Chapter-6

Concluding Observations and Recommendations
Education is an important medium for not only imparting pedagogic knowledge but also attitude, values and modes of behaviors. It is through education that transmission of languages, culture and moral value is possible. It has been recognized at international level that minorities should have a right to transmit their values through the medium of education, in fact, the minorities treaties of the of the League of Nations (1919) made explicit provision for education much before the recognition of human rights as a universal concept of law through the United Nations Charter (1945). The Universal Declaration of Human Rights of 1948 broke new ground in that it was the first international instrument to declare education to be a human right.

The history of the protection of rights under international human rights law is a relatively recent phenomenon, and begins in a sense with the first steps towards an international human rights regime with the adoption of the UN Charter and the Universal Declaration of Human Rights. A further step was taken with the adoption of the International Covenant on Economic, Social and Cultural Rights and International Covenant on Civil and Political Rights in 1966. Besides, a large number of Declarations and Conventions were adopted at international level for the protection and enforcement of human rights.\(^\text{386}\) Article 38(1) of the Constitution of India states: "The State shall strive to promote the welfare of the

\(^{386}\) There are approximately hundred international instruments dealing specifically with human rights issues.
people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life". Thus, it is the duty of the State under the Constitution to function as a Welfare State, and look after the welfare of all its citizens. Besides, India being a member of the United Nations, inter alia, and a staunch believer in upholding the human dignity,\(^{387}\) equality,\(^{388}\) brotherhood\(^{389}\) and welfare of all people\(^{390}\) since time immemorial, following the principle of "welfare of all of our people, and the sanctity of our Constitutional vision and goals"\(^ {391}\) has not lagged behind in the endeavours made at the international level.

In India, the protection and enforcement of human rights confined to "Civil and Political Rights" in the form of "Fundamental Rights" (Part III) and "Economic, Social and Cultural Rights" in the form of "Directive Principles" (Part IV) in the Constitution of India discusses the vision of the Constitution and its framers of the kind of society they aspired to establish in the country. The framers of the Constitution were quite clear in assigning an equal role to each and every individual in the political process and decision making. Not only did they provide for universal adult suffrage but they also provide for affirmative steps in the form of seats allocation or reservation in election bodies for those incapable of competing in political process on equal footing. For effective participation in that process as well as for leading a dignified life, which they did not want to leave to the political process alone or postpone for the future, they also provided for Fundamental Rights which initially included what later became Directive

Principles. The Fundamental Rights and Directive Principles, which have been distinguished as the conscience of the Constitution, and harmony and balance between them, have been found to be among the basic feature to the Constitution. Part IVA of the Constitution of India titled "Fundamental Duties" (Article 51A) provides that every citizen must do his duty towards the nation as well as the fellow citizens. Article 51A enjoins upon every citizen the duty to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem; to cherish and follow the noble ideals which inspired our national struggle for freedom; to uphold and protect the sovereignty, unity and integrity of India; to promote harmony and the spirit of common brotherhood amongst all the people etc. In State of Maharashtra v. Sarangdharsingh, the Apex Court held that what has been incorporated in the form of Part IVA was implicit in the Preamble, Part III and Part IV of the Constitution since fundamental rights of the citizens can become meaningful only if the State and citizens do their duty to bring about real equality amongst the people belonging to different segments of the society.

The provisions of the Constitution including Fundamental Rights are alterable but the result thereof should be consistent with the basic foundation and the basic structure of the Constitution. Republican and democratic forms of Government, secular character of the Constitution, separation of powers, dignity and freedom to the individual are basic features and foundations easily discernible, not only from the Preamble but the whole scheme of the Constitution. In S. R. Bommai v. Union of India, the Apex Court held that Preamble of the Constitution is the basic feature. Though the word "socialist"

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393 (2011) 1 SCC 577: 2011 (1) UJ 325 (SC).
was not expressly brought out in the main parts of the Constitution, its seedbeds are right to participation in public offices, right to seek consideration for appointment to an office or post; right to life and right to equality which would amplify the roots of socialism in democratic form of Government; right to equality of status and of opportunity, right to equal access to public places and right to prohibition of discrimination read with right to freedom, protective discrimination, abolition of untouchability, its practices in any form a constitutional offence, as guaranteed in Part III and IV of the Constitution.

Further the Constitution of India provides a strong mechanism of judicial review and assigns the judiciary as sole and chief interpreter of the provisions of the Constitution. There are plethora of cases and bundle of judgments of Apex Court and various High Courts while interpreting the provisions of the Constitution regarding the educational rights of the minorities. The problem of minorities was one of the outstanding problems during the nationalist movement. The British rule had shattered the earlier patterns of social orderings and distribution of power and position leading to the cultural backwardness of the Indian Muslims. The high caste Hindu in most parts of the country being the literate classes, had responded promptly to the western liberal education and entered in a big way and in big numbers in government service, professions and politics. Thus, Hindu dominated the nationalist movement. This phenomenon of the Hindu hegemony accentuated the disparities in the distribution of economic and political powers, permitting open rivalry between Hindus and Muslims.

The nature of the problem of the minorities is not always and everywhere the same. The problem of the minority arises only in a democracy. Prof. Humayun Kabir in his book “Minorities in a Democracy” observed that, “there can be no question of minorities except in democracy. Unless there is a democracy the problem would not arise in that form at all. In a democracy that recognition is
given to equal rights and duties for all, without regard to their religion, race, caste or language. In a totalitarian state, the minorities are not allowed to keep their separate identities, as there everything exits for the state. The minorities in totalitarian regime dissolve their identity in the identity of the state.

The minority problem has been the bane of Indian life. It had very much influenced and coloured the political life of the country before Independence. The major problem at that time was regarding the Muslim minority and this led to the partition of the country causing in its wake wide spread misery and suffering. The partition diluted the Muslim minority problems to some extent but it did not solve the minority problem as such because a number of other minority groups, as well as a large number of Muslims, were still present in the country.

India has a composite population. Hence the Indian society lacks homogeneity in so far as there exist numerous religions, cultural and linguistic groups. There are followers of the Hindu, Muslim and Christian religions. There are Parsis, Sikhs, etc. Each major religion comprises within itself a number of religious denominations and sects. The constitution has given recognition to a number of languages in the Eighth Schedule while, most of the language groups have states of their own, and each of these states has linguistic minority groups as well. The Patterns of culture vary from place to place. There are the Anglo-Indians, a community based on racial, religious and linguistic factors. Besides, there are sections of people like the scheduled castes, the scheduled Tribes and other socially, educationally and economically weaker sections of the people who not only need protection from exploitation, but even positive and special help from the state for amelioration of their miserable lot. Keeping in view this background as delineated above the researcher has undertaken the doctoral research work on the above stated topic.
The study examines five major issues. These issues are: when and how the educational rights of minorities have been evolved and developed and what is the impact of this right in India? What is the meaning and definition of education, role of education in up liftment of society and it's importance for betterment of minorities. What is the scope and ambit of the protection of educational rights of minorities under the Constitution of India? What is the role of Judiciary in determining the scope of educational rights of minorities in India?

**Historical Development of Achieving Educational Rights of Minorities and Its Impact in India**

Minorities are the integral part of democratic set-up in a country. India has accommodated minorities since times immemorial. The minorities and the majority community have lived here unitedly. There was neither the communal problem nor communal riots. The problem of minorities saw its birth during the British rule in India. The 'Divide and Rule' policy followed by British rulers was responsible to break the unity among minorities and the majority community in India and since then the minorities are contesting for recognition of their individual identities.

**Ancient Period**

In the ancient period, when the Aryans conquered North India, the problem of the conquered minority first came to surface. The Aryan attitude towards non-Aryans in India was truly imperialistic. The non-Aryans were treated as serfs or sudras i.e. fourth class citizens, in the social structure. Here political power was exercised by a minority group identifiably distinct from the majority of the population. A governing minority of this kind, living among a majority of indigenous peoples, does everything possible to institutionalize its superior
position, and make it permanent. This rule of the Aryan over the non-Aryans who were in the majority can be compared with the governing minorities of South Africa and Southern Rhodesia in the 20th century.

**Medieval Period**

During the medieval period, the Muslim community in India was a microscopic minority. According to Bernier, who was writing about 17th Century India, the Muslim numbered only one per cent of the total population, but was the ruling power. The problem of the minority in the real sense of the term was not there. It was the Hindus and Sikhs who formed the great majority who had problems common to groups and communities in a minority position. They were not allowed to share in the reconstruction of the Imperial structure and the governance of the country. They were neither taken into confidence nor appointed to higher posts of trust and responsibility. They also had to pay some discriminating taxes. Consequently, a large number of Hindu citizens were converted to the Muslim faith and this brought into existence the sizeable community in India which owed allegiance to the Muslim faith.

**The British Period**

With the dawn of the eighteenth century in British Period, the sun of the Mughal Empire declined towards the west. Before describing the advent of Europeans into India and the emergence of the British as the Sovereign power in the country, it would be desirable to make reference to Christianity and the Parsi religion as the remaining religious minorities on the Indian scene. These non-Hindu religions came from outside the country.

**Independent India**

The framer of the Constitution of India faced a very complicated task in devising suitable safeguards to meet the needs and aspirations of these various
sections, groups and classes of the people. Some of these groups are numerically microscopic but still they want to preserve their own distinctive cultures, religions, or languages. The framer of the constitution had attention to the minority problem in all its facets. They tried to do their very best to safeguard the interests of the various minority groups whether based on religion or language, culture or socio-economic factors so as to give them a sense of security.

The rights of the minority are sought to be preserved, first through the fundamental rights. These rights apply generally to all citizens, as well as to the minorities in particular, and offer valuable safeguards for the minorities over a comprehensive field of social life. A wide range of minority rights are covered by the constitutional provisions relating to the fundamental rights. Articles 14, 15, 16 and 29(2) seek to protect them from hostile and discriminatory state action. Articles 15(2), 16(3), 17, 23 and 24(2)(b) are examples of constitutional provisions made to remove social and economic disabilities of the depressed classes to people. Articles 25 to 30 provide for safeguarding religion and culture of minority groups in India. Besides there are a few directive principles of state policy which are relevant from the point of view of the minority rights. Thus article 46 requires the state to take special care in promoting the educational and economic interest of the weaker sections of the people and in particular, of the scheduled castes and the scheduled Tribes. Article 38 requires the state to promote the welfare of the people securing a social order based on social, economic and political justices.

The Constitution of India defines precisely the concept of either 'minority' or 'minority institution' or 'minority educational institution' as the case may be under Articles 29 and 30 of the Constitution of India. Besides these two Articles, various provisions of the Constitution read in conjunction with the series of land-mark judgement of the Hon’ble Supreme Court and High Courts.
it emerges that the above stated three concepts are refreshingly new in India. However, a thorough reference to the latest 11 Judges Bench decision of the Hon’ble Apex Court in *T. M. A. Pai Foundation*\(^{395}\) case makes it beyond doubt that it is the state as a Unit of Union of India, to determine the minority status of an educational institution, whether on linguistic or religious basis.

The concept of the minority educational institution is recognised under the Constitution of India which is the revival of 17\(^{th}\) century right of minority. To get the right and privilege of a minority educational institution a mainstream educational institution may disguise themselves as a minority institution. Therefore, the concepts of ‘minority educational institution’ become more important. The criteria for determining institutions as minority institutions is also post constitutional development.

**Meaning and Definition of Education**

The word ‘education’ has been derived from the Latin word ‘educo’ which means to educate or to bringing up or to raise. The concept of education is closely related to the modification of natural development, modification occurs through the personal experience of the person who is conscious about the purpose of changing the natural development of the child in narrow sense, the process of education implies the teaching. Teaching is imparting of knowledge and skill. In the broad sense the education is the process of development and growth of a person from infancy to maturity. It is process by which an individual learn how to adopt himself to physical, social and spiritual environment gradually and in various ways.

The word 'education' has a very wide connotation. Philosophers and thinkers from Socrates to Dewey in the West and Yajnavalkya to Gandhi in the east have

defined education in accordance with the result that have emerged divergent
concepts and definitions of education. Education plays an important role for
betterment of human personality in his 'Neetishatakam', Bhartru Hari has rightly
written that a man minus education worst than animal.

Various stages of Education

In Indian Education System can be divided into many stages. The Indian
education system comprises Pre-School, Primary School, Secondary School,
Stages are given below:

1. **Pre-primary** - It consists of children of 3-5 years of age studying in
nursery, lower kindergarten and upper kindergarten. At this stage student
is given knowledge about school life and is taught to read and write some
basic words.

2. **Primary** - It includes the age group of children of 6-11 years studying in
classes from first to fifth.

3. **Middle** - It consists of children studying in classes from sixth to eighth.

4. **Secondary** - It includes students studying in classes ninth and tenth.

5. **Higher secondary** - Includes students studying in eleventh and twelfth
classes.

6. **Undergraduate** - Here, a student goes through higher education, which is
completed in college. This course may vary according to the subject
pursued by the student. For medical student this stage is of four and a half
years plus one year of compulsory internship, while a simple graduate
degree can be attained in three years.
7. **Postgraduate** - After completing graduation a student may opt for post graduation to further add to his qualifications.

The expression "education" in the Constitution of India means and includes education at all levels from the primary school level up to the post graduate level. It is pertinent here that it is for the first time in *T. M. A. Pai case* professional education includes in education. Before the *T. M. A. Pai* judgment court were only concerning education in school and colleges but after this case the court observes that education is the special manifestation of man, education is the treasure which can be preserved without the fear of loss, education secures the marital pleasure, happiness and fame, and Education is the teacher of the teacher. Education is God incarnate, education secure honor at the hand of the state, not money, a man without education is equal to animal.

**Test to Determine Minority**

In order to claim the protection of Clause (1) of Article 30 of the Constitution:

(i) There must exist a minority community; and that

(ii) The institution is established by one or more members of it.

The first question is, who is a minority? And the second question leads to the problem whether an institution has been established by a minority community or a person belonging to the minority community or not. Taking for discussion the first question, namely, 'who is a minority or how to determine as to who is a minority,' it is submitted that the question was posed for the first time, before their Lordships of the Supreme Court of India in *Re Kerala Education Bill, 396*

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397 Importance of education was emphasized in 'Neethishatakam' by Bhartru hari (First century B.C) (Translation as quoted by Mohan. J., *Unnikrishnan v. State of A, P* (AIR 1993 SC 2230).

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S.K. Das, C.J., commented, "that the term minority is not defined in the Constitution." His Lordship was of the opinion: "It is easy to say that a minority community means a community which is numerically less than 50%, but then the question is not fully answered, for part of the question has yet to be answered, namely 50% of what? Is it 50% of the entire population of India or 50% of the population of a State forming part of the Union. State of Kerala though agreed that Christians were not a mathematical majority in the State and were about ¼ of the whole population, but even then contended? "Christians .... are not in minority in the State". It was further contended by the State, "Christians form the second largest community in Kerala State, "they form, however, a majority community in certain areas of the State. Muslims form the third largest community in certain areas of the State. Muslims form the third largest community in the State, about 1/7 of the total population. They also, however, form the majority community in certain other areas of the State. "State of Kerala was of the opinion that the mathematical test could not be followed to decide who was a minority within the meaning of Clause (1) of Article 30 of the Constitution. The argument of the State of Kerala was that if mathematical test was could not be followed to decide who was a minority within the meaning of Clause (1) of Article 30 of the Constitution. The argument of the State of Kerala was that if mathematical test was applied, it "would mean that any section of the people forming under 50% of the population should be classified as minority and be dealt with as such." State of Kerala referred to the judgment of Assam High Court in, Ramani Kanta Bose v. Gauhati University and suggested that the minority, "must numerically be a minority in the particular region in which the educational institution in question is or is intended to be situated, "to claim the

399 AIR 38 1951 NULL 163.
protection of the fundamental right guaranteed by Article 30(1) of the Constitution.

Constitutional and Legislative Protection

The Constitution of India makers took cognizance of the need to protect human rights, in general, and rights of minorities, in particular and incorporated provisions in the Constitution for the protection of the same. In fact, much of what is being formulated by United Nations regarding the rights of persons belonging to national or ethnic, religious and linguistic through its Charters, covenants and declarations, have already been taken care of in our Constitution. Asbjorn Eide in his introductory statement to his suggested approach says:

A human-rights-based approach in pluralist societies must combine efforts to ensure equality in the common domain with acceptance of diversity in the separate domain. The separate domain is that reserved to the minority or its members to protect its identity as a group ... the 'Common domain' includes all other aspects of social life which are subject to regulation by the authorities.400

The preamble to the Constitution as amended in 1976 declares India to be a secular democratic republic.401 Even before that, the secular nature was held to be a basic feature of the Constitution.402

The Constitution does not define the term "secular" presumably because it is a very elastic term not capable of a precise definition and perhaps best left

401 The world 'secular' was inserted in the preamble to the constitution through the Constitution (42nd Amendment) Act, 1976.
undefined. The Indian concept is indeed singular. It defies all traditionally accepted definitions and explanations. The Constitution seeks to protect minority rights along with the guarantee of individual freedom. The concept of “secular”, while ensuring religious freedom to all, mandates the State not to discriminate against any citizen on grounds of religion, and as a corollary it seeks to maintain a balance between the religious rights of the majority and those of the minority groups. It endeavours to integrate the concept of secular state with minority protection. It may be said in this context that the concept includes minority protection coupled with freedom of religion.

Education makes the people conscious of their rights. Here in lies the importance of the right guaranteed to minorities in Article 30(1) to establish educational institutions of their choice. Article 29(1) confers on any section of the citizens a right to conserve its own language, script or culture. This emphasizes that a minority may effectively conserve its language, script and culture by establishing educational institutions. While protecting these rights of the minorities, the constitution also declares that no citizen shall be denied admission into an educational institution maintained by the state or receiving aid out of state funds on grounds only of religion, race, caste, language or any of them (Article 29(2)). As observed by Justice H.R. Khanna, the object of Articles 25 to 30 is "to preserve the rights of religious and linguistic minorities, to place them on a secure pedestal and withdraw them from the vicissitudes of political controversy".

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403 The Constitution permits the legislature to reform Hindu religion to a great extent (Article 25) itself abolishes untouchability (Article 17) an entrenched practice of Hindu religion and permits the state to administer the religious institutions and temples of Hindus.

404 Articles 25, 26, 15, 29(2) of the Constitution.


The rights mentioned in Articles 14-28 are the ones that come under the “common domain”. Other rights, which fall in the ‘separate domain’ include the rights under Articles 29 and 30. The first right is meant for all the citizens, who form minorities in different parts of the country. Accordingly, Article 29 provides: (1) 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 shall have the right to conserve the same; and (2) No citizen shall be denied admission into any educational institution maintained by the State or receives aid out of State funds on grounds only of religion, race, caste, language or any of them.

A point that has to be kept in mind while looking at Article 29 is that actually refer to ‘any section of the citizens’, who may have a distinct language, script or culture, which means that they may belong even to the majority community as, for example, members of the Hindu community living in Punjab or Nagaland receive protection for their linguistic or cultural rights, by virtue of their being ‘so-called minorities’ in these States.

The fundamental right guaranteed under Article 30 of Constitution to the religious and linguistic minorities provides: All minorities, whether based on religion or language, shall have the right to establish and administer educational institution of their choice. In making any law pending for the compulsory acquisition of any property of an educational institution established and administered by a minority referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause. The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

In brief, these are the basic fundamental or human rights and freedoms, which
the Constitution of India provides in the 'common domain' as well as in the 'separate domain'. In the implementation of these rights and freedoms, of course, care needs to be taken to see that these should be protected in such a way that protection of the minority rights should not take place at the cost of the majority.

It follows that the State is obliged to see that the minorities are also able to enjoy rights including the religious rights at par with the majority.\textsuperscript{407} The Constitution recognises the latter view through Articles 29 and 30.

According to the learned judges, Chief Justice Ray if the minorities are allowed to establish and administer educational institutions for the purpose of giving their children in the best general secular education, that will develop the commonness of boys and girls of our country. In his view general secular education will open doors of perception and act as the natural light of mind for our countrymen to live in the whole.

It can be said that the Preamble to the Constitution of India provides the protection of minorities under the emerging concept of social justice. Articles 14, 15, 16, 21, 25, 26, 29 and 30 bear eloquent testimony of this fact. Of these, the most important right is the one relating to establishment and administration of educational institutions guaranteed to the minorities in Article 30 but due to lack of proper implementation of the constitutional mandates the national commission for minorities act, 1992. Taking into account that there persists feeling of inequality, security and discrimination among the minorities, the Government of India set up “Minority Commission” through a government resolution in January 1978. The Resolution clearly states:

"Despite the safeguards provided in the Constitution and the laws in force, there persists amongst the minorities a feeling of inequality and discrimination. In order to preserve secular traditions and to promote national integration, the Government of India attaches highest importance to the enforcement of the safeguards provided for the minorities and is of the firm view that effective institutional arrangements are urgently required for the effective enforcement and implementation of all the safeguards provided for the minorities in the constitution, in central and State laws, and in government policies and administrative schemes enunciated from time to time”.

The National Commission for Minorities is a quasi-judicial autonomous body now working under the National Commission for Minorities Act 1992 - which was enacted by Parliament fifteen years after the initial establishment of a Central Minorities Commission by a Government Notification issued on 12th January, 1978. The First Statutory Commission was set up in May 1993 and the Second - in November 1996.

The functions of the National Commission for Minorities include, *inter alia*, the following -

2. (a) Evaluate the process of the development minorities under the Union and States:

(b) Monitor the working of the safeguards provided in constitution and in laws enacted by Parliament and the State legislatures;

(c) Make recommendations for the effective implementation of safeguards for the protection of the interests of minorities by the Central Government or the State Governments:

(d) Look into specific complaints regarding deprivation of rights and
safeguards of the minorities and take up such matters with the appropriate authorities;

(e) Cause studies to be undertaken into problems arising out of any discrimination against minorities and recommend measures for their removal;

(f) Conduct studies, research and analysis on the issues relating to socio-economic and educational development of minorities;

(g) Suggest appropriate measures in respect minority to be undertaken by, the Government or the State Government;

(h) Make periodical or special reports to the Central Government on any matter pertaining to minorities and in particular difficulties confronted by them; and

(i) Any other matters which may be referred to it by the Central Government.

National Commission for Minority Educational Institutions Act, 2004

Apart from the 1992 Act in order to give statutory force to the problem of minorities education. The National Commission for Minority Educational Institutions Act, 2004 was passed. The Act included itself 15 point programme for the welfare and empowerment of minorities unheld by the Prime Minister. The main objective of the new Act is to enhance opportunity for education for minorities it comprehended in itself. Under the Sarva Shiksha Abhiyan the educational facilities for minority girl has been provided and provisions for the availability of the opportunities to minority in National Economic Affairs. This Act is one of the extended form of the Constitutional Rights to the minorities. This Act was amended in 2005 and came into force on 23.01.2006 which
provided to set up a Commission to advise the Central Government or any state
government on any question relating to the education of minorities that may be
referred to it; to look into specific complaints regarding deprivation or violation
of rights of minorities to establish and administer educational institutions; to
decide on any dispute relating to affiliation to a Scheduled University; and to
report its findings to the Central Government for its implementation. The said
Act also provided right to a Minority Educational Institution (MET) to seek affiliation to
any of six Universities listed in its schedule. The Commission was also given
power to determine disputes regarding affiliation between Minority Educational
Institutions and the Universities.

Judicial Pronouncements

The Constitution of India provides a strong mechanism of judicial review and
also assigns judiciary as chief and sole interpreter of the Constitution in the case
of ambiguity. In the foregoing chapters an attempt has been made examine
various concepts relating to the educational rights of the minorities as well as
what legal measures are available at national and international level. Attempt
has also been made to analyse the present position of the status of the minorities
with regard to the education. The judiciary has the sole capacity to throw light
on the provisions of the Constitution in case of ambiguity. The educational
rights of the minorities are most contentious facets of the cases from
Champakam Dorairajan v. State of Madras \textsuperscript{408} to P.A. Inamdar v. State of
Maharashtra \textsuperscript{409} through which the apex court interpreted the various facets of
the educational rights of the minorities. For the convenience the findings of the
judicial pronouncements has been divided in the various sub heads such as

\textsuperscript{408} AIR 1951 SC 226: [1951] 2 SCR 525.

\textsuperscript{409} AIR 2005 SC 3226: (2005) 6 SCC 537.
nature and extent of minority right, right regarding the selection of students, appointment of teacher head of the institution, management service condition, general administration etc. Attempt has also been made to sum-up the emerging trends of the various concepts relating to the educational rights of the minorities.

The Cultural and Educational rights of minorities recognized by Articles 29 and 30 of the Constitution have remained highly contentious both in public and before judiciary. The litigation on the subject has been enormous. Aside of it, there can be no two opinions about the utility and the role played by minority educational institutions in rendering most needed services to the country in terms of both quality and quantity. There have, however, been frequent efforts to restrict establishment of such schools, and also the private initiative in the field of education has been questioned. On the contrary, the minorities assert that the independence of the nation has to be appreciated as a message of protection and progress to all Indians. The adoption of the provisions of the Constitution about protection of minorities is to be understood

410 Article 29: Protection of interests of minorities -
(1) 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 shall have the right to conserve the same.
(2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

Article 30: Right of minorities to establish and administer educational institutions-
(1) All minorities whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.
(1A) In making any law providing for the compulsory acquisition of any property of an educational institution established and administered, by a minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.
(2) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.
in the same spirit.

Article 30 is in fact a seedbed from which several significant broad banded rights have sprouted. This aspect merits a detailed analysis.

Right guaranteed by clause (1) of Article 30 is a right to establish and administer educational institution of their choice. Once it is proved that an educational institution is established by minority and it is a minority educational institution, be it linguistic or religious, then the question comes about right to administer. It is submitted that right, to administer, presupposes exercise and protection of right to establish educational institution. Both these rights are conjunctive and not an independent one. Right to administer is most critical and controversial right. Since the Constitution is silent about the nature of this right i.e. whether it is subject to some restrictions or is an absolute one. We have to rely on judicial decisions.

The content and contours of the provision have been discussed at length in a series of decisions/opinions by the Supreme Court. On certain grey areas of the subject, the last word has not yet been pronounced. All the same, the court has identified a cluster of rights lying embedded in that constitutional provision. Some of the major rights thus identified are:

(1) Right to set up educational institution
(2) Right to minority-run educational institutions to recognition/affiliation;
(3) Right to choose medium of instruction;
(4) Right to admit students of their choice in their institutions;
(5) Right to Appointment of the Head of The Institution / Principal
(6) Right to choose teaching and non-teaching staff;
(7) Right to minority-run institution to manage its affairs without interference by the state;

(8) Right to take disciplinary proceedings against staff;

(9) Right to get Government grants;

(10) Right of educational institutions to fix their fees;

On reconsideration of these issues, in *Unni Krishnan v. State of Andhra Pradesh*, the Supreme Court evolved a scheme of admission and fees for professional colleges in the country with a view that the right to establish schools is subject to law and public interest and that there is no basic right to recognition or affiliation. The idea behind the scheme is to eliminate discretion in the management altogether in the matter of admission. As per that scheme, at least 50% of the seats are to be filled by the nominees of the State or university, as the case may be, and these heats be called "free seats'. The remaining 50% of the seats, to be called the "payment seats", be filled by those candidates who would be prepared to pay the prescribed fees on the basis of inter se merit. No quota be reserved for the management or for any family, caste or community which might have established such college, but for the constitutionally permissible categories (SCs/STs). Number of seats available should also be fixed by appropriate authority.

In *Shahal H. Musaliar v. State of Kerala* the court was requested by several professional colleges to review the scheme of admissions laid down in Unni Krishnan for professional colleges, levying capitation fee. One of the questions raised was about the extent to which the scheme would apply to the minority institutions to which the admission quota from the community was limited by

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412 SCC 1993 Sup (4) 112.
*St. Stephen's College*\(^\text{413}^\) case to 50%. The court passed interim orders providing 50% of seats are to be filled by State agencies on merit with fees at the government rates. The management may admit the rest from its own community on *inter se* merit. Half of the seats would be 'free seats' and the other half 'payment seats'. 5% of the management seats may go to NRIs.

Later, in a number of occasions the Supreme Court considered the issue of selection of students at the behest of *T. M. A. Pai Foundation* - a linguistic minority in Karnataka, running professional colleges. The court in one such petition *T. M. A. Pai Foundation v. State of Karnataka*\(^\text{414}^\) fixed the number of "paid" seats as compared to *Unni Krishnan* scheme at half but higher fees were proposed. In another petition *T. M. A. Pai Foundation v. State of Karnataka*,\(^\text{415}^\) besides the question regarding meaning of "minority" and "minority educational institution", the issue about the correctness of the stand taken by the Court in St. Stephens' College case came up for consideration. The Court proposed the issues to be considered by a larger Bench, stating:

In *St. Stephen's College v. University of Delhi*,\(^\text{416}^\) the Apex Court held that it is not permissible for the State or the affiliating University to provide that admissions to Minority Educational Institutions should also be on the basis of merit as determined in a joint/common entrance test. We entertain serious reservations with respect to the said holding. So long as the Minority Educational Institutions are permitted to draw students belonging to that minority to the extent of 50% seats even by going down the merit list, we see no reason why the State/affiliating university cannot stipulate that the general

\(^{413}\) *St. Stephen's College* v. University of Delhi, AIR 1992 SC 1630: (1992) 1 SCC 558.

\(^{414}\) 1993 (3) SCALE 990: SCC 1993 (4) 276.


students as well the minority students be drawn from the common merit pool and that even the minority community students must also be admitted on the basis of inter se merit determined on the basis of common/joint entrance test Article 30, in our opinion, does not clothe a Minority Educational Institution with the power to adopt its own method of selection of students. It is not of a part of the minority character of the Institution. The said requirement is but a piece of regulation which the State/affiliating University can prescribe in the interest of fairness and maintenance of standards.

The observation is reflective of a restrictive approach toward administration of minority educational institutions by the minorities.

Reiterating the same the court has again observed in Cochin University of Science and Technology v. Thomas P. John, that an educational institution is free to fix the amount of fee without any outside interference. However, to gain profit through capitation fee is not proper and should not be encouraged. Thus the court observed that "A fee is 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 the levy of a fee with mathematical precision. The Supreme Court has laid down several broad principles with regard to the fixation of fees and as of today, those principles are being adopted by the committees set up for the purpose. It must be understood at the outset that an educational institution chalks out its own programme year wise on the basis of the projected receipts and expenditure and for the court to interfere in this purely administrative matter would be impinging excessively on this right. From this, however, it should not be understood that the educational institution has a carte blanche to fix any fee that it likes but substantial autonomy must be left to it". Thus the

court is clearly of the view that "An educational institution must be left to its own decision in the matter of fixation of fee though profiteering or the imposition of capitation fee is to be ruled out".

**Recommendations**

While the expression “minority” is derived from Latin word “minor” and the suffix “ity”, which means “small in number”. According to *Encyclopedia Britannica* minority means “group held together by ties as common descent, language or religious faith and feeling different in these respects from the inhabitants of a given political entity”. The *Oxford English Dictionary* defines minority as “the condition or fact of being smaller, inferior or subordinate”, or as “a number which is less than half the whole number”. The term minority cannot be for practical purpose explained simply by interpreting the word in its literal sense. If this was the case, almost all the communities existing within a State would be styled minorities, including families, social class, cultural, linguistic groups etc. Generally, the minority is thought of as the opposite to majority. In democratic societies, is based on the numerical ratio to the population as a whole in a particular place. There are times when the majority is the minority and the *vice versa*.

Under International law the term “minority” is commonly used in a more restricted sense. It has come to refer chiefly to a particular kind of group which differs from the dominant group within the state. The UN Sub-Commission on Prevention of Discrimination of Minorities has defined minority as under:

1. The term ‘minority’ includes only those non dominant group of the population which possess and wish to preserve stable ethnic, religious or linguistic traditions or characteristics markedly different from those of the rest of the population;
2. Such minorities should properly include the number of persons sufficient by themselves to preserve such traditions or characteristics; and

3. Such minorities should be loyal to the state of which they are nationals. According to sociologist, the term signifies such groups of people that are united by certain common features and which feel that they belong to one common unit. Such groups may be held together by ties of common descent, physical characteristics, traditions, customs, language or religious faith or a combination of these.

A critical perusal of the educational status of minorities reveals that so far as, educational condition of the various minorities are concerned there are sectarian and regional heterogeneity. Muslims possess more illiteracy than the other religion of the minorities. Among the Muslims high rate of literacy in a particular region other than the Muslims in other region. Thus it will be seen that regional and even sectarian and caste differences must be taken into account while trying to understand the situation of Indian minorities.

As far as the types of minority is concerned Article 29(1) talks of the type of minority based on distinct language script of culture while Article, 30(1) talks of the minority based on religion or language. Thus religious and linguistic minorities are the kinds recognized by our Constitution.

In India, the impact of religion in the day-to-day life of society is still very profound. The reason for this is that Indian Society which is pre-dominantly Hindu places the highest premium on religion, and is always careful to regulate its conduct according to religious injunctions. Historically speaking we can discuss the problem of minorities in three different stages of our history.

Taking into account of the facts and findings of the cases discussed, it can be said that the ‘minority’ refers to the community which is numerically less than
the fifty percent of a population of a particular state as a whole when a law is considering of which the question of minority right is to be determined in a state law. Whenever a community in a minority position in a specific area of the state though a majority in the state as a whole would not be treated as a minority for the purpose of Article 30 of the Constitution. The unit to determine the minority is a state and not the nation as whole.

The word 'establish and administer' used in Article 30 of the Constitutional includes many things like selection/admission of students, fixing the fee structure, appointment of teachers and other staff and general administration. After T.M.A. Pai case and Islamic Academy of Education case it is clear that the minority and non-minority both the institution cannot ignore the inter-se merit. Merit is the only criteria for admission to the institution though the minority institution has preferential right to admit the students from their own community yet they can filled the vacant seats from the non-minority students but even then the merit will be the only criteria for admission. It is also clear that the admission / selection of the students in minority and non-minority professional institution can only be made on the basis of the common entrance test held either by the state university or by the managements of the same kind of institutions together. In later case the committee will look after the fairness and reasonableness of entrance test and selection.

In the background of liberalization polices, the private educational institutions and minority educational institutions demand more autonomy like in other sectors. Recently he apex court in T.M.A. Pai case gave an ambiguous judgment which paved the way for some more confusion. In Islamic Academy of Education, the Supreme Court of India further clarified its stand regarding right

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to establish and administer educational institutions by both minority and non-minorities and the Government Control and regulation.

The real purpose of Article 30 is to prevent discrimination against members of the minority community and to place them in equal footing with non-minority. As regards the general control of the government over the unaided minority institution the Court is of the view that the control should be minimal but the conditions of recognition and affiliation must be complied with. The court is of the opinion that the matter of day to day management the management should have the freedom from the external interference. However, the state can prescribe the minimum qualification of the teachers and staff. In case of termination of employees the grievances must be heard by a tribunal presided over by a judicial officer of the rank of District Judge.

Mahatma Gandhi once said "civilization can be judged by the way it treats its minorities". If the Indian Government and various state governments act on the policy foundations of our civilizations which has accommodated diverse religious, cultural, and linguistic minorities, the minority rights will be well safeguarded.

After analyzing the concept and critically examining the various problems related to the minorities, the researcher offers certain suggestions. The scholar hopes that if they are incorporated as part of various schemes relating to minorities welfare, it will improve their social, political and educational status. Hence the humble suggestions for present study are given as under:

1. The right to education of minorities are recognised under Articles 21 and 21A as this right is available to non-minority people. Besides, Article 29 and 30 of the Constitution provides the right of minorities to establish and administer educational institute. The right to education of minorities is a group right. Therefore, for proper implementation and realisation of this
group right of minorities Articles 15(3) and 16(4) of the Constitution be amended and the word “minority” be added. Articles 15(3) and 16(4) are to be drafted in the following manner:

Article 15(3): “Nothing this Article shall prevent the state from making any special provision for women, children and minorities.”

Article 16(4): “Nothing this Article shall prevent the state from making any special provision for the reservation of appointments or posts in favour of any backward class of citizens or minorities which in the opinion of the state, is not adequately represented in the services under the state”.

2. The UGC should evolve a system where part of the allocation to colleges and universities is linked to the diversity in the student population. The state ‘should play a definite role in the system of education in the country and its power to regulate cannot be down by saying that it is merely confined to the laying down of a prescribed standard of education for minority institutions. In fact, it should extend all necessary measures to secure in orderly, efficient and sound administration of such institutions.

3. State should be overcautious while enacting a law and must pay serious consideration and regard to judicial precedents. Providing hostel facilities at reasonable costs for students from minorities must be taken up on a priority basis.

4. A suitable amendment in Article 30(1) is must which would enable the universities to exercise specific, clear and reasonable/rational control overall minority educational institutions. A meaningful right must shaped,
moulded and created Article 30(1). At the same time there is a need to strike a balance and harmony between this right and other provisions of the Part III, between traditions of the past and the convenience of the present, between society’s need for stability and its need for change, so that there could exist peace and prosperity in it.

5. Minorities should participate in general programmes of resource education to the same extent as other citizens of the state, according to principles of non discrimination and equal rights. Education programmes and services for minority groups should be developed and implemented in cooperation with them.

6. Measures should be taken in the field of education in order to encourage knowledge of the history, traditions, language and culture of the minorities living within the society.

7. Minorities and majorities should have the opportunity to understand and participate in each other’s cultures and languages.

8. Teacher training should include learning about the cultures of their student and their experiences as members of minority groups.

9. Minority views should be given the same critical hearing as majority views, and teaching should avoid stereotypical labeling of the attributes and competence of different minority groups.