judicial Perspective

In Sidhajbhai Sabhai Case,546 the Supreme Court observed as follows:547-

"...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. The rights under Article 30(1) remain unaffected even after securing financial assistance from the government."

In The Ahmedabad St. Xaviers College Society case548, It was held that the right of the minorities to administer their educational institutions under Art. 30(1) was not inconsistent with the right of the State to insist on proper safeguards against mal-administration by imposing reasonable regulations as conditions precedent to the grant of aid. That did not however, mean that State Legislature could, in the exercise of its powers of legislation under Arts. 245 and 246 of the Constitution, override the fundamental rights by employing indirect methods, for what it had no power to do directly, it could not do indirectly.

546. Supra n. 54.
547. Id at 856-57.
548. Supra n. 6 (As per Justice Khanna).
In T.M.A. Pai Foundation case,\textsuperscript{549} the Court observed that 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.\textsuperscript{550} 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) illusory.\textsuperscript{551} 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.\textsuperscript{552} 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.\textsuperscript{553} We would, however, like to clarify that if an abject surrender of the right to management is made a condition of aid, the denial of aid would be violative of Article 30(2).\textsuperscript{554} 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 facet of administration.\textsuperscript{555} 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.\textsuperscript{556}

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.\textsuperscript{557} 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.\textsuperscript{558} Of course, the state cannot be compelled to grant aid, but the receipt of aid cannot be a reason for altering the nature or character of the recipient educational institution.\textsuperscript{559} It cannot be argued that no conditions can be imposed while giving aid to a minority institution.\textsuperscript{560} 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.\textsuperscript{561} 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.\textsuperscript{562} The conditions for grant or non-grant of aid to educational institutions have to be uniformly applied, whether

\textsuperscript{549} Supra n. 5.
\textsuperscript{550} Id at 579 (para 141).
\textsuperscript{551} Ibid.
\textsuperscript{552} Ibid.
\textsuperscript{553} Ibid.
\textsuperscript{554} Ibid.
\textsuperscript{555} Ibid.
\textsuperscript{556} Ibid.
\textsuperscript{557} Ibid.
\textsuperscript{558} Ibid.
\textsuperscript{559} Ibid.
\textsuperscript{560} Ibid (para 144).
\textsuperscript{561} Ibid.
\textsuperscript{562} Ibid.
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 instruction 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

563. Ibid.
564. Ibid.
565. Ibid.
566. Ibid.
567. Ibid.
568. Ibid.

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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.

**Acquisition of Property of a Minority Educational Institution**

The Constitution Forty-fourth Amendment enacted in 1978 added Article 30 (1A) to the Indian Constitution which runs 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), 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."

In Society of St. Joseph's case, the Supreme Court observed that Article 30 (1A) has been introduced in the Constitution because Parliament in its constituent capacity apprehended that minority educational institutions could be compelled to close down or curtail their activities by the expedient of acquiring their property and paying them inadequate amounts as compensation. The has emphasised that Article 30 (1A) requires that Parliament or State Legislature, as the case may be, ought to make a specific law to provide for the compulsory acquisition of property belonging to minority educational institutions. The provisions of this law should be such as would ensure that the amount payable to the educational institutions for the acquisition of its property will not in any manner impair the functioning of the education institution. The Land Acquisition Act is not adequate for the purpose of acquiring the property of minority education institutions.

**Minority Educational Institutions and Article 31-A**

In Very Rev. Mother Provincial case, thirty-three petitioners belong to different denominations of the Christian community. The petitioners in the petitions specially invoke the provisions of Article 30 of the Constitution which protects the right of the minorities to establish and administer educational institutions of their choice. The impugned Kerala University Act, 1969 consists of 78 sections divided into 9 chapters. The Act as stated already consists of 78 sections arranged under 9 Chapters. Chapter VIII is headed ‘Private Colleges’ and Chapter IX ‘Miscellaneous’. Chapter I consists of the short title and commencement (Section 1) and definitions (Section 2). We are

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570. Supra n. 33.
571. Id at 419.
572. Ibid.
573. Ibid.
574. Id at 421.
575. Ibid.
576. Ibid.
concerned with some definitions in Section 2 and Chapter VIII and IX. They are not in dispute. “College” in the Act means an institution maintained by, or affiliated to, the University, in which instruction is provided in accordance with the provisions of the Statutes, Ordinances, and Regulations. These are framed by the University. ‘Educational Agency’ means any person or body of persons who or which establishes and maintains a private college. ‘Private College’ means a college maintained by an agency other than the Government or the University and affiliated to the University. The provision of Section 63 (1) which reads:

“63. Power to regulate the management of private colleges.
(1) Whenever Government are satisfied on receipt of a report from the University or upon other information that a grave situation has arisen in which the working of a private college cannot be carried on for all or any of the following reasons, namely:

(a) default in the payment of the salary of the members of the staff of the college for a period of not less than three months;
(b) willful closing down of the college for a period of not less than one month except in the case of the closure of the college during a vacation;
(c) persistent default or refusal to carry out all or any of the duties imposed on any of the authorities of the college by this Act or the Statutes or Ordinances or Regulations or Rules or Bye-laws or lawful orders passed thereunder;

and that in the interest of private college it is necessary so to do, the Government may, after giving the governing body or managing council, as the case may be, the manager appointed under sub-section (1) of Section 50 and the education agency, if any, a reasonable opportunity of showing cause against the proposed action and after considering the clause, if any, shown, by order, appoint the University to manage the affairs of such private temporarily for a period not exceeding two years:

Provided that in cases where action is taken under this sub-section otherwise than on report from the University, it shall be consulted before taking such action.

The Supreme Court held that the High Court rightly pointed out that Sub-section 63 (1) provides for compulsory requisition of the properties within Article 31 (2) and (2-A). To be effective the section required the assent of the President under sub-section

577. Ibid.
578. Ibid.
579. Ibid.
580. Ibid.
581. Ibid.
582. Id at 425.
Review

The study shows that in order to instill confidence among Indian religious and linguistic minorities, Indian Constitution enshrined Article 25 to 30. These provisions enshrine a befitting pledge to the minorities in the Constitution of the country whose greatest son had laid down his life for the protection of the minorities. As long as the Constitution stands as it is today, no tampering with those rights can be countenanced. Any attempt to do so would be not only an act of breach of faith; it would be constitutionally impermissible and liable to be struck down by the Courts although 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 right to establish and administer an educational institution broadly 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 employees. The choice of educational institutions may vary from religious instruction to temporal education or a combination of both.

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 Articles 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. 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. Article 30 (1) though couched in absolute and spacious terms in marked contrast with other fundamental rights in Part III has to be read subject to the regulatory power of the State. 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. 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.

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

583. Ibid.
584. Ibid.
the institution in particular will be best served. But 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 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.

Article 30(1) of the Constitution made no distinction between minority institutions existing from before the Constitution or established thereafter and protected both. It did not require that a minority institution should be confined to the members of the community to which it belonged and a minority institution could not cease to be so by admitting a non-member to it. Regulations can be made to prevent the housing of an educational institution in unhealthy surroundings as also to prevent the setting up or continuation of an educational institution without qualified teachers. The State can prescribe regulations to ensure the excellence of the institution. Prescription of standards for educational institutions does not militate against the right of the minority to administer the institutions. Regulations 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. A regulation which is designed to prevent maladministration of an educational institution cannot be said to offend clause (1) of Article 30. At the same time it has to be ensured that under the power of making regulations nothing is done as would detract from the character of the institution as a minority educational institution or which would impinge upon the rights of the minorities to establish and administer educational institutions of their choice. The right conferred by Article 30 (1) is intended to be real and effective and not a mere pious and abstract sentiment; it is a promise of reality and not a teasing illusion.

Article 29(1) gives protection to any section of the citizens having a distinct language, script or culture by guaranteeing their right to conserve the same. Article 29(2) 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. Article 29(2) confers a special right on citizens for admission into educational institutions maintained or aided by the State. 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. 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 of a minority institution obtains a grant of aid, Article 28 of the Constitution comes into play.
In T.M.A. Pai Foundation case, the Supreme Court held that Linguistic and religious minorities are covered by the expression "minority" under Article 30 of the Constitution. The opening words of Article 30 (1) make it clear that religious and linguistic minorities have been put on a 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 religion viz. Telugu. “Linguistic minority” can, therefore, logically only 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-à-vis Article 30, then with “religious minority” being on the same footing, it is the State in relation to which the majority or minority status will have to be determined. The Court held that Linguistic and religious minorities are covered by the expression "minority" under Article 30 of the Constitution. Since reorganization of the States in India has been on linguistic lines, therefore, for the purpose of determining the minority, the unit will be the State and not the whole of India.

‘Minority Educational Institution’ means a college or institution (other than a University) established or maintained by a person or groups of persons from amongst the minorities. What is necessary to claim the protection of Article 30(1) of the Constitution is that the founder of an education institution belongs to either a religious or linguistic minority and that he has established the educational institution for the benefit of such minority community.

585 Supra n. 5.
586 Id at 587.
587 Id at 552.
588 Ibid.
589 Ibid.
590 Ibid.
591 Ibid.
592 Ibid.
593 Ibid.
594 Ibid.
595 Ibid.
596 Id at 587.
597 Ibid.