CHAPTER – I

INTRODUCTION

1.1 Introduction

India has a form of society in which minority groups maintain independent tradition and culture. This is the result of historical and geographical phenomenon in India. Diversity in different geographical areas of the country projects the cultural, religious, linguistic, racial and ethnic differences. There are followers of Hinduism, Islam, Christianity, Parsis, Buddhists, Sikhs, Jains, etc. Each major religion comprises within itself a number of religious denominations and sects. There is a big majority Hindu community as well as minorities based on religion and language. Muslims, Christians, Sikhs, Buddhists, Parsis and Jains\(^1\) are recognized religious minorities in India. Division of States in the country is based on linguistic basis; there are linguistic minorities in each State as well.

India is a multi-religious and multi cultural state. The term minority is not properly defined either in any constitution or international treaty. The term in modern political terminology is restricted to distinct racial or national minority groups of numerical strength within a state. The term is used by politicians and social scientists as ‘group culturally, ethnically or racially distinct, living within a larger society'. A minority is necessarily subordinate to the dominant group within a society. The subordinancy, rather than a numerical strength, is the chief defining characteristic of a minority group.

The role of minority groups vanes from society to society depending upon the structure of the social system and the relative power of the minority groups.

India has different minorities-religious, linguistic, cultural, tribal and so on. The minority and majority look upon their respective cultural heritage, social institutions and religion as a clear expression of separate individuality and want to preserve them at any cost. In so far as these are in conflict or when the minority is

\(^{1}\) On Jan. 30, 2014, the Government of India awarded the status of a minority religion to the Jain Community as per sec. 2(c) of the National Commission for Minorities Act, 1992.
likely to be swamped and overwhelmed by the majority, political problem of minorities exists. As a consequence stems the question of protection of minorities.

1.2 International Law and Protection of Minorities

In the international sphere, the demand for special safeguards to protect the cultural or linguistic identity of minority communities has emerged from the principle that owing to war or like circumstances causing territorial changes without the consent of people residing in those territories, the identity of such communities who have been torn as under by circumstances beyond their control should be preserved from ethnic extinction, by affording safeguards through International Charters and National Constitutions.

The human rights of minorities are explicitly set out in Universal Declaration of Human Rights, the International Covenants, The Convention of Elimination of all forms of Racial Discrimination, The Convention on the Rights of the Child, The Declaration on Rights of persons belonging to National or Ethnic, Religious or Linguistic Minorities\(^2\) and other widely adhered to international human rights treaties and Declarations.

---

\(^2\) Article 1
1. States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories, and shall encourage conditions for the promotion of that identity.
2. States shall adopt appropriate legislative and other measures to achieve those ends.

Article 2
1. Persons belonging to national or ethnic, religious and linguistic minorities (hereinafter referred to as persons belonging to minorities) have the right to enjoy their own culture, to profess and practise their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination.
2. Persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic and public life.
3. Persons belonging to minorities have the right to participate effectively in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live, in a manner not incompatible with national legislation.
4. Persons belonging to minorities have the right to establish and maintain their own associations.
5. Persons belonging to minorities have the right to establish and maintain, without any discrimination, free and peaceful contacts with other members of their group, with persons belonging to other minorities, as well as contacts across frontiers with citizens of other States to whom they are related by national or ethnic, religious or linguistic ties.
The idea underlying the treaties for the protection of minorities is to secure for certain elements incorporated in a State, the population of which differs from them in race, language or religion, the possibility of living peaceably alongside that population and co-operating amicably with it, while at the same time preserving the characteristics which distinguish them from the majority, and satisfying the ensuring special needs.

In order to attain that object, two things were regarded as particularly necessary, and have formed the subject of provisions in these treaties.

The first is to ensure that nationals belonging to racial, religious or linguistic minorities shall be placed in every respect on a footing of perfect equality with the other nationals of the State. The second is to ensure for the minority elements suitable means for the preservation of their racial peculiarities, their traditions and their national characteristic.

These two requirements are indeed closely interlocked, for there would be no true equality between a majority and a minority if the latter were deprived of its own institutions and were consequently compelled to renounce that which constitutes the very essence of its being a minority.

The Commission of Human Rights did not define the term minority before setting the Sub-Commission on Prevention of Discrimination and Protection of Minorities. The U. N. Assembly also did not define the term, “Right of peoples to self determinations” before proclaiming the application of the principle. Lack of proper definition was no obstacle to the drawing of the numerous international instruments containing provision on the rights of certain groups of the population to preserve their culture and use their own language. The terminology used to refer such groups varies from one instrument to another. For example, the UNESCO Convention against Discrimination in Education mentions ‘National Minorities’, while the expressions ‘National, Ethnical, Racial or Religious groups’ is used in the Convention on the Prevention and Punishment of the Crime of Genocide and ‘Racial or ethnic groups’ in the International Convention on Elimination of All Forms of Racial Discrimination. The U.N. concept and protection of minorities came to be incorporated in its Covenant on Civil and Political Rights. India is a party to the International Covenant on Civil and Political Rights. Article 27 of the
Covenant explicitly recognizes the rights of “ethnic, religious, or linguistic minorities”.

Article 27 of the **International Convention on Civil and Political Rights** does not define the word Minority but gives them the following rights – ‘In those states in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, a community with the other members of the group, to enjoy their own culture, to profess and practice their own religion or to use their own language’.

On analysis of the above Article, it is clear that the protection is available to only ethnic, religious or linguistic minorities who are already in the existence. Other groups or newly created minority groups have not been protected under this Article. As per the interpretation of the Article following rights have been conferred on the minorities.

1. To enjoy their own culture,
2. To profess and practice their own religion,
3. To use their own language.

In examining the three rights guaranteed in Article 27, it should be remembered that the rights do not exist in isolation there is a link between them since water tight compartments cannot be created between these rights.³

In Article 27 of the Covenant, the term ‘Minority’ may be taken to refer to:

1. A group numerically less to the rest of the population of the State;
2. In a non – dominant position;
3. Whose members being nationals of the State possesses ethnic, religious or linguistic characteristics differing from those of the rest of the population; and
4. These members show a sense of solidarity towards preserving their culture, traditions, religion or language.

The Covenant on Economic, Social and Cultural Rights (1966) provided for everyone to have the right to an education (Art. 13). From this perspective, it is obvious that minorities are entitled to access to education and educational resources on the same basis as everyone else in the population. The lack of adequate resources by itself, therefore, is not a ground for not providing education to minorities.

The Convention on the Rights of Child,\(^4\) contain provision addressing the rights of the minorities. Article 30 states:

“In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, or child belonging to such minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion or to use his or her own language.”

A special Sub-committee on the Protection of Minority Rights appointed by the United Nations Human Rights Commission in 1946 defined the ‘minority’ as those “non-dominant groups in a population which possess a wish to preserve ethnic, religious and linguistic traditions or characteristics marked by different from those of the rest of the population.” It was also stated by the sub-committee that only those sufficient by themselves to develop these characteristics and loyal to the country of which they may be the nationals can be termed minorities.

The U.N. Sub-Committee on Prevention of Discrimination and Protection of Minorities has defined a minority as follows:

A group of citizens of a State, constituting a numerical minority and in a non-dominant position in that State, endowed with ethnic, religious or linguistic characteristics which differ from those of the majority of the population, having a sense of solidarity with one another, motivated, if only implicitly, by a collective will to survive and whose aim it is to achieve equality with the majority in fact and in law.

The United Nations Commission on Human Rights in 1950 had defined minorities as below:

“Only those communities other than the ruling national community can be termed as minorities, who want to have a language, religion or race different from the language, religion and race of the national community. It is essential for being recognized as minorities that they should be sufficient in number and their constituents should be faithful to the nation in which they live.”

The UN Declaration on the Rights of Minorities 1992 enjoins the States to protect the existence and identity of minorities within their respective territories and encourage conditions for promotion of that identity; ensure that persons belonging to minorities fully and effectively exercise human rights and fundamental freedoms with full equality and without any discrimination; create favourable conditions to enable minorities to express their characteristics and develop their culture, language, religion, traditions and customs; plan and implement national policy and programmes with due regard to the legitimate interests of minorities; etc.

1.3 Minority Rights and the Constituent Assembly Debate

The constitution had to meet the needs and aspiration of all the section of society. Safeguard was assured for people who had distinct culture, religion or language. Through the special provisions for minority they did their best to safeguard the interest of the various minority groups whether based on religion, language, culture or socio-economic factors so as to give them a sense of security and participation in the national growth.

It is for this reason that makers of the Constitution provided freedom to the minorities in respect to establishment and administration of their educational institutions. Originally the Draft Constitution contained it as ordinary rights with prohibition on the part of the State for passing any law which could be called

---

5 UN Declaration on Minorities: “States should, where appropriate, take measures in the field of education in order to encourage knowledge of the history, traditions, language and culture of the minorities existing, within their territory. Persons belonging to minorities should have adequate opportunities to gain knowledge of the society as a whole.
oppressive. But the discussions in the Assembly lead to change it as fundamental rights. The purpose for doing so was explained by Dr. B. R. Ambedkar in the following words:

“The present situation as you find is that we are converting it into a fundamental rights, so that if a state makes any law which was inconsistent with the provisions of this Article then that much of the law would be invalid”  

The expression “Education in the Articles of Constitution means and includes education at all levels from primary school level to the University level including professional education”. The word ‘education’ and its derivatives as used below we mean not only general education at the primary, secondary, graduate and postgraduate levels, but also instruction and training in engineering, technology, managerial and vocational courses and professional studies like medicine, law and accountancy. All these subjects and disciplines - as long the paraphernalia required for these like libraries, reading rooms, laboratories, hostels, dormitories etc, - are included in our recommendations for the advancement of education among the minorities.

1.4 Constitution of India and Minority Rights

As a means education has been used for preserving the culture and language of the group. The Constitution of India provides safeguard for minorities to establish and administer educational institutions of their choice. In the past, education to ethnic and caste was imparted through Madrasas, Pathsalas, Gurukuls, etc. which were set by mosques, temples, Maths, etc. Community played a major role in imparting education. In pre-independence era colleges and universities like Benaras Hindu University, Aligarh Muslim University, etc were established. Liberal support of British Government promoted the proliferation of christian missionary schools which catered to educational and cultural needs of the christian community.

Supreme Court through its numerous decisions has been upholding the rights of religious and linguistic minorities in respect to, (i) Declaring a community as a minority community and (ii) In respect to establishing and administering

---

7 The word ‘education’ and its derivatives as used below we mean not only general education at the primary, secondary, graduate and postgraduate levels, but also instruction and training in engineering, technology, managerial and vocational courses and professional studies like medicine, law and accountancy. All these subjects and disciplines - as long the paraphernalia required for these like libraries, reading rooms, laboratories, hostels, dormitories etc, - are included in our recommendations for the advancement of education among the minorities.
8 Education has been transferred from list II to List III of VII Schedule to the Constitution by 42nd Amendment Act, 1976.
minority institutions. Supreme Court has not only upheld the fundamental rights of minorities in a large number of cases but has honored the sacred obligation to the minority communities. In *Re: The Kerala Education Bill, 1957 case*\(^9\) the Chief Justice S. R. Das observed that We the people of India have given unto ourselves the Constitution which is not for any particular community or section but for all. Its provisions are intended to protect all, minority as well as the majority communities. There can be no manner of doubt that our Constitution has guaranteed certain cherished rights of the minorities concerning their language, culture and religion. 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 honor our sacred obligation to the minority communities who are of our own.

### 1.5 Scope of Study

Minority is a group numerically inferior to the rest of the population of the State in a non-dominant position, whose members possess ethnic, religious or linguistic characteristics differing from the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language.\(^10\) To prevent the numerical inferiority of the minorities from turning into political and societal inferiority, legal protection of the distributive characteristics of minorities’ viz. ethnic, religious or linguistic becomes imperative in a democracy. The duty of democratic state is to safeguard the rights of minorities and to protect them from all forms of discrimination.

In a country, like India, where there is a big majority community, if some safeguards or incentives are not provided, the overall development of the minority community will be at stake and a stage may come when it will become difficult for them even to survive. In a democratic set-up, where decisions are made by majority opinion, the need to provide safeguards to minorities becomes imperative. It is for this reason that there is no democratic country in the world which does not provide special safeguards for the minorities. Similarly, India too has provided minorities right to establish and administer educational institutions of their choice.

\(^9\) [1959] 1 SCR 995.

This study is focused to understand the problem, considering all the related aspects that affect the rights of minority educational institutions. The introspective study of past and present scenario of minorities’ educational institutions position during the various eras will be conducted to understand the problem in wider perspective. The need is felt to test the efficacy of the fundamental rights guaranteed under the constitution. To do so, judicial pronouncements in cases related to minority educational institutions from 1951 to 2015 will be studied. Minorities do feel that they are not being getting their due share and they are been deliberately sidelined. This belief has been strengthened by Sachar Commission report. An attempt to ascertain the truth will be made. Government circulars will be scrutinized to deduce whether there are any circulars infringing the constitutional rights of minorities. An overall effort will be made to determine whether the minorities do really have some rights or is it diluting out.

1.6 Statement of the Problem

The concept of minority has not been adequately defined in the Constitution or in any other Act or Instrument. Researcher through various sources has made an attempt to understand the concept of Minority. After studying the Constitutional and legal provisions safeguarding the minorities’ educational institutions rights, judicial approach has been critically analyzed by studying almost all the cases relating to rights of minority educational institutes from 1951 to 2015. Thus researcher intended to limit his study under the following title.

1.7 Importance of the Study

Minority due to their less number might not be able to effectively represent themselves and their needs. Therefore in a democratic society, majority rule is coupled with guarantees of citizens’ fundamental rights, which in turn serve to protect the rights of minorities, whether ethnic, cultural, religious, linguistic or political. The rights of minority should in no way depend on the mercy or good will of the majority and these rights cannot be eliminated by majority vote. The constitutional and fundamental rights of minorities need to be protected because democratic laws and institutions need to protect the rights of all citizens. In such a situation legal protection of minorities becomes an obligation of a state.
According to Diane Ravitch,\textsuperscript{11} in a constitutional democracy, representative democracy operates in accordance with a constitution that limits the powers of the government and guarantees fundamental rights to all citizens. In such a society, the majority rules, and the rights of minorities are protected by law and through the institutionalization of law.

There is a feeling among minorities in India that they have been sidelined and their problems are neglected. Time and again they have approached the judiciary to get their fundamental rights implemented. In spite of the fact that more than sixty years have passed since India achieved its independence yet the minority rights are not yet defined, the law is not yet settled. Though fundamental rights are guaranteed to minority but the term minority is no where defined under the constitution. This has lead to many more claims for minority status.

The researcher intends to study and analyze the existing national and international legal provisions relating to minorities and as well critically examine the judicial trend related to minority rights especially relating to the right to establish and administer professional educational institutions.

### 1.8 Objectives of the Study

The major objectives of this research study is focused on the following aspects:

1. To examine the constitutional provisions relating to minority rights in general and minority educational institutions in particular.

2. To study the concept of minority for national and international perspective.

3. To study the various government regulations that encroach legal rights of Minority Educational Institutions.

4. To analyze the rules related to affiliation, recognition and approval aspects of procedures relating to establishment and Administration of Professional Educational Institutions.

\textsuperscript{11} A Former Assistant U.S. Secretary of Education.
5. To Study the role of executive approaches of various bodies like State, University, etc.
6. To Study the various laws related to minority educational institutions.
7. To Study the changing trends and interpretations by judiciary of legal rights of minority educational institutions.
8. To suggest appropriate remedies.

1.9 Hypothesis

The hypotheses of the study is based on the significance and objectives of the study the following hypothesis are formulated:

1. The Constitution of India contains adequate provisions to safeguard the interest of minorities.
2. The government rules and regulations infringes the minority rights guaranteed under the constitution.
3. Statutory bodies like universities, UGC, board of education etc interface minority educational institution is a difficult task.
4. The Judicial interpretation of Article 30 is not in favour of minority educational institutions.
5. Constitution interpretation of Article 30 not guaranties educational rights of minorities.

1.10 Research Methodology

The study is purely doctrinal in nature. International Conventions and Documents, Constitution and various laws related to minorities will be studied to understand the existing laws relating to Minority Educational Institutions. The circulars of government, educational boards and universities will be scrutinized to assess its impact on minority educational institutions. Role of Executive will be examined to determine their attitude towards minority educational institutions. Judicial decisions will be carefully analyzed to understand the changing judicial trends in the background of recent developments. Apex court’s decision in the landmark cases related to minorities viz, in State of Bombay v. Bombay Education
Chapter I


1.11 Sources of Study

The researcher relies on books, journals articles and case laws, decided by various high court and Supreme Court as well as various international documents on minorities.

12 AIR 1954 SC 561.
13 AIR 1958 SC 956.
14 AIR 1963 SC 540.
16 AIR 1968 SC 662.
17 AIR 1971 SC 1737.
18 AIR1971 SC 1731.
19 AIR 1970 SC 2079.
20 AIR1974 SC 1389.
21 AIR1990 SC 695.
22 AIR 1992 SC 1630.
23 AIR 1986 SC 1490.
24 (2002) 8 SCC 481.
25 AIR 1988 SC 305.
27 (2005) 6 SCC 537.
28 T.C. (c) No. 98 of 2012.
1.12 Limitation of the Study

The term ‘Minority’ is nowhere defined either in the Indian Constitution or Constituent Assembly Debate, the concept of Minority had to be deduced through various international instruments, national legal and Constitutional provisions and through judicial pronouncements.

The researcher has confined the study to the rights of minority educational institutions as envisaged through various judicial pronouncements. Researcher has not dealt with any other rights of minority except the right of minority to establish and administer educational institutions of their choice including establishment of professional educational institutions. This right has been guaranteed under Article 30(1) of the Indian Constitution. Hence the study is focused on existing legislations and landmark judgments of Supreme Court and various High Courts of the country.

1.13 Scheme of the Study

The First Chapter is the Introduction dealing with objectives scope and statement of the problem, hypothesis and the methodology adopted for the research study.

The Second Chapter deals with minority rights under the Indian Constitution, historical perspective, landmark decisions of various courts etc. It discusses constitutional provisions safeguarding minorities rights. The chapter deliberates on the need for minority rights. Further the chapter analyses constitutional and legal provisions relating to minority rights and examines the legal and constitutional provisions relating to rights of minority educational institutions.

The purpose of providing benefit to minorities has been examined whether the institutions that has been established is really for the purpose of the minorities or is a cloak or a veil or a master phantom for private benefit. The researcher will examine the above aspects in detail in the light of the recent regulations by the government and Supreme Court decisions.

The Third Chapter deals with Admission to Professional Educational Institutions: Policy, Law and the Constitution. Admission to an educational
institutions is important for those who yearn to enter the temple of learning and lay the foundation of their future career in life. Education is also fundamental in shaping the character of an individual and his integrated personhood, and on such a view it is of crucial constitutional significance. Lack of broad national policy of admission to professional educational institutions or a codified enactment may be the main reason for the not so clear state of affairs in this area. The researcher will make attempts in this chapter an analysis of various problems in the matter of admission to professional educational institutions on the basis of the present policy law and the constitution.

Chapter Four deals with the rights under Article 29 and 30 of the Indian Constitution and a critical analysis is elaborately discussed in order to appreciate the constitutional guaranties protected, provided and guaranteed to the minorities under the Indian Constitution.

Chapter Five deals with Minority Rights in the Asian Countries discusses the relevant provision, dealing with minority rights in select Asian Countries, like Sri Lanka, Pakistan, Bangladesh constitutions, with a view to examine how the rights of the minorities are protected in those countries, what is the extent of freedom enjoyed by the minorities in the matter of establishing and administering educational institutions of their choice, what are the regulation and procedures followed by them in admitting students in professional educational institutions. This would help the researcher in comparing, analyzing and criticizing it with the Indian situation and to arrive at a conclusion of taking into account the declared objectives of the Indian constitution.

Chapter Six elaborately deals with judicial approach towards minority rights to establish and administer educational institutions. A critical analysis is made mainly on the case laws such as State of Madras v Srimati Champakam Dorairajan to P.A. Inamdar v. State of Maharashtra Sindhu Education Society v. Chief Secretary, Govt. of NCT, Delhi and Christian Medical College, Vellore v. Union of India and others, Pramati Educational and Cultural Trust and Others v. Union of India.
Chapter Seven is the Conclusion. In this chapter the researcher concludes his findings, recommendations and suggestions arrived at by him based on his research study are incorporated in this chapter.