Chapter - 4

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I. Introduction

An attempt has been made in previous chapters to discuss the concept of minority and its legal status at international level as well as in India. It emerges from the discussion that the problems of the minorities are relating to the protection of culture, language and religion as well as education which can be solved through the educational process. It is significant to note that even the countries which have enjoyed the benefit of fixed boundaries and stable composition of the people for centuries have not been successful in homogenizing culture, language and religion. The idealized view of a culturally homogeneous nation-state has really never existed in any part of the world. Therefore, it is a myth, if one claims that in the modern society a state


and nationality coincide. In such a heterogeneous society the "national way of life is the life of numerical majority, and the strangers — the minority members — form smaller cultural racial enclave. The minority groups are often "faced by an ideal of national cultural and national physical types associated with the characteristics of the dominant segments of the state societies into which they have been incorporated". Moreover, India's fundamental integrative ethos and its self-identity have been drawn from a social reality that is composed of great diversity and plurality. In this context, it is also worthwhile to mention the landmark judgment of the Supreme Court of India, which is a clear testimony to the fact that India is essentially a plural society. The Supreme Court observed that so long as the Constitution stands as it is and is not altered, it is we conceive, the duty of this Court to uphold the fundamental rights and thereby honour our sacred obligation to the minority communities who are of our own. Throughout the ages endless inundations of men of diverse creeds, cultures and races-Aryans and non Aryans, Dravidians and Chinese, Seythians, Huns, Pathans and Mughals have come to these ancient lands from distant regions and climes. India has welcomed them all. They have met and gathered, given and taken and got mingled, merged and lost in India's tradition and has thus been epitomized in the following lines:

"None shall be turned away from the shore of this vast sea of humanity that is India".

The observation of Jawaharlal Nehru regarding the minorities situation in India clearly reflects the necessity of recognizing the existence of minorities in a plural society and accordingly adopt and implement measures for the protection and promotion of their ethnic, religious, linguistic and cultural rights. Nehru

167 Charles Wagley and Marvin Harris “Minorities in the New World” (1958) at p. 243.
emphatically observed:

"The history of India and of many of the countries of Europe has demonstrated that there can be no stable equilibrium in an county so long as an attempt is made to crush a minority or to force it to conform to the as of the majority There is no surer method of rousing the resentment of the minority and keeping it apart from the rest of the nation than to make it feel that it has not got the freedom to stick to its own ways. Repression and coercion can never succeed in coercing a minority. They but make it more self-conscious and more determined to value and hold fast to what it considers its very own". 169

II. Protection of Right to Education of Minorities under the Constitution of India

A. Articles 25 to 30 of the Constitution of India

Articles 29 and 30 of the Constitution provide for cultural and educational rights. 170 Reference may be made to Articles 25 to 28 under the heading "Right to Freedom of Religion", and Articles 29 and 30 under the heading "Cultural and Educational Rights". 171 In Anjali Jain v. State of Bihar, 172 the Patna High Court held that held that in view of the Articles 29 and 30 of the Constitution, a minority is entitled to administer its educational institution

169 Jawahar Lal Nehru, Young India, 15th May, 1930.


without Governmental interference even if such institution receives substantial aid from the Government. The significance of protection extended to religious consciousness under the provisions of the Constitution of India, is apparent from the fact that the provisions relating thereto are contained in Part III of the Constitution of India, which delineates the fundamental rights extended to all persons (in some cases, limited to citizens alone) in their relationship with the State.

Article 25 of the Constitution of India, as its language suggests, secures to every person the right to freely profess, practice and propagates "religion". In the *Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*, the scope of Article 25 was explained by the Apex Court thus:

> We now come to Article 25 which, as its language indicates, secures to every person, subject to public order, health and morality, a freedom not only to entertain such religious belief, as may be approved of by his judgment and conscience, but also to exhibit his belief in such outward acts as he thinks proper and to propagate or disseminate his ideas for the edification of others....

> The guarantee under our Constitution not only protects the freedom of religious opinion but it protects also acts done in pursuance of a religion and this is made clear by the use of the expression "practice of religion" in Article 25....

> Restrictions by the State upon free exercise of religion are permitted both under Articles 25 and 26 on grounds of public order, morality and health. Clause (2)(a) of Article 25 reserves the

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right of the State to regulate or restrict any economic, financial, political and other secular activities which may be associated with religious practice and there is a further right given to the State by Sub-clause (b) under which the State can legislate for social welfare and reform even though by so doing it might interfere with religious practices....

In *Gurleen Kaur v. State of Punjab*, the Punjab and Haryana High Court Article 26 of the Constitution of India allows every religious denomination to establish and maintain institutions for religious and charitable purposes. The provision also allows a religious denomination to manage its own affairs in "matters of religion". Liberty is also extended to religious denominations to own and acquire immovable property, as also, to administer such property. 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".

Article 29(1) says that "Any section of citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own" has the right to conserve the same. Article 30 confers the right on religious and linguistic minorities to establish and administer educational institutions of their choice, and the State is required not to discriminate against such institutions in the matter of giving aid. Thus, Article 29(1) gives protection to any section of citizens residing in the territory of India having a distinct language, script or culture of its own the right to conserve the same. As we have already stated, the distinct language, script or culture of a minority community can best be inculcated into

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174 2009 (3) RCR (Civil) 324: 2009 (5) SLR 690.
the impressionable minds of the children of their community. It is through educational institutions that the language and script of the minority community can be preserved, improved and strengthened. It is, therefore, that Article 30(1) confers on all minorities, whether based on religion or language, the right to establish and administer educational institutions of their choice.\textsuperscript{176}

The decisional law has created some avenues even for non-minorities to establish educational institutions. For the moment, this right is being treated as a part of the right to occupation under Article 19(1)(g); but there have been discreet judicial hints that such rights can also be claimed under Article 26(a). Article 29(2) gives a general right to the citizens not to be discriminated against on grounds only of religion, race, caste, language or any of them in matters of admission to an educational institution maintained by the State or recognized and aided by the State. If necessary one can also fall back on Article 14, and the Supreme Court decisions have extended this right also against the State recognized educational institutions, even though they may not be aided by the State.\textsuperscript{177}

The Indian Constitution 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.\(^\text{178}\)

The preamble to the Constitution as amended in 1976 declares India to be a secular democratic republic.\(^\text{179}\) Even before that, the secular nature was held to be a basic feature of the Constitution.\(^\text{180}\) The Constitution does not define the term secular state presumably because it is a very elastic term not capable of a precise definition and perhaps best left undefined.\(^\text{181}\) The Indian concept is indeed singular.\(^\text{182}\) 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 state, while ensuring religious freedom to all, mandates the State not to discriminate against any citizen on grounds of religion,\(^\text{183}\) and as a corollary it seeks to maintain a balance between the religious rights of the majority and those of the minority


\(^{179}\) The world 'secular' was inserted in the preamble to the constitution through the Constitution (42nd Amendment) Act, 1976.


\(^{182}\) 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.

\(^{183}\) See Articles 25, 26, 15, 29(2) of the Constitution of India.
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.\textsuperscript{184} 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)].

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.\textsuperscript{185}

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,\textsuperscript{184}

\textit{St. Stephen's College v. University of Delhi, AIR (1992) SC 1630: (1992) 1 SCC 558.}\textsuperscript{185}

\textit{Ibid., at p.15.}
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 Indian Constitution 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. Asbjorn Eide's advice in this regard is worth considering, he says:

“A human rights based quest for minority protection must...be threelfold to search for approach which can safeguard equally between all human beings in society; to promote group diversity where required to ensure the dignity and identity of all and to advance stability and peace, both domestically and internationally.”

The question whether minority protection is compatible with secularism is highly debatable. The secular State has to ensure that it has no affinity towards
any particular religion and should treat all religions alike, whereas the minority protection clause confers special rights on religious minorities. The question arising in this connection is: whether the State may be permitted to endear itself to certain religions and claim to be secular in nature at the same time? Two views must be considered in this regard. One view can be described as negative in the sense that State shall not interfere in matters which are strictly religious. The other positive view is that the State is under active obligation to provide protection to all in matters of religion and this protection is to be extended to all religions without compromising public interest. The question was considered by Justice H.R. Khanna in *St. Xavier's College*. 186

According to his Lordship, the majority in a system of adult franchise hardly needs any protection. It can look after itself and protect its interests. Any measure wanted by the majority can without much difficulty be brought on the statute book because the majority can get that done by giving such a mandate to the elected representatives. It is the minorities who need protection and Article 30, besides some other articles, is intended to afford and guarantee that protection. 187 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. 188 The Constitution recognizes 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

186 Ibid.

187 Ibid. at p. 1415.

our countrymen to live in the whole.\textsuperscript{189}

\textbf{B. Concept of Equality and Minority Protection}

The right to equality and non-discrimination is stipulated in the \textit{International Covenant on Civil and Political Rights}, 1966 (ICCPR) under Article 26. According to it all persons are equal before law and entitled without any discrimination to the equal protection of law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Thus, equality and non-discrimination is a recognized right under ICCPR. This principle of equality and non-discrimination is also a foundational principle of numerous existing international human rights instruments including minority protection instruments.

The framers of the \textit{Constitution of India} not only placed justice and equality at the highest pedestal, but also incorporated several provisions for ensuring that the people are not subjected to discrimination on the grounds of caste, colour, religion or sex. Article 14 of the \textit{Constitution} declares that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. Equality before the law proclaims and pronounces the concept of “Rule of Law,” a basic feature of the \textit{Constitution of India}.\textsuperscript{190} The “Rule of Law” and its virtue one should be wary of disqualifying the legal pursuit of major social goals in the name of the rule of law. After all, the rule of law is meant to enable the law to promote social good, and should not be lightly used to show that it should not do so. Sacrificing too many social goals at the altar of the rule of law may make the law barren and empty.\textsuperscript{191}

\textsuperscript{189} Ibid.


According to "Rule of Law," no man is above the law of the land and every person, whatever his rank or condition, is subject to the ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunals. The idea of legal equality, or of the universal subjection of all classes to one law administered by the ordinary courts, has been pushed to its utmost limit.\textsuperscript{192} Professor Dicey, explaining the concept of legal equality as it operated in England, said:

With us every official, from Prime Minister down to a constable or a collector of taxes, is under the same responsibility for every act done with legal justification as any other citizen.\textsuperscript{193}

The concept of equality\textsuperscript{194} is intended to guarantee equal rights to all citizens which include the minorities also. Thus, other things being equal, minorities have every right to be appointed to any public office at any level and also have a common citizenship and all other connected rights.\textsuperscript{195} It can be said that protection of minorities in an article of faith in the Constitution. Articles 14, 15, 16, 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.

In the \textit{Ahmedabad St. Xavier's College Society Case},\textsuperscript{196} Chief Justice Ray


\textsuperscript{194} Article 14 of the Constitution of India.

\textsuperscript{195} \textit{AIR} (1985) SC 945: (1985) 2 SCC 556.

observed the whole object of conferring the right on minorities under Article 30 was to ensure that there would be equality between the majority and the minority. The considerations that guided the founding fathers while enacting the provisions relating to protection of minority rights were lucidly expounded by Justice Fazal Ali in *Managing Board, Milli Talmi Mision v. Bihar*, thus:

The most difficult and delicate task of our founding fathers while framing the Constitution of the largest democracy in the world was to protect, preserve and safeguard the interests of the minorities and the backward classes in order to retain the secular nature of our Constitution. Perhaps they feared that a time may come when the overwhelming majority may overshadow or dominate devour or destroy the educational, cultural and social rights of the minorities and wreck their individuality and personality. It was this central theme that runs through the entire Constitution which has provided sufficient safeguards to protect and preserve the minority educational institutions which is the most important and vocal medium through which this section of the Society can speak and seek to redress its grievances.

Equality before law is no doubt, a precious fundamental rights guaranteed by Article 14 of the Constitution. Viewed superficially, one may be tempted to think that the right granted. Article 30 to the minorities to establish and administer educational institutions of their choice militates against the lofty concept of equality. This is in fact not so. This has been eloquently highlighted by Justice K. K. Mathew in *St. Xavier’s case*. According to the learned judge, the problem of the minorities is not really a problem of the establishment of

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equality because it taken literally, such equality would mean absolute identical treatment of both the minorities and the majorities.

At the time of adopting the Constitution the Indian state had committed itself to provide elementary education under Article 45 of the Directive Principles a State Policy. Article 45 stated that "The State shall endeavour to provide within a period of ten years from the commencement of this constitution, for free and compulsory education for all children until they complete the age of fourteen years." In 1993, in a landmark judgment, the Supreme Court ruled that the right to education is a fundamental right flowing from the Right to Life in Article 21 of the Constitution. Subsequently in 2002 education as a fundamental right was endorsed through the 86th Amendment to the Constitution. Article 21-A states that: "The State shall provide free and compulsory education to all children of the age six to fourteen years in such a way as the state may, by law, determine." The 86th Amendment also modified Article 45 which now reads as "The State shall endeavor to provide early childhood care and education for all children until they complete the age of 6 years". However, despite this commitment the number of children in this age group who have remained out of school is alarmingly large. The successive governments have vacillated on enacting the Right to Education Bill despite the fact that Article 21-A makes it the responsibility of the state to provide free and compulsory education to every child. Since education is a concurrent subject, both the State and Central governments are responsible for it.

C. Right to Education

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The right to education has been explicitly recognized under Article 13 of the International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR). Article 13 of the ICESCR drafted on the suggestion of the UNESCO’s then Director-General, lays down the right to education, in comprehensive terms. Article 13 provides: "The State Parties to the present Covenant recognize that with a view to achieving the full realization of this right: (a) Primary education shall be compulsory and available free to all; (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by appropriate means and in particular, by the progressive introduction of free education; (c) Higher education shall be made equally accessible to all, on the basis of capacity, by all appropriate means and in particular, by the progressive introduction of free education; (d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education; (e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved". It contains a provision similar to Article 4 of the UNESCO Convention against Discrimination in Education, 1960. The States party to the ICESCR recognize the universal right to education under Article 13(1), and undertake, with a view to achieving the full realization of this right, “Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education” [Article 13(2)(d)].

Article 45 is the only Article in Part IV of the Constitution of India, which speaks of a time limit within which this right should be made justifiable. The directive

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201 Article 45: "The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years". See State of U. P. v. Bhupendra Nath Tripathi, AIR
principle contained in Article 45 made provision for free and compulsory education for all children up to the age of 14 years within 10 years of promulgation of the Constitution of India but the nation could not achieve this goal even after 50 years of adoption of the provision. The task of providing education to all children in this age group gained momentum after National Policy of Education (NPE) was announced in 1986. It was felt that though the Government of India in partnership with State Governments made strenuous efforts to fulfil the mandate and though significant improvements were seen in various educational indicators, the ultimate goal of providing universal and quality education still remained unfulfilled. In order to fulfil that goal, it was felt that an explicit provision should be made in the Part of the Constitution relating to Fundamental Rights. Right to education is now a guaranteed fundamental right under Article 21A. It commands that the State shall provide free and compulsory education to all children of the age of 6 to 14 years in such manner as the State may, by law, determine. The State at present is under the constitutional obligation to provide education to all children of the age of 6 to 14 years. In order to give effect to the said fundamental right of education, the Right of Children to Free and Compulsory Education Act, 2009 was passed. In Chapter-III of the said Act, duties of appropriate government, local authority and parents have been mentioned. Similarly, in Chapter-IV, responsibilities of schools and teachers are provided. Section 21 provides for constituting a School Management Committee. Section 22 prescribes that the School Management Committee shall prepare a School Development Plan.202

The State by virtue of Article 21A is bound to provide free education, create necessary infrastructure and effective machinery for the proper implementation of the right and meet total expenditure of the schools to that extent. Right to education guaranteed by Article 21A would remain illusory in the absence of State taking adequate steps in


requiring all schools to be manned by efficient and qualified teachers. Before teachers are allowed to teach the children, they are required to receive appropriate and adequate training from a duly recognized training institute. The Apex Court in Childline India Foundation v. Allan John Waters, observed:

Article 21A of the Constitution mandates on the State shall provide free and compulsory education to all children in India up to the age of 14 years. The word "life" in the context of Article 21 of the Constitution has been found to include "education" and accordingly this Court has implied that "right to education" is in fact a fundamental right.

The first case on the right to education as a fundamental right, giving full recognition to the interdependence argument of social and civil or political rights, is Mohini Jain v. State of Karnataka. In this case, the two-Judge Bench of the Apex Court, while declaring the charging of capitation fees illegal, categorically stated “the right to education flows directly from the right to life” since “the right to life and the dignity of an individual cannot be assured unless it is accompanied by the right to education”. Considering the interdependence of the rights guaranteed in Parts III and IV, the Court held that the directive principles, which are fundamental to the governance of the country, cannot be isolated from the Fundamental Rights guaranteed under Part III. The Directive Principles have to be read into the Fundamental Rights. Both are supplementary to each other. Without rendering the right to education provided in Article 41 of the Constitution a reality, the Fundamental Rights contained in Chapter III shall remain beyond the reach of a large majority, which remains illiterate. The court also referred to the Universal Declaration of Human Rights (UDHR) principles

and to Article 41 of the *Constitution*, which recognizes an individual’s right to education.

Subsequently, in *Unni Krishnan v. State of A. P.*,\(^{205}\) the Constitution Bench articulated that the fundamental right to education flows from Article 21. While declaring the right to education a Fundamental Right; it was held not to be an absolute right, and its content was defined by the parameters of Articles 41 and 45. In other words, every child/citizen has a right to free education up to the age of fourteen years and thereafter the exercise of the right would be subject to the limits of the economic capacity of the State. This was, in a way, the waking up of the State from hibernation such that it may be fully alive to its obligations under the directives to do full justice to the principles of “life” or “liberty” in Article 21. The Court relied upon the UDHR and Article 13 of *International Covenant on Economic, Social and Cultural Rights*, 1966 (ICESCR) and for the first time declared education to be a “social” right. By upholding the right to free primary education up to the age of 14 years, the Court reminded the State of the endeavour it was obliged to undertake under Article 45 within a prescribed time-limit, which had expired long ago. This was one of the first judgments in which the Court employed ICESCR language for the progressive realization of the right to higher education while declaring the fundamental right to free primary education.

D. Fundamental Rights and Directive Principles Relations in Case of Minority

The *Constitution of India* is the highest law of the land and all laws, national or local, customary or statutory, past and future draw their validity and legitimacy from it.\(^{206}\) Article 13 of the *Constitution* indicates that laws inconsistent with or in derogation of

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the Fundamental Rights contained in Part III of the Constitution would "to the extent of such inconsistency, be void." In its form and structure, the Constitution follows the Western liberal model of Constitutionalism, but it has several features founded on Indian traditions and the special needs and circumstances of the society.

In Ram Jethmalani v. Union of India, the Apex Court observed that the scrutiny and control of activities, whether in the economic, social or political contexts, by the State, in the public interest as posited by modern Constitutionalism, is substantially effectuated by the State "following the money." The Preamble to the Constitution of India emphasises the principle of equality as basic to the Constitution. Equality of opportunity to all irrespective of their caste, colour, creed, race, religion and place of birth which constitutes one of the core values of the Universal Declaration of Human Rights also forms part of Preamble to the Constitution of India. JUSTICE, LIBERTY, EQUALITY, including social, economic and political justice, the golden goals set out in the Preamble to the Constitution of India is to be achieved. It secures, as one of its objects, fraternity assuring the dignity of the individual and the unity and integrity of the nation to "WE, THE PEOPLE OF INDIA."

For achieving the various goals set out in the Preamble, framers of the Constitution included a set of provisions in Part III titled "Fundamental Rights" and another set of provisions in Part IV titled "Directive Principles of State Policy". The provisions contained in Part III of the Constitution, by and large contain negative injunctions.

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against State’s interference with the Fundamental Rights of individuals and group of individuals and also provide for remedy against violations of such rights by direct access to the Apex Court of the country. The inclusion of a set of Fundamental Rights in the Constitution of India has its genesis in the forces that operated in the national struggle during British rule. Essential rights like personal freedom, protection of one's life and limb and of one's good name, derived from the Common Law and the principles of British jurisprudence, were well accepted and theoretically recognized by various British enactments.\textsuperscript{213} Part IV enumerates State's obligation to make policies and enact laws for ensuring that weaker segments (have-nots) of the society are provided with opportunities to rise to a level where they can compete with others (haves).

Part III, entitled "Fundamental Rights", primarily, but not exclusively, contains what are called the civil and political rights and may roughly be compared with ICCPR, while Part IV, "Directive Principles of State Policy" contains what may primarily, but not exclusively, be called social and economic rights, roughly comparable with the ICESCR. In Part III, we also have provisions for abolition of untouchability, bonded labour, traffic in human beings, and also for prohibition of children employed in factories or in other kinds of hazardous employments. But more importantly, their enforcement in a meaningful sense involves taking effective economic measures, and mere paper abolition by enacting necessary laws will not be enough. The difference between the Fundamental Rights and Directive Principles in the Constitution lies in this that the former are primarily aimed at assuring political freedom of the citizens by protecting them against excessive State action while the latter aim at the securing social and economic freedoms by appropriate State action. Fundamental Rights intend to foster the ideal of a political democracy and to prevent the establishment of authoritarian rule; hence, they are of no value unless they can be enforced through

resorting to court action. So they are made justifiable. On the other hand, it is also evident that notwithstanding their great importance, the Directive Principles cannot in the very nature of things be enforced in a court of law.\textsuperscript{214} This does not imply that Directive Principles are any less important than Fundamental Rights or that they are not binding on the various organs of the State.\textsuperscript{215}

Part III of the Constitution consists of Articles 12 to 35, divided into eight groups. Articles 12 and 13 are “General”. The former defines “the State”, while the latter invalidates existing laws inconsistent with the Fundamental Rights and prohibits the making of inconsistent law in future. Articles 14 to 18 are grouped as “Right to Equality”; Articles 19 to 22 as "Right to Freedom"; Articles 23 and 24 as “Right against Exploitation”; Articles 25 to 28 as “Right to Freedom of Religion”; Articles 29 and 30 as “Cultural and Educational Rights”. Article 31, which constituted the “Right to Property”, was omitted in 1979. Articles 31A to 31C are grouped as “Savings of Certain Laws” and Articles 32 to 35 are grouped as “Right to Constitutional Remedies”. Thus, Fundamental Rights may be classified into: (i) right to equality, (ii) right to freedom, (iii) right against exploitation, (iv) right to freedom of religion, (v) cultural and educational rights, (vi) right to property, and (vii) right to constitutional remedies. They are the rights of the people preserved by the Constitution; “Fundamental Rights” are the modern name for what have been traditionally known as “natural rights”. These are moral rights which every human being everywhere at all times ought to have simply because of the fact that in contradiction with other beings, he is rational and moral. They are the primordial rights necessary for the development of human personality. They enable a man to chalk out his own life in the manner he


likes best. The Constitution, in addition to the well-known Fundamental Rights, also included the rights of the minorities, untouchables and other backward communities.\textsuperscript{216}

Part IV of the Constitution consists of Articles 36 to 51 and contains the "Directive Principles of State Policy" fundamental to the governance of the country and it is the duty of the State to apply these principles in making law. Article 37 makes it clear that unlike the provisions of Part III, the directives are not "judicially enforceable",\textsuperscript{217} but they shall, nevertheless, be fundamental in the governance of the country. The 1937 Constitution of Eire contained a chapter titled "Fundamental Rights" and another "Directive Principles of State Policy"\textsuperscript{218}. Articles 37 to 39 of the Constitution of India are principally based on Article 45 of the Constitution of Eire with certain distinctions. Unlike Article 45 of the Constitution of Eire, Article 37 of the Constitution of India does not prohibit the courts from taking contingency of the directives. In purely jurisprudential terms, a distinction is drawn between the enforceability of a provision and the same being "judicially cognizable."\textsuperscript{219} Therefore, it was felt that some of the principles laid down in the Directive Principles of State Policy, which had its influence in the governance of the country, would not be achieved if those Articles were literally interpreted and applied.

The Directive Principles of the State Policy lay down the fundamental principles for the governance of the country, and through those principles, the State is directed to secure that the ownership and control of the material resources of the community are so distributed as to best sub-serve the common good and that the operation of the

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\textsuperscript{216} Maneka Gandhi v. Union of India, AIR 1978 SC 597: (1978) 1 SCC 248.
\textsuperscript{218} Umaji Keshao Meshram v. Radhikabai, AIR 1986 SC 1272: 1986 (1) SCALE 681.
\textsuperscript{219} Sir Ivor Jennings, The Law and the Constitution (University of London Press, 1959) Ch. III, Sec. 2.
\end{footnotesize}
economic system does not result in the concentration of wealth and means of production to the common detriment. Further, it was also noticed that the fundamental rights are not absolute but subject to the law of reasonable restrictions in the interest of the general public to achieve the above objectives specially to eliminate Zamindari system. The Apex Court initially, for example, in State of Madras v. Srimathi Champakam Dorairajan, held that in case of conflict between a Fundamental Right and the Directive Principle, the former takes precedence and the latter must run subsidiary to the former. However, in later years the Court’s philosophy underwent a change. In Chandra Bhavan, Kesavananda Bharati, and Minerva Mills, the Apex Court embraced the view that Parts III and IV of the Constitution should be treated as of equal value and the Court’s attempt should be to bring about harmony between the two instead of reading a conflict.

E. Right to State Aid (Grant-in-Aid) for Minority

In the matter of right to get grant-in-aid from the State for the educational institutions, the Constitution of India, itself, has classified the educational institutions into two: (i) those educational institutions which are by the Constitution itself expressly made eligible for receiving grants; and (ii) those educational institutions which are not entitled to any grant by virtue of any express provision of the Constitution. Educational institutions established prior to 1948 by Anglo-Indians come within the first category. An Anglo-Indian is

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221 AIR 1951 SC 226: (1951) 2 SCR 525.


225 There is no Constitutional provision for such grant of aid to educational institutions established by the Anglo-Indian community after 1948.

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defined by Article 366(2)\textsuperscript{226} of the Constitution and Article 337\textsuperscript{227} of the Constitution conferred a positive right on them, to get grant, for a period of ten years from the commencement of the Constitution. Article 337 protected such financial grants which the Anglo-Indian educational institutions were getting “in the financial year ending on the thirty-first day of March, 1948.” The grants were initially protected for a period of three years; thereafter, during each succeeding year, the same could be reduced by 10% than those for the immediately preceding period of three years. The Anglo-Indian educational institutions, as a condition precedent to get grants were under an obligation, according to the second proviso to Article 337, to make available 40% of the annual admissions to other communities.

The crucial problem areas vis-a-vis linguistic minorities are (i) the right to

\textsuperscript{226} Article 366(2) of the Constitution of India:
“366. Definitions-In this Constitution, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say-
(1) .................
(2) “an Anglo-Indian” means a person whose father or any of whose other male progenitors in the male line is or was of European descent but who is domiciled within the territory of India and is or was born within such territory of parents habitually resident therein and not established there for temporary purposes only;” See Wilson Reade v. C.S. Booth, AIR 1958 Gau 128.

\textsuperscript{227} Article 337 of the Constitution of India:
“Special provision with respect to educational grants for the benefit of Anglo-Indian community-During the first three financial years after the commencement of this Constitution, the same grants, if any, shall be made by the Union and by each State for the benefit of the Anglo-Indian community in respect of education as were made in the financial year ending on the thirty-first day of March, 1948.

During every succeeding period of three years the grants may be less by ten per cent than those for the immediately preceding period of three years.

Provided that at the end of ten years from the commencement (If this Constitution such grants, to the extent to which they are a special concession to the Anglo-Indian community, shall cease. Provided further that no educational institution shall be entitled to receive any grant under this article unless at least forty per cent of the annual admissions therein are made available to members of communities other than the Anglo-Indian community.”
instruction in their mother-tongue,\textsuperscript{228} (ii) the use of minority languages for official purposes, and (iii) the recruitment of minorities in state services.

III. Right to Instruction in Mother-Tongue

A. At the Primary Stage

The language of instruction in educational institutions at the primary and secondary level is a matter that vitally affects each individual whether belonging to a dominant language group or linguistic minority group.\textsuperscript{229} In this respect, the Constitution has recognized in Article 29 (1) the right of a linguistic minority to conserve their language and culture: It also prohibits discrimination on grounds only of religion, race, caste, language or any of them in the matter of admission to educational institutions maintained or aided by the state. This provision does not cast any positive obligation on the state to promote steps to conserve the language and culture of linguistic minority groups. But it prevents the state from imposing on a linguistic minority any other language.

As regards educational rights, the Constitution has guaranteed to the minorities the right to establish their own schools but had not before the Constitution (Seventh Amendment) Act, 1956, specifically recognized the right to instruction in the mother-tongue in the schools maintained by the state. This was a lacuna in the constitutional provision. The minorities especially in rural areas may not have the necessary wherewithal to set up and maintain their own educational institutions. Consequently positive duty should be imposed on the state to provide facilities to the minorities for education in their mother-tongue at the primary school stage in schools maintained by the state. But awareness of this

\textsuperscript{228} See General Secretary, Linguistic Minorities Protection Committee v. State of Karnataka, AIR 1989 Kant 226: ILR 1989 Karnataka 457.

\textsuperscript{229} Associated Managements of Primary and Secondary Schools in Karnataka v. State of Karnataka, ILR 2008 Karnataka 2895: 2008 (4) Kar LJ 593.
problem was present at the state government and central government levels as early as 1949, in fact the Provincial Education-Ministers' Conference of 1949 passed a resolution recommending the introduction of mother-tongue as the medium of instruction at the primary stage of education for linguistic minorities by appointing one teacher, provided there were not less than 40 students speaking the language in the whole school or 10 such pupils in a class. The recommendation was accepted by the Central Government. However, as the resolution was merely recommendatory the states failed to adopt a uniform policy in this respect. Nonetheless, the constitution-makers did not think it necessary to incorporate this safeguard in the Constitution as originally framed. The States Reorganization Commission while examining the question of safeguards for linguistic minorities felt the necessity of giving constitutional recognition to this right and recommended accordingly.²³⁰

B. Advance Registration of Linguistic Minority Pupils

The procedure of advance registration of linguistic minority pupils was suggested by the Southern Zonal Council²³¹ and the Commissioner for Linguistic Minorities in order to enable the educational authorities to assess the demands of such pupils in advance of the school year and to ensure that such pupils are not denied facilities of instruction through their mother-tongue on the basis that their needs were not known to the authorities. This suggestion which puts teeth into the safeguard has been accepted by all the states and actual implementation has been reported in certain states.

In cases where there are not sufficient number of linguistic minorities pupils for opening a new school or section in a school, arrangements should be made for

²³¹ The Southern Zonal Council's suggestion was accepted by the Chief Ministers' Conference in 1961.
inter-school transfers. The implementation of this suggestion originally made by the Southern Zonal Council and approved by the Chief Ministers’ Conference of 1961 would ensure that no pupil of the linguistic minority community will be refused admission in schools on the basis that sufficient number is not forthcoming and that the educational authorities will adjust the claims of such students by inter-school transactions. This suggestion has been accepted by most of the states but orders for its implementation have been issued only in some.

C. At the Secondary Stage

The Constitution has not enjoined upon the states to provide adequate facilities for instruction in the mother-tongue at the level of secondary education to the linguistic groups. The Chief Ministers’ Conference of 1961 also fell that the mother – tongue formula could not be fully applied at the stage of secondary education. This is understandably so because the secondary education is intended to build a base for preparing the student either for a vocation or for higher education in the universities. Consequently, the media or instruction should be the modern Indian languages stated in the Eighth Schedule to the Constitution as well as English. Exception may be made for hill districts of Assam and West Bengal.

D. Extent of Implementation

Effective implementation of the above safeguards initially requires the demarcation of areas in each state where a linguistic minority constitutes 13 to 20 per cent of the population. Most of the states have prepared lists of such areas.\(^{232}\) Majority of the states have issued orders that replies to representations and petitions from the public in a minority language should be given, wherever

\(^{232}\) Id., at p. 10.
possible, in the language of the representation.233 So far as the setting up of translation cells for purposes of translating the substance of important laws, government notifications, rules and regulations in minority languages, the states of Andhra Pradesh, Kerala, Tamil Nadu, Mysore, Assam, West Bengal and Uttar Pradesh have made provisions.234 The other states and union territories should not lag behind in the implementation of this important safeguard. The linguistic minorities will be further handicapped by the absence of translations of laws and government rules in their own language. The volume of laws and delegated legislation in the form of rules, regulations, bye-laws, notifications emanating from the government and embracing almost all aspects of an individual’s life is large and every effort should be made by the government to publish them in the minority languages in addition to the official languages of the state.

E. Medium of Instruction

The medium of instruction plays a very important role in education. Normally, it is the prerogative of the State, as a part of its police power, to determine it. The point of discussion here is whether this normal governmental power is subject to minority institutions’ claim that it is a part of their right of administration that in their own institutions they should have the privilege to determine the same. As we shall see now, the Supreme Court has said that, minority institutions have the right to determine the medium of instruction and examination for themselves. But, we must take note of a few considerations which are practical and educational in nature, before we discuss the decided cases. The first important point to be noted is that in every case it has been iterated by the Court that the standard of education is not a part of minority’s


234 Ibid.
right of administration, and it cannot be denied that at the level of higher education it is very important to keep in mind whether a particular language has developed enough to be chosen as the medium of instruction, at least for some subjects. The Constitution gives to the Central Government the exclusive power of “coordination and determination of standards, in institutions for higher education or research and scientific and technical institutions.” Therefore, if and when Parliament chooses to legislate in this respect in exercise of its aforesaid power, the State Government’s power and also the minority’s privilege in determining the medium of instruction will have to be subordinated to parliamentary exercise of power. In the relevant Supreme Court case of D. A. V. College, Bhatinda v. State of Punjab,235 which we shall see later in this subsection, the minority institution was on a strong ground because it was claiming the privilege to use Hindi, instead of Punjabi, as the medium of instruction.

The second point to be noted is that at the primary level the child finds it easier to be taught in his mother tongue. The language, he already knows; he has only to be taught the alphabets and a little of grammar. Any language other than the mother tongue would obviously be difficult, and in the absence of very strong motive for learning, the child may find the entire educational process quite frightening. Still, for socio-political reasons something different is happening across India. Many job opportunities are available only to those who can communicate well in English—both written and spoken. Therefore, more and more parents are sending their children to English medium schools. We shall now see that the Supreme Court in State of Bombay v. Bombay Education Society236 held that the parents could not be prevented from doing so. But in that case, the educational institution was a minority institution. Can other institutions be prevented from using English as the medium of instruction and can they be

236 (1955) 1 SCR 568; AIR 1954 SC 561.
forced to opt for the language spoken in the State? This is the tussle which the Karnataka institutions\textsuperscript{237} are facing. Even though, the State Government's writ may ultimately prevail, it is submitted that the entire measure is clearly violative of Article 14 of the Constitution. The State Government's measure, in the circumstances, amounts to forcibly keeping certain sections of the society deprived of the bright opportunities of life which, unfortunately, in today's India are available only to those who are well-versed in English. Why should the burden of promoting the growth of local language be borne only by those who are non- or under-privileged? This digression was necessary so that the reader may understand the implications of the law, to be discussed now, in the correct context and perspective.

The Supreme Court pronounced for the first time on this issue in \textit{State of Bombay v. Bombay Education Society}.\textsuperscript{238} The Education Department of the Government of the State of Bombay issued a circular which was sent to the Headmasters of the schools in the State where education was imparted at the primary and secondary stages through English medium. The circular asked these schools not to take fresh admission of children who were neither Anglo-Indians nor were of non-Asiatic descent. In case they wanted to admit such children, they were asked to run parallel classes in Hindi medium or in the medium of any other Indian language. The Government promised even to help financially in this matter. One of the institutions affected was the Barnes High School, an Anglo-Indian school which had to refuse admission to many, including a child of a Christian family, who claimed that their mother tongue was English, and a child of a Hindu family who said that their mother tongue was Gujarati. Consequently, the school and the parents of these children

\textsuperscript{237} The matter is pending before the Supreme Court.

approached the Bombay High Court and challenged the constitutionality of the circular letter. The High Court decided that the impugned letter was constitutionally impermissible. Against that decision the State of Bombay appealed to the Supreme Court. A constitution bench of the Court dismissed the appeal. The following propositions of law emerge from the judgment.

First, it was held that the circular was in violation of the rights of admission-seekers under Article 29(2) which provides that no discrimination can be practised by any State-maintained or State-aided institution on certain grounds including race and language. Second, the circular prevented the Barnes High School, an Anglo-Indian institution, from fulfilling its constitutional obligation under Article 337 which required every such institution to admit at least 40 per cent students from outside the Anglo-Indian community so that it could claim the constitutionally guaranteed grant. To the suggestion that the institution could fulfil its obligation by running non-English medium parallel classes, the Court replied that that would amount to adding an additional obligation and would also be in violation of institution’s Article 30(1) right because it was a minority institution and had the right to determine its medium of instruction. Delivering the judgment of the Court, S.R. Das, J. said:

Where, however, a minority like the Anglo-Indian Community, which is based, inter alia, on religion and language, has the fundamental right to conserve its language, script and culture under Article 29(1) and has the right to establish and administer educational institutions of their choice under Article 30(1), surely then there must be implicit in such fundamental right the right to impart instruction in their own institutions to the children of their own community in their own language. To hold otherwise will be to deprive Article 29(1) and Article 30(1) of the greater part of their contents. Such being the fundamental
right, the police power of the State to determine the medium of instruction must yield to this fundamental right to the extent it is necessary to give effect to it and cannot be permitted to run counter to it.\textsuperscript{239}

The matter came again for consideration before the Supreme Court in \textit{Gujarat University, Ahmedabad v. Krishna Rangnath Mudholkar}.\textsuperscript{240} In this case, the Gujarat University had prescribed Hindi or Gujarati as the exclusive medium of instruction and examination. Its constitutional validity was challenged. However, even though St. Xavier's College, a minority institution, was also a party in the litigation, the Court refused to allow arguments to be made with reference to Article 30(1) of the Constitution because of inadequate pleadings in the case on this point. Ultimately, the matter came to be decided finally by a constitution bench headed by S.M. Sikri, C.J. in \textit{DAV College, Bhatinda v. State of Punjab}.\textsuperscript{241} The Punjab University, Patiala had made Punjabi written in Gurmukhi script as the exclusive medium of instruction in all subjects including science. This was challenged by the petitioner-colleges which were affiliated to the university on several grounds. One ground, that is relevant to our purpose here, was that the petitioner-colleges, as minority institutions, could not be forced to impart instruction in Punjabi. They contended that as Arya Samaj had established the institutions and Hindi written in Devnagiri script was their language, they had a constitutionally protected right to use Hindi as the medium of instruction and examination. Relying on the observations of S.R. Das, J. in \textit{Bombay Education Society},\textsuperscript{242} which was quoted above, the Court upheld the contention of the petitioners. The constitution bench in this case even said that if

\textsuperscript{239} Ibid., p. 586 of the SCR.


the university had any difficulty in accommodating the petitioners, they should be allowed to get affiliated to a University which might allow Hindi to be used as medium of instruction and examination.

However, even though the minority institutions cannot be forced to accept a certain language, say the regional language of the State, as the medium of instruction, they can be asked to teach compulsorily the language of the State from a stage that it may not amount to be an excessive burden on the child. Obviously, the teaching of the language of the State will be in addition to the language which the child might have chosen as his first language. In *English Medium Students Parents Association v. State of Karnataka*, the Supreme Court upheld the order of the Karnataka Government which made the teaching of Kannada compulsory from the standard V as the second language, which was required to be taught to every child in every school in the State, including the minority schools.

**IV. Aligarh Muslim University Act 1920 and Minority Education**

The Aligarh Muslim University has been established and incorporated under the Aligarh Muslim University Act, 1920 passed by the Central Legislature. The Executive Council is one of the Authorities of the University and is constituted as the Executive Body of the University. Its powers and duties have been prescribed by the Statutes. Statute 16 confers a power on the Executive Council to appoint Professors, Readers, Lecturers and other members of the teaching staff on the recommendations of the Selection Committee. By the Aligarh Muslim University (Amendment) Act, 1965 published in the Gazette of India dated 22. 09. 1965. Statute 16 was amended The relevant amendment for our purposes is that a Clause (ii-B) was added empowering the Executive Council to regulate and enforce discipline among members of the teaching, administrative

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and ministerial staff of the University in accordance with the Statutes and the Ordinances.\textsuperscript{244} Then Statute 25-A which dealt with the removal of members and officers was amended by the amending Act No. 19 of 1965, and to Statute 25-A after Clause (2) a Clause (3) was added which appears to be material for the purposes of this case. Its text is as follows:

"(3) (a) Notwithstanding anything contained in the terms of his contract of service or of his appointment, the Executive Council shall be entitled to dismiss a teacher on grounds of misconduct, but save as aforesaid, the Executive Council shall not be entitled to determine the employment of a teacher save for good cause and after giving three months' notice in writing or payment of three months' salary in lieu of such notice.

(b) The determination of a teacher's employment shall require a two-thirds majority of the members of the Executive Council present and voting.

c) The Vice-Chancellor may suspend a teacher against whom any misconduct is alleged and shall report the case to the next meeting of the Executive Council, but before any orders for dismissal are passed, the teacher shall be informed of the allegations made against him and shall be given a reasonable opportunity of making such representations to the Executive Council or to any Committee thereof appointed for the purpose, as he may desire to make.

d) Any dismissal on the ground of misconduct shall take effect on the date on which the teacher was first suspended.

\textsuperscript{244} See Dr. G. P. Gupta v. Director, Muslim University Institute of Ophthalmology, AIR 1967 All 411: (1968) ILLJ 599 All. See also Mohd. Sohrab Khan v. Aligarh Muslim University, 2009 (3) SCALE 638: (2009) 4 SCC 555.
Before a notice is given or payment is made to the teacher under Sub-clause (a), he shall be informed by the Executive Council of the cause of the action proposed to be taken against him and shall be given a reasonable opportunity of making such representations to the Executive Council or to any Committee thereof appointed for the purpose, as he may desire to make..."

In *S. Azeez Basha v. Union of India*, the issue before the Supreme Court was that whether the Aligarh Muslim University was by established by a minority or not? The Apex Court held that Aligarh Muslim University (AMU) coming into existence by extinguishing three previous educational bodies and vesting all rights possessed by them in AMU by Central Legislation of 1920. The purpose of establishing AMU was to make degree and certificates issued by AMU recognized by Central Government. The provisions of Act of 1920 shows that administration of University not intended to be vested exclusively on Muslim community as the provisions having effect that Court of University to consist only of Muslims. The provision does not necessarily mean that administration was vested in Muslim minority. The amendments of 1951 deleting Section 9 and modifying Section 8 of Act of 1920 brought in order to bring Act in conformity with provisions of Constitution and to continue to receive Government grants. The requirement that all members of Court to be only Muslims deleted by 1965 amendments. The powers of Court of University decreased and powers of Executive Council increased by 1965 amendments – under Article 30 (1) a minority group have right to administer educational institutions established by them. No right to administer if institution not established by minority community. The word 'establish and administer' in Article 30 (1) to be read conjunctively. The word 'establish' would mean 'to

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246 *Christian Medical College Vellore v. Union of India*, 2013 (9) SCALE 226.
bring into existence' for purpose of Article 30 (1). The University cannot be said to be established by Muslim minority and 1951 and 1965 Acts not hit by any constitutional provisions. Thus, Apex Court held, Amendment Acts of 1951 and 1965 cannot be struck down as ultra vires the Constitution.

Similarly, in Sanghvi Jeevraj Ghewar Chand v. Secretary, Madras Chillies, the petitioners challenged the validity of the Aligarh Muslim University (Amendment) Act, 62 of 1951 and the Aligarh Muslim University (Amendment) Act, 19 of 1965 as violating Article 30(1) of the Constitution. This Court went into the history of the establishment of the University to ascertain whether it was set up by the Muslim minority and as such entitled to rights under Article 80 and held that it was not set up by the minority but in fact establish by the Government of India by passing the Aligarh Muslim University Act, 1920. There is thus ample authority justifying the Court in looking into the history of the legislation, not for the purpose of construing the Act but for the limited purpose of ascertaining the background, the conditions and the circumstances which led to its passing, the mischief it was intended to prevent and the remedy it furnished to prevent such mischief. The statement of objects and reasons also can be legitimately used for ascertaining the object which the legislative had in mind, though not for construing the Act.

In Anath Nath Naskar v. Union of India, the Calcutta High Court examined the issue whether the Aligarh Muslim University could set up educational colleges affiliated to it in State within purview of provisions contained in the Act. The court held that bare reading of provisions made it clear that provision contained in Section 5(9A) of the Act gives university an independent right to

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249 2013 (2) CHN 213.
establish its centres within radius of University Mosque without rider of Section 12(2) of the Act. The Section 12 of Act deals with power to establish and maintain high schools and other institutions, which not contemplated under Section 5(9A) of the Act. Similarly, in Zafruddin Khan v. Aligarh Muslim University, the Apex Court examined the issue whether under Section 5(9A) of the Aligarh Muslim University Act, 1920 for declaration that decision of Aligarh Muslim University to establish special campus centres across India was illegal and for direction to said University not to establish a campus. The Court regard to fact that Appellant was a former student and elected member of AMU Court and was also a donor life member, he had sufficient interest to file the writ petition in public interest. The High Court ought not to have dismissed the public interest litigation only on the ground of locus standi of Appellant to file the writ petition - Order of High Court was set aside and public interest litigation to the file of High Court was restored - Hence, appeal allowed.

V. 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 “Minorities 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 1996.251

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

1. (a) Evaluate the process of the development minorities under the Union
and States:252

(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

251 See R. Krishnaiah v. Union of India, 2012 (5) ALT 704; Sanjiv Gajanan Punalekar v. Union of

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.

2. The Central Government shall cause the recommendations to be laid before each House of Parliament along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the Union and the reasons for the non-acceptance, if any, of any of such recommendations.

3. Where any recommendation or any part thereof with which any State Government is concerned, the Commission shall forward a copy of such recommendation or part to such State Government who shall cause it to be laid before the legislature of the State along with a memorandum explaining the action taken or proposed to be taken on - recommendations relating to the State and the reasons for the non-acceptance, if any, of any such recommendations or part.

4. The Commission shall, while performing any of the functions, have all the powers of a civil court trying a Suit and in particular in respect of the
following matters, namely:

(a) summoning and enforcing the attendance of any person from any part of India and examining him on oath;

(b) requiring the discovery and production of any document;

(c) receiving evidence on affidavits:

(d) requisitioning any public record or copy thereof from any court or office;

(e) issuing commissions for the examination of witness and documents; and

(f) any other matter which may be prescribed.

However, it is a great pity that because of overall indifference of the well as State Governments and because of the footlessness of the Commission, these commissions have not been able to play an effective role and the plight of the minorities continue to be much the same. It has neither undertaken any study of minority under-representation and its causes including prejudice and discrimination against them" nor has it impressed upon the Government of India to publish such studies and data. It would not be out of place to point out the Section 9(2) of the National Commission for Minorities Act, 1992 requires the Union Government to table its Annual Report in both Houses along with details of actions on various recommendations. Similarly, Section 9(3) requires the Government of each state to table in the State Legislature all recommendations made for that State.

VI. National Commission for Minority Educational Institutions Act, 2004

Apart from the 1992 Act, in order to give statutory force to the problem of
The Act included itself 15 point programme for the welfare and empowerment of minorities by the Prime Minister. The main objective of the new Act is to enhance opportunity for education for minorities it comprehended in itself and to provide the Sarva Shiksha Abhiyan the educational facilities for minority girl 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.

The Committee was informed that based on the experience of the functioning of the Commission, it was felt that by limiting the scope of affiliation only to six Universities given in the Schedule to the Act, the applicability of the Act had been severely restricted. The Commission as well as the Government received several representations and suggestions for making the Commission more effective in deciding n matters of deprivation or violation of the educational

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rights of the minorities guaranteed under Article 30 of the Constitution. The majority of the representations received by the Commission related to the problems faced by minority communities in obtaining 'No Objection Certificate' (NOC) for establishing an Educational Institution and also in obtaining the status of a Minority Institution. It has reoriented Madarsas school system for Muslim and has given a feeling of satisfaction to the minorities. Reproduce here the amended provision in order to make a comprehensive look of the same.

The salient features of the Act are as follows:254

1. It provides for the right to establish a Minority Educational Institution 'and also provides that wherever 'No Objection Certificate' for establishing a Minority Educational Institution is either not granted within a period of sixty days or where a decision in this regard is not communicated within such period, the Minority Educational Institution would proceed with the establishment of the institution as if the No Objection Certificate has been granted to it.

2. It provides for the right of Minority Educational Institutions to seek affiliation to any University of their choice subject to the Acts, Statutes, Ordinances, Rules and Regulations of the concerned University. It proposes to do away with the Schedule. It also proposes to give appellate jurisdiction to the Commission in the matters of refusal to grant 'No Objection Certificate' for establishing a Minority Educational Institution. It enables the National Commission for Minority Educational Institutions to enquire into and investigate complaints regarding deprivation or violation of rights of minorities to establish and administer Educational Institutions of their choice and, also to decide on disputes relating to affiliation of Minority Educational Institutions to a

254 See Dr. Ranjit Kumar v. The Union of India, 2012 (4) PLJR 903.
University. It also enables the Commission to decide on all questions relating to the status of any institution as a Minority Educational Institution.\footnote{See \textit{St. John's Educational Development Society v. Government of Andhra Pradesh}, 2010 (5) ALD 499; 2010 (5) ALT 347; \textit{Association of Private Dental and Medical Colleges v. State of M.P.}, ILR [2009] MP 2269: 2009 (3) MPHT 418.}

3. It empowers the Commission to cancel recognition as a Minority Educational Institution, where it is found by the Commission that the purpose or character on which a Minority Educational Institution status was granted and also in admitting students belonging to the minority community as per rules and prescribed percentage, has failed.

4. It provides that every proceeding before the Commission shall be deemed to be a judicial proceeding and, the orders made by the Commission shall be executable by it as a decree civil court.

5. It empowers the Commission to utilize the services of any officer of the Central Government or any State Government, with the concurrence of such Government, for the purpose of conducting investigation pertaining to complaints received by the Commission.

It is clear therefore that Government of the day is very much conscious about the implementation of the Constitutional provisions with regard to minorities right to education envisaged in Article 30(1) of our constitution along with Article 29 and other relevant Articles.

\textbf{VII. Conclusion}

Article 25 of the Constitution of India guarantees “Right to freedom of religion,” as a part of the liberty of an individual, and incidental to his well being. This article guarantees not only freedom of religion but also freedom
from religion if it becomes a means to one's liberty and dignity. Constitution aims at the ideology of free exercise of religion and also the principle of tolerance and equality.\(^{256}\) The state has got a right to step in if religion leads to social injustice, exploitation and cruelty such as in the form of child marriage, human sacrifice or burning of a widow on the pier of her deceased husband. The unusual arrangement of placing the limitations before the rights in Article 25 and 26 of the Constitution, support the point that, the State has got a jurisdiction to interfere in the matters of religion as stated above.

Articles 25 to 28 guarantee to all persons freedom of religion. However, a person who takes the cover of a religious practice to defeat the process of law is not entitled to any equitable consideration.\(^{257}\) In *Moulana Mufti Sayed Md. Noorur Rehman Barkati v. State of West Bengal*,\(^{258}\) the Calcutta High Court held that *azan* is certainly an essential and integral part of Islam but the use of microphone and loud-speakers are not an essential or integral part thereof. It is not only a source of pollution but it is also a source, which causes several health hazards. Thus, restrictions on the use of microphone and loud speakers at the time of giving *azan* are not violative of Article 25 of the Constitution.

Article 26 provides to every religious denomination or any section thereof freedom to manage religious affairs subject to certain restrictions mentioned therein. In *Sri Kanyaka Parameswari Anna Satram Committee v. Commissioner, Hindu Religious and Charitable Endowments Deptt.*\(^{259}\) Section 27 of the A. P. Charitable and Hindu Religious Institutions and Endowments


\(^{258}\) AIR 1999 Cal 15 at 28.

\(^{259}\) AIR 1999 SC 3567: (1999) 7 SCC 666.
Act, 1966 and the appointment of an executive officer made there under was challenged. The Supreme Court rightly pointed out that it could not be denied that among the religious institutions, denominational institutions stand on a different footing and enjoy special protection under Article 26 of the Constitution. Therefore, while considering the challenge to the appointment of an executive officer, it is essential to bear in mind the protection given under Article 26 which the high court failed to do. In the circumstances, the apex court instead of itself deciding this aspect, considered it appropriate to remand the matter to the division bench to hear and dispose of the case on that aspect. The court further stated that while accepting the finding, which had not been challenged by the respondents that the appellant institution was a denominational one, the high court would decide the legality of the appointment in the light of Article 26. It is submitted that since the Supreme Court had already gone into details of this case, it could have disposed of the case instead of remanding the matter to the high court. In that case the dispute could have been settled immediately and for all times to come.

Thus, the brief account of secularism and freedom of religion as it prevails in Articles 25 to 28 of the Constitution proves that the minorities in India enjoy not only the cultural and educational rights as guaranteed by Articles 29 and 30 of the Constitution but also the freedom to practice and propagate their religion and their religious beliefs. In essence the guarantee given by Articles 29, 30 and 25 to 28 are complimentary to each other. These freedoms along with the guaranteed right to equality provide not only for a full scope for the growth and development of human personality, but also paves way for smooth integration of minorities with the rest of the nation. To implement the right to education of minorities a member of legislations has been enacted in India.

260 Ibid, at 671. See also Mis Ganapathyraja Enterprises v. Bangalore Development Authority, AIR 1999 Kant 112 at 119.