CHAPTER 6

SUGGESTIONS AND CONCLUSION

The Study shows that India is a multi-linguistic and multi-religious country and the population of the linguistic and religious community is increasing as shown by the Census of India, 1991 and the democratic character of India can be judged by the way it treats minorities and minority educational institutions.

The study also shows that the Constitution makers have endeavoured to unite the people of our country irrespective of their race, creed, caste, sex, place of birth, religion or language and at the same time safeguarded cultural and educational rights of minorities in a democratic Republic. A critical examination of the Constitutional provisions guaranteed to the minorities in India proves beyond doubt that the framers of the Constitution of India have dealt with the problem in its historical perspective thoroughly. Articles 15, 16 and 29 enjoin that the State shall not discriminate against any citizen on grounds of religion, race, caste, sex, place of birth or any of them. Article 25 to 28 guarantees non-discrimination in the exercise of the right to the freedom of religion. Articles 29 and 30 protect 'cultural and educational rights' of minorities. Clause (1) of Article 30 guarantees to all minorities whether based on religion or language, the right to establish and administer educational institutions of their choice. T.M.A. Pai Foundation case\(^1\) establishes that religious and linguistic minorities, who have been put at par in Article 30, have to be considered State-wise. For the purpose of determining the minority, the unit will be the State and not the whole of India and the minority for the purpose of Article 30 cannot have different meanings depending upon who is legislating.\(^2\)

The study shows that the right to establish and administer an educational institution as guaranteed by Article 30 (1) broadly comprises of the following rights: - (a) the bringing into being of an educational institution of its own choice; (b) to admit students; (b) to constitute a governing body for the same; (c) to make regulations for the conduct of students; (d) to set up a reasonable fee structure; (e) To constitute a governing body; (d) To appoint staff (teaching and non-teaching); (e) to make regulation for the conduct of staff (teaching and non-teaching) and (f) to take action if there is dereliction of duty on the part of any employees.

The study also shows that it matters not if a single philanthropic individual with his own means founds the institution or the community at large contributes the funds. The intention of the founder of that community must be to found an institution for the benefit of a minority community otherwise there would be no nexus between the institution and the minority as such.


\(^{2}\) Id at 553.
The study also shows that the judiciary from time to time made it clear that Article 30 (1) does not require that minorities based on religion should establish educational institution for teaching its religion only or that linguistic minorities should establish educational institution for teaching its language only. They are free to teach general secular education and professional education.

The study also shows that the grant of aid is not a constitutional imperative. If no aid is granted to anyone, Article 30 (1) would not justify a demand for aid, and it cannot be said that the absence of aid makes the right under Article 30 (1) illusory. Article 30 (2) only means that a minority institution shall not be discriminated against where aid to a religious or linguistic minority institution only on the ground that the management of that institution is with the minority. Therefore, if an abject surrender of the right to management is made a condition of aid, the denial of aid would be violative of Article 30 (2). However, conditions of aid that do not involve a surrender of the substantial right of management would not be inconsistent with constitutional guarantees, even if they indirectly impinge upon some facet of administration. The State cannot be compelled to grant aid, but the receipt of aid cannot be a reason for altering the nature or character of the recipient educational institution. The conditions that can normally be permitted to be imposed, on the educational institutions receiving the grant, must be related to the proper utilization of the grant and fulfillment of the objectives of the grant. Any such secular conditions so laid, such as a proper audit with regard to the utilization of the funds and the manner in which the funds are to be utilized, will be applicable and would not dilute the minority status of the educational institutions. The conditions for grant or non-grant of aid to educational institutions have to be uniformly applied, whether it is a majority-run institution or a minority-run institution. The State could, when granting aid, provide 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.

The study also shows that as in the case of a majority-run institution, the moment of a minority institution obtains a grant of aid, Article 28 of the Constitution comes into play. When an educational institution is maintained out of State funds, no religious instruction can be provided therein. Upon the receipt of aid, the provisions of Article 28(3) would apply to all educational institutions whether run by the minorities or the non-minorities. Article 28(3) is the right of a person studying in a state recognized institution or in an educational institution receiving aid from state funds, not to take part in any religious instruction, if imparted by such institution, without his/her consent (or his/her guardian's consent if such a person is a minor). Just as Article 28(1) and (3) become applicable the moment any educational institution takes aid, likewise, Article 29(2) would also be attracted and become applicable to an educational institution maintained by the state or receiving aid out of state funds. The right of admission is further curtailed by Article 15(4) which provides an exception to Article 29(2). Article 15(4) enables the State to make any special provision for the advancement of any socially and educationally backward class of citizens or for the scheduled caste and scheduled tribes in the matter of admission in the educational institutions maintained by the State or receiving aid from the State.
The study shows that 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 study shows that most the litigation between the States and the educational institutions established by the minorities has taken place on the issue of the 'right to administration' the educational institutions established by the minorities guaranteed under Article 30 (1). Since the decision in Re: Kerala Education Bill, 1957 case the Supreme Court held that the right to administer does not include the right to maladminister.

The study also shows that the judiciary has from time to time made it clear that the minorities right 'to establish and administer' educational institution of their choice is not absolute and State has a right to regulate it. 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. At the same time it has to be ensured that under the power of making regulations nothing is done as would detract from the character of the institution as a minority educational institution or which would impinge upon the rights of the minorities to establish and administer educational institutions of their choice. The right conferred by Article 30 (1) is intended to be real and effective and not a mere pious and abstract sentiment; it is a promise of reality and not a teasing illusion. Such a right cannot be allowed to be whittled down by any measure masquerading as regulation.

The study also shows that the standards of education are not a part of the administration as such. These standards concern the body politic and are dictated by considerations of the advancement of the country and its people. Therefore, affiliating universities can establish syllabi for examinations, 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. 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.

The study also shows that in addition to the minority community others from other minority communities or even from the majority community can take advantage of minority educational institutions. By admitting a non-member into it the minority institution does not shed its character and cease to be a minority institution.

The study shows that the right of the minorities to establish and administer educational institutions of their choice includes the right to have a choice of the medium

3. 1959 SCR 995.
of instruction also. However, 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 T.M.A. Pai Foundation Case, the Supreme Court by a majority of 6:5 responded that as far as right to admission to unaided schools and undergraduate colleges is concerned since there the scope of merit-based selection in such institutions is practically nil, the concerned State or the University cannot regulate the admission of students "except providing the qualification and minimum conditions of eligibility in the interest of academic standards." As regards, minorities' right to run unaided professional institutions, the Court responded: (i) Minority educational institutions may have their own procedure and method of admission. Such a procedure and method, however, "should not tantamount to maladministration.") (ii) So long as the admission to such institutions is "fair" and on a "transparent basis", and the merit is "adequately taken care", the State government or the University is not entitled to interfere with the minorities' right to admit students. (iii) At best there could be only "regulatory measures for ensuring educational standards and maintaining excellence thereof." (iv) "The conditions of recognition as well as the conditions of affiliation to a University or Board have to be complied with." (v) 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." (vi) For the selection of teaching staff and for taking disciplinary action, "a rational procedure" has to be evolved by the management itself. (vii) For redressing the grievances of employees, in case of punishment or termination from serve, there is a need to evolve appropriate tribunals, and till then, the tribunals could be presided over by the judicial officer of the rank of district judge. (viii) The State or other controlling authorities could always prescribe the minimum qualification, experience and other conditions bearing on the merit of an individual or a principal of any educational institution. (ix) Fee to be charged cannot be regulated by the State or affiliating University, but no institution should charge capitation fee.

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4. Supra n.1.
5. Supra n. 1, at 73 (para 162).
6. Ibid.
7. Id at 73-74.
8. Ibid.
9. Id at 75.
10. Ibid.
11. Ibid.
12. Ibid.
13. Ibid.
In Islamic Academy of Education case\textsuperscript{14}, 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.\textsuperscript{15} 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{16} However, whilst selecting/admitting students of their community/language the inter-se merit of those students cannot be ignored. 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.

\textsuperscript{15} Ibid
\textsuperscript{16} Id at 727.
The Supreme Court in P.A. Inamdar's case directed 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. 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. 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.

In Islamic Academy\(^{18}\), the Bench accepted that there could be no rigid fee structure
fixed by the government for private institutions\(^{19}\). 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.\(^{20}\) Only capitation and diversion of profits and surplus of the institute to
any other business or enterprise was prohibited.\(^{21}\) A provision for reasonable surplus can
be made to enable future expansion.\(^{22}\) 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.\(^{23}\)
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.\(^{24}\) Chief Justice V.N. Khare said as
follows:\(^{25}\)

"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
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. If an institution feels that any particular student may leave in midstream then, at the highest, it may require that student to give a bond/bank guarantee that the balance fees for the whole course would be received by the institute even if the student left in midstream. If any educational institution has collected fees in advance, only the fees of that semester/year can be used by the institution. The balance fees must be kept invested in fixed deposits in a nationalised bank. As and when fees fall due for a semester/year only the fees falling due for that semester/year can be withdrawn by the institution. The rest must continue to remain deposited till such time that they fall due. 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.

In P.A. Inamdar’s case 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. 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. 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 T.M.A. Pai Foundation case, as regards minorities' right to run aided educational institutions-professional and non-professional, the Court responded: (i) An
aided minority educational institution 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.”\(^{38}\) (ii) The reasonable extent would vary from the types of the institution, the
courses of education for which the admission is being sought, and other factors like
population and educational needs of minorities.\(^{39}\) (iii) The concerned State government
has to notify the percentage of the non-minority students to be admitted in the light of the
factors as stated in the preceding paragraph.\(^{40}\) (iv) “Observance of inter-se merit amongst
the applicants belonging to the minority group could be ensured.”\(^{41}\) (v) In addition to the
stipulations regarding aided non-professional minority educational institutions, 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.”\(^{42}\) (vi)
“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 exists.”\(^{43}\) (vii) In the case of Minority
Educational Institutions, “it will be permissible for the government or the University to
provide that consideration would be shown to the weaker sections of the society.”\(^{44}\) (viii)
Regulations governing service conditions of teaching and other staff for whom aid is
provided by the State can be framed, but without interfering with the overall
administrative control of the management over the staff. (ix) For redressing grievances of
employees who are subjected to punishment or termination from service, appropriate
tribunals could be constituted, and till then, such tribunals could be prescribed over by a
judicial officer of the rank of district judge, as in the case of unaided minority educational
institutions.\(^{45}\)

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.\(^{46}\) 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.\(^{47}\) 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. Therefore, the students of

\(^{38}\) Id at 74.
\(^{39}\) Ibid.
\(^{40}\) Ibid.
\(^{41}\) Ibid.
\(^{42}\) Ibid.
\(^{43}\) Ibid.
\(^{44}\) Id at 75.
\(^{45}\) Ibid.
\(^{46}\) Id at 561 (para 104).
\(^{47}\) Ibid.
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.\textsuperscript{48} In other words, the predominance of linguistic students hailing from the state in which the minority educational institution is established should be present.\textsuperscript{49} 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).\textsuperscript{50}

The 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.\textsuperscript{51} However, a rational procedure for the selection of teaching staff and for taking disciplinary action has to be evolved by the management itself.\textsuperscript{52} 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.\textsuperscript{53} 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.\textsuperscript{54}

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.\textsuperscript{55} 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.\textsuperscript{56} The teachers are like foster-parents who are required to look after, cultivate and guide the students in their pursuit of education.\textsuperscript{57} The teachers and the institution exist for the students and not vice versa.\textsuperscript{58} 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.\textsuperscript{59} Where allegations of misconduct are made, it is imperative that a disciplinary enquiry is conducted, and that a decision is taken.\textsuperscript{60} In the case of a private institution, the relationship between the Management and the employees

\begin{itemize}
\item \textsuperscript{48} Ibid.
\item \textsuperscript{49} Ibid.
\item \textsuperscript{50} Ibid.
\item \textsuperscript{51} Id at 589.
\item \textsuperscript{52} Ibid.
\item \textsuperscript{53} Ibid.
\item \textsuperscript{54} Id at 549.
\item \textsuperscript{55} Id at 589.
\item \textsuperscript{56} Ibid.
\item \textsuperscript{57} Id at 547.
\item \textsuperscript{58} Ibid.
\item \textsuperscript{59} Ibid.
\item \textsuperscript{60} Ibid.
\end{itemize}
is contractual in nature.61 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.62 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.63 It is only on the basis of the result of the disciplinary enquiry that the management will be entitled to take appropriate action.64

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.65 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.66 Normally, the aggrieved party would approach a court of law and seek redress.67 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.68 Disputes between the management and the staff of educational institutions must be decided speedily, and without the excessive incurring of costs.69 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.70 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.71 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 teacher or any other employee.72 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.73

The study shows that there are two distinct categories of educational institutions. One refers to educational institutions that have been set up by minorities 'at their own expense' for the purpose of conserving their 'distinct language, script or culture.' In this

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61. Ibid.
62. Ibid.
63. Ibid.
64. Ibid.
65. Ibid.
66. Id at 548.
67. Ibid.
68. Ibid.
69. Ibid.
70. Ibid.
71. Ibid.
72. Ibid.
73. Ibid.
category, minorities enjoy almost unrestricted freedom and the State is not supposed to interfere except perhaps on such grounds as ‘public order’, ‘morality’ or ‘health’. The admission of students belonging to community other than from their own minority group would rather be welcomed, because such a step simply helps in spreading their own language and culture. The second category of educational institutions is the one whose prime purpose is not to conserve a particular language or culture or religion but to impart profession education in the field of medicine or engineering etc. These institutions invariably require the State support by way of recognition or affiliation to a University with or without aid. In this category, minorities exercise their right, not qua minorities, but qua citizens, and thus, instantly become subject to the discipline of Articles 19 (6) and 29 (2).

The study shows that the category of educational institutions, dedicated to the cause of conserving culture, distinct language and script of a minority group or any section of citizens, relatively Free from State control; whereas the other category of educational institutions, dedicated to professional education, requires State intervention as the Constitution under Article 19 (6) commends the State expressly to make any law relating to “the professional or technical qualification necessary for practicing any profession, or carrying out on any occupation, trade or business.

The study shows that the judiciary has not justified interference with the governing body or managing committee of minority educational institutions by State or University.

The study shows that there is need to make a specific law to provide for the compulsory acquisition of property belonging to minority educational institutions.

The study also shows that State is also under an obligation to protect the interests of the student, the teaching and non-teaching staff and for this purpose there is an imminent need of setting up an Educational Tribunal in each State. The Tribunal should consist of three members. One of the members having expertise in minority educational affairs and another member having expertise in law and third member having specialization in social work.

It is submitted that Articles 29 and 30 of the Indian Constitution conferring ‘Cultural and Educational Rights’ on the minorities are adequate to safeguard the cultural and educational rights of linguistic and religious minorities. The Constitution of India has provided ample protection to safeguard educational and cultural rights of linguistic and religious minorities by guaranteeing fundamental rights and Indian higher judiciary have left no stone unturned by declaring that these rights cannot be waived.

At the last but not the least it is submitted that the States must realise the importance of Articles 29 and 30 guaranteeing cultural and educational rights to religious and linguistic minorities, lies in the very Preamble of the Constitution which speak of “Fraternity” assuring the dignity of the individual and the unity of the nation. The Articles have been enumerated in Indian Constitution, so the minority educational institutions are bound to act within the framework of the Constitution.