CHAPTER 5
ADMINISTRATION OF MINORITY EDUCATIONAL INSTITUTIONS UNDER INDIAN CONSTITUTION

Introduction

The Constitution makers have endeavoured to unite the people of our country in a democratic Republic. The democratic Republic would not last long if its members were in constant war among themselves for the ascendancy of their separate rights. It will soon drift into Absolutism of one kind or another. European history demonstrates that whenever one group has attempted to deny liberty to another group, it has lost its own liberty. Pagans persecuted Christians and lost their own liberty. Christians, in their turn, denied religious freedom to pagans and surrendered their own freedom either to an Absolute Emperor or to an Infallible Pope. Catholics and Protestants denied religious freedom to one another and strengthened the absolutism of the monarchy. Absolute rights are possible only in the moon. It is impossible or a member of a civilized community to have absolute rights. Some regulation of rights is necessary for due, enjoyment by every member of the society of his own rights. It cannot be disputed that the right under Article 30(1) is also subject to regulation for the protection of various social interests such as health, morality, security of State, public order and the like, for the good of the people is the supreme law. Today, education, especially Science and Technology, is a preemptive social interest for our developing Nation. The extent of regulatory power of the State would vary according to various types of educational institutions established by religious and linguistic minorities. Educational institutions may be classified in several ways: (1) According to the nature of instruction which is being imparted by the minorities. It may be religious, cultural and linguistic instruction or secular general education or mixed; (2) According to grant of aid and recognition by the State. Some institutions may receive aid; the others may not. Similarly, some institutions may receive recognition; the others may not. There may be some others which may receive both aid and recognition; some others may receive neither aid nor recognition. (3) According to the standard of secular general education which is being imparted in the institutions primary, secondary and higher. (4) According to the nature of education such as military, academy, marine engineering, in which the State is vitally interested for various reasons.

The extent of regulatory power may vary from class to class as well as within a class. For instance, institutions receiving aid and recognition may be subject to greater regulation than those which receive neither. Similarly, institutions imparting secular general education may be subject to greater regulation than those which are imparting religious, cultural and linguistic instruction solely. The aided educational institutions (whether majority or minority) should not have unfettered freedom in the matter of administration and management.¹ The State which gives aid to educational institution

including minority educational institution can impose such conditions as are necessary for the proper maintenance for the higher standards of education.\textsuperscript{2} State is also under an obligation to protect the interests of the teaching and non-teaching staff.\textsuperscript{3} In many States, there are various statutory provisions to regulate the functioning of these educational institutions. Every educational institution should have basic amenities. If it is a school, it should have healthy surroundings for proper education; it should have a playground, a laboratory, a library and other requisite facilities that are necessary for a proper functioning of the school. The teachers who are working in the schools should be governed by proper service conditions.

In States where the entire pay and allowances for the teaching staff and non-teaching staff are paid by the State, the State has got ample power to regulate the method of selection and appointment of teachers. State can also prescribe qualifications for the teachers to be appointed in such schools. Similarly in an aided school, State sometimes provides aid for some of the teachers only while denying the aid to other teachers. Sometimes the State does not provide aid for the non-teaching staff. The State could, when granting aid, provides for the age and qualifications for recruitment of a teacher, the age of retirement and even for the manner in which an enquiry has to be held by the institution. In other words there could be regulations which ensure that service conditions for teachers and staff receiving aid of the State and the teachers or the staff for which no aid is being provided are the same. Pre-requisite to attract good teachers is to have good service conditions. To bring about an uniformity in the service conditions State should be put at liberty to prescribe the same without intervening in the process of selection of the teachers or their removal, dismissal etc. We agree that there need not be both prior and subsequent approval from any functionaries of the State/University/Board (as the case may be) for disciplinary action, removal or dismissal. However principles of natural justice must be observed and as already provided, by the learned Chief Justice all such action can be scrutinised by the Education Tribunal. Educational Institutions receiving State aid cannot claim to have complete autonomy in the matter of administration. They are bound by various statutory provisions which are enacted to protect the interests of the education, students and teachers. Many of the Statutes were enacted long back and stood the test of time. Nobody has ever challenged the provisions of these enactments. The regulations made by the State, to a great extent, depend on the extent of the aid given to institutions including minority institutions. In some States, a lump sum amount is paid as grant for maintenance of schools. In such cases, the State may not be within its rights to impose various restrictions, especially regarding selection and appointment of teachers. But in some States the entire salary of the teaching and non-teaching staff are paid, and these employees are given pension and other benefits, the State may then have a right and an obligation to see that the selection and appointment of teachers are properly made. Similarly the State could impose conditions to the effect that in the matter of appointments, preference shall be given to weaker sections of the community, especially physically handicapped or dependents of employees who died in harness. All such regulations may not be said to be bad and/or invalid and may not even amount to infringing the rights of the minority conferred under Article 30(1) of the Constitution.

\textsuperscript{2} Ibid.
\textsuperscript{3} Ibid.
Administration: Meaning and Scope

In State of Kerala v. Very Rev. Mother Provincial, Hidayatullah C.J., speaking for the unanimous Court, held:

"Administration means 'management of the affairs' of the institution. This management must be free of control so that the founders or their nominees can mould the institution as they think fit, and in accordance with their ideas of how the interests of the community in general and the institution in particular will be best served. No part of this management can be taken away and vested in another body without an encroachment upon the guaranteed right."

He also held that 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 the 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.

In The Ahmedabad St. Xaviers College Society case, while considering the right of the religious and linguistic minorities to administer their educational institutions, Chief Justice A.N. Ray observed as follows:-

"The right to administer is said to consist of four principal matters. First is the right to choose its managing or governing body. It is said that the founders of the minority institution have faith and confidence in their own committee or body consisting of persons selected by them. Second is the right to choose its teachers. It is said that

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5. Id at 421.
6. Ibid.
7. Ibid.
8. Ibid.
9. Ibid.
10. Ibid.
11. Ibid.
12. Ibid.
minority institutions want teachers to have compatibility with the ideals, aims and aspirations of the institution. Third is the right not to be compelled to refuse admission to students. In other words, the minority institutions want to have the right to admit students of their choice subject to reasonable regulations about academic qualifications. Fourth is the right to use its properties and assets for the benefit of its own institution. The right conferred on the religious and linguistic minorities to administer educational institutions of their choice is not an absolute right. This right is not free from regulation. Just as regulatory measures are necessary for maintaining the educational character and content of minority institutions similarly regulatory measures are necessary for ensuring orderly, efficient and sound administration."

Regulations which will serve the interests of the students, regulations which will serve the interests of the teachers are of paramount importance in good administration. Regulations in the interest of efficiency of teachers, discipline and fairness in administration are necessary for preserving harmony among affiliated institutions.

Autonomy in administration means right to administer effectively and to manage and conduct the affairs of the institutions. The distinction is between a restriction on the right of administration and a regulation prescribing the manner of administration. The right of administration is day-to-day administration. The choice in the personnel of management is a part of the administration. The University will always have a right to see that there is no mal-administration. If there is mal-administration, the University will take steps to cure the same. There may be control and check on administration in order to find out whether the minority institutions are engaged in activities which are not conducive to the interest of the minority or to the requirements of the teachers and the students.

In a concurrent judgment, Khanna, J. examined Article 30, and observed as follows:

"...the right to administer an institution means the right to effectively manage and conduct the affairs of the institution. Administration connotes management of the affairs of the institution. The management must be free of control so that the founders or their nominees can mould the institution as they think fit and in accordance with their ideas of how the interest of the community in general and the institution in particular will be best served. The words "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..."

Article 30(1) bestows on the minorities, whether based on religion or language, the right to establish and administer educational institution of their choice. This sub-Article

\[14\] Id at 748.
\[15\] Ibid.
\[16\] Id at 750.
\[17\] Id at 770.
also does not specifically mention that the right to establish and administer a minority educational institution would be subject to any rules or regulations. Can Article 30(1) be so read as to mean that it contains an absolute right of the minorities, whether based on religion or language, to establish and administer educational institutions in any manner they desire, and without being obliged to comply with the provisions of any law? Does Article 30(1) give the religious or linguistic minorities a right to establish an educational institution that propagates religious or racial bigotry or ill will amongst the people? Can the right under Article 30(1) be so exercised that it is opposed to public morality or health? In the exercise of its right, would the minority while establishing educational institutions not be bound by town planning rules and regulations? Can they construct and maintain buildings in any manner they desire without complying with the provisions of the building by-laws or health regulations?

So far as the statutory provisions regulating the facets of administration are concerned, in case of an unaided minority educational institution, the regulatory measure of control should be minimal and the conditions of recognition as well as the conditions of affiliation to a university or board have to be complied with. The right of the minorities to administer educational institutions does not, however, prevent the making of reasonable regulations in respect of those institutions. The regulations have, necessarily to be made in the interest of the institution as a minority educational institution. They have to be so designed as to make it an effective vehicle for imparting education. The right to administer educational institutions can plainly not include the right to mal-administer. 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 all 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. Further, as observed by Hidayatullah C.J., in the case of Very Rev. Mother Provincial, the 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

18. Supra n. 1 at 556, para 92(As per B.N. Kirpal, C.J., who delivered the majority Judgment on behalf of the Court).
19. Ibid.
20. Ibid (para 93).
21. Ibid.
22. Id at 557.
23. Ibid.
24. Ibid.
25. Id at 589.
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. It is, in my opinion, permissible to make regulations for ensuring the regular payment of salaries before a particular date of the month. Regulations may well provide that the funds of the institution should be spent for the purposes of education or for the betterment of the institution and not for extraneous purposes. Regulations may also contain provisions to prevent the, diversion of funds of institutions to the pockets of those incharge of management or their embezzlement in any other manner. Provisions for audit of the accounts of the institution would be permissible regulation. Likewise, regulations may provide that no anti-national activity would be permitted in the educational institutions and that those employed as members of the staff should not have been guilty of any activities against the national interest. Minorities are as much part of the nation as the majority, and anything that impinges upon national interest must necessarily in its ultimate operation affect the interests of all those who inhibit this vast land irrespective of the fact whether they belong to the majority or minority sections of the population. It is, therefore, as much in the interest of minorities as that of the majority to ensure that the protection afforded to minority institutions is not used as a cloak for doing something which is subversive of national interests. Regulations to prevent anti-national activities in educational institutions can, therefore, be considered to be reasonable.

A regulation which is designed to prevent mal-administration 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 more pious and abstract sentiment; it is a promise of reality and not a teasing illusion. Such a right cannot be allowed to be whittled down by any measure masquerading as a regulation. The Court in the Rev. Sidhajbhai Sabhai case\(^{26}\) observed that 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 minority institution effective as an educational institution. Such regulation must satisfy a dual test the test of reasonableness, and the test that it is regulative of the educational character of the institution and is conducive to making the institution an effective vehicle of education for the minority community or other persons who resort to it. It has been said in the context of the American Constitution and the Canadian Bill of Rights that the constitutional protection of religious freedom terminated disabilities, it did not create new privileges. It gave religious equality, not civil immunity. Its essence is freedom from conformity to, religious dogma, not freedom from conformity to law because of religious dogma.

The Court further observed:

"The Court did not, however, lay down any test of reasonableness of the regulation. The Court did not decide that public or national Interest was the sole measure or test of reasonableness: it also did not decide that a regulation would be deemed unreasonable only if it was totally destructive of the right of the minority to administer educational institution. No general principle on which reasonableness or otherwise of a regulation may be tested was sought to be laid down by the Court."

It was reiterated in the St. Xavier's College case\textsuperscript{27} that the right to administer was not a right to mal-administer. Elaborating the minority's right to administer, it was observed as follows:\textsuperscript{28}:

"...The minority institutions have the right to administer institutions. This right implies the obligation and duty of the minority institutions to render the very best to the students. In the right of administration, checks and balances in the shape of regulatory measures are required to ensure the appointment of good teachers and their conditions of service. The right to administer is to be tempered with regulatory measures to facilitate smooth administration. The best administration will reveal no trace or colour of minority. A minority institution should shine in exemplary eclecticism in the administration of the institution. The best compliment that can be paid to a minority institution is that it does not rest on or proclaim its minority character."

The Learned Chief Justice, Ray, concluded by observing, as follows:\textsuperscript{29}:

"The ultimate goal of a minority institution too imparting general secular education is advancement of learning. This Court has consistently held that it is not only permissible but also desirable to regulate everything in educational and academic matters for achieving excellence and uniformity in standards of education. In the field of administration it is not reasonable to claim that minority institutions will have complete autonomy. Checks on the administration may be necessary in order to ensure that the administration is efficient and sound and will serve the academic needs of the institution. The right of a minority to administer its educational institution involves, as part of it, a correlative duty of good administration."

The learned Judge Khanna observed that the right of the minorities to administer educational institutions did not prevent the making of reasonable regulations in respect of these institutions. \textsuperscript{30} Recognizing that the right to administer educational institutions could not include the right to mal-administer, it was held that regulations could be lawfully imposed, for the receiving of grants and recognition, while permitting the institution to retain its character as a minority institution. The regulation" must satisfy a dual test the test of reasonableness, and the test that it is regulative of the educational character of the institution and is conducive to making the institution an effective vehicle

\textsuperscript{27} Supra n. 13.  
\textsuperscript{28} Ibid.  
\textsuperscript{29} Ibid.  
\textsuperscript{30} Ibid.
of education for the minority community or other persons who resort to it. "It was permissible for the authorities to prescribe regulations, which must be complied with, before a minority institution could seek or retain affiliation and recognition. But it was also stated that the regulations made by the authority should not impinge upon the minority character of the institution. Therefore, a balance has to be kept between the two objectives that of ensuring the standard of excellence of the institution, and that of preserving the right of the minorities to establish and administer their educational institutions. Regulations that embraced and reconciled the two objectives could be considered to be reasonable. This, in our view, is the correct approach to the problem..."

The Hon'ble Supreme Court in Lily Kurian v. Sr. Lewina31 observed as follows:-

"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."

The right under Article 30 is not absolute.32 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.

In Re Kerala Education Bill, 1957 case33, the Court concluded as follows:-

"We have already observed that Article 30(1) gives two rights to the minorities, (1) to establish and (2) to administer, educational institutions of their choice. The right to administer cannot obviously include the right to maladminister. The minority cannot surely ask for aid or recognition for an educational institution run by them in unhealthy surroundings, without any competent teachers, possessing any semblance of qualification, and which does not maintain even a fair standard of teaching or which teaches matters subversive of the welfare of the scholars. It stands to reason, then, that the constitutional right to administer an educational institution of their choice does not necessarily militate against the claim of the State to insist that in order to grant aid the State may prescribe reasonable regulations to ensure the excellence of the institutions to be aided."

31. (1979) 1 SCR 995.
33. 1959 SCR 995 at 1062.
In the St. Stephen's College case, the Supreme Court with regard to Article 30(1), observed as follows:

"The minorities whether based on religion or language have the right to establish and administer educational institutions of their choice. The administration of educational institutions of their choice under Article 30(1) means 'management of the affairs of the institution'. This management must be free from control so that the founder or their nominees can mould the institution as they think fit, and in accordance with their ideas of how the interests of the community in general and the institution in particular will be best served. But the standards of education are not a part of the management as such. The standard concerns the body politic and is governed by considerations of the advancement of the country and its people. Such regulations do not bear directly upon management although they may indirectly affect it. The State, therefore, has the right to regulate the standard of education and allied matters. Minority institutions cannot be permitted to fall below the standards of excellence expected of educational institutions. They cannot decline to follow the general pattern of education under the guise of exclusive right of management. While the management must be left to them, they may be compelled to keep in step with others..."

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. The Court observed as follows:

"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)."

In State of Madras v. Srimathi Champakam Dorairajan, the State had issued an order, which provided that admission to students to engineering and medical colleges in the State should be decided by the Selection Committee, strictly on the basis of the

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34. Supra n. 32.
35. Id at 596.
36. Id at 598-99.
37. AIR 1951 SC 226.
number of seats fixed for different communities. While considering the validity of this order, this Court interpreted Article 29(2) and held that if admission was refused only on the grounds of religion, race, caste, language or any of them, then there was a clear breach of the fundamental right under Article 29(2). The said order was construed as being violative of Article 29(2), because students who did not fall in the particular categories were to be denied admission. The Court observed as follows: "so far as those seats are concerned, the petitioners are denied admission into any of them, not on any ground other than the sole ground of their being Brahmins and not being members of the community for whom those reservations were made..." The Court held this government order violative of the Constitution and constitutive of a clear breach of Article 29(2). Article 30 did not come up for consideration in that case.

In the Re. Kerala Education Bill case, this Court again had the occasion to consider the interplay of Articles 29 and 30 of the Constitution. This case was a reference under Article 143(1) of the Constitution made by the President of India to obtain the opinion of this 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. 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. This right, however, is subject to clause 2 or Article 29 which provides that no citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them."

In Malankara Syrian Catholic College case, the Court held that there can be checks on administration as are necessary to ensure that the administration is efficient and sound, so as to serve the academic needs of the institution. Regulations made by the State concerning generally the welfare of students and teachers, regulations laying down eligibility criteria and qualifications for appointment, as also conditions of service of

38. Ibid.
39. Id at 228 (para 11).
40. Supra n. 33.
41. Id at 1046.
employees (both teaching and non-teaching), regulations to prevent exploitation or oppression of employees, and regulations prescribing syllabus and curriculum of study fall under this category. Such regulations do not in any manner interfere with the right under Article 30 (1).

Affiliation and Recognition of Minority Educational Institutions by State or University

The fundamental right to establish an educational institution cannot be confused with the right to ask for recognition or affiliation. The right to establish an educational institution can be regulated; but such regulatory measures must, in general, be to ensure the maintenance of proper academic standards, atmosphere and infrastructure (including qualified staff) and the prevention of mal-administration by those in charge of management. Conditions granting recognition or affiliation can broadly cover academic and educational matters including the welfare of students and teachers. The conditions of affiliation or recognition, which pertain to the academic and educational character of the institution and ensure uniformity, efficiency and excellence in educational courses are valid, and that they do not violate even the provisions of Article 30 of the Constitution; but conditions that are laid down for granting recognition should not be such as may lead to governmental control of the administration of the private educational institutions.

In Re The Kerala Education Bill case, Das, C.J. Said, "There is, no doubt, no such thing as fundamental right to recognition by the State but to deny recognition to the educational institutions except upon terms tantamount to the surrender of their constitutional right of administration of the educational institutions of their choice is in truth and in effect to deprive them of their rights under Article 30(1). The minorities, quite understandably, regard it as essential that the education of their children should be in accordance with the teachings of their religion and they hold, quite honestly, that such an education cannot be obtained in ordinary schools designed for all the members of the public but can only be secured in schools conducted under the influence and guidance of people well versed in the tenets of their religion and in the traditions of their culture. They also desire that scholars of their educational institutions should go out in the world well and sufficiently equipped with the qualifications necessary for a useful career in life. But according to the Education Code now in operation to which it is permissible to refer for ascertaining the effect of the impugned provisions on existing state of affairs the scholars of unrecognised schools are not permitted to avail themselves of the opportunities for higher education in the University and are not eligible for entering the public services. Without recognition, therefore, the educational institutions established or to be established by the minority communities cannot fulfill the real objects of their choice and the rights under Art. 30(1) cannot be effectively exercised. The right to establish educational institutions of their choice must, therefore, mean the

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43 Ibid.
44 Ibid.
45 Supra n. 1.
46 Id at 549.
47 Id at 550.
48 Supra n. 33.
right to establish real institutions which will effectively serve the needs of their community and the scholars who resort to their educational institutions. The right under Article 30 cannot be exercised in vacuo. Nor would it be right to refer to affiliation or recognition as privileges granted by the State. In a democratic system of Government with emphasis on education and enlightenment of its citizens, there must be elements which give protection to them. The meaningful exercise of the right under Article 30(1) would and must necessarily involve recognition of the secular education imparted by the minority institutions without which the right will be a mere husk. This Court has so far consistently struck down all attempts to make affiliation or recognition on terms tantamount to surrender of its rights under Article 30(1) as abridging or taking away those rights. Again as without affiliation the right under Article 30(1), the affiliation to be given should be consistent with that right, nor can it indirectly try to achieve what it cannot directly do.  

He further observed:  

"Without recognition, therefore, the educational institutions established or to be established by the minority communities cannot fulfill the real objects of their choice and the right under Article 30(1) cannot be effectively exercised. The right to establish educational institutions of their choice must, therefore, mean the right to establish real institutions which will effectively serve the needs of their community and the scholars who resort to their educational institutions. There is, no doubt, no such thing as fundamental right to recognition by the State but to deny recognition to the educational institutions except upon terms tantamount to the surrender of their constitutional right of administration of the educational institutions of their choice is in truth and in effect to deprive them of their rights under Article 30(1). We repeat that the legislative power is subject to the fundamental rights and the legislature cannot indirectly take away or abridge the fundamental rights which it could not do directly and yet that will be the result if the said Bill containing any offending clause becomes law."  

In State of Kerala v. Very Rev. Mother Provincial, the Supreme Court explained the necessary and importance of regulatory measures of system and standard of education in the interest of the county and the people as follows:  

"When a minority institution applies for affiliation, it agrees to follow the uniform courses of study. Affiliation is regulating the educational character and content of the minority institutions. These regulations are not only reasonable in the interest of general secular education but also conduce to the improvement in the statute and strength of the minority institutions. All, institutions of general secular education whether established by the minorities or the non-minorities must impart to the students education not only for their intellectual attainment but also for pursuit of careers. Affiliation of minority institutions is intended to ensure the growth and excellence of their children and other students in the academic field. Affiliation mainly pertains to the academic and educational character of the institution. Therefore, measures which will regulate the
courses of study, the qualifications and appointment of teachers, the conditions of employment of teachers, the health and hygiene of students, facilities for libraries and laboratories are all comprised in matters germane to affiliation of minority institutions. These regulatory measures for affiliation are for uniformity, efficiency and excellence in educational courses and do not violate any fundamental right of the minority institutions under Article 30. The entire controversy centers round the extent of the right of the religious and linguistic minorities to administer their educational institutions. The right to administer is said to consist of four principal matters. First is the right to choose its managing- or governing body. It is said that the founders of the minority institution have faith and confidence in their own committee or body consisting of persons selected by them. Second is the right to choose its teachers. It is said that minority institutions want teachers to have compatibility with the ideals, aims and aspirations of the institution. Third is the right not to be compelled to refuse admission to students. In other words, the minority institutions want to have the right to admit students of their choice subject to reasonable regulations about academic qualifications. Fourth is the right to use its properties and assets for the benefit of its own institution. The right conferred on the religious and linguistic minorities to administer educational institutions of their choice is not in an absolute right. This right is not free from regulation. Just as regulatory measures are necessary for maintaining the educational character and content of minority institutions similarly regulatory measures are necessary for ensuring orderly, efficient and sound administration."

In All Saints High School v Government of Andhra Pradesh,\(^{52}\) the learned Chief Justice Chandrachud, observed that no institution, minority or majority, has a fundamental right to recognition by the State or affiliation to the University, but since recognition and affiliation are indispensable for an effective and fruitful exercise of the fundamental right of minorities to establish and administer educational institutions of their choice, they are entitled to recognition and affiliation if they agree to accept and comply with regulatory measures which are relevant for granting recognition and affiliation, which are directed to ensuring educational excellence of the institution concerned and which, largely and substantially, leave unimpaired the right of administration in regard to internal affairs of the institution.

In The Ahmedabad St. Xaviers College Society case,\(^{53}\) the court considered whether religious and linguistic minorities, who have the right to establish and administer educational institutions of their choice, have a fundamental right to affiliation. It is contended on behalf the petitioners that the right to establish educational institutions of their choice will be without any meaning if affiliation is denied. The respondents pose the question whether educational institutions established and administered by minorities for imparting general secular education have a fundamental right to be affiliated to a statutory University on terms of management different from those applicable to other affiliated colleges. The Court held that there is no fundamental right of a minority institution to affiliation.\(^{54}\) An explanation has been put upon that statement of law. It is that affiliation must be a real and meaningful exercise for minority institutions in the

\(^{52}\) (1980) 2 SCR 924 (Before Y.V. Chandrachud, Syed M. Fazal Ali and P.S. Kailasam, JJ.).  
\(^{53}\) Supra n. 13.  
\(^{54}\) Id at 744.
matter of imparting general secular education. Any law which provides for affiliation on terms which will involve abridgement of the right of linguistic and religious minorities to administer and establish educational institutions of their choice will offend Article 30(1). The educational institutions set up by minorities will be robbed of their utility if boys and girls cannot be trained in such institutions for University degrees. Minorities will virtually lose their right to equip their children for ordinary careers if affiliation be on terms which would make them surrender and lose their rights to establish and administer educational institutions of their choice under Article 30. The primary purpose of affiliation is that the students reading in the minority institutions will have qualifications in the shape of degrees necessary for a useful career in life. The establishment of a minority institution is not only ineffective but also unreal unless such institution is affiliated to a University for the purpose of conferment of degrees on students. Affiliation to a University really consists of two parts. One part relates to syllabi, curricula, courses of instruction, the qualifications of teachers, library, laboratories, conditions regarding health and hygiene of students. This part relates to establishment of educational institutions. The second part consists of terms and conditions regarding management of institutions. It relates to administration of educational institutions.

With regard to affiliation a minority institution must follow the statutory measures regulating educational standards and efficiency, the prescribed courses of study, courses of instruction and the principles regarding the qualification of teachers, educational qualifications for entry of students into educational institutions etcetera. When a minority institution applies to a University to be affiliated, it expresses its choice to participate in the system of general education and courses of instruction prescribed by that University; Affiliation is regulating courses of instruction in institutions for the purpose of coordinating and harmonizing the standards of education. With regard to affiliation to a University, the minority and non-minority institutions must agree in the pattern and standards of education. Regulatory measures of affiliation enable the minority institutions to share the same courses of instruction and the same, degrees with the non-minority institutions.

Recognition or affiliation is granted on the basis of the excellence of an educational institution, namely, that it has reached the educational standard set up by the university. Recognition or affiliation is sought for the purpose of enabling the students in an educational institution to sit for an examination to be conducted by the university and to

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55. Ibid.
56. Ibid.
57. Ibid.
58. Id at 745.
59. Ibid.
60. Ibid.
61. Ibid.
62. Ibid.
63. Ibid.
64. Ibid.
65. Ibid.
66. Ibid.
obtain a degree conferred by the university. For that purpose, the students should have to be coached in such a manner so as to attain the standard of education prescribed by the university. Recognition or affiliation creates an interest in the university to ensure that the educational institution is maintained for the purpose intended and any regulation which will subserve or advance that purpose will be reasonable and no educational institution established and administered by a religious or linguistic minority can claim recognition or affiliation without submitting to those regulations. That is the price of recognition or affiliation; but this does not mean that it should submit to a regulation stipulating for surrender of a right or freedom guaranteed by the Constitution, which is unrelated to the purpose of recognition or affiliation. In other words, recognition or affiliation is a facility which the university grants to an educational institution, for the purpose of enabling the students there to sit for an examination to be conducted by the university in the prescribed subjects and to obtain the degree conferred by the university, and therefore, it stands to reason to hold that no regulation which is unrelated to the purpose can be imposed. If, besides recognition or affiliation, an educational institution conducted by a religious minority is granted aid, further regulations for ensuring that the aid is utilized for the purpose for which it is granted will be permissible.

The heart of the matter is that no educational institution established by a religious or linguistic minority can claim total immunity from regulations by the legislature or the university if it wants affiliation or recognition; but the character of the permissible regulations must depend upon their purpose. As we said, such regulations will be permissible if they are relevant to the purpose of securing or promoting the object of recognition or affiliation. There will be borderline cases where it is difficult to decide whether a regulation really sub serves the purpose of recognition or affiliation. But that does not affect the question of principle. In every case, when the reasonableness of a regulation comes up for consideration before the court, the question to be asked and answered is whether the regulation is calculated to sub serve or will in effect sub serve the purpose of recognition or affiliation, namely, the excellence of the institution as a vehicle for general secular education to the minority community and to other persons who resort to it. The question whether a regulation is in the general interest of the public has no relevance, if it does not advance the excellence of the institution as a vehicle for general secular education as, ex-hypothesis, the only permissible regulations are those which secure the effectiveness of the purpose of the facility, namely, the excellence of the educational institutions in respect of their educational standards. This is the reason why this Court has time and again said that the question whether a particular regulation is calculated to advance the general public interest is of no consequence if it is not conducive to the interests of the minority community and those persons who, resort to it.

A.P. Christians Medical Educational Society case is a brazen and bizarre exploitation of the na"ive and foolish, eager and ready-to-be-duped, aspirants for admission to professional collegiate courses, behind the smoke-screen of the right of the minorities to establish and administer educational institutions of their choice. A society styling itself as the ‘Andhra Pradesh Christian Medical Educational Society’ was

68 Id at 669.
registered on August 31, 1984.\textsuperscript{69} The first of the objectives mentioned in the memorandum of association of the society was to establish, manage and maintain educational and other institutions and impart education and training at all stages, primary, secondary, collegiate, post-graduate and doctoral, as a Christian Minorities' Educational Institution.\textsuperscript{70} Another object was to promote, establish, manage and maintain Medical colleges, Engineering colleges, Pharmacy colleges, Commerce, Literature, Arts and Sciences and Management colleges and colleges in other subjects and to promote allied activities for diffusion of useful knowledge and training.\textsuperscript{71} Other objects were also mentioned in the memorandum of association. All that is necessary to mention here is that one of the objects, apart from the first extracted object, had anything to do with any minority.\textsuperscript{72}

On August 27, 1984, one Professor C.A. Adams who was one of the signatories to the memorandum of association of the society, claiming also to be the President of a self-styled National Congress of Indian Christian addressed a letter to Smt. Indira Gandhi, late Prime Minister of India, requesting that the Central Government may grant them permission to establish a Central Christian University of India in Andhra Pradesh, where Christian children would be provided with facilities for education in arts, sciences, engineering and technological courses, medicine, law and theological courses.\textsuperscript{73} The petitions officer attached to the Prime Minister's office informed Prof. Adams that his letter has been forwarded to the Ministry of Education and Culture for further action.\textsuperscript{74} On September 20, 1984, the Deputy Secretary to the Government of India, Ministry of Education and Culture wrote to the President, National Congress of Indian Christians to the effect that universities could only be established under Acts of Parliament or of State legislatures and there was, therefore, no question of giving permission to any organisation to establish a university.\textsuperscript{75} However, it was pointed out that it was open to private organisations to establish colleges of higher education which could seek affiliations to the universities in whose jurisdiction they were established.\textsuperscript{76} Such colleges could offer courses leading to university degrees only if they were affiliated to a university.\textsuperscript{77} Prof. Adams then wrote to the Government of India claiming that there was no legal impediment to the grant of permission by the government to the establishment of a university.\textsuperscript{78} It was said that if necessary, the government could initiate legislation also. In order to avoid further delay, the letter proceeded to state, they were starting professional courses in rural areas at Vikarabad in Rangareddy District.\textsuperscript{79}

It was stated "to start with, as per your advice, we are proposing to start the following faculties at Vikarabad where we have our Christian Hospital, High School,

\textsuperscript{69} Ibid.  
\textsuperscript{70} Ibid.  
\textsuperscript{71} Ibid.  
\textsuperscript{72} Ibid.  
\textsuperscript{73} Ibid.  
\textsuperscript{74} Id at 670.  
\textsuperscript{75} Ibid.  
\textsuperscript{76} Ibid.  
\textsuperscript{77} Ibid.  
\textsuperscript{78} Ibid.  
\textsuperscript{79} Ibid.
Church and other vacant buildings and plenty of vacant land suitable for further expansion belonging to our Christian Churches". The Government of India was further requested to address the University of Hyderabad to grant affiliation to their colleges and to recommend to the All India Institute of Medical Sciences to affiliate their medical college. The government was also requested to sanction 'the Central grant' for these colleges. Earlier in the letter it was also mentioned that the Prime Minister was kind enough to agree to grant permission for establishing the Central Christian University of India in Andhra Pradesh for the benefit of two crores of Christians living in India. Most of the statements in the letter are either misleading or false. That the Prime Minister had agreed to the establishment of a Central Christian University is admitted before us to be false. Similarly the reference to "our Christian Hospital, High School and Church and vacant buildings" would give an impression that the hospital, high school, etc. were institutions of the self-styled National Congress of Indian Christians. None of those institutions is even remotely connected with this so-called organisation. This was admitted before us in answer to a question by us. While Prof. Adams in his capacity as the so-called President of the National Congress of Indian Christians corresponded with the Central Government, the same Prof. Adams in another capacity, namely, Chairman of the Andhra Pradesh Christian Medical Educational Society, entered into a correspondence with the Chief Minister of the Government of Andhra Pradesh and the Vice-Chancellor, Osmania University.

He and one Christopher, who described himself as the Secretary of the Society addressed a letter to the Chief Minister, claiming that under the provisions of Article 30 (1) of the Constitution, they, the Christian minority had the right to establish educational institutions of their choice and requested him to initiate necessary action for the establishment of a Central Christian University of India as suggested by the Government of India and to grant permission for establishing a Christian Medical College at Vikarabad. It was mentioned in the letter that the Government of India had informed them that either Parliament or the State legislature had to initiate action for establishing a university, but the Government of India had permitted them to start professional colleges and seek affiliation of the university within whose jurisdiction they fell. It is unnecessary to repeat that the reference to the grant of permission was false. On November 30, 1984, Christopher, Secretary of the National Congress of Indian Christians wrote a circular letter to the Vice-Chancellors of the Osmania University, the Hyderabad Central University and eight other universities all over India requesting them to grant

80. Ibid.
81. Ibid.
82. Ibid.
83. Ibid.
84. Ibid.
85. Ibid.
86. Ibid.
87. Ibid.
88. Ibid.
89. Ibid.
90. Ibid at 671.
91. Ibid.
92. Ibid.

affiliation to their colleges. On January 22, 1985, the Registrar of the Osmania University replied stating that it was necessary for the association to submit documentary evidence regarding the fulfilment of the conditions prescribed for affiliation and to submit an application in the prescribed form.

Thereafter on March 19, 1983, Prof. Adams as Chairman of the Christian Medical Education Society wrote to the Registrar, Osmania University informing the latter that the Management was taking necessary action in regard to the various matters mentioned in the letter of the University dated January 22, 1985 and that one Dr. K. Sanjeeva Rao had been appointed as Principal of that college. It was stated in the letter that there was no need to get the permission of the State Government as the Christian Community had a right to establish its own educational institutions under Article 30 of the Constitution. But if permission was necessary permission had already been granted by the Central Government in their letter dated September 20, 1984. It was also mentioned that ‘plans and estimates’ of the proposed medical college at Muttangi, Medak District were enclosed. The university was further informed that 60 students had already been admitted to the first year of University MBBS course of 1984 session and the classes were functioning from February 25, 1985. The University was requested to send its screening Committee to inspect the college. The University was also requested to grant temporary affiliation. The letter contained the usual false statements. The University wrote to the society on May 23, 1985 pointing out that according to the procedure laid down, affiliation could not be granted without obtaining the feasibility report of the Screening Committee. It was also pointed out that it was necessary to obtain the permission of the State Government and the Medical Council of India in order to start a medical college. The society was informed that their action in admitting students in the first year MBBS course was highly irregular and illegal and the society was asked to cancel the admissions made by them. It was also pointed out that attendance at the institutions not affiliated or recognised by the University would not qualify a candidate for admission to any examination conducted by the university.

On July 24, 1985, the Government of Andhra Pradesh wrote to the society informing them that permission to start a private medical college could not be granted as it was the policy of the Government of India and the Medical Council of India not to permit opening of new medical colleges. On refusal of the Government of Andhra

93 Ibid.
94 Ibid.
95 Id at 672.
96 Id at 673.
97 Ibid.
98 Ibid.
99 Ibid.
100 Ibid.
101 Ibid.
102 Ibid.
103 Ibid.
104 Ibid.
105 Ibid.
106 Ibid.
107 Id at 674.
The Supreme Court held that the government, the University and ultimately the court have the undoubted right to pierce the 'minority veil'-with due apologies to the corporate lawyers- and discover whether there is lurking behind it no minority at all and in any case, no minority institution. The object of Article 30 (1) is not to allow bogies to be raised by pretenders but to give the minorities 'a sense of security and a feeling of confidence' not merely by guaranteeing the right to profess, practise and propagate religion to religious minorities and the right to conserve their language, script and culture to linguistic minorities, but also to enable all minorities, religious or linguistic, to establish and administer educational institutions of their choice. These institutions must be educational institutions of the minorities in truth and reality and not mere masked phantoms. They may be institutions intended to give the children of the minorities the best general and professional education, to make them complete men and women of the country and enable them to go out into the world fully prepared and equipped. What is important and what is imperative is that there must exist some real positive index to enable the institution to be identified as an educational institution of the minorities. The Court said that in the present case apart from the half a dozen words 'as a Christian minorities' institution' occurring in one of the objects recited in the memorandum of association, there is nothing whatever, in the memorandum or the articles of association or the actions of the society to indicate that the institution was intended to be a minority educational institution.

In T.M.A. Pai Foundation case, the Court observed that the right to establish an educational institution can be regulated; but such regulatory measures must, in general, be to ensure the maintenance of proper academic standards, atmosphere and infrastructure (including qualified staff) and the prevention of mal-administration by

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108. Id at 675.
109. Ibid.
110. Ibid.
111. Ibid.
112. Id at 676.
113. Ibid.
114. Ibid.
115. Id at 677.
116. Ibid.
117. Ibid.
118. Supra n. 1 at 544.
those in charge of management. The fixing of a rigid fee structure, dictating the formation and composition of a governing body, compulsory nomination of teachers and staff for appointment or nominating students for admissions would be unacceptable restrictions.\textsuperscript{119}

There can be no doubt that in seeking affiliation or recognition, the Board or the university or the affiliating or recognizing authority can lay down conditions consistent with the requirement to ensure the excellence of education.\textsuperscript{120} It can, for instance, indicate the quality of the teachers by prescribing the minimum qualifications that they must possess, and the courses of study and curricula.\textsuperscript{121} It can, for the same reasons, also stipulate the existence of infrastructure sufficient for its growth, as a pre-requisite.\textsuperscript{122} But the essence of a private educational institution is the autonomy that the institution must have in its management and administration.\textsuperscript{123} There, necessarily, has to be a difference in the administration of private unaided institutions and the government-aided institutions.\textsuperscript{124} Whereas in the latter case, the Government will have greater say in the administration, including admissions and fixing of fees, in the case of private unaided institutions, maximum autonomy in the day-to-day administration has to be with the private unaided institutions.\textsuperscript{125} Bureaucratic or governmental interference in the administration of such an institution will undermine its independence.\textsuperscript{126} While an educational institution is not a business, in order to examine the degree of independence that can be given to a recognized educational institution, like any private entity that does not seek aid or assistance from the Government, and that exists by virtue of the funds generated by it, including its loans or borrowings, it is important to note that the essential ingredients of the management of the private institution include the recruiting students and staff, and the quantum of fee that is to be charged.\textsuperscript{127}

### Inference with Governing Bodies or Managing Committees of Minority Educational Institutions by State or University

In The Right Rev. Bishop S. K. Patro case,\textsuperscript{128} a primary school started in 1854 at Bhagalpur was later converted into a Higher Secondary School.\textsuperscript{129} The Legislature of the State of Bihar enacted the Bihar High Schools (Control and Regulation of Administration Act 13 of 1960 which by section 8 invested the State Government with power to frame rules. Section 8 (1) provides:\textsuperscript{130}

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\textsuperscript{119} Ibid.
\textsuperscript{120} Ibid.
\textsuperscript{121} Ibid.
\textsuperscript{122} Ibid.
\textsuperscript{123} Ibid.
\textsuperscript{124} Ibid.
\textsuperscript{125} Ibid.
\textsuperscript{126} Ibid.
\textsuperscript{127} Ibid.
\textsuperscript{129} Id at 864.
\textsuperscript{130} Ibid.

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“The State Government may, after previous publication and subject to the provisions of Article 29, 30 and 337 of the Constitution of India, make rules not inconsistent with this Act for carrying out the purposes of this Act.”

In 1964 rules were framed under the Act by the State Government of Bihar. Rule 41 provides:

“These rules shall not apply to the schools established and administered by the minorities whether based on religion or language.”

By order dated September 4, 1963, the President of the Board of Secondary Education approved the election of Bishop Parmar as President and Rev. Ghest as Secretary of the Church Missionary Society Higher Secondary School. This order was set aside by the Secretary to the Government, Education Department, by order dated May 22, 1967. On June 21, 1967, the Regional Deputy Director of Education, Bhagalpur, addressed a letter to the Secretary, Church Missionary Society, School, Bhagalpur, inviting his attention to the order dated May 22, 1967, and requested him to take steps to constitute a Managing Committee of the School “in accordance with that order”.

A petition was then filed in the High Court of Patna by four petitioners for a writ quashing the order, dated May 22, 1967, and for an order restraining the respondents—the State of Bihar, the Secretary to the Government of Bihar, Department of Education and the educational authority of the State— from interfering with the right of the petitioners to control, administer and manage the affairs of the School. The High Court of Patna dismissed the petition. The High Court held that the primary School at Bhagalpur was established by the Church Missionary Society of London; that the school had developed into the present Church Missionary Society Higher Secondary School; and that the School was administered in recent times by the Church Missionary Society of the Bhagalpur Diocese, and that the school not being an education institution established by a minority, protection was not afforded thereto by Article 30 of the Constitution. Against the order dismissing the petition, civil appeal has been filed in Supreme Court.

Two other petitions are filled in Supreme Court claiming relief on the footing that by the order, dated May 22, 1967, of the Government of Bihar had the fundamental right of the Christian minority to maintain an educational institution of its choice and guaranteed by Article 30 (1) is infringed. One Writ petition is filed by the Principal, Church Missionary Society Higher Secondary School, Bhagalpur, the Secretary, Bihar Christian Council, Gaya, the Secretary, Santhalia Christian Council, Bhagalpur, and the Secretary, National Christian Council of India, Nagpur, another Writ Petition has been

131 Ibid.
132 Ibid.
133 Ibid.
134 Ibid.
135 Ibid.
136 Ibid.
137 Ibid.
138 Ibid.
139 Ibid.
filed by Rev. M.P. Hembrom, Parish Priest, Church Missionary Society, Bhagalpur, two of whose children are being educated at the School.140

The only question which falls to be determined is whether the petitioners in the two writ petitions and the appellants are entitled to claim the protection of Article 30 of the Constitution on the ground that the Church Missionary Society Higher Secondary School at Bhagalpur is an educational institution of their choice established by a minority.141

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.142 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.143 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.144

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.145 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.146 Assistance was undoubtedly obtained from other bodies including the Church Missionary Society, London.147 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.148

It is unnecessary to enter upon an enquiry whether all the persons who took part in establishing the school in 1854 were “Indian citizen”.149 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.150 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 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.

The Supreme Court held that the order passed by the Educational Authorities requiring the Secretary of the Church Missionary Society Higher Secondary School to take steps to constitute a Managing Committee in accordance with the order dated May 22, 1967, is invalid.

In The Rev. Father W. Proost case, the Court dealt with the Bihar University Act. Some of its provisions affected private colleges, particularly those founded by minority communities in the State. The constitutional validity of those provisions was challenged by members of the minority communities in writ petitions filed in the High Court. Sections 48 and 49 of the Act dealt with governing body for private colleges not under corporate management and with managing council for private colleges under corporate management. In either case the educational agency of a private college was required to set up a governing body for a private college or a managing council for private colleges under one corporate management. The sections provided for the composition of the two bodies so as to include Principals and Managers of the private colleges, nominees of the University and Government, as well as elected representatives of teachers. Sub-section (2) provided that the new bodies would be bodies corporate having perpetual succession and a common seal. Sub-section (4) provided that the members would hold office for four years. Subsection (5) of each section cast a duty on the new governing body or the managing council to administer the private college or colleges in accordance with the provisions of the Act. Sub section (6) of each section laid down that the powers and functions of the new bodies, the removal of members thereof and the procedure to be followed by them would be prescribed by statutes. The petitioners challenged the provisions of those two sections as also sub-sections (1), (2), (S) and (9) of section 53 which conferred on the Syndicate of the University the power to veto the decisions of the governing council and a right of appeal to any person aggrieved by their action. Likewise, the petitioners challenged section 56, which conferred ultimate

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powers on the University and the Syndicate in disciplinary matters in respect of teachers, 
section 58, which removed membership of the Legislative Assembly as a disqualification 
for teachers and section 63(1), which provided that whenever Government was satisfied 
that a grave situation had arisen in the working of a private college, it could inter alia 
appoint the University to manage the affairs of such Private college for a temporary 
period.

The High Court on petitions filed by the petitioners declared some of the 
provisions of the Act to be invalid. On appeal this Court speaking through Hidayatullah 
C.J. held that the High Court was right in holding that sub-sections (2) and (4) of sections 
48 and 49 were ultra vires article 30(1). Sub-section (6) of each of those two sections 
was also held to be ultra vires. The High Court, it was further held, was also right in 
declaring that sub-sections (1), (2) and (9) of section 53, subsections (2) and (4) of 
section 56, were ultra vires as they fell within sections 48 and 49; that section 58 (in so 
far as it removed disqualification which. the founders might not like to agree to), and 
section 63 were ultra vires article 30(1) in respect of the minority institutions. The Court 
further held that section 48-A of the Bihar University Act which came into force from 1 
March, 1962 completely took away the autonomy of the governing body of St. Xavier's 
College established by the Jesuits of Ranchi. Section 48-A of the said Act provided inter 
alia that the Commission would recommend to the governing body names of persons in 
order of preference and in no case could the governing body appoint a person who was 
not recommended by the University Service Commission. The Court while dealing with 
section 48-A of the 'Bihar Universities Act observed that the said provision completely 
took away the autonomy of the governing body of the college and virtually vested the 
control of the college in the University Service Commission. The petitioners in that case 
were, therefore, held entitled to the protection of article 30(1) of the Constitution.

In Very Rev. Mother Provincial case157, thirty-three petitioners belong to different 
denominations of the Christian community.158 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.159 The 
impugned Kerala University Act, 1969 consists of 78 sections divided into 9 chapters.160 
The main attack in the petitions is against Chapter VIII headed 'private colleges' 
consisting of Sections 47 to 61 and some provisions of Chapter IX particularly Section 
63.161 The Act as stated already consists of 78 sections arranged under 9 Chapters.162 
Chapter VIII is headed 'Private Colleges' and Chapter IX 'Miscellaneous'.163 Chapter I 
consists the short tiled and commencement (Section 1) and definitions (Section 2).164 We 
are concerned with some definitions in Section 2 and Chapter VIII and IX.165 The other

157. Supra n. 4.
158. Id at 419.
159. Ibid.
160. Ibid.
161. Ibid.
162. Id at 421.
163. Ibid.
164. Ibid.
165. Ibid.

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chapters lay down the constitution of University and contain matters relating thereto. 166 They are not in dispute. 167 "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. 'Principal' means the head of a college. By 'teacher' as used in the Act is meant a Principal, Professor, Assistant-Professor, Reader, Lecturer, Instructor or such other person imparting instruction or supervising research and whose appointment has been approved by the University in any of the colleges or recognised institutions. 'Recognised teacher' means a person employed as a teacher in an affiliated institution and whose appointment has been approved by the University. There is such overlap between 'college', 'teacher' and 'recognised teacher' but there is no antinomical confusion which might have otherwise resulted. These definitions by themselves are not questionable but in the context of the provisions of Chapters VIII and IX, about to be referred to, the insistence on the recognition by the University is claimed to be interference with the freedom of management.

Chapter VIII embraces Section 47 to 61. It begins with the definition of 'corporate management' which means a person or body of persons who or which manages more than one private college. Section 48 and 49 deal respectively with (a) the governing body for private college not under corporate management and (b) with managing council for private colleges under corporate management. In either case the education agency (by which term we denote the educational agency of a private college as also corporate management, that is to say, the person or body of persons who or which manages more than one private college) is required to set up a governing body for private college or a managing council for private colleges under one corporate management. The two sections embody the same principles and differ only because in one case there is one institution and in the other more than one. Both consist of 7 sub-sections. Under these provisions the educational agency or the corporate management has to establish a governing body or a managing council respectively. The sections give the compositions of the two bodies. The governing body set up by the educational agency is to consist of 11 members and the managing council of 21 members. The 11 members of the governing body are (i) the principal of the private college (ii) the manager of the private college (iii) a person nominated by the University in accordance with the provisions in that behalf contained in the Statutes (iv) a person nominated by the Government (v) a person elected in accordance with such procedure as may be prescribed by the Statutes of the University from among themselves by the permanent teachers of the private college and (vi-xi) not more than six persons nominated by the educational agency. The composition of the managing council consists of a principal in rotation from the private colleges, manager of the private colleges, the nominees of the University and the Government as above described, two elected representatives of the teachers and not more than 15 members nominated by the educational agency. The Act ought to have used the expression

166. Ibid.
167. Ibid.

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'corporate management' instead of 'educational agency' but the meaning is clear. Sub-section in either section make these bodies into bodies corporate having perpetual succession and a common seal. The manager of the college or colleges, as the case may be, is the Chairperson in either case [Sub-section (3)]. Sub-section (4) then says that the members shall hold office for a period of 4 years from the date of the constitution. Sub-section (5) then says as follows:

"It shall be the duty of the Governing Body (Managing Council) to administer the private college (all the private colleges under the corporate management) in accordance with the provisions of this Act and the Statutes, Ordinances, Regulations, Bye-Laws and Orders made thereunder."

Sub-section (6) then lays down that the powers and functions of the governing body (the managing council), the removal of members thereof and the procedure to be followed by it, including the delegation of its powers, shall be prescribed by the Statutes. Sub-section (7) lays down that decisions in either of the two bodies shall be taken at meetings on the basis of simple majority of the members present and voting. These sections were partly declared ultra vires of Article 30 (1) by the High Court as they took away from the founders the right to administer their own institution.

The Supreme Court held that we agree with the High Court that sub-sections (2) and (4) of Sections 48 and 49 are ultra vires Article 30 (1). The Court also held that sub-section (6) of these two sections is also ultra vires. They offend more than the other two of which they are a part and parcel.

In D.A.V. College case, the petitioners challenged the statutes made in exercise of the powers conferred under sub-section (1) of 19 of the Guru Nanak University, Amritsar Act which according to the petitioners interferes with the management of their institutions, as such violates Article 30 (1) of the Constitution. The relevant impugned statutes are contained in Chapter V relating to admission to colleges. These are Sections 2 (1) (a), 17 and 18 read with clause 1 (2) and (3) which are as follows:

1. (1) * * * * * 2. (2) Colleges shall be of two types namely University Colleges and affiliated Colleges.

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168. Id at 423.
169. Ibid.
170. Ibid.
171. Id at 425.
172. Ibid.
173. Ibid.
175. Id at 281.
176. Ibid.
177. Ibid.
1. (3) The educational institutions and Colleges situated in the Districts of Amritsar, Jullundur, Gurdaspur and Kapurthala are deemed to be associated with and admitted to the privileges of the University with effect from 30th day of June 1970. These institutions shall observe the conditions for admission to the privileges of the University failing which the rights conferred may be withdrawn.

2. (1) A college applying for admission to the privileges of the University shall send a letter of application to the Registrar and shall satisfy the Senate:

   (a) that the College shall have a regularly constituted governing body consisting of not more than 20 persons approved by the Senate and including, among others, two representatives of the University and the Principal of the college ex-officio;

Provided that the said conditions shall not apply in the case of colleges maintained by Government which shall however, have an Advisory Committee consisting of among others the principal of the college (ex-officio) and two representatives of the University.

The Supreme Court held that in our view there is no possible justification for the provisions contained in Clauses 2 (1) (a) of Chapter V of the statutes which decidedly interfere with the rights of management of the petitioners colleges. These provisions cannot therefore be made as conditions of affiliation, the non-compliance of which involve disaffiliation and consequently they will have to be struck down as offending Article 30 (1).

In St. Xaviers College Society case, the provisions contained in section 33A (1) (a) of the Gujarat University Act, 1949 state that every college shall be under the management of a governing body which shall include amongst its members, a representative of the university nominated by the Vice-Chancellor and representatives of teachers, non teaching staff and students of the college. These provisions are challenged on the ground that this amounts to invasion of the fundamental right of administration. It is said that the governing body of the college is a part of its administration and therefore that administration should not be touched. The right to administer is the right to conduct and manage the affairs of the institution. This right is exercised through a body of persons in whom the founders of the institution have faith and confidence and who have full autonomy in that sphere. The right, to administer is subject to permissible regulatory measures. Permissible regulatory measures are those which do not restrict the right of administration but facilitate it and ensure better and more effective exercise of the right for the benefit of the institution and through the instrumentality of the management of the educational institutions and without displacing the management. If the administration has to be improved it should be done through the agency or instrumentality of the existing management and not by displacing, it. The Court held that the provisions contained in section 33A (1) (a) of the Act has the effect of displacing the management and entrusting it to a different agency. The autonomy in administration is lost. New elements in the shape of representatives of different type are brought in. The calm waters of an institution

178. Id at 283
179. Ibid.
180. Supra n. 13.
will not only be disturbed but also mixed. These provisions in section 33A (1) (a) cannot therefore apply to minority institutions.

In The Gandhi Faiz-e-am College case\textsuperscript{181}, the appellant is a registered society formed by the members of the Muslim community at Shahjahanpur.\textsuperscript{182} Indubitably, the community ranks as a minority in the country and the educational institution run by it has been found to be what may loosely be called a ‘minority institution’, within the constitutional compass of Article 30.\textsuperscript{183} The bone of contention before the Supreme Court is Statute 14-A of the University of Agra as it is an invasion of the fundamental right guaranteed under Article 30 of the Constitution of India.\textsuperscript{184} Statute 14-A may, at the outset, be reproduced:\textsuperscript{185}

\begin{quote}
"14-A. Each college, already affiliated or when affiliated, which is not maintained exclusively by Government must be under the Management of a regular constituted Governing body (which term includes Managing Committee) on which the staff of the college shall be represented by the Principal of the college and at least one representative of the teachers of the college to be appointed by rotation in order of seniority determined by length of service in the college, who shall hold office for one academic year."
\end{quote}

The Supreme Court observed that the two requirements of the University asks for are that the managing body (whatever its name) must take in (a) the Principal of the College; (b) its seniormost teacher.\textsuperscript{186} Is this desideratum dismissible as biting into the autonomy of management or tenable as ensuring the excellence of the institution without injuring the essence dilemma, we are inclined to the view that this case falls on the valid side of the delicate line.\textsuperscript{187} Regulation which restricts is bad; but regulation which facilitates is good.\textsuperscript{188} Where does this fine distinction lie?\textsuperscript{189} No rigid formula is possible but a flexible test is feasible.\textsuperscript{190} Where the object and effect is to improve the tone and temper of the administration without forcing on it a stranger, however superb his virtues be, where the directive is not to restructure the governing body but to better its performance approval or outside nominee is made compulsory to validate the Management Board but inclusion of an internal key functionary appointed by the autonomous management alone is asked for, the provision is salutary and saved, being not a diktat eroding the freedom of the freedom.\textsuperscript{191}

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\textsuperscript{182} Id at 286.
\textsuperscript{183} Ibid.
\textsuperscript{184} Ibid.
\textsuperscript{185} Ibid.
\textsuperscript{186} Ibid.
\textsuperscript{187} Ibid.
\textsuperscript{188} Ibid.
\textsuperscript{189} Ibid.
\textsuperscript{190} Ibid.
\textsuperscript{191} Ibid.
The Court further observed that let us again feel our way through the controversy. First, the principal. This strategic appointee must be chosen by the management with sedulous care and his choice should not be ‘externalised’ by regulations. All right. But for the excellent reason that the principal is the vital, vibrant and luscent presence within the educational campus, no administration can bring out its best in the service of the institution sans the principal. To alienate him is to self-inflict wounds; to associate him is to integrate the academic head into the administrative body for the obvious betterment of managerial insight and proficiency. He is no stranger to the college but the commander appointed by the management itself. A regulation which requires his inclusion in the governing council imposes no external element nor exposes the college to the espionage of one with dual loyalties. His membership on the Board is a blessing in many ways and not a curse in any conceivable way. After all, the functions of the Managing Committee, as set down in bye-law 15, are:

15. The Managing Committee shall-

(a) Dispose of applications for scholarships and concession, etc., received by the Secretary or any other person.

(b) Check and pass account kept by the treasurer, Secretary or Principal.

(c) Have powers to appoint, suspend, remove or otherwise punish or dismiss any servant of the school or college or give them promotion or make reductions in their salaries and grant them leave in accordance with the Agra University rules as the case may be:

Provided that in case of dismissal or removal or fine exceeding one month’s pay or suspension for a period exceeding one month, an appeal shall lie to the Governing Body whose decision shall be final. The period for filing the appeal shall be 15 days from the receipt of the order against which the appeal is to be preferred.

(d) See that the property of the institution, whether movable or immovable, is properly managed and kept.

(e) Generally supervise the work of all the Office-bearers.

(f) To pass the annual budget, annual report and dispose of the audit note.

192. Id at 292.
193. Ibid.
194. Ibid.
195. Ibid.
196. Id at 293.
197. Ibid.
198. Ibid.
199. Ibid.
200. Ibid.
201. Ibid.
(g) To sanction expenditure up to Rs. 25,000 in the course of one year, irrespective of the budget provisions.

(h) To acquire by purchase, mortgage or otherwise immovable or movable property for the institution and to sell or otherwise dispose of movable property.

The Court further observed that an activist principal is an asset in discharging these duties which are inextricably interlaced with academic functions.202 The principal is an invaluable insider- the management’s own choice- not an outsider answerable to the Vice-Chancellor.203 He brings into the work of the Managing Committee that intimate acquaintance with educational operations and that necessary expression of student-teacher aspirations and complaints which are so essential for the minority institution to achieve a happy marriage between individuality and excellence.204 And the role of the seniormost teacher, less striking maybe and more unobtrusive, is a useful input into managerial skills, representing as he does the teachers and being only a seasoned minion chosen by the management itself.205 After all, two creatures of the society on a 16-member Managing Committee can bring light, not tilt scales.206 Moreover, the Managing Committee itself is subject to the hierarchical control of the governing body and the General Council.207

The Supreme Court held that the determination of the composition of the body to administer the educational institution established by a religious minority must be left to the minority as that is the core of the right to administer.208 Regulations to prevent maladministration by that body are permissible.209 As the right to determine the composition of the body which will administer the educational institution is the very essence of the right to administer guaranteed to the religious or linguistic minority under Article 30 (1), any interference in that area by an outside authority cannot be anything but an abridgment of that right.210 The religious or linguistic minority must be given the freedom to constitute the agency through which it purposes to administer the educational institution established by it as that is what Article 30 (1) guarantees.211 The Principal is that the minority community has the exclusive right to vest the administration of the college in a body of its own choice, and any compulsion from an outside authority to include any other person in that body is an abridgment of its fundamental right to administer the educational institution.

202 Ibid.
203 Ibid.
204 Ibid.
205 Ibid.
206 Ibid.
207 Ibid.
208 Id 301.
209 Ibid.
210 Ibid.
211 Ibid.
All Bihar Christian Schools Association case\(^{212}\), petitioners under Article 32 of the Constitution of India challenged the constitutional validity of the Bihar Non-Government Secondary Schools (Taking Over of Management and Control) Act, 1981 (Bihar Act 33 of 1982) on the ground that the provisions of the Act are violative of Article 30 of the Constitution. All Bihar Christian Schools' Association, petitioner 1, is a religious minority society registered under the Societies Registration Act. The petitioner association has set up a number of secondary schools in the State of Bihar which are managed and administered by the Christian dioceses/societies and these institutions are recognised by the Education Department of the State of Bihar. The petitioners allege that the provisions of the Bihar Non-Government Secondary Schools (Taking Over of Management and Control) Act, 1981 (hereinafter referred to as the Act) make serious inroad on the petitioners' right to establish and administer educational institutions of their choice. They have challenged constitutional validity of the provisions of the Act and particularly the provisions contained in Section 3 and Section 18 of the Act which according to them interfere with their fundamental right guaranteed by Article 30(1) of the Constitution.

Section 3 of the impugned Act provides for compulsory acquisition or taking over of the administration or assets of non-government secondary schools. Section 3(1) lays down that all government secondary schools other than minority secondary schools shall be deemed to have been taken over by the State Government with effect from October 2, 1980. There were five categories of secondary schools functioning in the State of Bihar, and out of them, the management and control of only non-government secondary schools have been taken over by the State. The minority secondary schools, proprietary secondary schools, centrally sponsored schools and autonomous secondary schools have not been taken over by Section 3(1) of the Act. It does not affect a minority secondary school at all. As regards Section 3(2) it confers power on the State Government to take over the management and control of recognised minority schools, proprietary or autonomous secondary schools by issuing a notification in the official gazette provided the managing committee, trust, association or the corporate body which may have been maintaining such schools makes an unconditional offer to the State Government to make over the school with all assets and properties. If the State Government accepts the offer and considers it necessary to take over the management of such a school it may lay down terms and conditions for the take over of the management and control of the school. Section 3(2) does not confer any power on the State to compulsorily acquire or take over the management of a minority school; instead the management is free to maintain and carry on the administration of its school and the State has no power to interfere with its administration.

The State is entitled to take over the school only if an unconditional offer is made by the management of the school. There is, however, no compulsion on the management of a minority school to make over the school to the government. If the management of a minority school finds it difficult to maintain its school, instead of closing down, it may, in the larger interest of the educational need of the area, hand over the control and

\(^{212}\) All Bihar Christian Schools Association v State of Bihar, 1988 (1) SCC 2006 (K. N. Singh and Ranganath Misra, JJ).
management of the institution to the State. Section 3(2) does not interfere with minority's rights to maintain or administer its school, it merely enables the State to take over the control and management of a minority institution only when an unconditional offer is made to it by the management of the minority institution. There is, therefore, no question of Section 3(2) infringing the rights of minority institutions. Section 3(3) confers power on the State Government to take over the management and control of the secondary schools which may not have been recognised on the date of the enforcement of the Ordinance or the Act. It provides that the State Government may take over the management and control of such schools on terms and conditions which the government may deem proper. These schools include those which may have received permission for establishment of the school from the Bihar Secondary Education Board of schools which may have applied for permission of establishment immediately before the date of the promulgation of the Ordinance provided the State Government is satisfied with regard to the utility of such schools. Section 3(3) relates to the taking over of management and control of unrecognised schools other than minority schools. These provisions do not affect the fundamental right of minority institutions. The Court held that in this view Section 3 which provides for taking over of management and control of non-government secondary schools does not in any manner encroach upon the fundamental right of a minority institution.

The question as to whether the provisions of Section 18 violate Article 30(1). Section 18(1) provides that a school declared as a minority institution under the provisions of the Bihar Secondary Education Act, 1976 or under the Bihar Secondary Education Board (Second Amendment) Ordinance, 1980 shall be deemed to have been recognised under the provisions of the Act. This provision ensures the continuity of recognition of a minority school. Sub-section (2) provides for future recognition of a minority school which may have been established by a minority community on the basis of religion or language for the purpose of meeting the educational requirement and for the protection of their culture provided it fulfils the prescribed conditions. Section 18(3) lays down conditions under which a recognised minority secondary school shall be managed and controlled. These terms and conditions are specified in clauses (a) to (k). This section requires a recognised minority school to comply with the terms and conditions set out therein and in accordance with rules framed by the managing committee regulating employment of teachers and disciplinary matters. It was urged that clauses (a) to (k) of Section 18(3) make serious inroads into the right of a minority institution to carry on its administration according to its own choice. The terms and conditions prescribed therein regulate and control the administration of a minority school, which are violative of Article 30(1) of the Constitution. We would examine each of the clauses (a) to (k) in detail to determine the crucial question, whether any of these clauses violate petitioners' fundamental right guaranteed to them under Article 30(1) of the Constitution.

Section 18(3) provides that recognised minority secondary schools shall be managed and controlled in accordance with the provisions contained in clauses (a) to (k). Clause (a) requires a minority secondary school to have a managing committee registered under the Societies Registration Act, 1862 and to frame written bye-laws regulating constitution and functions of the managing committee. The bye-laws regarding the
constitution of the managing committee are required to be framed by the minority institution itself. The State or any other authority has no power or authority to impose any terms or conditions for the constitution of the managing committee. If a society running a minority institution frames written bye-laws providing for the constitution of managing committee entrusted with the function of running and administering its school it would ensure efficient administration. This clause is in the interest of the minority institution itself, as no outsider is imposed as a member of the managing committee, there is no interference with the minorities' right to administer its school. Clause (b) provides for two things, firstly it requires the managing committee of a minority school to appoint teachers possessing requisite qualifications as prescribed by the State Government for appointment of teachers of other nationalised schools, secondly, the managing committee is required to make appointment of a teacher with the concurrence of the School Service Board constituted under Section 10 of the Act. Proviso to clause (b) lays down that the School Service Board while considering the question of granting approval to the appointment of a teacher shall ascertain if the appointment is in accordance with the rules laying down qualifications, and manner of making appointment framed by the State Government. The proviso makes it clear that the School Service Board has no further power to interfere with the right of managing committee of a minority school in the appointment of a teacher. Under clause (b) the managing committee is required to make appointment of a teacher with the concurrence of the School Service Board. The expression 'concurrence' means approval. Such approval need not be prior approval, as the clause does not provide for any prior approval. Object and purpose underlying clause (b) is to ensure that the teachers appointed in a minority school should possess requisite qualifications and they are appointed in accordance with the procedure prescribed and the appointments are made for the sanctioned strength.

The selection and appointment of teachers is left to the management of the minority school; there is no interference with the managerial rights of the institution. In granting approval the School Service Board has limited power. The appointment of qualified teachers in a minority school is a sine qua non for achieving educational standard and better administration of the institution. Clause (b) is regulatory in nature to ensure educational excellence in the minority school. Clause (c) requires a minority school to frame rules regulating conditions of service of its teachers; such rules should be consistent with principles of natural justice and the prevailing law. The clause further requires the minority institution to submit a copy of such rules to the State Government. This clause in substance lays down that the management of a recognised minority school shall frame rules, regulating conditions of service of teachers and such rules shall conform to principles of natural justice and prevailing law. These provisions are directed to avoid uncertainty and arbitrary exercise of power. If rules are framed by the management those rules would bring uniformity in administration and there would be security of employment to teachers. In a civilised society the observance of principles of natural justice is an accepted rule; these principles contain basic rules of fair play and justice and it is too late in the day to contend that while administering a minority school the management should have right to act in contravention of the principles of natural justice. Clause (c) is regulatory in nature which requires the managing committee to frame rules of employment consistent with principles of natural justice and the prevailing law. No outside agency is required to frame rules of employment of teachers instead the
management itself is empowered to frame rules. The Court held that there is no element of interference with the management's right to administer a minority school.

Students' Admission Policy for Minority Educational Institutions

The Court held that when a minority educational institution received aid, outsiders would have to be admitted\(^{213}\). In the State of Kerala v. Very Rev. Mother Provincial\(^{214}\), it was held that it is permissible that a minority institution while admitting students from its community may also admit students from majority community. Admission of such non-minority students would bring income and the institution need not be turned away to enjoy the protection.\(^{215}\)

In the St. Stephen's College case\(^{216}\), St. Stephen's College was founded on February 1, 1881.\(^{217}\) It is the oldest college in Delhi.\(^{218}\) It was first affiliated to Calcutta University and then to Punjab University and thereafter to Delhi University.\(^{219}\) Upon affiliation to the Delhi University it became one of its three original constituent colleges.\(^{220}\) The College offers three years degree course in B.A. /B.Sc. (Hons), B.A. (Pass) and B.Sc General as well as two years post-graduate degree course in M.A. and M.Sc.\(^{221}\) For the academic year 1980-81, the college published “Admissions Prospectus” on May 25, 1980, inter alia, providing that applications for admission for the first year course must be received in the College office on or before June 20, 1980.\(^{222}\) In the same prospectus, it was also provided that there would be interview prior to final selection of students for admission to the College.\(^{223}\) It appears that on May 22, 1980 the Vice-Chancellor of the Delhi University in exercise of his emergency powers under Statute 11-G (4) of the Statutes of the University, constituted an Advisory Committee to consider and recommend the dates for admission/registration to various undergraduate/post-graduate courses in the Faculties of Arts and Social Sciences/Mathematics and Science for the academic session 1980-81 and for other related matters concerning admissions.\(^{224}\) The constitution of the Advisory Committee was approved by the Academic Council also authorised the Vice-Chancellor to accept the recommendations of the Advisory Committee for implementation.\(^{225}\) The Advisory Committee, inter alia, laid down as follows:\(^{226}\)

\(^{213}\) Supra n. 26.
\(^{214}\) Supra n. 4.
\(^{215}\) Ibid.
\(^{216}\) Supra n. 32.
\(^{217}\) Id at 574.
\(^{218}\) Ibid.
\(^{219}\) Ibid.
\(^{220}\) Ibid.
\(^{221}\) Ibid.
\(^{222}\) Ibid.
\(^{223}\) Ibid.
\(^{224}\) Id at 575.
\(^{225}\) Ibid.
\(^{226}\) Ibid.
“(i) Admission to B.A. (Pass)/B.A. Vocational Studies Courses be based on the merit of the percentage of marks secured by students in qualifying examination.

(ii) The admission to B.Com (Pass) B.A. (Hons.) and B.Com. (Hons.) Courses be also on the basis of marks. However, the College may give weightage to marks obtained in one or more individual subjects in addition to the aggregate marks of the qualifying examination. But whenever weightage is proposed to be given to individual subject(s) by the College, it should be notified in advance to the students through the College Prospectus/Notice Board so that applicants seeking admission know in advance the basis of admission.

(iii) That last date for receipt of applications to all the undergraduate courses will be June 30, 1980 and this would be uniformly adhered to by all the Colleges.”

These recommendations were accepted by the Central Admission Committee and also by the Vice-Chancellor.227

On June 5, 1980 the University issued circular to all affiliated colleges prescribing the last date for the receipt of applications as June 30, 1980.228 The circular also provided phased programme of admission as follows:229

“A. First phase of admission

(i) Notification of first admission list by the colleges

For students securing 45 per cent of marks or Above

Wednesday 2nd July, 1980

Payment of fees (up to) Friday July 4, 1980 up to 4 p.m.

General note:
The number of names in all admission lists shall correspond to the number of seats available in the courses concerned. No student whose name appears in an admission list (or who qualifies on the basis of the percentage indicated in the list) shall be denied admission provided he/she pays the fees by the date and time stipulated.

(ii) Notification of Second Admission List by the Colleges

For students securing below 45 per cent but above 40 per cent marks Tuesday July 8, 1980, 12 noon

Thursday July 10, 1980, 4 p.m.”

On June 9, 1980, the University issued another circular to Principals of all colleges intimating inter alia, that admission to B.A. (Pass)/B.A. Vocational study courses be based on the merit of the percentage of marks secured by students in the qualifying

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227. Ibid.
228. Ibid.
229. Ibid.
The admission to B.Com (Pass), B.A. (Hons) and B.Com (Hons) courses shall be on the basis of marks. However, the college may give weightage to marks obtained in one or more individual subjects in addition to the aggregate marks of the qualifying examination. But whenever, weightage is proposed to be given to individual subject(s) by the college, it should be notified in advance to the students through the College Prospectus/Notice Board so that applicants seeking admission know in advance the basis of admission. This circular also provides certain guidelines for admission to sportsmen and persons with other distinctions.

The Delhi University Students Union had complained to the University authorities that the College was violating the University Statutes and Ordinances by fixing its own time schedule for receipt of applications as well as by stipulating interview before admission. On the basis of this complaint, the Registrar of the University wrote a letter dated June 9, 1980 requesting the Principal of the College to conform to the University schedule communicated to the College by the circular dated June 5, 1980. This was followed by some more correspondence between the College management and the Vice-Chancellor. The College management pointed out that at that late stage, it would not be possible to make any changes in their admission programme. There then the Vice-Chancellor addressed a letter dated June 7/9, 1980 to the Chairman of the Governing Body of the College stating that as per the decision of the Central Admission Committee, the last date for receipt of admission forms for undergraduate courses should be June 30, 1980 and the stipulation of the College as June 20, 1980 for that purpose would be very embarrassing to the University authorities. The Vice-Chancellor again asked the College management to conform to the dates prescribed by the University.

The Principal of the College was not available at that time and in his absence the Vice-Chairman of the College replied by letter dated June 12, 1980 to the Vice-Chancellor stating that “the interview of prospective students by a competent body is an integral part of admission procedure at St. Stephen’s College and this policy has been followed and highly valued throughout the history of the college...” He however, assured the Vice-Chancellor that no admission list would be put up before July 2, 1980, the date prescribed by the University for publishing the first admission list.

When the matter thus stood, a student by the name of Rahul Kapoor seeking admission to the College for undergraduate course filed a Writ Petition in the High Court...
Course of Delhi under Article 226 of the Constitution, challenging the admission schedule of St. Stephen's College and the interview test prescribed for candidates. The Court passed an order directing the College, to receive the applications for admission till June 16, 1980 and also prohibiting the College from announcing the admission till June 30, 1980 and also prohibiting the College from announcing the admission list, for which the prescribed date was July 2, 1980 till the disposal of the writ petition.

That in pursuance of these events, St. Stephen's College moved this Court by means of a writ petition under Article 32 of the Constitution. The Court while issuing rule nisi in the said writ petition has stayed the operation of the circulars. In view of the stay granted by this Court, the College continued to follow its own admission policy, modality and schedule in the succeeding years.

The Delhi University Students' Union is an intervener in the writ petition filed by St. Stephen's College. That subsequently for the admission year 1984-85, the Delhi University Students Union and Dr Mahesh C. Jain filed writ petition under Article 32 of the Constitution seeking a direction to St. Stephen's College to follow all University policies, rules, regulations, ordinances regarding admissions etc. and further for a direction restraining the College from giving preference in favour of Christian students in the matter of admission to the College.

Whether St. Stephen's College as minority institution was bound by the University circulars dated June 5, 1980 and June 9, 1980?

The first circular of the University dated June 5, 1980 has prescribed the last date for receipt of applications for admission. By the second circular dated June 9, 1980 all the Colleges of Delhi University were directed to admit students solely on the basis of merit determined by the percentage of marks secured by the students in the qualifying examinations. The first circular left by itself could not have been complained of, but it is so closely connected with the directive in the second circular. If the last date fixed in the first circular for receipt of applications was followed, then the College could not have selected applicants by following its own admission programme. It is the case of the College that it has been following its own admission programme for more than 100 years and over the years it has built up a corporate image in a number of distinctive activities. The admission programme of the College has become a crucial instrument to promote the excellence of the institution and it forms part of the administration which the
College is entitled to have as a minority institution under Article 30 (1) of the Constitution. The University cannot direct the College to dispense with its admission programme in the absence of proof of maladministration of the College. The circulars have been challenged also on the ground that they are not regulative in nature. It is said that if students are admitted purely on the basis of marks obtained by them in the qualifying examination it would not be possible for any Christian student to get admission. It has been found that unless concession is afforded, the Christian students cannot be brought within the zone of consideration. They generally lack merit when compared with the other applicants.

In admission programme of St. Stephen's College, the applications are sorted out for each course of study under the direct supervision of the Tutor of admission, and are then sent to two teachers of the department concerned for scrutiny. These applications are then further scrutinised in relation to the combination of subjects taken by the students at his last examination and the order of preference indicated by him regarding the course in which admission is sought by him. At this stage in accordance with the cut-off percentage given by the department concerned, out of whom one is the Head of the Department and the other is a nominee of the department, prepare a list of potential suitable candidates which is normally on the basis of 1:4 and 1:5 for Arts and Science students respectively. The lists of names of the applicants called for interview for each subject is put up on the notice board separately with the date and time at which they would be interviewed. Those living outside the Union territory of Delhi are informed by post. The applicant selected for the interview has to appear before a Selection Committee normally consisting of the Principal, the Tutor for admissions, two members of the department concerned, and the President of Games (a senior member of the faculty). Each member of the Committee has a complete list of the candidates invited for interview with their aggregate percentage of marks, marks obtained in individual subjects, interests and proficiency in sports and extracurricular activities etc. Questions are asked to test the candidate's knowledge of the subject together with his general awareness of the current problems. The interview is conducted orally but if and when necessary, problems are given to be solved in writing. Each application form has also space provided where the applicant is required to write about his interest, hobbies, suitability of a candidate for a particular course. Each member of the Committee...
grades the performance of the candidates and at the end of the interview for each course of study, the opinion of all the members is taken into account and by consensus the final list of candidates selected for admission is put up.271

To Christian students, relaxation up to 10 per cent is given.272 The Scheduled Castes/Scheduled Tribes candidates who are having a minimum of 50 per cent of marks are called for interview for selection to Honours courses.273 For B.A. pass course, a further concession to them is granted and the qualifying marks are reduced even below 50 per cent and in exceptional cases up to 15 per cent or more.274 However, a Christian student, who is below the cut-off percentage by more than 10 per cent, is never called for interview.275

The Court held that we see neither any arbitrariness nor any vice or lack of scientific basis in the interview or in the selection.276 The interview confers no wide discretion to the Selection Committee to pick and choose any candidate of their choice.277 They have to select the best among those who are called for interview and the discretion is narrowly limited to select one out of every 4 or 5.278 In these premises, we would defer the choice and discretion of the Selection Committee so long as they act properly and not arbitrarily and act within the recognised principles.279

The Court further held that the College seems to have compelling reasons to follow its own admission programme.280 The College receives applications from students all over the country.281 The applications ranging from 12,000 to 20,000 are received every year as against a limited number of 400 seats available for admission.282 The applicants come from different institutions with diverse standards.283 The merit judging by percentage of marks secured by applicants in different qualifying examinations with different standards may not lead to proper and fair selection.284 It may not also have any relevance to maintaining the standards of excellence of education.285 The College Admission Programme based on the test of promise and accomplishment of candidates seems to be better than the blind method of selection based on the marks secured in the qualifying examinations.286 The Court concluded that St. Stephen’s College is not bound by the impugned circulars of the University.287

271. Ibid.
272. Ibid.
273. Ibid.
274. Ibid.
275. Ibid.
276. Id at 602.
277. Ibid.
278. Ibid.
279. Ibid.
280. Id at 602.
281. Ibid.
282. Ibid.
283. Ibid.
284. Ibid.
285. Ibid.
286. Ibid.
287. Id at 603.
The Court also held that aided minority educational institutions were entitled to preferably admit their community candidates so as to maintain the minority character of the institution, and that the state may regulate the intake in this category with due regard to the area that the institution was intended to serve, but that this intake should not be more than 50% in any case.

The Supreme Court in Unni Krishnan, J.P. v. State of A.P.,288 laid down a scheme of for the self-financed institutions. In terms of the said scheme the self-financed institutions were entitled to admit 50% of students of their choice, whereas rests of the seats were to be filled in by the State. For admission of students, a common entrance was to be held. The State and various statutory authorities including the Medical Council of India, University Grants Commission and All India Council for Technical Education made and/or amended regulations so as to bring on a par with the said scheme.

In T.M.A. Pai Foundation case,289 the court held that as Article 29 and Article 30 apply not only to institutions of higher education but also to schools, a ceiling of 50% would not be proper.290 It will be more appropriate that, depending upon the level of the institution, whether it be a primary or secondary or high school or a college, professional or otherwise, and on the population and educational needs of the area in which the institution is to be located, the state properly balances the interests of all by providing for such a percentage of students of the minority community to be admitted, so as to adequately serve the interest of the community for which the institution was established.291

The aided linguistic minority educational institution is given the right to admit students belonging to the linguistic minority to a reasonable extent only to ensure that its minority character is preserved and that the objective of establishing the institution is not defeated.292 If so, such an institution is under an obligation to admit the bulk of the students fitting into the description of the minority community.293 Therefore, the students of that group residing in the state in which the institution is located have to be necessarily admitted in a large measure because they constitute the linguistic minority group as far as that state is concerned.294 In other words, the predominance of linguistic students hailing from the state in which the minority educational institution is established should be present.295 The management bodies of such institutions cannot resort to the device of admitting the linguistic students of the adjoining state in which they are in a majority, under the facade of the protection given under Article 30(1).296 If not, the very objective

289. Supra n. 1 at 584 (para 151).
290. Id at 561 (para 104).
291. Ibid.
292. Id at 585 (para 153).
293. Ibid.
294. Ibid.
295. Ibid.
296. Ibid.
of conferring the preferential right of admission by harmoniously constructing Articles 30(1) and 29(2), which we have done above, may be distorted.²⁹⁷

Admission of students to unaided minority educational institutions, viz., schools and undergraduate colleges where the scope for merit-based selection is practically nil, cannot be regulated by the concerned State or University, except for providing the qualifications and minimum conditions of eligibility in the interest of academic standards.²⁹⁸ The right to admit students being an essential facet of the right to administer educational institutions of their choice, as contemplated under Article 30 of the Constitution, the state government or the university may not be entitled to interfere with that right, so long as the admission to the unaided educational institutions is on a transparent basis and the merit is adequately taken care of.²⁹⁹ The right to administer, not being absolute, there could be regulatory measures for ensuring educational standards and maintaining excellence thereof, and it is more so in the matter of admissions to professional institutions.³⁰⁰ A minority institution does not cease to be so, the moment grant-in-aid is received by the institution.³⁰¹ An aided minority educational institution, therefore, would be entitled to have the right of admission of students belonging to the minority group and at the same time, would be required to admit a reasonable extent of non-minority students, so that the rights under Article 30(1) are not substantially impaired and further the citizens' rights under Article 29(2) are not infringed.³⁰² What would be a reasonable extent would vary from the types of institution, the courses of education for which admission is being sought and other factors like educational needs.³⁰³ The concerned State Government has to notify the percentage of the non-minority students to be admitted in the light of the above observations.³⁰⁴ Observance of inter se merit amongst the applicants belonging to the minority group could be ensured.³⁰⁵ In the case of aided professional institutions, it can also be stipulated that passing of the common entrance test held by the state agency is necessary to seek admission.³⁰⁶ As regards non-minority students who are eligible to seek admission for the remaining seats, admission should normally be on the basis of the common entrance test held by the state agency followed by counselling wherever it exists.³⁰⁷

A minority institution may have its own procedure and method of admission as well as selection of students, but such a procedure must be fair and transparent, and the selection of students in professional and higher education colleges should be on the basis of merit.³⁰⁸ The procedure adopted or selection made should not be tantamount to mal-

²⁹⁷ Ibid.
²⁹⁸ Id at 588.
²⁹⁹ Ibid.
³⁰⁰ Ibid.
³⁰¹ Ibid.
³⁰² Ibid.
³⁰³ Ibid.
³⁰⁴ Ibid.
³⁰⁵ Ibid.
³⁰⁶ Ibid.
³⁰⁷ Ibid.
³⁰⁸ Ibid.
administration.\textsuperscript{309} Even an unaided minority institution ought not to ignore the merit of the students for admission, while exercising its right to admit students to the colleges aforesaid, as in that event, the institution will fail to achieve excellence.\textsuperscript{310}

While giving aid to professional institutions, it would be permissible for the authority giving aid to prescribe by-rules or regulations, the conditions on the basis of which admission will be granted to different aided colleges by virtue of merit, coupled with the reservation policy of the state qua non-minority students.\textsuperscript{311} The merit may be determined either through a common entrance test conducted by the concerned University or the Government followed by counselling, or on the basis of an entrance test conducted by individual institutions the method to be followed is for the university or the government to decide.\textsuperscript{312} The authority may also devise other means to ensure that admission is granted to an aided professional institution on the basis of merit.\textsuperscript{313} In the case of such institutions, it will be permissible for the government or the university to provide that consideration should be shown to the weaker sections of the society.\textsuperscript{314} For admission into any professional institution, merit must play an important role.\textsuperscript{315} While it may not be normally possible to judge the merit of the applicant who seeks admission into a school, while seeking admission to a professional institution and to become a competent professional, it is necessary that meritorious candidates are not unfairly treated or put at a disadvantage by preferences shown to less meritorious but more influential applicants.\textsuperscript{316} Excellence in professional education would require that greater emphasis be laid on the merit of a student seeking admission.\textsuperscript{317} Appropriate regulations for this purpose may be made keeping in view the other observations made in this judgment in the context of admissions to unaided institutions.\textsuperscript{318} Merit is usually determined, for admission to professional and higher education colleges, by either the marks that the student obtains at the qualifying examination or school leaving certificate stage followed by the interview, or by a common entrance test conducted by the institution, or in the case of professional colleges, by government agencies.\textsuperscript{319}

Admission of students to unaided minority educational institutions, viz., Schools where scope for merit based selection is practically nil, cannot be regulated by the State or the University (except for providing the qualifications and minimum conditions of eligibility in the interest of academic standards).\textsuperscript{320} Right to admit students being an essential facet of right to administer educational institutions of their choice, as contemplated under Article 30 of the Constitution, the State Government or the University may not be entitled to interfere with that right in respect of unaided minority

\textsuperscript{309} Ibid.

\textsuperscript{310} Ibid.

\textsuperscript{311} Id at 589.

\textsuperscript{312} Ibid.

\textsuperscript{313} Ibid.

\textsuperscript{314} Ibid.

\textsuperscript{315} Id at 545.

\textsuperscript{316} Id at 546.

\textsuperscript{317} Ibid.

\textsuperscript{318} Ibid.

\textsuperscript{319} Ibid.

\textsuperscript{320} Id at (As per Justice S.N. Variava).
institutions provided however that the admission to the unaided educational institutions is on transparent basis and the merit is the criteria.321 The right to administer, not being an absolute one, there could be regulatory measures for ensuring educational standards and maintaining excellence thereof and it is more so, in the matter of admissions to undergraduate Colleges and professional institutions.322 The moment aid is received or taken by a minority educational institution it would be governed by Article 29(2) and would then not be able to refuse admission on grounds of religion, race, caste, language or any of them.323 In other words it cannot then give preference to students of its own community.324 Observance of inter se merit amongst the applicants must be ensured.325 In the case of aided professional institutions, it can also be stipulated that passing of common entrance test held by the State agency is necessary to seek admission.326 A minority institution may have its own procedure and method of admission as well as selection of students, but such procedure must be fair and transparent and selection of students in professional and higher educational colleges should be on the basis of merit.327 The procedure adopted or selection made should not tantamount to mal-administration.328 Even an unaided minority institution, ought not to ignore merit of the students for admission, while exercising its right to admit students to the colleges aforesaid, as in that event, the institution will fail to achieve excellence.329 It must be stated that whilst giving aid to professional institutions, it would be permissible for the authority giving aid to prescribe by-rules or regulations, the conditions on the basis of which admission will be granted to different aided colleges by virtue of merit, coupled with the reservation policy of the state.330 The merit may be determined either through a common entrance test conducted by the University or the Government followed by counselling, or on the basis of an entrance test conducted by individual institutions - the method to be followed is for the university or the government to decide.331 The authority may also devise other means to ensure that admission is granted to an aided professional institution on the basis of merit.332

In Islamic Academy of Education case333, the Supreme Court observed that in unaided professional institutions, there will be full autonomy in their administration, but the principle of merit cannot be sacrificed, as excellence in profession is in national interest. Without interfering with the autonomy of unaided institutions, the object of merit based admissions can be secured by insisting on it as a condition to the grant of recognition and subject to the recognition of merit, the management can be given certain

321. Ibid.
322. Ibid.
323. Ibid.
324. Ibid.
325. Ibid.
326. Ibid.
327. Ibid.
328. Ibid.
329. Ibid.
330. Ibid.
331. Ibid.
332. Ibid.
discretion in admitting students.\textsuperscript{334} This can be done through various methods. For instance, a certain percentage of the seats can be reserved for admission by the Management out of those students who have passed the common entrance test held by itself or by the State/University and have applied to the college concerned for admission, while the rest of the seats may be filled up on the basis of counseling by the state agency. This will incidentally take care of poorer and backward sections of the society. The prescription of percentage for this purpose has to be done by the government according to the local needs and different percentages can be fixed for minority unaided and non-minority unaided and professional colleges. The same principles may be applied to other non-professional but unaided educational institutions viz., graduation and post graduation non-professional colleges or institutes.

The Court clarified that a minority professional college can admit, in their management quota, a student of their own community/language in preference to a student of another community even though that other student is more meritorious.\textsuperscript{335} However, whilst selecting/admitting students of their community/language the inter-se merit of those students cannot be ignored. In other words whilst selecting/admitting students of their own community/language they cannot ignore the inter-se merit amongst students of their community/language. Admission, even of members of their community/language, must strictly be on the basis of merit except that in case of their own students it has to be merit inter-se those students only. Further if the seats cannot be filled up from members of their community/language, then the other students can be admitted only on the basis of merit based on a common entrance test conducted by government agencies. The Court hold that the management could select students, of their quota, either on the basis of the common entrance tests conducted by the State or on the basis of a common entrance test to be conducted by an association of all colleges of a particular type in that State e.g. medical, engineering or technical etc. The common entrance test, held by the association, must be for admission to all colleges of that type in the State. The option of choosing, between either of these tests, must be exercised before issuing of prospectus and after intimation to the concerned authority and the committee set up hereinafter. If any professional college chooses not to admit from the common entrance test conducted by the association then the college must necessarily admit from the common entrance test conducted by the State. After holding the common entrance test and declaration of results the merit list will immediately be placed on the notice board of all colleges which have chosen to admit as per this test. A copy of the merit list will also be forthwith sent to the concerned authority and the Committee. Selection of students must then be strictly on basis of merit as per that merit list. Of course, as indicated earlier, minority colleges will be entitled to fill up their quota with their own students on basis of inter-se merit amongst those students. The list of students admitted, along with the rank number obtained by the student, the fees collected and all such particulars and details as may be required by the concerned authority or the Committee must be submitted to them forthwith. The question paper and the answer papers must be preserved for such period as the concerned authority or Committee may indicate. If it is found that any student has been admitted de-hors

\textsuperscript{334} Ibid
\textsuperscript{335} Id at 727.
merit penalty can be imposed on that institute and in appropriate cases recognition/affiliation may also be withdrawn.

The Court directed the respective State Government do appoint a permanent Committee which will ensure that the test conducted by the association of colleges is fair and transparent. For each State a separate Committee shall be formed. The Committee would be headed by a retired Judge of the High Court. The Judge to be nominated by the Chief Justice of that State. The other member, to be nominated by the Judge, would be a doctor or an engineer of eminence (depending on whether the institution is medical or engineering/technical). The Secretary of the State in charge of Medical or Technical Education, as the case may be, shall also be a member and act as Secretary of the Committee. The Committee will be free to nominate/co-opt an independent person of repute in the field of education as well as one of the Vice Chancellors of University in that State so that the total number of persons on the Committee does not exceed five. The Committee shall have powers to oversee the tests to be conducted by the association. This would include the power to call for the proposed question paper/s, to know the names of the paper setters and examiners and to check the method adopted to ensure papers are not leaked. The Committee shall supervise and ensure that the test is conducted in a fair and transparent manner. The Committee shall have power to permit an institution, which has been established and which has been permitted to adopt its own admission procedure for the last, at least, 25 years, to adopt its own admission procedure and if the Committee feels that the needs of such an institute are genuine, to admit, students of their community, in excess of the quota allotted to them by the State Government. Before exempting any institute or varying in percentage of quota fixed by the State, the State Government must be heard before the Committee. It is clarified that different percentage of quota for students to be admitted by the management in each minority or non-minority unaided professional college/s shall be separately fixed on the basis of their need by the respective State Government and in case of any dispute as regards fixation of percentage of quota, it will be open to the management to approach the Committee. It is also clarified that no institute, which has not been established and which has not followed its own admission procedure for the last, at least, 25 years, shall be permitted to apply for or be granted exemption from admitting students in the manner set out hereinabove.

The Supreme Court in P.A. Inamdar’s case\textsuperscript{336} directed that the respective State Governments to appoint a permanent Committee which will ensure that the test conducted by the association of colleges is fair and transparent. For each State a separate Committee shall be formed. The Committee would be headed by a retired Judge of the High Court. The Judge is to be nominated by the Chief Justice of that State. The other member, to be nominated by the Judge, would be a doctor or an engineer of eminence (depending on whether the institution is medical or engineering/technical). The Secretary of the State in charge of Medical or Technical Education, as the case may be, shall also be a member and act as the Secretary of the Committee. The Committee will be free to nominate/co-opt an independent person of repute in the field of education as well as one

of the Vice-Chancellors of the University in that State so that the total numbers of persons on the Committee do not exceed five.

The Committee shall have powers to oversee the tests to be conducted by the association. This would include the power to call for the proposed question paper(s), to know the names of the paper-setters and examiners and to check the method adopted to ensure papers are not leaked. The Committee shall supervise and ensure that the test is conducted in a fair and transparent manner. The Committee shall have the powers to permit an institution, which has been established and which has been permitted to adopt its own admission procedure for the last, at least, 25 years, to adopt its own admission procedure and if the Committee feels that the needs of such an institute are genuine, to admit, students of their community, in excess of the quota allotted to them by the State Government. Before exempting any institute or varying in percentage of quota fixed by the State, the State Government must be heard before the Committee. It is clarified that different percentage of quota for students to be admitted by the management in each minority or non-minority unaided professional college(s) shall be separately fixed on the basis of their need by the respective State Governments and in case of any dispute as regards fixation of percentage of quota, it will be open to the management to approach the Committee. It is also clarified that no institute, which has not been established and which has not followed its own admission procedure for the last, at least, 25 years, shall be permitted to apply for or be granted exemption from admitting students in the manner set out hereinafter."

The Court held that for admission in unaided (minority or non-minority) educations institutions, Six months prior to the commencement of the academic year, the Government would fix the percentage of students to be admitted by a minority (religious/linguistic) professional college (other than engineering), taking into account the local needs of the State, the region as well as that of the minority-community. It would be a huge and cumbersome exercise in practice, to fix a percentage for each one of the institutions separately and it would be a pragmatic approach to have a fixed percentage for all the minority institutions which is fair and reasonable. A practical approach to the problem would require a very definite percentage to be fixed for minority institutions, say, 50% so that even if candidates of their choice, belonging to the minority institutions, are only 25% they would still have the right to select non-minority students to make up the 50%, of course, from the CET held by the Government.

The Court held as follows:

1. The CET held by Government would ensure that the various devices adopted by professional colleges to secretly demand capitation fees and take the same in black money, thus resulting in merit being the casualty, would not take place. No prejudice will be caused to the management of the professional colleges as they could select the minority students based on inter se merit in the CET held by the Government.

2. There would equally be no disadvantage to any particular section or to Government if the same 50% rule is applied even to unaided non-minority professional colleges as well.
3. The result of following this procedure is that a consortium holding the tests for admissions is done away with and a monitoring committee, preferably headed by a retired High Court or Supreme Court judge would ensure fairness and transparency both in the minority and non-minority professional institutions.

Fee Structure for Minority Educational Institutions

In the case of Mohini Jain (Miss) v. State of Karnataka, the challenge was to a notification of June 1989, which provided for a fee structure, whereby for government seats, the tuition fee was Rs.2,000 per annum, and for students from Karnataka, the fee was Rs.25,000 per annum, while the fee for Indian students from outside Karnataka, under the payment category, was Rs.60,000 per annum. It had been contended that charging such a discriminatory and high fee violated constitutional guarantees and rights. This attack was sustained, and it was held that there was a fundamental right to education in every citizen, and that the state was duty bound to provide the education, and that the private institutions that discharge the state's duties were equally bound not to charge a higher fee than the government institutions. The Court then held that any prescription of fee in excess of what was payable in government colleges was a capitation fee and would, therefore, be illegal.

The correctness of this decision was challenged in Unni Krishnan's case, the Court considered the conditions and regulations, if any, which the state could impose in the running of private unaided/aided recognized or affiliated educational institutions conducting professional courses such as medicine, engineering, etc. The extent to which the fee could be charged by such an institution, and the manner in which admissions could be granted was also considered. This Court held that private unaided recognized/affiliated educational institutions running professional courses were entitled to charge a fee higher than that charged by government institutions for similar courses, but that such a fee could not exceed the maximum limit fixed by the state. It held that commercialization of education was not permissible, and was opposed to public policy and Indian tradition and therefore charging capitation fee was illegal. "With regard to private aided recognized/affiliated educational institutions, the Court upheld the power of the government to frame rules and regulations in matters of admission and fees, as well as in matters such as recruitment and conditions of service of teachers and staff."

While holding, on an interpretation of Articles 21, 41, 45 and 46, that a citizen who had not completed the age of 14 years had a right to free education, it was held that such a right was not available to citizens who were beyond the age of 14 years. It was further held that private educational institutions merely supplemented the effort of the state in

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337. (1992) 3 SCC 666.
338. Ibid.
339. Ibid.
340. Ibid.
341. Supra n. 228.
342. Ibid.
343. Ibid.
344. Ibid.
educating the people. No private educational institution could survive or subsist without recognition and/or affiliation granted by bodies that were the authorities of the state. In such a situation, the Court held that it was obligatory upon the authority granting recognition/affiliation to insist upon such conditions as were appropriate to ensure not only an education of requisite standard, but also fairness and equal treatment in matters of admission of students. The Court then formulated a scheme and directed every authority granting recognition/affiliation to impose that scheme upon institutions seeking recognition/affiliation, even if they were unaided institutions. The scheme that was framed, inter alia, postulated (a) that a professional college should be established and/or administered only by a Society registered under the Societies Registration Act, 1860, or the corresponding Act of a State, or by a Public Trust registered under the Trusts’ Act, or under the Wakfs Act, and that no individual, firm, company or other body of individuals would be permitted to establish and/or administer a professional college (b) that 50% of the seats in every professional college should be filled by the nominees of the Government or University, selected on the basis of merit determined by a common entrance examination, which will be referred to as "free seats"; the remaining 50% seats ("payment seats") should be filled by those candidates who pay the fee prescribed therefor, and the allotment of students against payment seats should be done on the basis of inter se merit determined on the same basis as in the case of free seats (c) that there should be no quota reserved for the management or for any family, caste or community, which may have established such a college (d) that it should be open to the professional college to provide for reservation of seats for constitutionally permissible classes with the approval of the affiliating university (e) that the fee chargeable in each professional college should be subject to such a ceiling as may be prescribed by the appropriate authority or by a competent court (f) that every state government should constitute a committee to fix the ceiling on the fees chargeable by a professional college or class of professional colleges, as the case may be. This committee should, after hearing the professional colleges, fix the fee once every three years or at such longer intervals, as it may think appropriate (g) that it would be appropriate for the University Grants Commission to frame regulations under its Act regulating the fees that the affiliated colleges operating on a no grant-in-aid basis were entitled to charge. The AICTE, the Indian Medical Council and the Central Government were also given similar advice.

Fees to be charged by unaided institutions cannot be regulated but no institution should charge capitation fee. The decision on the fee to be charged must necessarily be left to the private educational institution that does not seek or is not dependent upon any funds from the government. Every institution is free to devise its own fee structure subject to the limitation that there can be no profiteering and no capitation fee can be charged directly or indirectly, or in any form. We, however, wish to emphasize one point, and that is that inasmuch as the occupation of education is, in a sense, regarded as charitable, the government can provide regulations that will ensure excellence in education, while forbidding the charging of capitation fee and profiteering by the institution. Since the object of setting up an educational institution is by definition "charitable", it is clear that an educational institution cannot charge such a fee as is not

345 Supra n. 1 at 544.
346 Id at 545.
347 Ibid.
required for the purpose of fulfilling that object.\textsuperscript{348} To put it differently, in the establishment of an educational institution, the object should not be to make a profit, inasmuch as education is essentially charitable in nature.\textsuperscript{349} There can, however, be a reasonable revenue surplus, which may be generated by the educational institution for the purpose of development of education and expansion of the institution.\textsuperscript{350} In Private Unaided Professional Institutions, a rational fee structure should be adopted by the Management, which would not be entitled to charge a capitation fee.\textsuperscript{351} Appropriate machinery can be devised by the state or university to ensure that no capitation fee is charged and that there is no profiteering, though a reasonable surplus for the furtherance of education is permissible.\textsuperscript{352}

In Islamic Academy\textsuperscript{353}, the Bench accepted that there could be no rigid fee structure fixed by the government for private institutions\textsuperscript{354}. An institute should have the freedom to fix its own fee structure for day-to-day running of the institute and to generate funds for its further growth.\textsuperscript{355} Only capitation and diversion of profits and surplus of the institute to any other business or enterprise was prohibited.\textsuperscript{356} A provision for reasonable surplus can be made to enable future expansion.\textsuperscript{357} The relevant factors which would go into determining the reasonability of a fee structure, in the opinion of majority, are: (i) the infrastructure and facilities available, (ii) the investments made, (iii) salaries paid to the teachers and staff, (iv) future plans for expansion and betterment of the institution etc.\textsuperscript{358} S.B. Sinha, J, defined what is 'capitation' and 'profiteering' and also said that reasonable surplus should ordinarily vary from 6 per cent to 15 per cent for utilization in expansion of the system and development of education.\textsuperscript{359} Chief Justice V.N. Khare said as follows:\textsuperscript{360} -

"we direct that in order to give effect to the judgment in T.M.A. Pai case the respective State Governments/concerned authority shall set up, in each State, a committee headed by a retired High Court Judge who shall be nominated by the Chief Justice of that State. The other member, who shall be nominated by the Judge, should be a Chartered Accountant of repute. A representative of the Medical Council of India (in short "MCI") or the All India Council for Technical Education (in short "AICTE"), depending on the type of institution, shall also be a member. The Secretary of the State Government in charge of Medical Education or Technical Education, as the case may be, shall be a member and Secretary of the Committee. The Committee should be free to nominate/co-opt another independent person of repute, so that the total number of members of the

\textsuperscript{348} Ibid.
\textsuperscript{349} Ibid.
\textsuperscript{350} Ibid.
\textsuperscript{351} Ibid.
\textsuperscript{352} Ibid.
\textsuperscript{353} Supra n. 333.
\textsuperscript{354} Id at 720.
\textsuperscript{355} Ibid.
\textsuperscript{356} Ibid.
\textsuperscript{357} Ibid.
\textsuperscript{358} Ibid.
\textsuperscript{359} Ibid.
\textsuperscript{360} Id at 721-22.
Committee shall not exceed five. Each educational institute must place before this Committee, well in advance of the academic year, its proposed fee structure. Along with the proposed fee structure all relevant documents and books of accounts must also be produced before the Committee for their scrutiny. The Committee shall then decide whether the fees proposed by that institute are justified and are not profiteering or charging capitation fee. The Committee will be at liberty to approve the fee structure or to propose some other fee which can be charged by the institute. The fee fixed by the Committee shall be binding for a period of three years, at the end of which period the institute would be at liberty to apply for revision. Once fees are fixed by the Committee, the institute cannot charge either directly or indirectly any other amount over and above the amount fixed as fees.

If any other amount is charged, under any other head or guise e.g. donations, the same would amount to charging of capitation fee. The Governments/appropriate authorities should consider framing appropriate regulations, if not already framed, whereunder if it is found that an institution is charging capitation fees or profiteering that institution can be appropriately penalised and also face the prospect of losing its recognition/affiliation.” The Court further said that an educational institution can only charge prescribed fees for one semester/year. 361 If an institution feels that any particular student may leave in midstream then, at the highest, it may require that student to give a bond/bank guarantee that the balance fees for the whole course would be received by the institute even if the student left in midstream. 362 If any educational institution has collected fees in advance, only the fees of that semester/year can be used by the institution. 363 The balance fees must be kept invested in fixed deposits in a nationalised bank. 364 As and when fees fall due for a semester/year only the fees falling due for that semester/year can be withdrawn by the institution. 365 The rest must continue to remain deposited till such time that they fall due. 366 At the end of the course the interest earned on these deposits must be paid to the student from whom the fees were collected in advance. 367 The Constitution Bench has made it clear that the setting up of two sets of Committees in the States has been directed in exercise of the power conferred on this Court by Article 142 of the Constitution and such Committees "shall remain in force till appropriate legislation is enacted by Parliament" 

The Court in P.A. Inamdar’s case 368 held that the Committee suggested by Islamic Academy and the procedure mentioned therein, appears to be the only safe method of ensuring that extortionate fees are not charged by the medical colleges. At the same time, it would be wrong to deny expenditure which the institution undertakes for ensuring excellence in education. Equally, a reasonable surplus should be permitted so that the fees charged cover the entire revenue expenditure and in addition leaves a reasonable

361 Id at 722.
362 Ibid.
363 Ibid.
364 Ibid.
365 Ibid.
366 Ibid.
367 Ibid.
368 Supra n. 336.
surplus for future expansion. This alone would prevent the clandestine collection of capitation fees and would result in entrepreneurs investing in new medical colleges.

The Committee suggested by Islamic Academy appears to be the ideal one consisting of a chartered accountant, a representative of the MCI or AICTE as the case may be, with a retired judge of the High Court or the Supreme Court as the head. The fee is to be fixed on the proposal of the institution supported by documents and the procedure of fee finalization should commence at least 6 months in advance of the commencement of the academic year. In Delhi Abibhavak Mahasangh v. Union of India, the Delhi High Court has ruled that under Article 30 (1), the right to freely administer educational institutions does not permit the minorities to indulge in commercialisation of education in the garb of constitutional protection.

In Cochin University of Science and Technology v. Thomas P. John, the Supreme Court held that the matter relating to the fixation of fee is a part of the administration of an educational institution and it would impose a heavy onus on such an institution to be called upon to justify levy of a fee with mathematical precision.

Reservation Policy for Minority Educational Institutions

In The State of Madras v. Srimathi Champakam Dorairajan, the State had issued an order, which provided that admission to students to engineering and medical colleges in the State should be decided by the Selection Committee, strictly on the basis of the number of seats fixed for different communities. While considering the validity of this order, this Court interpreted Article 29(2) and held that if admission was refused only on the grounds of religion, race, caste, language or any of them. Then there was a clear breach of the fundamental right under Article 29(2). The said order was construed as being violative of Article 29(2), because students who did not fall in the particular categories were to be denied admission. In this connection it was observed as follows:- "so far as those seats are concerned, the petitioners are denied admission into any of them, not on any ground other than the sole ground of their being Brahmins and not being members of the community for whom those reservations were made..." This government order was held to be violative of the Constitution and constitutive of a clear breach of Article 29(2). Article 30 did not come up for consideration in that case.

In The State of Bombay vs. Bombay Education Society and Others, an Anglo-Indian School, called Barnes High Court at Deolali, received aid from the State of Bombay. The State of Bombay issued a circular order on 6th January, 1954 which enjoined that no primary or secondary school could admit to a class where English is used as the medium of instruction, any pupil other than the pupil whose mother tongue was English. The validity of the circular was challenged while admission was refused, inter alia, to a member of the Gujarati Hindu Community. A number of writ petitions

369. AIR 1999 Del 128.
371. Id at 88.
372. Supra n. 37.
were filed and the High Court allowed them. In an application filed by the State of Bombay, this Court had to consider whether the said circular was ultra vires Article 29(2). In deciding this question, the Court analyzed the provisions of Articles 29(2) and 30, and repelled the contention that Article 29(2) guaranteed the right only to the citizens of the minority group. The Court observed as follows:

"Assuming, however, that under the impugned order a section of citizens, other than Anglo-Indians and citizens of non-Asiatic descent, whose language is English, may also get admission, even then citizens, whose language is not English, are certainly debarred by the order from admission to a School where English is used as a medium of instruction in all the classes. Article 29(2) ex facie puts no limitation or qualification on the expression "citizen. 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) extends against the State or anybody 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. The heading under which Articles 29 and 30 are grouped together - namely "Cultural and Educational Rights"- is quite general and does not in terms contemplate such differentiation. If the fact that the institution is maintained or aided out of State funds is the basis of this guaranteed right then all citizens, irrespective of whether they belong to the majority or minority groups; are alike entitled to the protection of this fundamental right."

It is clear from the aforesaid discussion that this Court came to the conclusion that in the case of minority educational institutions to which protection was available under Article 30, the provisions of Article 29(2) were indeed applicable.

In Rev. Sidhajbhai Sabha and Others v. State of Bombay and Another, the petitioners who profess the Christian faith and belong to the United Church of Northern India are members of a society which maintain educational institutions primarily for the benefit of the Christian Community. The society conducts forty-two primary schools and a Training College for teachers. The teachers trained in the college are absorbed in

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374. Id at 579-80.
375. Supra n. 1 at 558.
376. Supra n. 26.
377. Ibid.
378. Ibid.
the primary schools conducted by the society and those not so absorbed are employed by other Christian Mission Schools conducted by the United Church of Northern India.\textsuperscript{379} The cost of maintaining the training college and the primary schools is met out of donations received from the Irish Presbyterian Mission, fee from scholars and grant-in-aid from the State Government.\textsuperscript{380} On May 28, 1955, the Government of Bombay issued an order that from the academic year 1955-56, 80% of the seats in the training colleges shall be reserved for teachers nominated by the Government, and the Educational Inspector on June 13, 1955, ordered the Principal of the Training College of the Society, not to admit without specific permission of the Education department private students in excess of 20% of the total strength in each class.\textsuperscript{381} The Principal of the college expressed his inability to comply with the order.\textsuperscript{382} On December 27, 1955, the Educational Inspector informed the management that their action in refusing admission to Government nominated teachers was irregular and against the Government Policy and he severely warned the society that for disregarding the orders, no grant would be paid to the college for the current year.\textsuperscript{383} On March 29, 1956, the Educational Inspector called upon the Principal not to admit private candidates to the 1st year class without obtaining specific permission, failing which severe disciplinary action, such as withdrawal of recognition of the institution, would be taken.\textsuperscript{384} The society was again informed by letter dated May 9, 1956, that having failed to abide by the conditions set out earlier, the college will not be paid the education grant.\textsuperscript{385} These letters were written in pursuance of the authority assumed under two sets of Rules framed by the Government of Bombay—(1) Rules for Primary Training Colleges, and (2) Rules for the recognition of the Private Training Institutions.\textsuperscript{386} By Rule 5 (2) of the first set of Rules, it was prescribed that in non-Governmental Institutions, percentage of seats reserved for Board deputed teachers shall be fixed by the Government and the remaining seats shall be filled by students deputed by private schools or by private students.\textsuperscript{387} Rules 11, 12 and 14 of the Rules for the recognition of Private Primary Training Institutions were as follows:\textsuperscript{388}

“11. The Institution will have to be kept open for all students irrespective of caste or creed: It will be open to Government to reserve seats for Board deputed teachers to such extent as is deemed necessary. The institution will have to give such representation on its staff and students to backward classes as may be fixed by Government.”

“12. Women teachers will be admitted in Women’s Training Institutions. The Head of such Institutions should be a woman and not less than 50 percent of the Assistant Teachers, should be women. In special cases, men’s institutions may be allowed to admit women teachers provided:

\textsuperscript{379} Ibid.
\textsuperscript{380} Ibid.
\textsuperscript{381} Ibid.
\textsuperscript{382} Ibid.
\textsuperscript{383} Ibid.
\textsuperscript{384} Id at 838.
\textsuperscript{385} Ibid.
\textsuperscript{386} Id at 844.
\textsuperscript{387} Ibid.
\textsuperscript{388} Ibid.
(i) separate classes for women are formed.

(ii) One trained graduate woman teacher is appointed per class for women teachers opened in the college.

(iii) Separate residential arrangement under supervision of a woman teacher are made for woman teacher are made for women students in the Hostel.

(iv) Satisfactory arrangements are made for teaching Home Science as an auxiliary craft to women students.

(v) Separate sanitary arrangement are made for women teachers in the college and hostel premises.”

“14. It will be open to the Department to withdraw recognition or refuse payment of grant to any private training institution for non-fulfilment of any of the conditions mentioned above, for inefficient management and poor quality of teaching, or for failure to comply with any of the Departmental regulation now in force or that may be issued from time to time by the Government, or by the Director of Education on behalf of Government.”

The petitioners moved the Supreme Court for a writ in the nature of mandamus or other writ directing the State of Bombay and the Director of Education not to compel the Society and the petitioner to reserve 80 % or any seats in the training college for the “Government nominated teachers”; nor to compel the society and the petitioners to comply with the provisions of rules 5 (2), 11, 12 and 14 and not to withdraw recognition of the college or withhold grant-in-aid under rule 14 or otherwise. The petitioners claimed that their fundamental right guaranteed by Articles 30 (1), 26 (a), (b), (c) and (d) and 19 (1) (f) and (g) were violated by letters dated May 28, 1955, December 27, 1955 and March 29, 1956, threatening to withhold the grant-in-aid and to withdraw recognition of the college.

The Supreme Court held as follows:

"The right established by Article 30 (1) is a fundamental right declared in terms absolute. Unlike the fundamental freedoms guaranteed by Article 19, it is not subject to reasonable restrictions. It is intended to be a real right for the protection of the minorities in the matter of setting up of educational institutions of their own choice. The right is intended to be effective and is not to be whittled down by so-called regulative measures conceived in the interest not of the minority educational institution, but of the public or the nation as a whole. If every order which while maintaining the formal character of a minority institution destroys the power of administration 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.

389 Ibid.
390 Ibid.
391 Id at 856.
Regulations which may lawfully be imposed either by legislative or executive action as a condition of receiving grant or of recognition must be directed to making the institution while retaining its character as a minority institution effective as an educational institution. Such regulation must satisfy a dual test the test of reasonableness, and the test that it is regulative of the educational character of the institution and is conducive to making the institution an effective vehicle of education for the minority community or other persons who resort to it."

It was held by a Bench of six judges speaking through Shah J. (as he then was) that the rule 5 (2) of the Rules for Primary Training Colleges and Rules 11 and 14 for recognition of private training institutions, in so far as they related to reservation of seats therein under orders of Government, and directions given pursuant thereto regarding reservation of 80% of the seats and the threat to withhold grant-in-aid and recognition of the college, infringed the fundamental freedom guaranteed to the petitioners under article 30(1).392

In St. Stephen's College case,393 the Supreme Court dealt with the question as to whether a preference in favour of, or a reservation of seats for candidates belonging to, its own community by the minority institutions would be invalid under Article 29(2) of the Constitution.394 After referring to the Constituent Assembly Debates and the proceedings of the Draft Committee that led to the incorporation of Articles 29 and 30, this Court proceeded to examine the question of the true import and effect of Articles 29(2) and 30(1) of the Constitution. On behalf of the institutions, it was argued that a preference given to minority candidates in their own educational institutions, on the ground that those candidates belonged to that minority community, was not violative of Article 29(2), and that in the exercise of Article 30(1), the minorities were entitled to establish and administer educational institutions for the exclusive advantage of their own community's candidates. This contention was not accepted by this Court on two grounds. Firstly, it was held that institutional preference to minority candidates based on religion was apparently an institutional discrimination on the forbidden ground of religion the Court stated that "if an educational institution says yes to one candidate but says no to other candidate on the ground of religion, it amounts to discrimination on the ground of religion. The mandate of Article 29(2) is that there shall not be any such discrimination."395

The Court concluded as follows:396-

"...In view of the importance which the Constitution attaches to protective measures to minorities under Article 30(1), the minority aided educational institutions are entitled to prefer their community candidates to maintain the minority character of the institutions subject of course to conformity with the University standard. The State may regulate the intake in this category with due regard to the need of the community in the area which the institution is intended to serve. But in no case such intake shall exceed 50

392. Id 857.
393. Supra n. 32.
394. Id at 603.
395. Id at 607.
396; Id at 613-14.
per cent of the annual admission. The minority institutions shall make available at least 50 per cent of the annual admission to members of communities other than the minority community. The admission of other community candidates shall be done purely on the basis of merit."

It must be stated that whilst giving aid to professional institutions, it would be permissible for the authority giving aid to prescribe by-rules or regulations, the conditions on the basis of which admission will be granted to different aided colleges by virtue of merit, coupled with the reservation policy of the state.397 In the case of such institutions, it will be permissible for the government or the university to provide that consideration should be shown to the weaker sections of the society.398

In P.A. Inamdar case399 the Court held that the States have no power to insist on seat sharing in the unaided private professional educational institutions by fixing a quota of seats between the management and the State. The State cannot insist on private educational institutions which receive no aid from the State to implement State's policy on reservation for granting admission on lesser percentage of marks, i.e. on any criterion except merit.400 Such imposition of quota of State seats or enforcing reservation policy of the State on available seats in unaided professional institutions are acts constituting serious encroachment on the right and autonomy of private professional educational institutions.401 Such appropriation of seats can also not be held to be a regulatory measure in the interest of minority within the meaning of Article 30(1) or a reasonable restriction within the meaning of Article 19(6) of the Constitution.402 Merely because the resources of the State in providing professional education are limited, private educational institutions, which intend to provide better professional education, cannot be forced by the State to make admissions available on the basis of reservation policy to less meritorious candidate.403 Unaided institutions, as they are not deriving any aid from State funds, can have their own admissions if fair, transparent, non-exploitative and based on merit.404 The management can have quota for admitting students at its discretion but subject to satisfying the test of merit based admissions, which can be achieved by allowing management to pick up students of their own choice from out of those who have passed the common entrance test conducted by a centralized mechanism.405 Such common entrance test can be conducted by the State or by an association of similarly placed institutions in the State.406 The State can provide for reservation in favour of financially or socially backward sections of the society.407 The majority opinion carved out an exception in favour of those minority educational professional institutions which were established and were having their own admission procedure for at least 25 years from the requirement of joining any common entrance test, and such institutions were

397. Supra n. 1 (As per Justice S.N. Variava).
398. Ibid.
399. Supra n. 336.
400. Ibid.
401. Ibid.
402. Ibid.
403. Ibid.
404. Ibid.
405. Ibid.
406. Ibid.
407. Ibid.
408. Ibid.
permitted to have their own admission procedure. The State Governments were directed to appoint a permanent Committee to ensure that the test conducted by the association of colleges is fair and transparent.

In Ashok Kumar Thakur case, the Supreme Court held that Constitution (Ninety-Third Amendment) Act, 2005 does not violate the "basic structure" of the Constitution.

Teaching, Teaching Subjects and Medium of Instruction in Minority Educational Institutions

Article 28(1) prohibits any educational institution, which is wholly maintained out of state funds, to provide for religious instruction. Moral education dissociated from any denominational doctrine is not prohibited; but, as the state is intended to be secular, an educational institution wholly maintained out of state funds cannot impart or provide for any religious instruction. The exception to Article 28(1) is contained in Article 28(2). Article 28(2) deals with cases where, by an endowment or trust, an institution is established, and the terms of the endowment or the trust require the imparting of religious instruction, and where that institution is administered by the state. In such a case, the prohibition contained in Article 28(1) does not apply. If the administration of such an institution is voluntarily given to the government, or the government, for a good reason and in accordance with law, assumes or takes over the management of that institution, say on account of mal-administration, then the government, on assuming the administration of the institution, would be obliged to continue with the imparting of religious instruction as provided by the endowment or the trust. While Article 28(1) and Article 28(2) relate to institutions that are wholly maintained out of state funds, Article 28(3) deals with an educational institution that is recognized by the state or receives aid out of state funds. Article 28(3) gives the person attending any educational institution the right not to take part in any religious instruction, which may be imparted by an institution recognized by the state, or receiving aid from the state. Such a person also has the right not to attend any religious worship that may be conducted in such an institution, or in any premises attached thereto, unless such a person, or if he/she is a minor, his/her guardian, has given his/her consent. The reading of Article 28(3) clearly shows that no person attending an educational institution can be required to take part in any religious instruction or any religious worship, unless the person or his/her guardian has given his/her consent thereto, in a case where the educational institution has been recognized by the state or receives aid out of its funds.

408 Ibid.
409 Ibid.
411 The Amendment provides, "Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to the educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30."
412 Supra n. 1 at 554.
413 Ibid.
414 Id at 555.
While noting that Article 30 referred not only to religious minorities but also to linguistic minorities, it was held that the Article gave those minorities the right to establish educational institutions of their choice, and that no limitation could be placed on the subjects to be taught at such educational institutions and that general secular education is also comprehended within the scope of Article 30(1).

In Bombay Education Society case, the Supreme Court while dealing with a circular issued by the State of Bombay prohibiting the admission to a class where English is used as the medium of instruction, of any pupil who is not an Anglo-Indian and citizens of non-Asiatic descent, held that the State had not the power to prohibit contrary to the rights guaranteed under Article 29 (2) the admission of students to Anglo Indian Schools whose mother tongue was not English. Justice Das, was delivering the unanimous judgment of the Court observed:-

"Where however, a minority like the Anglo-Indian Community, which is based, inter alia, on religion and language, has the fundamental right to conserve its language, script and culture under Article 29 (1) and has the right to establish and administer educational institutions of their choice under Article 30 (1), surely then there must be implicit in such fundamental right the right to impart instruction in their own institutions to the children of their own community in their own language. To hold otherwise will be to deprive Article 29 (1) and Article 30 (1) of the greater part of their contents."

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

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415. Ibid.
416. Supra n. 373.
417. Id at 586.
419. Id at 261.
420. Ibid.
421. Ibid.
422. Ibid.
423. Ibid.
University.\textsuperscript{424} 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.\textsuperscript{425}

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-University even for Science group with effect from the Academic Session 1970-71”.\textsuperscript{426} Later the University by a letter, dated July 2, 1970, informed the Principals that a decision of the Senate Sub-committee, dated July 1, 1970, as enclosed therewith, was made giving “relaxation in some special cases of pre-University students seeking admission for the year 1970”.\textsuperscript{427} This enclosure was in Punjabi, an English translation of which would show that the relaxation was to permit students who had passed their matriculation examination with English as their medium of examination to be taught and to answer examination papers in the English medium at pre-University level ‘only so long as the other Universities and School bodies of Punjab did not adopt Punjabi as their medium of instruction’.\textsuperscript{428} On October 7, 1970, the University made a further modification and it was decided by the Senate “that English be allowed as an alternative medium of examination for all students for the courses for which the University had adopted the regional language as the medium. It was however understood that qualifying in the elementary Punjabi papers would, as already decided by the University be obligatory in the case of such students offering English medium as had not studied Punjabi as an elective or optional subject even up to the middle standard”.\textsuperscript{429} The resolution of July 1, 1970, further decided that students availing themselves of the facilities given there-under will have to pass a compulsory course in Punjabi of 50 marks of which a minimum of 25 marks will be required to pass that course.\textsuperscript{430} 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.\textsuperscript{431}

It was held by the Supreme Court that the circular of June 15, 1970 as amended by the circulars of July 2, 1970 and October 7, 1970 was invalid and ultra vires the powers vested in the University.\textsuperscript{432} The Court further held that while the University can prescribe Punjabi as ‘a’ medium of instruction it cannot prescribe it as the exclusive medium nor compel affiliated Colleges established and administered by linguistic or religious
minorities or by a section of the citizens who wish to conserve their language, script and culture, to teach in Punjabi or take examination in that language with Gurmukhi script.\textsuperscript{433} The relaxation made subsequently in the earlier directive of the University, it was observed, made little difference because the concession did not benefit students with Hindi as the medium and Devnagri as the script. The right of the minorities to establish and administer educational institutions of their choice, it was further held, included the right to have a choice of the medium of instruction also. That would be the, result of reading article 30(1) with article 29(1). No inconvenience or difficulties, administrative or financial, could justify the infringement of guaranteed rights. The Court emphasized that if the University compulsorily affiliates minority colleges to itself and prescribes the medium of instruction and examination to be in a language which is not their mother tongue, or requires examination to be taken in a script which is not their own, then it would interfere with their Fundamental Rights. No linguistic minority can, of course, insist that a University must conduct its examinations in the language or script of the minority, but, at the same time, the University also cannot force the minority institutions to compulsorily affiliate themselves to it and impose on them a medium of instruction which is different from the minority’s language or script. The State has to harmonise its power to prescribe the medium of instruction with the rights of the religious or linguistic minorities to have the medium of instruction and script of their own choice. The State can therefore either provide for instruction in the media of these minorities, or allow their institutions to get affiliated to such other Universities outside the State as have the media of instruction as the minority institutions.

In D.A.V. College case,\textsuperscript{434} fourteen writ petitions were filed by various Colleges managed and administered by Dayanand Anglo Vedic College (D.A.V. College) Trust and the Managing Society, against the respondents challenging the constitutional validity of certain provisions of Guru Nanak University, Amritsar, Act 21 of 1969 and in particular sections 4, 4(2), 4(3) and 5 of the Act as being violative of Articles 14, 19(1)(c) and (f), 26, 29(1) and 30(1) of the Constitution of India.\textsuperscript{435} There was also a prayer for quashing the Notification No. 2201-4-RDI-70/7147, dated March 16, 1970, issued under sub-section (1) of Section 5, by the first Respondent, the State of Punjab as being illegal, unconstitutional and void.\textsuperscript{436} The Managing Committee of the D.A.V. College is composed of 24 members and manages a score of other D.A.V. Institutions established in the country.\textsuperscript{437} The D.A.V. College Trust and the Managing Society was formed to perpetuate the memory of Swami Dayanand Saraswati who was the founder of an organisation known as Arya Samaj, which organisation it is claimed has a fixed religious programme and its constitution is designed to perpetuate the religious teaching and philosophy of its founder.\textsuperscript{438} The Arya Samaj it is stated has its won philosophy conception of God worship, religious tenets, rituals, social work, educational work etc., as would appear from the constitution of the Arya Samaj. It is, therefore, claimed that it

\textsuperscript{433} Ibid.
\textsuperscript{434} Supra n. 174.
\textsuperscript{435} Id at 271.
\textsuperscript{436} Ibid.
\textsuperscript{437} Ibid.
\textsuperscript{438} Ibid.
being a religious sect and denomination, is a minority within the meaning of Article 30 (1) of the Constitution.\footnote{439}

The Institutions which have filed the Writ Petitions were before the Punjab Reorganization Act (hereinafter called the ‘Reorganisation Act’) affiliated to the Punjab University constituted under the East Punjab Act, 7 of 1947 (hereinafter called the ‘Punjab University’ or ‘the Punjab University Act’ as the context admits). Before the partition of India some of these Institutions were affiliated to the Punjab University, Lahore. After the partition other Universities were set up in Punjab State like the Punjabi University, the Kurukshetra University etc., each of which had its own territorial jurisdiction.\footnote{440} At the time of the Reorganisation of the State other Universities other than the University of Punjab were in existence namely the Punjabi University in Punjab, and Kurukshetra University in Haryana.\footnote{441} The Punjab Legislature in order to mark 500\textsuperscript{th} Birth anniversary of Shri Guru Nanak Devji established a University to perpetuate his name.\footnote{442} The Act received the assent of the Governor on November 28, 1969. On March 16, 1970 the first Respondent in exercise of the powers conferred on it by sub-section (1) of Section 5 of the Act specified the districts of Amritsar, Gurdaspur, Jullundur and Kapurthala in the State of Punjab as the area in which the University shall exercise its power and perform its duties.\footnote{443} It further notified on March 16, 1970, in exercise of the powers under sub-section (3) of Section 5, June 30, 1970, as the date for the purpose of the said sub-section in respect of the educational institutions situated within the limits of the aforesaid area, which meant that as and from that date the colleges in the areas specified above which were affiliated to the Punjab University ceased to be affiliated to that University and were deemed to be associated with and admitted to the privileges of the University.\footnote{444}

The contentions urged before the Supreme Court are that the main purpose and object of the University as constituted by the University Act is to propagate Sikh religion and promote Punjabi language in Gurmukhi script, the since the petitioners institutions belong to a minority based on religion and language in that since, the petitioners institutions belong to a minority based on religion and language in that they being adherents of Arya Samaj sect and denomination their compulsory affiliation to the University violates Article 29 (1) and 30 (1) of the Constitution of India.\footnote{445} It is also submitted this statutory affiliation being compulsory affects the petitioners right of association guaranteed under Article 19 (1) (c) and that Article 14 is contravened because Section 4 (2) and 4 (3) discriminate against the Hindus, for while providing for the study of the teachings of Guru Nanak and the encouragement of the Punjabi language no provision is made for the study of the religion or teachings of the Hindus or for their language- the Hindi.\footnote{446}
Sub-section (2) of the Act, it is submitted enacts a provision for making it imperative to study and conduct research on the life and teachings of Guru Nanak and their cultural and religious impact on Indian and World civilizations while sub-section (3) contemplates the adopting of measure for the study of Punjabi language, literature and culture which provisions according to the petitioners directly aim at strangulating the growth of Hindi while encouraging the growth of Punjabi. Their apprehension is that Punjabi with Gurmukhi script will be made the sole medium of instruction in the University and that all colleges affiliated to this University may be forced to impart education through that medium.

Sub-section (2) and (3) of Section 4 are as follows:

(1) * * * *
(2) To make provision for study and research on the life and teachings of Guru Nanak and their cultural and religious impact in the context of Indian and World Civilization;
(3) To promote studies to provide for research in Punjabi language and literature and to undertake measures for the development of Punjabi language, literature and culture.

The Supreme Court held that to provide for academic study of life and teaching or the philosophy and culture of any great saint of India in relation to or the impact on the Indian and world civilizations cannot be considered as making provision for religious instruction. The Court held that sub-section (3) of Section 4 also does not in our view transgress the guarantee under Article 29 (1). Whether one may like it or not, linguistic States in this country have come to stay. Whether one may like it or not, linguistic States in this country have come to stay. The purpose and object of these linguistic states is to provide with greater facility the development of the people of that area educationally, socially and culturally, in the language of that region but while the State or the University has every right to provide for the education of the majority in the regional medium, it is subject to the restrictions contained in Articles 25 to 30. Neither the University nor the State can provide for imparting education in a medium of instruction in a language and script which stifles the language and script of any section of the citizens. Such a course will trespass on the rights of those sections of the citizens which have a distinct language or script and which they have a right to conserve through educational institutions of their own. In our opinion Section 4 (3) does not lend itself to the interpretation that the medium of instruction of all affiliated colleges has to Punjabi. The provision, as we construe it, is for the promotion of Punjabi studies and research in and the development of the Punjabi language, literature and culture which is far from saying that the University can under that provision compel the affiliated colleges

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447 Id at 277.
448 Id at 278.
449 Ibid.
450 Id at 279.
451 Ibid.
452 Ibid.
453 Ibid.
454 Id at 280.
455 Ibid.
456 Ibid.

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particularly those of the minority to give instruction in the Punjabi language or in any way impede the right to conserve their language, script and culture.457

In St. Xaviers College Society case,458 three sets of regulations were impeached as violative of Article 30. The first set consists of section 39, 40 and 41 of the Gujarat University Act, 1949 as amended, referred to, as the Act. The second set consists of section 33A (1) (a). The third set consists of sections 51A and 52A.

Section 39 provided that within the University area all post-graduate instruction, teaching and training shall be conducted by the University or by such affiliated College or institution and in such subjects as may be prescribed by statutes. Section 40(1) enacted that the Court of the University may determine that all instructions, teaching and training in courses of studies in respect of which the University is competent to hold examinations shall be conducted by the University and shall be imparted by the teachers of the University. Sub-section (2) of Section 40 stated that the State Government shall issue a notification declaring that the provisions of Section 41 shall come into force on such date as may be specified in the notification.

Section 41 of the Act consists of four sub-sections. The first subsection states that all colleges within the university area which are admitted to the privileges of the university under subsection (3) of section 5 of the Act and all colleges which may hereafter be affiliated to the university shall be constituent colleges of the university. It is true that no determination has yet been made by the court of the university under section 40 of the Act but the power exists. The power may be used in relation to minority institution. Once that is done the minority institutions will immediately become constituent colleges. The, real implication of section 40 of the Act is that teaching and training shall be conducted by the university. The word "conduct" clearly indicates that the university is a teaching university. Under section 40 of the Act the university takes over teaching of under-graduate classes. Section 41 of the Act is a corollary to section 40 of the Act. Section 41 of the Act does not stand independent of section 40 of the Act. Once an affiliated college becomes a constituent college within the meaning of section 41 of the Act pursuant to a declaration under section 40 of the Act it becomes integrated to the university. A constituent college does not retain its former individual character any longer. The minority character of the college is lost. Minority institutions become part and parcel of the university. The Court held that the result is that section 40 of the Act cannot have any compulsory application to minority institutions because it will take away their fundamental right to administer the educational institutions of their choice. The second sub-section states that all institutions within the university area shall be the constituent institutions of the university. The third sub-section states that no educational institution situated within the university area shall, save with the consent of the university and the sanction of the State Government be associated in any way with or seek admission to any privilege of any other university established by law. The fourth sub-section states that the relations of the Consent colleges and constituent, recognised or approved institutions within the university area shall be governed by the statutes to be

457. Ibid.
458. Supra n. 13.

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made in that behalf and such statutes shall provide in particular for the exercise by the university of the powers enumerated therein in respect of constituent degree colleges and constituent recognised institutions.

The effect of sections 40 and 41 is that in case the University so determines and the State Government issues the necessary notification under subsection (2) of section 40, all instructions, teaching and training in under-graduate courses shall within the University area be conducted by the University and shall be imparted by the teachers of the University. The, result would be that except in matters mentioned in the proviso to subsection (4) of section 41 no instructions, teaching and training in undergraduate courses of study, which has hitherto been conducted by the affiliated colleges, would be conducted by these colleges, because the same would have, to be conducted by the University and would have to be imparted by the teachers of the University. The affiliated colleges would also as a result of the above become constituent colleges. A provision which makes it imperative that teaching in under-graduate courses can be conducted only by the University and can be imparted only by the teachers of the University plainly violates the rights of minorities to establish and administer their educational institutions, Such a provision must consequently be held qua minority institutions to result in contravention of article 30(1). The Court struck down section 40 so far as minority educational institutions are concerned as being violative of Article 30(1). Further, once section 40 is held to be unconstitutional so far as minority educational institutions are concerned, the same vice would afflict section 41 because section 41 can operate only if section 40 survives the attack and is held to be not violative of article 30(1). The Court therefore, held section 40 and 41 to be void in respect of minority educational institutions. It may also be mentioned that the concept of constituent colleges is not a rigid concept and can vary from university to university. The concept of constituent colleges which is visualized in the impugned provisions of sections 40 and 41 of the Act contemplates that the imparting of teaching at the under-graduate level in the prescribed course of studies shall be only by the teachers of the University. The minority colleges as such would not be entitled to impart education in courses of study through their own teachers. Sections 40 and 41 would, therefore be as already mentioned violative of article 30(1). So far as post-graduate teaching is concerned, the general pattern which prevails and has been accepted so far is that the education is imparted by the University. As against that, the mode for under-graduate teaching has been that it is imparted by the individual colleges. A very large number of colleges, including minority colleges, have been established and are in existence for the purpose of imparting under-graduate education. The Supreme Court held that the impugned provisions are calculated to do away with the present system and in the process they impinge upon the rights of minorities under article 30(1).

Appointment/ Approval of Teaching and Non-Teaching Staff for Minority Educational Institutions by State or University

In the Re Kerala Education Bill case, Kerala Education Bill inter alia clause 11 dealing with the Appointment of teachers in Government and aided schools states-

459. Supra n. 33.
(1) The Public Service Commission shall, as empowered by this Act to select candidates for appointment as teachers in Government and aided schools. Before Service Commission shall select candidates with due regard to the probable number of vacancies of teachers that may arise in the course of the year. The candidates shall be selected for each district separately and the list of candidates so selected shall be published in the Gazette. Teachers of aided schools shall be appointed by the manager only from the candidates so selected for the district in which the school is located provided that manager may, for sufficient reason, with the permission of the Public Service Commission, appoint teachers selected for any other district. Appointment of teachers in Government schools shall also be made from the list of candidates so published.

(2) In selecting candidates under subsection (1) the Public Service Commission shall have regard to the provisions made by the Government under clause (4) of Article 16 of the Constitution. Clause 12 dealing with the Conditions of service of aided school teachers states:-

(1) The conditions of service relating to pensions, provident fund, insurance and Kerala University Act.

In this case the Court also held that State can prescribe reasonable regulations. In this case regulations which provided for qualifications of teachers and which provided for State Public Service Commission to select teachers in aided schools were upheld.

In Very Rev. Mother Provincial case, forty-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 main attack in the petitions is against Chapter VIII headed ‘private colleges’ consisting of Sections 47 to 61 and some provisions of Chapter IX particularly Section 63. 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 the short title and commencement (Section 1) and definitions (Section 2). We are concerned with some definitions in Section 2 and Chapter VIII and IX. The other chapters lay down the constitution of University and contain matters relating thereto. They are not in dispute.

460 Supra n. 4.
461 Id at 419.
462 Ibid.
463 Ibid.
464 Ibid.
465 Id at 421.
466 Ibid.
467 Ibid.
468 Ibid.
469 Ibid.
470 Ibid.

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“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. ‘Principal’ means the head of a college. By ‘teacher’ as used in the Act is meant a Principal, Professor, Assistant-Professor, Reader, Lecturer, Instructor or such other person imparting instruction or supervising research and whose appointment has been approved by the University in any of the colleges or recognised institutions. ‘Recognised teacher’ means a person employed as a teacher in an affiliated institution and whose appointment has been approved by the University. There is such overlap between ‘college’, ‘teacher’ and ‘recognised teacher’ but there is no antinomical confusion which might have otherwise resulted. These definitions by themselves are not questionable but in the context of the provisions of Chapters VIII and IX, about to be referred to, the insistence on the recognition by the University is claimed to be interference with the freedom of management.

Section 53, sub-sections (1), (2) and (3) confer on the Syndicate of the University the power to veto even the action of the governing body or the managing council in the selection of the principal.471 Similarly, sub-section (4) takes away from the educational agency or the corporate management the right to select the teachers.472 The insistence on merit in sub-section (4) or on seniority-cum-fitness in sub-section (7) does not save the situation.473 The power is exercised not by the educational agency or the corporate management but by a distinct and autonomous body under the control of the Syndicate of the University.474 Indeed sub-section (9) gives a right of appeal to the Syndicate to any person aggrieved by the action of governing body or the managing council thus making the Syndicate the final and absolute authority in these matters.475 Coupled with this is the power of Vice-Chancellor and the Syndicate in sub-section (2) and (4) of Section 56.476 These sub-sections read477:

“56. Conditions of service of teachers of private colleges.

(1) * * * *

(2) No teacher of a private college shall be dismissed, removed, or reduced in rank by the governing body or managing council without the previous sanction of the Vice-Chancellor or placed under suspension by the governing body or managing council for a continuous period exceeding fifteen days

471. Ibid.
472. Ibid.
473. Ibid.
474. Ibid.
475. Id at 424.
476. Ibid.
477. Ibid.
without such previous sanction.

(3) * * * * *

(4) A teacher against whom disciplinary action is taken shall have a right of Appeal to the Syndicate, and the Syndicate shall have power to order reinstatement of the teacher in cases of wrongful removal or dismissal and to order such other remedial measures as it deems fit, and the governing body or managing council, as the case may be, shall comply with the order."

Then Section 58 which reads:478

"58. Membership of Legislative Assembly, etc., not to disqualify teachers.-A teacher of a private college shall not be disqualified for continuing as such teacher merely on the ground that he has been elected as a member of the Legislative Assembly of the State or of Parliament or of a local authority:

Provided that a teacher who is a member of the Legislative Assembly of the State or of Parliament shall be on leave during the period in which the Legislative Assembly or Parliament shall be in session."

The Supreme Court held that sub-sections (1), (2), (3) and (9) of Section 53, sub-sections (2) and (4) of Section 56, Section 58 (in so far as it removes disqualification which the founders may not like to agree to), and Section 63 are ultra vires Article 30 (1) in respect of the minority institutions.479

In D.A.V. College case,480 writ petitions were filed by the various colleges managed and administered by the D.A.V. College Trust and Managing Society.481 These colleges were before the Punjab Reorganization Act affiliated to 'the Punjab University'.482 As a result of notification issued under section 5 of the Guru Nanak University (Amritsar) Act (Act 21 of 1969) those colleges, which were in the specified areas ceased to be affiliated to the Punjab University and were to be associated and admitted to the privileges of the Guru Nanak University.483 Under clause 17 of the statutes framed under the Act, the staff initially appointed had to be approved by the Vice-Chancellor and all subsequent changes were also to be reported to the University for Vice-Chancellor's approval.484 Clause 18 required non-Government colleges to comply with the requirements laid down in the ordinance governing service and conduct of teachers in non-Government colleges as might be framed by the University.485 This Court held that Arya Samaj was a part of the Hindu religious minority in the State of Punjab and that Arya Samajis had a distinct script of their own, namely, Devnagri. Arya

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478. Ibid.
479. Id at 426.
480. Supra n. 174.
481. Id 271.
482. Ibid.
483. Ibid.
484. Id at 282.
485. Ibid.
Samajis were held entitled to invoke the right guaranteed by article 29(1) because they were a section of citizens having a distinct script; they were also entitled to invoke article 30(1) because they were a religious minority.486 Clause 17 of Chapter V of the statutes was struck down by the Court as offending article 30(1) because they interfered with the right of the religious minority to administer their educational institutions.487

The Court said these provisions cannot be made conditions of affiliation, the non-compliance of which involve disaffiliation and consequently they will have to be struck down as offending Article 30(1).488 Clause 18 was held not to suffer from the same vice as clause 17 because that provision in so far as it is applicable to the minority institution empowers the University to prescribe by regulations governing the service and conduct of teachers which is enacted in the larger interests of the institutions to ensure efficiency and excellence.489 It may for instance issue an ordinance in respect of age of superannuation or prescribe minimum qualifications for teachers to be employed by such institutions either generally or in particular subjects.490 Uniformity in the conditions of service and conduct of teachers in all non-Government colleges would make for harmony and avoid frustration.491 Of course while the power to make ordinances in respect of the matters referred to is unexceptional the nature of the infringement of the right, if any, under Article 30(1) will depend on the actual purpose and import of the ordinance when made and the manner in which it is likely to affect the administration of the educational institution, about which it is not possible now to predicate.492

The Supreme Court in The Ahmedabad St. Xavier’s College Society case493 observed that educational institutions are temples of learning.494 The virtues of human intelligence are mastered and harmonised by education.495 Where there is complete harmony between the teacher and the taught, where the teacher imparts and the student receives, where there is complete dedication of the teacher and the taught in learning, where there is discipline between the teacher and the taught, where both are worshippers of learning, no discord or challenge will arise.496 An educational institution runs smoothly when the teacher and the taught are engaged in the common ideal of pursuit of knowledge.497 It is, therefore, manifest that the appointment of teachers is an important part in educational institutions.498 The qualifications and character of the teachers are really important.499 The minority institutions have the right to administer institutions.500 This right implies the obligation and duty of the minority institutions to render the very

\[486 \text{ Id at 277.} \]
\[487 \text{ Id at 283.} \]
\[488 \text{ Ibid.} \]
\[489 \text{ Id at 284.} \]
\[490 \text{ Ibid.} \]
\[491 \text{ Ibid.} \]
\[492 \text{ Ibid.} \]
\[493 \text{ Supra n. 13.} \]
\[494 \text{ Id at 748.} \]
\[495 \text{ Ibid.} \]
\[496 \text{ Ibid.} \]
\[497 \text{ Ibid.} \]
\[498 \text{ Ibid.} \]
\[499 \text{ Ibid.} \]
\[500 \text{ Ibid.} \]
In the right of administration, checks and balances in the shape of regulatory measures are required to ensure the appointment of good teachers and their conditions of service.  

In that case, Section 41(4)(ii) of the Gujarat University Act, 1949 Act confers power on the university to approve the appointment of the teachers made by colleges. Section 41(4)(iii) of the Gujarat University Act, 1949 Act requires colleges to contribute teachers for teaching on behalf of the university. Section 41(4)(iv) of the Act confers power on the university to co-ordinate and regulate the facilities provided and expenditure incurred by colleges and institutions in regard to libraries, laboratories and other equipments for teaching and research. It was concluded by Khanna, J., that a law which interfered with a minority's choice of qualified teachers, or its disciplinary control over teachers and other members of the staff of the institution, was void, as it was violative of Article 30(1). While it was permissible for the state and its educational authorities to prescribe the qualifications of teachers, it was held that once the teachers possessing the requisite qualifications were selected by the minorities for their educational institutions, the state would have no right to veto the selection of those teachers.  

The selection and appointment of teachers for an educational institution was regarded as one of the essential ingredients under Article 30(1). An educational institution runs smoothly when the teacher and the taught are engaged in the, common ideal of pursuit of knowledge. It is, therefore, manifest that the appointment of teachers is an important part in educational institutions. The qualifications and the character of the teachers are really important. The minority institutions have the right to administer institutions. This right implies the obligation and duty of the minority institutions, to render the very best to the students. In the right of administration, checks and balances in the shape of regulatory measures are required to ensure the appointment of good teachers. The Court held that these sections cannot be applied to minority educational institutions.

The Court in Rev. Father W. Proost case, held that section 48-A of the Bihar University Act which came into force from 1 March, 1962 completely took away the autonomy of the governing body of St. Xaviers College established by the Jesuits of Ranchi. Section 48-A of the said Act provided inter alia that appointments of service by the governing body of the College were to be made on the recommendation of the University Service Commission and subject to the approval of the University.

In T.M.A. Pai Foundation case, the Supreme Court held that in the matter of day-to-day management, like the appointment of staff, teaching and non-teaching, and administrative control over them, the management should have the freedom and there should not be any external controlling agency. However, a rational procedure for the

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501. Ibid.
502. Ibid.
503. Supra n. 13.
504. Ibid.
505. Ibid.
506. Supra n. 156.
507. Supra n. 1.
508. Id at 589.
selection of teaching staff and for taking disciplinary action has to be evolved by the management itself. The State or other controlling authorities, however, can always prescribe the minimum qualification, experience and other conditions bearing on the merit of an individual for being appointed as a teacher or a principal of any educational institution.

In Private Unaided Professional Institutions, the Management will have the right to select teachers as per the qualifications and eligibility conditions laid down by the State/University subject to adoption of a rational procedure of selection. In N. Ahmed case, the appellant contended that he being the seniormost graduate teacher of an aided minority school, he should be appointed as the Headmaster and none else. He relied on Rule 44-A of the Kerala Education Rules which provided that appointment of Headmaster shall ordinarily be according to seniority from the seniority list prepared and maintained under clauses (a) to (b) of Rule 34. The Supreme Court held that selection and appointment of Headmaster in a school (or Principal of a college) are of prime importance in administration of that educational institution. The Headmaster is the key post in the running of the school. He is the hub on which all the spokes of the school are set around whom they rotate to generate result. A school is personified through its Headmaster and he is the focal point on which outsiders look at the school. A bad Headmaster can spoil the entire institution, an efficient and honest Headmaster—can improve it by leaps and bounds. The functional efficacy of a school very much depends upon the efficiency and dedication of its Headmaster. The right to choose is the most important facet of the right to administer a school.

In Mlankara Syrian Catholic College case, the Court held that subject to the eligibility conditions/qualification prescribed by the State being met, the unaided minority educational institutions will have the freedom to appoint teachers/lecturers by adopting any rational procedure of selection. The Court held that the State can prescribe the minimum qualifications, experience and other criteria bearing on merit, for making appointments. The Court held that having regard to the key role played by the principal in the management and administration of the educational institution, there can be no doubt that the right to choose the Principal is an important part of the right to administration and even if the institution is aided, there can be no interference with the

509. Ibid.
510. Ibid.
511. Id at 549.
513. Id at 680.
514. Ibid.
515. Ibid.
516. Ibid.
517. Ibid.
518. Ibid.
519. Ibid.
520. Supra n. 42.
521. Ibid.
said right.\textsuperscript{522} The fact that the post of the Principal/Headmaster is also covered by State aid will make no difference.\textsuperscript{523}

Service and Conduct Rules of Teachers for Minority Educational Institutions by State or University

In re Kerala Education Bill case,\textsuperscript{524} the Supreme Court upheld the validity of Clauses 11 and 12(4) of the Bill. Clause 11(1) required a recognised minority institution to appoint teachers selected by the State Public Service Commission, while Clause 12(4) laid down that no teacher of an aided school shall be dismissed, removed, reduced in rank or suspended by the management without previous sanction of the authorised officer. The Court held that these clauses were designed to give protection and security to the teachers who are engaged in rendering service to the nation and were permissible regulations which the State could impose on the minorities as a condition for granting aid to their educational institutions.\textsuperscript{525} The court further held that since these aforesaid clauses of the Bill were regulatory, they do not violate Article 30(1) of the Constitution.\textsuperscript{526}

In Frank Anthony Public School Employees' Assn. v. Union of India,\textsuperscript{527} Section 8(4) of the Delhi School Education Act, 1973 which require a managing committee of recognised private school to obtain approval of the Director for suspending an employee was upheld in its application to the minority institutions. The Court in Rev. Father W. Proost case\textsuperscript{528} held that section 48-A of the Bihar University Act which came into force from 1 March, 1962 completely took away the autonomy of the governing body of St. Xaviers College established by the Jesuits of Ranchi. Section 48-A of the said Act provided inter alia that dismissals, removals, termination of service by the governing body of the College were to be made on the recommendation of the University Service Commission and subject to the approval of the University. According to the section, subject to the approval of University appointments, dismissals, removals, termination of service or reduction in rank of teachers of an affiliated college not belonging to the State Government would have to be made by the governing body of the college on the recommendation of the University Service Commission. The section further provided that the said Commission would be consulted by the governing body of a college in all disciplinary matters affecting teachers of the college and no action would be taken against or any punishment imposed upon a teacher of a college otherwise than in conformity with the findings of the Commission.

Another significant question was raised in this case. Section 12 of the Delhi School Education Act says that the grades prevalent in the government schools would not apply to unaided minority schools. The Teachers' Union of the Frank Anthony Schools sought a declaration that this situation was discriminatory and sought its invalidation under Article 14. The Supreme Court has observed that the excellence of the instruction

\textsuperscript{522} Id at 404.
\textsuperscript{523} Ibid.
\textsuperscript{524} Supra n. 33.
\textsuperscript{525} Ibid.
\textsuperscript{526} Ibid.
\textsuperscript{527} (1987) 1 SCR 238.
\textsuperscript{528} Supra n. 156.
provided in an institution depends directly on the quality and the contentment of the teaching staff. Conditions of service pertaining to minimum qualifications of teachers, their salaries, allowances and other conditions of service which ensure security, contentment and decent living standards to teachers will enable them to render better service to the institution and this cannot be regarded as violative of Article 30 (1). The management of a minority educational institution cannot be permitted under the guise of the Fundamental Right guaranteed by Article 30 (1) of the Constitution to oppress or exploit its employees any more than other private employee. The Court declared Section 12 of the Delhi Education Act invalid insofar as it has made government pay scales inapplicable to minority institutions as being clearly discriminatory.

In the D.A.V. College case,\(^\text{529}\) Clause 18 of the statutes framed by the Guru Nanak University under Section 19 of the University Act provided that non-government colleges were to comply with the requirements laid down in the ordinances governing the service and conduct of teachers in non-government colleges, as may be framed by the University. The Court held that Clause 18 does not to suffer from the vice because the provision, insofar as it was applicable to the minority institutions, empowered the University to prescribe by-regulations governing the service and conduct of teachers, and that this was in the larger interest of the institutions, and in order to ensure their efficiency and excellence.\(^\text{530}\) In this connection, the Court observed that: \(^\text{531}\)

"Uniformity in the conditions of service and conduct of teachers in all non-Government Colleges would make for harmony and avoid frustration. Of course while the power to make ordinances in respect of the matters referred to is unexceptional the nature of the infringement of the right, if any, under Article 30(1) will depend on the actual purpose and import of the ordinance when made and the manner in which it is likely to affect the administration of the educational institution, about which it is not possible now to predicate." The Court further observed that disciplinary control over the teachers of a minority educational institution would be with the governing council, regulations, in my opinion, can be made for ensuring proper conditions of service, of the teachers and for, securing a fair procedure in the matter of disciplinary action against the teachers. Such provisions which are calculated to safeguard the interest of teachers would result in security of tenure and thus inevitably attract competent persons for the posts of teachers. Such a provision would also eliminate a potential cause of frustration amount the teachers. Regulations made for this purpose should be considered to be in the interest of minority educational institutions and as such they would not violate article 30(1).

In Lilly Kurian case\(^\text{532}\), Smt. Lily kurian, the appellant herein, was appointed as Principal of the St. Joseph Training College for Women, Eranakulam in the year 1957.\(^\text{533}\) The College was established by the Congregation of the Mothers of Carmel, which is a religious society of Nuns belonging to the Roman Catholic Church, and is affiliated to the University of Kerala.\(^\text{534}\) It is administered by a Managing Board, and the Provincial of the

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\(^{529}\) Supra n. 174.

\(^{530}\) Id at 709.

\(^{531}\) Ibid.

\(^{532}\) Supra n. 31.

\(^{533}\) Id at 127.

\(^{534}\) Ibid.

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Congregation. Smt. Lily Kurian had sent two communications dated October 6, 1969, and November 5, 1969, to the Secretary to the Government, Education Department, calling for termination of deputation of Rajaratnam, appointed as a Lecturer in the College by the Management, as a result of which his deputation was cancelled by the Government on December 9, 1969. The Managing Board viewed the sending of these communications by the appellant without reference to it as an act of insubordination, and therefore, decided to conduct an enquiry against the appellant and she was suspended pending enquiry. Later on she was dismissed from the service. A substitute Principal, Sr. Lewina, was appointed and the appellant was relieved of the duties on April 10, 1970. On April 13, 1970 the appellant filed an appeal to the Vice-Chancellor against the order of suspension under Ordinance 33 (1) framed under the Kerala University Act, 1969.

The Vice-Chancellor, University of Kerala, by his two orders dated October 19, 1970 held that the order of dismissal from service and the order of suspension passed against the appellant were in breach of the rules of natural justice and fair play and were consequently illegal and null and void, and accordingly directed the management to allow her to function as Principal.

The Kerala University Act, 1957, “the Act”, as the preamble shows, was enacted to reconstitute the University of Travancore into a teaching University for the whole of the State of Kerala. Section 2 (a) defines “college” to mean a college maintained by, or affiliated to the University. The definition of “teacher” in Section 2 (j) of the Act is wide enough to take in a Principal, as any ‘other person imparting instruction’. Section 5 (viii) confers power on the University to affiliate to itself colleges within the State in accordance with the conditions to be prescribed in the statutes regarding management, salary and terms of service of members of the staff, and other such matters, and to withdraw affiliation from colleges. Section 15 (2) (ii) enjoins that the Senate shall make, amend or repeal statutes of its own motion or on the motion of the Syndicate. The powers of the Syndicate are enumerated in Section 19, the relevant provisions of which read:

19. Powers of the Syndicate.- Subject to the provisions of this Act and the Statutes, the Executive Authority of the University including the general superintendence and
control over the institutions of the University shall be vested in the Syndicate; and subject likewise, the Syndicate shall have the following powers, namely:547-

a) to affiliate institutions in accordance with the conditions prescribed in the Statutes;

(b) to make ordinances and to amend or repeal the same;

(J) to fix the emoluments and prescribe the duties and the conditions of service of teachers and other employees in private colleges.

The Kerala University Act, 1957 was repealed by the Kerala University Act, 1969 which came into force with effect from February 28, 1969.548 Section 75 (2) of the Act provides that the statutes, ordinances, rules and bye-laws in force immediately before the commencement of the Act shall, in so far as they are not inconsistent with its provisions, continue to be in force unless they are replaced.549 The material provisions of Ordinance 33, Chapter 57 of the Ordinances framed by the Syndicate under Section 19 (j) are as follows:550

33 (1) Suspension: The management may at any time place a teacher under suspension where a disciplinary proceeding against him is contemplated or is pending. He shall be paid subsistence allowance and other allowances by the management during the period of suspension at such rates as may be specified by the University in each case. The teacher shall have right to appeal against the order of suspension to the Vice-Chancellor of the University within a period of two months from the date on which he receives the order of suspension.

(2) Nature of penalties: The following penalties may for good and sufficient reason be imposed on a teacher by the management:-

(i) Censure.
(ii) Withholding of increment.
(iii) Recovery from pay of any pecuniary loss caused to the institution/monetary value equivalent to the amount of increment ordered to be withheld.
(iv) Reduction to a lower rank in the seniority list or to a lower grade or post.
(v) Dismissal from service.

The management shall be the Disciplinary Authority in imposing the penalties.

(4) Appeal: A teacher shall be entitled to appeal to the Vice-Chancellor of the University against any order passed by the management in respect of the
penalties referred to in items (ii) to (v). Such appeal shall be submitted within a period of 60 days the appellant receives the order of punishment.

The Supreme Court held that the conferral of a right of appeal to an outside authority like the Vice-Chancellor under Ordinance 33 (4) takes away the disciplinary power of a minority educational authority.551 The Vice-Chancellor has the power to veto its disciplinary control.552 There is a clear interference with the disciplinary power of the minority institution.553 The State may ‘regulate’ the exercise of the right of administration but it has no power to impose any ‘restriction’ which is destructive of the right itself.554 The conferral of such wide powers on the Vice-Chancellor amounts in reality, to a fetter on the right of administration under Article 30 (1).555 This, it seems to us, would so affect the disciplinary control of a minority educational institution as to be subversive of its constitutional rights and can hardly be regarded as a ‘regulation’ or a ‘restriction’ in the interest of the institution.556

The Court held that the power of appeal conferred on the Vice-Chancellor under Ordinance 33 (4) is not only a grave encroachment on the institution’s right to enforce and ensure discipline in its administrative affairs but it is uncanalised and unguided in the sense that no restrictions are placed on the exercise of the power.557 The extent of the appellate power of the Vice-Chancellor is not defined, and, indeed, his powers are unlimited.558 The grounds on which the Vice-Chancellor can interfere in such appeals are also not defined.559 He may not only set aside an order of dismissal of a teacher and order his reinstatement, but may also interfere with any of the punishments enumerated in items (ii) to (v) of Ordinance 33 (2), that is to say, he can even interfere against the infliction of minor punishments.560 In the absence of any guide-lines, it cannot be held that the power of the Vice-Chancellor under Ordinance 33 (4) was merely a check on maladministration.561 The Ordinance was struck down as it contained no guidelines for the exercise of the appellate power.562

The Court held that Ordinance 33 (4), Chapter 57 of the Ordinance framed by the Syndicate of the University under Section 19 (j) of the Kerala University Act, 1969 would not be applicable to an educational institution established and managed by a religious or linguistic minority like St. Joseph’s Training College for Women, Ernakulam.563

551. Id at 137.
552. Ibid.
553. Ibid.
554. Ibid.
555. Ibid.
556. Ibid.
557. Id at 141.
558. Ibid.
559. Ibid.
560. Ibid.
561. Ibid.
562. Ibid.
563. Id at 142.
In All Saints High School v Government of Andhra Pradesh, the question arose whether certain provisions of the Andhra Pradesh recognised Private Educational Institutions Control Act, 11 of 1975, offend against the fundamental right conferred on minorities by Article 30 (1). The impugned Act, by reason of section 1 (3), applies to all private educational institutions, whether or not they are established by minorities. The appellants' contention is that several provisions of the Act violate the guarantee contained in Article 30(1) by permitting or compelling interference with the internal administration of private educational institutions established by minorities. The appellants are particularly aggrieved by the provisions of sections 3 to 7 of the Act, the validity whereof is challenged on the ground that they deprive the appellants of their right to administer the affairs of minority institutions by vesting the ultimate administrative control in an outside authority. These contentions having been rejected by the High Court of Andhra Pradesh, the appellants have filed these appeals by special leave. Section 3 (1) of the Act provides that, subject to any rule that may be made in this behalf, no teacher employed in any private educational institution shall be dismissed, removed or reduced in rank nor shall his appointment be otherwise terminated, except with the prior approval of the competent authority. The proviso to the section says that if any educational institution contravenes the aforesaid provision, the teacher affected by the contravention shall be deemed to be in service. Section 3 (2) requires that where the proposal to dismiss, remove or reduce in rank or otherwise terminate the appointment of any teacher employed in any private educational institution is communicated to the competent authority, that authority shall approve the proposal, if it is satisfied that there are adequate and reasonable grounds for the proposal. The Court held that Sections 3(1) and 3(2) are unconstitutional in so far as they are made applicable to minority institutions since, in practice, these provisions are bound to interfere substantially with their right to administer institutions of their choice, as they sought to confer an unqualified power upon the competent authority.

In the St. Xavier’s College Society case, the petitioners impeached inter alia sections 51A and 52A of the Gujarat University Act, 1949. Section 51A states that no member of the teaching, other academic and non-teaching staff of an affiliated college shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges and given a reasonable opportunity of being heard and until (a) he has been given a reasonable opportunity of making representation on any such penalty proposed to be inflicted on him; and (b) the penalty to be inflicted on him is approved by the Vice-Chancellor or any other officer of the university authorised by the Vice-Chancellor in this behalf. Objection is taken by the petitioners to the approval of Penalty by the Vice-Chancellor or any other officer of the university authorised by him. First, it is said that a blanket power is given to the Vice-Chancellor without any guidance. Second, it is said that the words "any other officer of the university authorised by him" also confer power on the Vice-Chancellor to authorise any one and no

564 Supra n. 52.
565 Supra n. 13.
566 Id at 751.
567 Ibid.
568 Ibid.
guidelines are to be found there. In short, unlimited and undefined power is conferred on the Vice-Chancellor. The Approval by the Vice-Chancellor may be intended to be a check on the administration. The provision contained in section 51A, clause (b) of the Act cannot be said to be a permissive regulatory measure inasmuch as it confers arbitrary power on the Vice-Chancellor to take away the right of administration of the minority institutions. Section 51A of the Act cannot, therefore, apply to minority institutions.

The provisions contained in section 52A of the Act contemplate reference of any dispute between the governing body and any member of the teaching, other academic and non-teaching staff of an affiliated college which is connected with the conditions of service of such member to a Tribunal of Arbitration consisting of one member nominated by the governing body of the college, one member nominated by the member concerned and an Umpire appointed by the Vice-Chancellor. These, references to arbitration will introduce an area of litigious controversy inside the educational institution. The atmosphere of the institution will be vitiated by such proceedings. The governing body has its own disciplinary authority. The governing body has its domestic jurisdiction. This jurisdiction will be displaced. A new jurisdiction will be created in administration. The provisions contained in section 52A of the Act cannot, therefore, apply to minority institutions.

The Court held that for these reasons the provisions contained in sections 51A and 52A cannot be applied to minority institutions. These provisions violate the fundamental rights of the minority institutions. Clause (a) of sub-sections (1) and (2) of section 51A of the impugned Act which make provision for giving a reasonable opportunity of showing cause against a penalty to be proposed on a member of the staff of an educational institution would consequently be held to be valid. Clause (b) of those sub-sections which gives a power to the Vice-Chancellor and officer of the University authorised by him to veto the action of the managing body of an educational institution in awarding punishment to a member of the staff, in my opinion, interferes with the disciplinary control of the managing body over its teachers. It is significant that the power of approval conferred by clause (b) in each of the two sub-sections of section 51A on the Vice-Chancellor or other officer authorised by him is a blanket power. No guidelines are laid down for the exercise of that power and it is not provided that the approval is to be withheld only in case the dismissal, removal, reduction in rank or termination of service is mala fide or by way of victimisation or other similar cause. The
conferment of such blanket power on the Vice-Chancellor or other officer authorised by him for vetoing the disciplinary action of the managing body of an educational institution makes a serious inroad on the right of the managing body to administer an educational institution. Clause (b) of each of the two sub-sections of section 51A should, therefore, be held to be violative of article 30(1) so far as minority educational institutions are concerned. Section 52A of the Act relates to the reference of disputes between a governing body and any member of the teaching, other academic and non-teaching staff of an affiliated college or recognized or approved institution connected with the conditions of service of such member to a Tribunal of Arbitration, consisting of one nominated by the governing body of the college or, as the case may be, of the recognised or approved institution, one member nominated by the member of the staff involved in the dispute and an Umpire appointed by the Vice-Chancellor. Section 52A is widely worded, and as it stands it would cover within its ambit every dispute connected with the conditions of service of a member of the staff of an educational institution, however trivial or insignificant it may be, which may arise between the governing body of a college and a member of the staff.

The effect of this section would be that the managing committee of an educational institution would be embroiled by its employees in a series of arbitration proceedings. The provisions of section 52A would thus act as a spoke in the wheel of effective administration of an educational institution. It may also be stated that there is nothing objectionable to selecting the method of arbitration for settling major disputes connected with conditions of service of staff of educational institutions. It may indeed be a desideratum. What is objectionable, apart from what has been mentioned above, is the giving of the power to the Vice-Chancellor to, nominate the Umpire. Normally in such disputes there would be hardly any agreement between the arbitrator nominated by the governing body of the institution and the one nominated by the concerned member of the staff. The result would be that the power would vest for all intents and purposes in the nominee of the Vice-Chancellor to decide all disputes between the governing body and the member of the staff connected with the latter's conditions of service. The governing body would thus be hardly in a position to take any effective disciplinary action against a member of the staff. This must cause an inroad in the right of the governing body to administer the institution. Section 52A should, therefore be held to be violative of Article 30(1) so, far as minority educational institutions are concerned.

In T.M.A. Pai Foundation case, the Court held that for redressing the grievances of employees of aided and unaided institutions who are subjected to punishment or termination from service, a mechanism will have to be evolved, and in our opinion, appropriate tribunals could be constituted, and till then, such tribunals could be presided over by a Judicial Officer of the rank of District Judge. Regulations can be framed governing service conditions for teaching and other staff for which aid is provided by the State, without interfering with the overall administrative control of the management over the staff. The teachers are like foster-parents who are required to look after, cultivate

582 Supra n. 1.
583 Id at 589.
584 Ibid.
and guide the students in their pursuit of education. The teachers and the institution exist for the students and not vice versa. Once this principle is kept in mind, it must follow that it becomes imperative for the teaching and other staff of an educational institution to perform their duties properly, and for the benefit of the students. Where allegations of misconduct are made, it is imperative that a disciplinary enquiry is conducted, and that a decision is taken. In the case of a private institution, the relationship between the Management and the employees is contractual in nature. A teacher, if the contract so provides, can be proceeded against, and appropriate disciplinary action can be taken if the misconduct of the teacher is proved. Considering the nature of the duties and keeping the principle of natural justice in mind for the purposes of establishing misconduct and taking action thereon, it is imperative that a fair domestic enquiry is conducted. It is only on the basis of the result of the disciplinary enquiry that the management will be entitled to take appropriate action.

The Court observed we see no reason why the Management of a private unaided educational institution should seek the consent or approval of any governmental authority before taking any such action. In the ordinary relationship of master and servant, governed by the terms of a contract of employment, anyone who is guilty of breach of the terms can be proceeded against and appropriate relief can be sought. Normally, the aggrieved party would approach a court of law and seek redress. In the case of educational institutions, however, we are of the opinion that requiring a teacher or a member of the staff to go to a civil court for the purpose of seeking redress is not in the interest of general education. Disputes between the management and the staff of educational institutions must be decided speedily, and without the excessive incurring of costs. It would, therefore, be appropriate that an educational Tribunal be set up in each district in a State, to enable the aggrieved teacher to file an appeal, unless there already exists such an educational tribunal in a State the object being that the teacher should not suffer through the substantial costs that arise because of the location of the tribunal; if the tribunals are limited in number, they can hold circuit/camp sittings in different districts to achieve this objective. Till a specialized tribunal is set up, the right of filing the appeal would lie before the District Judge or Additional District Judge as notified by the government. It will not be necessary for the institution to get prior permission or ex post facto approval of a governmental authority while taking disciplinary action against a

585 Id at 547.
586 Ibid.
587 Ibid.
588 Ibid.
589 Ibid.
590 Ibid.
591 Ibid.
592 Ibid.
593 Ibid.
594 Id at 548.
595 Ibid.
596 Ibid.
597 Ibid.
598 Ibid.
599 Ibid.
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teacher or any other employee. The State government shall determine, in consultation with the High Court, the judicial forum in which an aggrieved teacher can file an appeal against the decision of the Management concerning disciplinary action or termination of service.

So far as the statutory provisions regulating the facets of administration is concerned, in case of an unaided minority educational institution, the regulatory measure of control should be minimal and the conditions of recognition as well as conditions of affiliation to an University or Board have to be complied with, but in the matter of day-to-day Management, like appointment of staff, teaching and non-teaching and administrative control over them, the Management should have the freedom and there should not be any external controlling agency. However, a rational procedure for selection of teaching staff and for taking disciplinary action has to be evolved by the Management itself. For redressing the grievances of such employees who are subjected to punishment or termination from service, a mechanism will have to be evolved and in our opinion, appropriate tribunals could be constituted, and till then, such tribunal could be presided over by a Judicial Officer of the rank of District Judge. The State or other controlling authorities, however, can always prescribe the minimum qualifications, salaries, experience and other conditions bearing on the merit of an individual for being appointed as a teacher of an educational institution. Regulations can be framed governing service conditions for teaching and other staff for whom aid is provided by the State without interfering with overall administrative control of Management over the staff, Government/University representative can be associated with the selection committee and the guidelines for selection can be laid down. In regard to un-aided minority educational institutions such regulations, which will ensure a check over unfair practices and general welfare, of teachers could be framed.

In Mlankara Syrian Catholic College case, the Court held that aided educational minority institutions providing secular education or profession education should necessarily have standards comparable with non-minority educational institutions. Such standards can be attained and maintained only by having well-qualified professional teachers. An institution can have the services of good qualified professional teachers only if the conditions of service ensure security, contentment and decent living standards. That is why the State can regulate the service conditions of the employees of minority educational institutions to ensure quality of education. Consequently, any law intended to regulate the service conditions of employees of educational institutions will

600. Ibid.
601. Ibid.
602. Id at (As per Justice S.N. Variava).
603. Ibid.
604. Ibid.
605. Ibid.
606. Ibid.
607. Ibid.
608. Supra n. 42.
609. Ibid.
610. Ibid.
611. Ibid.
apply to minority institutions also, provided that such law does not interfere with the overall administrative control of the management over the staff.\textsuperscript{612}

**Minority Educational Institutions and Industrial Law**

The Court in Bangalore Water Supply and Sewerage Board v. A. Rajappa\textsuperscript{613} held that educational institutions would come within the expression "industry" in the Industrial Disputes Act. In Christian Medical College Hospital Employees' Union v. Christian Medical College Vellore Association,\textsuperscript{614} the Supreme Court was called upon to decide an important question, namely, whether Sections 9A, 10, 11A, 12 and 33 of the Industrial Disputes Act, 1947, are applicable to educational institutions established and administered by the minorities which are protected by Article 30 of the Constitution. The Supreme Court upheld the application of industrial law to minority colleges, and it was held that providing a remedy against unfair dismissals would not infringe Article 30. Statutory provisions such as labour laws and welfare legislations etc. would be applicable to minority educational institutions.\textsuperscript{615}

**Minority Educational Institutions and Income Tax Act**

In the CIT v. Sarsaswath Poor Students Fund,\textsuperscript{616} the Karnataka High Court held that an educational institution existing solely for educational purposes is entitled to exemption under section 10(22) of the Income Tax Act, 1961. In the CIT v. Academy of General Education,\textsuperscript{617} the Court pointed out that an educational institution may invest its funds in any manner and it would be entitled to exemption under section 10(22) if the income generated therefrom is utilized for educational activities. In the case of Rao Bahadur A.K.D. Dharmaraja Education Charity Trust v. CIT,\textsuperscript{618} the Madras High Court held that in order to get benefit of section 10(22) of the Income Tax Act, application of income has to be solely for educational purposes. In case of only a small amount was spent for educational purposes and huge surplus was left the trust was not entitled to exemption under section 10(22). In Birla Vidhya Vihar Trust v. CIT,\textsuperscript{619} the Calcutta High Court observed that, if the sources generating income exist only for educational purposes, and not for private profit, then section 10(22) of the Income Tax Act, 1961 would be attracted and exemption under section 10(22) would not be available only if the income can be diverted for private benefit. It was further observed that merely because there was surplus of receipts over the expenditure it cannot be said that the educational institution exists for profit.

In CIT v. St. Xaviers,\textsuperscript{620} it was held by Patna High Court that exemption under section 10(22) is available to an educational institution. Assessee-society running school

\textsuperscript{612} Ibid.
\textsuperscript{613} (1978) 2 SCC 213.
\textsuperscript{614} (1988) 1 SCR 546.
\textsuperscript{615} Supra n. 1 at (As per Hon'ble Mr. Justice S.N. Variava)
\textsuperscript{616} 1984 Indlaw KAR 166 (Kar.)
\textsuperscript{617} 1983 Indlaw KAR 49 (Kar.)
\textsuperscript{618} 1989 Indlaw MAD 145.
\textsuperscript{619} 1981 Indlaw CAL 76 (Cal.).
\textsuperscript{620} 1989 Indlaw BIH 43.
and having other objects other than educational institution, the Court held that it is irrelevant for deciding whether the income of assessee derived from educational institution is exempt. The assessee was held entitled for exemption under section 10(22). It was observed that one of the clauses specified by clause (22) of section 10 is income of a university or other educational institution existing solely for educational purposes and not for purposes of profit. It is thus clear that, if the income of any person falls in a clause covered by clause (22) of section 10, then such income is not includible in the total income of that person. The fact that that person has or can have income from sources not falling under clause (22) of section 10 would not be relevant for deciding whether the income of such person from an educational institution would or would not be exempt. If such income falls under the clause specified in clause (22) of section 10, then it would be exempt and would not be liable to be included in the total income of that person while framing his assessment for the relevant assessment year.

In Aditanar Educational Institution's case, the Supreme Court observed that Exemption under section 10(22) of the Income Tax Act, 1961 is available to an educational institution or an educational society or a trust or other similar body running an educational institution solely for educational purposes and not for purposes of profits.

In CIT v. Oxford University Press, it was held that for exemption under section 10(22), it is not necessary that the assessee itself should be a university or an educational institution. The character of the assessee is not material. He may be "any person" including a person engaged in business or profession. Even then, he would be entitled to exemption under section 10(22) in respect of any income falling within clause (22) of section 10. In other words, what is exempt is "the income of a university or an educational institution existing solely for educational purposes and not for the purpose of profit". It is not necessary for the purpose of section 10(22) that the university or educational institution itself is an assessee. Nor such university or educational institution need be established or constituted in India. What is necessary for availing the benefit of exemption under section 10(22) is that the income is the income of university or an educational institution existing solely for educational purposes and not for purposes of profit. The expression "existing solely for educational purposes and not for purpose of profit" appearing in section 10(22) is thus a condition precedent for exemption under section 10(22). In the context and setting of this clause, the expression "existing" obviously means and refers to the existence of such university or institution solely for educational purposes in India. If a university or an educational institution, though existing outside India as a university or an educational institution for educational purposes, does not so exist in India, it would not be entitled to claim exemption of its income from other activity carried on by it in India by virtue of section 10(22). In other words, a university or an educational institution, whether established in India or abroad, must retain its character of a university or an educational institution in India and the income in respect of which exemption is claimed under section 10(22) must be the income derived by it in its capacity as a university or an educational institution. If it does not carry on its activities as a university or educational institution in India, it cannot be regarded as a

621. Aditanar Educational Institution v Additional Commissioner of Income Tax 1997 Indlaw SC 899
622. 1995 Indlaw MUM 322 (Bom.)
university or educational institution existing solely for educational purposes and, hence, the income derived by it from any other activities would not qualify for exemption under section 10(22).

Review

Administration means 'management of the affairs' of the institution. This management must be free of control so that the founders or their nominees can mould the institution as they think fit, and in accordance with their ideas of how the interests of the community in general and the institution in particular will be best served. In The Ahmedabad St. Xaviers College Society case,623 while considering the right of the religious and linguistic minorities to administer their educational institutions, Chief Justice A.N. Ray observed that the right to administer is said to consist of four principal matters. First is the right to choose its managing or governing body. It is said that the founders of the minority institution have faith and confidence in their own committee or body consisting of persons selected by them. Second is the right to choose its teachers. It is said that minority institutions want teachers to have compatibility with the ideals, aims and aspirations of the institution. Third is the right not to be compelled to refuse admission to students. In other words, the minority institutions want to have the right to admit students of their choice subject to reasonable regulations about academic qualifications. Fourth is the right to use its properties and assets for the benefit of its own institution. The right conferred on the religious and linguistic minorities to administer educational institutions of their choice is not an absolute right. This right is not free from regulation. Just as regulatory measures are necessary for maintaining the educational character and content of minority institutions similarly regulatory measures are necessary for ensuring orderly, efficient and sound administration.

The fundamental right to establish an educational institution cannot be confused with the right to ask for recognition or affiliation as there is no fundamental right to recognition of an educational institution by the State. Conditions granting recognition or affiliation may be imposed. Conditions granting recognition or affiliation can broadly cover academic and educational matters including the welfare of students and teachers. The conditions of affiliation or recognition, which pertain to the academic and educational character of the institution and ensure uniformity, efficiency and excellence in educational courses are valid, and that they do not violate even the provisions of Article 30 of the Constitution; but conditions that are laid down for granting recognition should not be such as may lead to governmental control of the administration of the private educational institutions. In All Saints High School v Government of Andhra Pradesh624, the learned Chief Justice Chandrachud, observed that no institution, minority or majority, has a fundamental right to recognition by the State or affiliation to the University, but since recognition and affiliation are indispensable for an effective and fruitful exercise of the fundamental right of minorities to establish and administer educational institutions of their choice, they are entitled to recognition and affiliation if

they agree to accept and comply with regulatory measures which are relevant for granting recognition and affiliation, which are directed to ensuring educational excellence of the institution concerned and which, largely and substantially, leave unimpaired the right of administration in regard to internal affairs of the institution.

The determination of the composition of the body to administer the educational institution established by a religious minority must be left to the minority as that is the core of the right to administer. Regulations to prevent maladministration by that body are permissible. As the right to determine the composition of the body which will administer the educational institution is the very essence of the right to administer guaranteed to the religious or linguistic minority under Article 30 (1), any interference in that area by an outside authority cannot be anything but an abridgment of that right. The religious or linguistic minority must be given the freedom to constitute the agency through which it purposes to administer the educational institution established by it as that is what Article 30 (1) guarantees.

In T.M.A. Pai Foundation case, the aided linguistic minority educational institution is given the right to admit students belonging to the linguistic minority to a reasonable extent only to ensure that its minority character is preserved and that the objective of establishing the institution is not defeated. The right to admit students being an essential facet of the right to administer educational institutions of their choice, as contemplated under Article 30 of the Constitution, the state government or the university may not be entitled to interfere with that right, so long as the admission to the unaided educational institutions is on a transparent basis and the merit is adequately taken care of. An aided minority educational institution, therefore, would be entitled to have the right of admission of students belonging to the minority group and at the same time, would be required to admit a reasonable extent of non-minority students, so that the rights under Article 30(1) are not substantially impaired and further the citizens' rights under Article 29(2) are not infringed. What would be a reasonable extent would vary from the types of institution, the courses of education for which admission is being sought and other factors like educational needs. The concerned State Government has to notify the percentage of the non-minority students to be admitted in the light of the above observations.

Observance of inter se merit amongst the applicants belonging to the minority group could be ensured. In the case of aided professional institutions, it can also be stipulated that passing of the common entrance test held by the state agency is necessary to seek admission. As regards non-minority students who are eligible to seek admission for the remaining seats, admission should normally be on the basis of the common entrance test held by the state agency followed by counselling wherever it exists. A minority institution may have its own procedure and method of admission as well as selection of students, but such a procedure must be fair and transparent, and the selection of students in professional and higher education colleges should be on the basis of merit. The procedure adopted or selection made should not be tantamount to mal-administration.

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625 Ibid.
626 Supra n. 1.
627 Ibid.
628 Ibid.
In Islamic Academy of Education case\(^{629}\), the Supreme Court observed that in unaided professional institutions, there will be full autonomy in their administration, but the principle of merit cannot be sacrificed, as excellence in profession is in national interest. Without interfering with the autonomy of unaided institutions, the object of merit based admissions can be secured by insisting on it as a condition to the grant of recognition and subject to the recognition of merit, the management can be given certain discretion in admitting students.\(^{630}\) The Court clarified that a minority professional college can admit, in their management quota, a student of their own community/language in preference to a student of another community even though that other student is more meritorious.\(^{631}\)

However, whilst selecting/admitting students of their community/language the inter-se merit of those students cannot be ignored. In other words whilst selecting/admitting students of their own community/language they cannot ignore the inter-se merit amongst students of their community/language. Admission, even of members of their community/language, must strictly be on the basis of merit except that in case of their own students it has to be merit inter-se those students only. Further if the seats cannot be filled up from members of their community/language, then the other students can be admitted only on the basis of merit based on a common entrance test conducted by government agencies. The Court hold that the management could select students, of their quota, either on the basis of the common entrance tests conducted by the State or on the basis of a common entrance test to be conducted by an association of all colleges of a particular type in that State e.g. medical, engineering or technical etc. The common entrance test, held by the association, must be for admission to all colleges of that type in the State. The option of choosing, between either of these tests, must be exercised before issuing of prospectus and after intimation to the concerned authority and the committee set up hereinafter. If any professional college chooses not to admit from the common entrance test conducted by the association then the college must necessarily admit from the common entrance test conducted by the State. After holding the common entrance test and declaration of results the merit list will immediately be placed on the notice board of all colleges which have chosen to admit as per this test. A copy of the merit list will also be forthwith sent to the concerned authority and the Committee. Selection of students must then be strictly on basis of merit as per that merit list. The Court directed the respective State Government do appoint a permanent Committee which will ensure that the test conducted by the association of colleges is fair and transparent. For each State a separate Committee shall be formed. The Committee shall supervise and ensure that the test is conducted in a fair and transparent manner. The Committee shall have power to permit an institution, which has been established and which has been permitted to adopt its own admission procedure for the last, at least, 25 years, to adopt its own admission procedure and if the Committee feels that the needs of such an institute are genuine, to admit, students of their community, in excess of the quota allotted to them by the State Government. It is also clarified that no institute, which has not been established and which has not followed its own admission procedure for the

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\(^{630}\) Ibid

\(^{631}\) Id at 727.
lat, at least, 25 years, shall be permitted to apply for or be granted exemption from admitting students in the manner set out hereinabove.

The Supreme Court in P.A. Inamdar's case 632 directed that the respective State Governments to appoint a permanent Committee which will ensure that the test conducted by the association of colleges is fair and transparent. For each State a separate Committee shall be formed. The Committee shall have powers to oversee the tests to be conducted by the association. This would include the power to call for the proposed question paper(s), to know the names of the paper-setters and examiners and to check the method adopted to ensure papers are not leaked. The Committee shall supervise and ensure that the test is conducted in a fair and transparent manner. The Committee shall have the powers to permit an institution, which has been established and which has been permitted to adopt its own admission procedure for the last, at least, 25 years, to adopt its own admission procedure and if the Committee feels that the needs of such an institute are genuine, to admit, students of their community, in excess of the quota allotted to them by the State Government. Before exempting any institute or varying in percentage of quota fixed by the State, the State Government must be heard before the Committee. It is clarified that different percentage of quota for students to be admitted by the management in each minority or non-minority unaided professional college(s) shall be separately fixed on the basis of their need by the respective State Governments and in case of any dispute as regards fixation of percentage of quota, it will be open to the management to approach the Committee. It is also clarified that no institute, which has not been established and which has not followed its own admission procedure for the last, at least, 25 years, shall be permitted to apply for or be granted exemption from admitting students in the manner set out hereinabove.

The Court held that for admission in unaided (minority or non-minority) educations institutions, Six months prior to the commencement of the academic year, the Government would fix the percentage of students to be admitted by a minority (religious/linguistic) professional college (other than engineering), taking into account the local needs of the State, the region as well as that of the minority- community. It would be a huge and cumbersome exercise in practice, to fix a percentage for each one of the institutions separately and it would be a pragmatic approach to have a fixed percentage for all the minority institutions which is fair and reasonable. A practical approach to the problem would require a very definite percentage to be fixed for minority institutions, say, 50% so that even if candidates of their choice, belonging to the minority institutions, are only 25% they would still have the right to select non-minority students to make up the 50%, of course, from the CET held by the Government.

In Islamic Academy 633, the Bench accepted that there could be no rigid fee structure fixed by the government for private institutions 634. An institute should have the freedom to fix its own fee structure for day-to-day running of the institute and to generate funds for its further growth. 635 Only capitation and diversion of profits and surplus of the

632 Supra n. 336.
633 Supra n. 333.
634 Id at 720.
635 Ibid.

333
institute to any other business or enterprise was prohibited.\(^{636}\) The Court directed that in order to give effect to the judgment in T.M.A. Pai case the respective State Governments concerned authority shall set up, in each State, a committee headed by a retired High Court Judge who shall be nominated by the Chief Justice of that State. The other member, who shall be nominated by the Judge, should be a Chartered Accountant of repute. A representative of the Medical Council of India (in short "MCI") or the All India Council for Technical Education (in short "AICTE"), depending on the type of institution, shall also be a member. The Secretary of the State Government in charge of Medical Education or Technical Education, as the case may be, shall be a member and Secretary of the Committee. The Committee should be free to nominate/co-opt another independent person of repute, so that the total number of members of the Committee shall not exceed five. Each educational institute must place before this Committee, well in advance of the academic year, its proposed fee structure. Along with the proposed fee structure all relevant documents and books of accounts must also be produced before the Committee for their scrutiny. The Committee shall then decide whether the fees proposed by that institute are justified and are not profiteering or charging capitation fee. The Committee will be at liberty to approve the fee structure or to propose some other fee which can be charged by the institute. The fee fixed by the Committee shall be binding for a period of three years, at the end of which period the institute would be at liberty to apply for revision. Once fees are fixed by the Committee, the institute cannot charge either directly or indirectly any other amount over and above the amount fixed as fees. If any other amount is charged, under any other head or guise e.g. donations, the same would amount to charging of capitation fee.

In P.A. Inamdar case\(^{637}\) the Court held that the States have no power to insist on seat sharing in the unaided private professional educational institutions by fixing a quota of seats between the management and the State. The State cannot insist on private educational institutions which receive no aid from the State to implement State's policy on reservation for granting admission on lesser percentage of marks, i.e. on any criterion except merit.\(^{638}\) Such imposition of quota of State seats or enforcing reservation policy of the State on available seats in unaided professional institutions are acts constituting serious encroachment on the right and autonomy of private professional educational institutions.\(^{639}\) Such appropriation of seats can also not be held to be a regulatory measure in the interest of minority within the meaning of Article 30(1) or a reasonable restriction within the meaning of Article 19(6) of the Constitution. In Ashok Kumar Thakur case,\(^{640}\) the Supreme Court held that Constitution (Ninety-Third Amendment) Act, 2005 does not violate the "basic structure" of the Constitution.\(^{641}\)

The Supreme Court in The Ahmedabad St. Xavier's College Society case\(^{642}\) observed that educational institutions are temples of learning.\(^{643}\) The virtues of human

\(^{636}\) Ibid.
\(^{637}\) Supra n. 336.
\(^{638}\) Ibid.
\(^{639}\) Ibid.
\(^{640}\) Supra n. 410.
\(^{641}\) Supra n. 411.
\(^{642}\) Supra n. 13.
\(^{643}\) Id at 748.
intelligence are mastered and harmonised by education.644 Where there is complete harmony between the teacher and the taught, where the teacher imparts and the student receives, where there is complete dedication of the teacher and the taught in learning, where there is discipline between the teacher and the taught, where both are worshippers of learning, no discord or challenge will arise.645 An educational institution runs smoothly when the teacher and the taught are engaged in the common ideal of pursuit of knowledge.646 It is, therefore, manifest that the appointment of teachers is an important part in educational institutions.647 The qualifications and character of the teachers are really important.648 The minority institutions have the right to administer institutions.649 This right implies the obligation and duty of the minority institutions to render the very best to the students.650 In the right of administration, checks and balances in the shape of regulatory measures are required to ensure the appointment of good teachers and their conditions of service.

In T.M.A. Pai Foundation case,652 the Supreme Court held that in the matter of day-to-day management, like the appointment of staff, teaching and non-teaching, and administrative control over them, the management should have the freedom and there should not be any external controlling agency.653 However, a rational procedure for the selection of teaching staff and for taking disciplinary action has to be evolved by the management itself.654 The State or other controlling authorities, however, can always prescribe the minimum qualification, experience and other conditions bearing on the merit of an individual for being appointed as a teacher or a principal of any educational institution.655 In Private Unaided Professional Institutions, the Management will have the right to select teachers as per the qualifications and eligibility conditions laid down by the State/University subject to adoption of a rational procedure of selection.656

In T.M.A. Pai Foundation case,657 the Court held that for redressing the grievances of employees of aided and unaided institutions who are subjected to punishment or termination from service, a mechanism will have to be evolved, and in our opinion, appropriate tribunals could be constituted, and till then, such tribunals could be presided over by a Judicial Officer of the rank of District Judge.658 Regulations can be framed governing service conditions for teaching and other staff for which aid is provided by the State, without interfering with the overall administrative control of the management over

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644. Ibid.
645. Ibid.
646. Ibid.
647. Ibid.
648. Ibid.
649. Ibid.
650. Ibid.
651. Ibid.
652. Supra n. 1.
653. Id at 589.
654. Ibid.
655. Ibid.
656. Id at 549.
657. Supra n. 1.
658. Id at 589.
the staff.\textsuperscript{659} In the case of a private institution, the relationship between the Management and the employees is contractual in nature.\textsuperscript{660} A teacher, if the contract so provides, can be proceeded against, and appropriate disciplinary action can be taken if the misconduct of the teacher is proved.\textsuperscript{661} Considering the nature of the duties and keeping the principle of natural justice in mind for the purposes of establishing misconduct and taking action thereon, it is imperative that a fair domestic enquiry is conducted.\textsuperscript{662} It is only on the basis of the result of the disciplinary enquiry that the management will be entitled to take appropriate action.\textsuperscript{663} The Court observed we see no reason why the Management of a private unaided educational institution should seek the consent or approval of any governmental authority before taking any such action.

Disputes between the management and the staff of educational institutions must be decided speedily, and without the excessive incurring of costs.\textsuperscript{664} It would, therefore, be appropriate that an educational Tribunal be set up in each district in a State, to enable the aggrieved teacher to file an appeal, unless there already exists such an educational tribunal in a State the object being that the teacher should not suffer through the substantial costs that arise because of the location of the tribunal; if the tribunals are limited in number, they can hold circuit/camp sittings in different districts to achieve this objective.\textsuperscript{665} Till a specialized tribunal is set up, the right of filing the appeal would lie before the District Judge or Additional District Judge as notified by the government.\textsuperscript{666} The State government shall determine, in consultation with the High Court, the judicial forum in which an aggrieved teacher can file an appeal against the decision of the Management concerning disciplinary action or termination of service.\textsuperscript{667}