PREFACE

Historically speaking the people inhabiting this vast land of India profess different religions and speak different languages. In this Country many ethnic or religious and multi language people reside. The great leaders of India since time immemorial had preached the doctrine of tolerance and catholicity of outlook. According to 2001 census out of its total population of 1,129,866,154 people, 80.44 percent people follow Hindu religion, 13.42 percent follow Muslim religion, 2.33 percent follow Christian religion, 1.84 percent follow Sikh religion, 0.68 percent follow Buddhist religion, 0.38 percent follow Jains religion and remaining 0.65 percent follow other religions of the World. Despite the diversity of religion or ethnicity and language, there runs through the fabric of the nation the golden thread of a basic innate unity. It is a mosaic of different religions, languages and cultures. Each of them has made a mark on the Indian polity and India today represents a synthesis of them all. The closing years of the British rule were marked by communal riots and dissensions. There was also a feeling of distrust and the demand was made by a section of the Muslims for a separate homeland. This ultimately resulted in the partition of the country. Those who led the fight for independence in India always laid great stress on communal amity and accord. The wanted the establishment of a secular State wherein people belonging to the different religious should all have a feeling of equality and non-discrimination. Special safeguards were guaranteed for the minorities and they were made a part of the fundamental right with a view to instill a sense of confidence and security in the minorities.

Chapter 1 deals with meaning and scope of the words ‘minority’ and ‘minority groups’ respectively. It also traces kinds of minority groups particularly racial or ethnic minorities, religious minorities, gender and sexual minorities, age minorities, disability minorities, linguistic minorities and minorities in law and government. It also highlights our cultural and religious diversity. It enumerates basic and fundamental rights of minorities under Indian Constitution particularly cultural and educational rights available under Article 29 and 30, their enforceability and waiver. It also enumerates the purpose of the present study.

Chapter 2 traces the role of United Nations in the protection of minorities’ rights. It also traces the obligations of signatory States to the various International Conventions to protect national minorities and the rights of national minorities under these conventions viz, International Convention on the Elimination of All Forms of Racial Discrimination; National Declaration of the Right of Persons Belonging to or Ethnic, Religious and Linguistic Minorities; European Charter for Regional or Minority Languages; Congress of the Council of Europe; Recommendation 222 (2007) Language Education in Region or Minority Languages; Framework Convention for the Protection of National Minorities; Convention concerning Indigenous and Tribal Peoples; UNESCO Universal Declaration on Cultural Diversity; The Hague Convention Recommendations Regarding the Education Rights of National Minorities; The OSLO Recommendations Regarding the Linguistic Rights of National Minorities and United Nations Declaration on the Rights of Indigenous Peoples.
Chapter 3 traces how the framers of Indian Constitution emphasized the doctrine of unity in diversity and secured a sense of confidence and security in the minds of minorities. It discusses the recommendation of Nehru Committee Report and Sapri Committee Report on the minorities. It traces the contribution of the Constituent Assembly members in enumerating fundamental rights of religious or linguistic minorities. It enumerates the provisions for the protection of minorities in Draft Constitution and the present Constitution.

Chapter 4 demonstrates that the object of Articles 25 to 30 is to preserve the right of religious and linguistic minorities, to place them on a secure pedestal and withdraw them from the vicissitudes of political controversy. It highlights that to allay all apprehensions of interference by the legislature and the executive in matters of religion, the rights mentioned in articles 25 to 30 were made a part of the fundamental rights and religious freedom contained in those articles was guaranteed by the Constitution. It enumerates that Clause (1) of Article 30 to Indian Constitution gives right to all minorities, whether based on religion or language, to establish educational institutions of their choice. It discusses rationale behind Article 30 and its scope. It discusses the relation between Articles 29 and 30 vis-à-vis grant of aid. It also tells whether minorities have to be determined on the basis of State or National level. It also deals with religious denomination and minorities. It also discusses meaning and scope of the word ‘minority educational institution’. It also discusses whether Aligarh Muslim University is a minority educational institution and whether Aligarh Muslim University (Amendment Act, 1981) confer upon it a minority status.

Chapter 5 deals with administration of minority educational institutions. It enumerates that Clause (1) of Article 30 to Indian Constitution gives right to all minorities, whether based on religion or language, to administer educational institutions of their choice provide that the same has been established by it. It discusses the meaning and scope of the word ‘administration’. It established beyond dispute 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 and the extent of regulatory power of the State would vary according to various types of educational institutions established by religious and linguistic minorities. 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 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. There is, no doubt, no such thing as a 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).
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 conducive 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 the 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 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. It discusses to what extent State or University can interfere with Governing Bodies or Managing Committees of Minority Educational Institutions by State or University.

It also discusses students' admission policy for minority educational institutions and fee structure for minority educational institutions as well as reservation policy for minority educational institutions. It also discusses regarding teaching, teaching subject and medium of instruction in Minority educational institutions, appointment/approval of teaching and non-teaching staff for minority educational institutions and service as conduct rules of teachers for minority educational institutions. It also traces the relationship between minority educational institutions and Industrial Law. It traces the relationship between minority educational institutions and Income Tax Act.

Chapter 6 concludes the study highlighting 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. It also shows that the Constitution makers have endeavoured to unite the people of our count 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 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 no discrimination in the exercise of the right to the freedom of religion. Articles 29 and protect 'cultural and educational rights' of minorities. It also shows that the judiciary 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. 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: th
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 education; 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 teasing illusion. Such a right cannot be allowed to be whittled down by any measure masquerading as regulation.

It also 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 education 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 concludes 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 concludes 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 has 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 of 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 education institutions are bound to act within the framework of the Constitution.