CHAPTER – IV

THE MINORITY RIGHTS UNDER ARTICLE 30 OF THE INDIAN CONSTITUTION - AN ANALYSIS

4.1 Constitutional Provisions Relating to Minority Rights

It is praiseworthy that our Constitution of India has afforded protection to the minorities in the country. The framers of the Constitution were quite conscious of the importance of these provisions. They very well understood that, in pluralistic society rights of minorities and weaker sections need to be safeguarded. The idea of giving some special right to the minorities is not to treat them as privileged section of the population but to give to the minorities a sense of security. Special rights for minorities were designed not to create inequalities but to bring about equality by ensuring the preservation of the minority institutions and by guaranteeing autonomy in the matter of administration of these institutions.

In India, the safeguards for minorities under the constitution of India are in the form of fundamental rights. Firstly the Constitution nowhere discriminates among the citizens of India on the grounds of religion, race, caste, etc and secondly, the rights conferred under Articles 25 to 30 are fundamental rights. The State is duty bound to protect the fundamental rights.

If fundamental rights are infringed the remedy lies under Articles 32 and 226. A person can directly approach the Supreme Court or the High Court in case of violation of fundamental rights. So the true spirit and intention of the Constitution is to provide a very formal and water tight arrangement for safeguarding the interest of minorities.

There are some Articles in the Constitution of India that exclusively safeguards minority’s rights, whereas, there are certain Articles though not

specifically meant for minorities but they strengthen minorities’ rights. Hereunder the safeguards of minority rights are discussed.

**Article 14: Equality before law**- The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

The concept of equality, guaranteed in Article 14, as enshrined has made every one equal before the law. The fundamental rights are guaranteed to minority and majority as well. According to Article 14 of the Constitution, all persons shall be equally subjected to the law and that among equals; law shall be equal and shall be equally administered. Thus minorities cannot be put to any legal disability vis-a-vis the majority. Articles 15 and 16 prohibit discrimination only on certain grounds. Both these Articles are guarantee against discrimination of any kind and it can be asserted that no member of a minority community will be handicapped simply because he belongs to any particular minority group. Thus, other things being equal, minorities have every right in India to be appointed to any public office, however high; they have a common citizenship and these rights along with their cultural and educational rights will go long way in safeguarding the interests of minorities.

**Article 15: Prohibition of discrimination on the grounds of religion, race, caste, sex or place of birth**

(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, and place of birth or any of them.

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to-

   (a) access to shops, public restaurants, hotels and places of public entertainment, or

   (b) the use of wells, tanks, bathing ghats roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of general public.

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(3) Nothing in the Article shall prevent the State from making any special provision for women and children.

(4) Nothing in this Article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes

**Article 16: Equality of opportunity in matters of public employment**

(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the state.

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

(3) Nothing in this Article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office [under the Government of, or any local or other authority within, a State or union territory, any requirement as to residence within that State or Union territory] prior to such employment or appointment.

(4) Nothing in this Article shall prevent the State from making any provision for the reservation of appointments or posts in favor of any backward class of citizens which, in the opinion of the State, is not adequately represented in the service under the state.

[(4A) Nothing in this Article shall prevent the State from making any provision for reservation [in matters of promotion, with consequential seniority, to any class] or classes of posts in the services under the state in favour of the Scheduled Castes and Scheduled Tribes which in the opinion of the State are not adequately represented in the services under the State.

[4B) Nothing in this Article shall prevent the State from considering any unfilled vacancies of a year which are reserved for the being filled up in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of]
the year in which they are being filled up for determining the ceiling of fifty per cent. Reservation will depend on total number of vacancies of that year.]

(5) Nothing in this Article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.

Article 21: Protection of life and personal liberty: No person shall be deprived of his life or personal liberty except according to procedure established by law.

Article 25: Freedom of conscience and free profession, practice and propagation of religion

(1) Subject to public order, morality and health and to other provisions of this part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion.

(2) Nothing in this Article shall affect the operation of any existing law or prevent the state from making any law-

(a) regulating or restricting any economic, financial political or other secular activity which may be associated with religion practice.

(b) providing for social welfare and reform or throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus. Explanation 1- The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religions. Explanation II –In sub clause (b) of clause (2) the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina, or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.

Article 26: Freedom to manage religious affairs

Subject to public order, morality and health, every religious denomination or any section thereof shall have the right-
(a) to establish and maintain institutions for religious and charitable purposes;

(b) to manage its own affairs in matters of religion.

(c) To own and acquire movable and immovable property; and

(d) To administer such property in accordance with law.

Article 27: Freedom as to payment of taxes for promotion of any particular religion

No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination.

Article 28: Freedom as to attendance at religious instruction or religious worship in certain educational institutions

(1) No religious instruction shall be provided in any educational institution wholly maintained out of State fund.

(2) Nothing in clause (1) shall apply to an educational institution which is administered by the State but has been established under any endowment or trust which required that religious instruction shall be imparted in such institution.

(3) No person attending any educational institution recognized by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto.

4.2 Exclusive Rights of Minorities

India is the largest democracy of the world with secular character and is governed by the constitution. The founding fathers of the Indian Constitution, in order to give a sense of security and confidence to the minorities, have conferred
certain rights to minorities. Minorities in India do not stand on equal footing with others, which made the framers of the Constitution, through Article 29 and Article 30, accord special rights to the people who form religious or linguistic minority in India.

At the outset it is desirable to delineate Articles 29 and 30 of the Constitution of India, with relevant subject matter for the purpose of this study. The need for defining minorities stems from Article 29 and 30, which guarantees minorities with the following privileges:

4.3 Cultural and Educational Rights of Minorities

Article 29: Protection of interests of minorities.-

(1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.

(2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

Article 30: Right of minorities to establish and administer educational institutions.-

(1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

[(1A) In making any law providing for the compulsory acquisition of any property of any educational institution established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.]

(2) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.


6 Inserted by the Constitution (Forty Fourth) Amendment Act, 1978.
From the careful perusal of the above two Articles, it is found that the expression minorities has been used at four places in the Constitution of India.\(^7\) It has been used in the head note of Article 29 and 30 and in sub clause (1) and (2) of Article 30. Minorities in Article 30 has been used in two senses, one based on religion and other based on language.

4.4 \textbf{Relation between Articles 29 and 30}

Articles 29 and 30 of the Constitution are grouped under the heading "Cultural and Educational rights". These both Articles protect and guarantee certain collective rights for the minorities to help them to preserve their language, religion and culture. These rights also contribute to preserve the rich diversity of the country and give minority a sense of security.

Together, they confer four distinct rights on minorities. These include the right of:

(a) any section of citizens to conserve its own language, script or culture;

(b) all religious and linguistic minorities to establish and administer educational institutions of their choice;

(c) an educational institution against discrimination by State in the matter of State aid (on the ground that it is under the management of religious or linguistic minority; and

(d) the citizen against denial of admission to any State-maintained or State-aided educational institution.

Article 29, especially clause (1) thereof, is more generally worded, whereas article 30 is focused on the right of minorities to (i) establish and (ii) administer educational institutions. Notwithstanding the fact that the right of the minority to establish and administer educational institutions would be protected by article 19(1) (g), the farmers of the Constitution incorporated article 30 in the Constitution with the obvious intention of instilling confidence among minorities against any legislative or executive encroachment on their right to establish and

administer educational institutions. In the absence of such an explicit provision, it might have been possible for the State to control or regulate educational institutions, established by religious or linguistic minorities, by law enacted under clause (6) of article 19.

Over the decades, the interplay of these two Articles has been the cause of intense debate, firstly, touching on issues such as secularism and secondly, the degree of control over private educational institutions maintained by the State or receiving aid out of State funds; on grounds only of religion, race, caste, language or any of them. Further this chapter discusses judicial approach relating to each Sub Clause of Articles 29 and 30. Subsequently, the researcher has discussed the judicial interpretation relating to the relation between Articles i.e. 29 and 30.

Article 29(1) deals with right of any section of the citizens residing in India to preserve their language, script or culture. In order to invoke Article 29(1), all that is essential is that a section of the citizens, residing in India should have a distinct language, script or culture of its own. If so, then they will have the right to conserve the same.

Article 29(2) prohibits discrimination in matters of admission into educational institutions on grounds only of religion, race, caste, language or any of them. This provision guarantees the rights of individual irrespective of the community to which he/she belongs.8

Article 30 (1) provides that all religious and linguistic minorities have the right to establish and administer educational institutions of their choice. Article 30(2) prevents States from making any discrimination against any educational institution in granting aid on the ground that it is managed by a religious or linguistic minority.

**Article 29(1): Rights of citizens to preserve their language, script and culture**

Article 29(1) is not subjected to any reasonable restrictions. The right conferred upon the citizens to conserve their language, script and culture is made

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absolute by the Constitution. In *D.A.V. College Jullunder v State of Punjab case*\(^9\), it was held that where a legal provision required the Guru Nanak University to promote studies and research in Punjabi language and literature, and to undertake measures for the development of Punjabi language, literature and culture, did not infringe Article 29(1). The Supreme Court had emphasized that the purpose and object of the linguistic States, which has come to stay in India, is to provide greater facility for the development of the people of the area educationally, socially and culturally in the regional language. The concerned State or the University has every right to provide for the education of the majority in the regional medium.

This right however is subject to restrictions contained in Articles 25 to 30.\(^{10}\) Promotion of the majority language does not mean stifling of minority language and script. To do so will be to trespass on the rights of those sections of the citizens which have distinct language or script which they have right to conserve through their own educational institutions. The provision in question cannot, therefore be read as requiring the minority institutions affiliated to Guru Nanak University to teach in Punjabi language, or in any way impeding their right to conserve their language, script and culture.\(^{11}\)

It is relevant to state the Supreme Courts’ observation in the case *DAV College, Jullundar v. State of Punjab*

“The provision, as we construe it, is for the promotion of Punjabi studies and research and development of the Punjabi language, literature and culture which is far from saying that the University can under that provision compel the affiliated colleges particularly those of the minority to give instruction in the Punjabi language, or in any way impede the right to conserve their languages, script and culture.”

The legal provisions of the University that was challenged on the ground that the colleges administered by other religious minorities, i.e., Arya Samaj, and affiliated to the University would be compelled to study the religious teaching of

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\(^9\) AIR 1971 SC 1737


Guru Nanak and such provisions amounted to violation of fundamental right under Article 29(1). The Supreme Court rejected the argument saying that there is no mandate in the provision compelling affiliated colleges either to study the religious teachings of Guru Nanak, or to adopt in any way the culture of the Sikhs. If the University makes provision for an academic and philosophical study and research on the life and teachings of a saint, it cannot be said that the affiliated colleges are being required to compulsorily study his life and teachings.

Article 29(2): Right of the citizen not to be denied of admission into any State maintained or State aided educational institution

The right guaranteed under this Article is not restricted to minorities but extends to all citizens whether belonging to majority or minority. In *State of Bombay v Bombay Education Society’s Case*\(^ {12} \) the court held that limiting this right only to minority groups will amount to holding that the citizens of the majority group have no right to be admitted into an educational institution for the maintenance of which they contribute by the way of taxes. In *Ravneet Kaur v. Christian Medical College, Ludhiana’s Case,*\(^ {13} \) the Court held that a private institution receiving aid from the State cannot discriminate on grounds of religion, caste, race language or any of them.

Ambit of Article 29(2)

The scope of Article 29(2) was explained by the Supreme Court, in *State of Madras v. Champakam Dorairajan Case,*\(^ {14} \) where for the first time the question of application of Article 29(2) was challenged. The communal Government Order of the State of Madras allotted seats in medical and engineering colleges in the State proportionately to the several communities, viz, non-Brahmin Hindus, Backward Hindus, Brahmans, Harijans, Anglo Indians, Christians, and Muslims. A Brahmin candidate who could not be admitted to an engineering college challenged the Government Order as being inconsistent to Article 29(2).

The Supreme Court held that the classification in the Government order was based on religion, race and caste which were inconsistent with Article 29(2).

\(^{12}\) AIR 1954 SC 561
\(^{13}\) AIR 1998 P&H 1
\(^{14}\) AIR 1951 SC 226
Even though the petitioner had got much higher marks than secured by many non-brahmins who were admitted in the seats allotted to them, he could not be admitted into any institution. The only reason for the denial of admission to him was that he was a Brahmin and not a non-Brahmin.\textsuperscript{15}

In the \textit{State of Bombay v Bombay Education Society},\textsuperscript{16} an order issued by the Bombay Government banning admission of those whose language was not English to a school using English as a medium of instruction, was declared invalid under Article 29(2).

The Government had argued that the order did not debar citizens from the admission into English medium schools only on the ground of religion, race, caste, language, but on the ground that such denial would promote the advancement of the national language. Rejecting the contention the Supreme Court pointed out that the argument overlooked the distinction between the object underlying the order was laudable but even then its validity had to be judged by the method of its operation and its effect on the Fundamental Rights guaranteed under Article 29(2). The immediate ground for denying admission in English schools to pupils whose mother tongue was not English was only language and so order could not be upheld. Thus, discrimination in matters of admission on the basis of language was vetoed by the Supreme Court under Article 29(2).

\textbf{Article 30(1): Rights of Minorities to establish and Administer Educational Institutions of their choice}

Article 30 (1) gives the linguistic or religious minorities the following two rights:

i) Right to establish, and

ii) Right to administer educational Institutions of their choice.

This benefit is extended to only linguistic and religious minorities and to no other section of the Indian Citizens. The word ‘or’ means that a minority may either be linguistic or religious and that it does not have to be both- a religious


\textsuperscript{16} AIR 1954 SC 561
minority as well as linguistic minority. It is sufficient if it is one or the other or both.

Article 30 is a minority-specific provision that protects the right of minorities to establish and administer educational institutions. It provides that “all minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice”. Clause (1-A) of the Article 30, which was inserted by the Constitution (Forty-fourth Amendment) Act, 1978 provides that “in making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause”. Article 30 further provides that “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 and language”.

It would be worthwhile to note that minority educational institutions referred to in clause (1) of Article 30 have been kept out of the purview of Article 15(4) of the Constitution which empowers the State to make provisions by law for the advancement of any socially and educationally backward classes of citizens or SCs/STs in regard to their admission to educational institutions (including private educational institutions), whether aided or unaided.17

While interpreting Article 30 of the Indian Constitution the question of relative degree of autonomy and permitted area and extent of regulation of minority educational institutions has been one important issue to be resolved by the judiciary during the past six decades.

In re Kerala Education Bill case18 Supreme Court held that Article 30(1) covers institutions imparting general secular education. The object of Article 30(1) is to enable children of linguistic and religious minorities to go out in the world fully equipped. Protection guaranteed to minority under Article 30 is to preserve

17 Wadhwa Kamlesh Kumar, Minority safeguards in India: Constitutional provisions and their implementation, Thomson Press (India) Ltd., Haryana, 1975, p. 79.
18 AIR 1958 SC 956
and strengthen the integrity and unity of the country. The sphere of general secular education will develop the commonness among the students of the country. This is in true spirit of liberty, equality, and fraternity through the medium of education. The minorities will feel isolated and separated if they are not given the protection under Article 30.

In *Sidhrajbhai’s Case*¹⁹ it was held that under Article 30(1) fundamental right declared is in term absolute and is not subject to reasonable restrictions. It is intended to be a real right for the protection of minorities in the matter of setting up of educational institutions of their choice. The right is intended to be effective and not to be whittled down by so-called regulatory measures conceived in the interest not of the minority educational institution, but of the public or the nation as a whole.

The learned Judges had held that, “Regulations which may be lawfully be imposed either by legislative or executive action as a condition of receiving grant or recognition, must be directed to making the institution, while retaining its character as a minority institutions, effective as an educational institution. Regulations must satisfy a dual test- the test of reasonableness, and the test that it is regulative of the educational character of the institutions and is conducive to making the institution an effective vehicle of education for the minority community or other persons who resort to it.”

In *Rt. Rev Mark Netto v State of Kerala*²⁰ the Supreme Court held that refusal of Regional Deputy Director of Public Instruction to admit girl students was violative of Article 30(1). The principle that can be deduced from these decisions is that Article 30(1) is absolute in terms and said right cannot be whittled down by regulatory measures conceived in the interest not of minority institutions but of the public or the nation as a whole.

In *D. A. V. College Jullunder v State of Punjab*²¹ the Court held that a linguistic minority for the purpose of Article 30(1) is one which has separate spoken language. It is not necessary that language should also have separate script.

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¹⁹ AIR 1963 SC 540
²⁰ (1979) 1 SCC 23
²¹ AIR 1971 SC 1737
India has a number of languages which do not have script of its own but nonetheless, people speaking such a language will constitute a linguistic minority to claim protection of Article 30(1).

In *Ahmedabad St. Xavier’s College v State of Gujarat*\(^2^2\) Supreme Court has pointed out that the spirit behind Article 30(1) is the conscience of the nation that the minorities, religious as well as linguistic, are not prohibited from establishing and administering educational institutions of their choice for the purpose of giving their children the best general education to make them complete men and women of the country.

The Supreme Court in *S.K. Patro v State of Bihar*\(^2^3\) ruled that a minority claiming privilege under Article 30 should be minority of persons residing in India. Foreigners not residing in India do not fall within the scope of Article 30(1). Residents in India and forming the well define religious or linguistic minority fall under the protection of Article 30. Further, Article 30(1) does not expressly refer to citizenship as a qualification for the members of the minorities. The fact that funds have been obtained from outside India for setting up and developing a school is no ground for denying to it protection under Article 30(1).

*T.M.A Pai Foundation v State of Karnataka*\(^2^4\) over ruled the proposition that no regulation can be cast in the interest of the nation if it does not serve the interest of minority as well. Justice Kirpal C. J. had ruled, that “any regulation framed in the national interest must necessarily apply to all educational institutions, whether run by majority or minority. Such a limitation must necessarily be read into Article 30. The right under Article 30(1) cannot be such as to override the national interest or to prevent the Government from framing regulations in that behalf. Court further was of the view that no right can be absolute. Whether a minority or a non minority, no community can claim its interest to be above national interest”.

The words ‘Establish’ and ‘Administer’ in Article 30(1) have been read conjunctively. Therefore, a minority can claim a right to administer an educational

\(^{22}\) AIR 1974 SC 1389
\(^{23}\) AIR 1970 SC 259
\(^{24}\) (2002) 8 SCC 481
institution only if it has established by it but not otherwise. A religious minority cannot claim the right to administer an educational institution established by someone else, merely because, for some reason or other, it had been administering the institution before Constitution came into force.

In, *The Manager, St. Thomas U. P. School, Kerala v Commissioner’s Case*, it was held that Article 30(1) postulates that the religious community will have the right to establish and administer educational institutions of their choice meaning thereby that where a religious minority establishes an educational institution, it will have the right to administer that. The right to administer has been given to the minority, so that it can mould the institution as it thinks fit, and in accordance with its ideas of how the interest of the community in general, and the institution in particular, will be best served. For purposes of Article 30 (1), even a single philanthropic individual from the concerned minority can found the institution with his own means.

In *State of Kerala v. Reverend Mother Provincial’s Case*, construing Article 30 (1), Hidayatullah C. J. held that, ‘It matters not if a single philanthropic individual with his own means, founds the institution or the community at large contributes the funds. The position in law is the same and the intention in either case must be to found an institution for the benefit of a minority community by the member of that community.’

In *S. Azeez Basha v. Union of India*, it was held that the Aligarh Muslim University was established by the Central legislature Act of 1920. It could not therefore be said to have been established by the Muslim community. No degree granting institution can be established in India without a statute. Accordingly, the validity of a statute regulating administrative arrangements in the University could

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27 (2002) 9 SCC 497
28 (1970) 2 SCC 417
29 AIR 1968 SC 662
not be adjudged under Article 30(1). The material factor to attract Article 30(1) is the establishment of the institution by the minority concerned.30

The Article 30(1) clearly shows that the minority will have the right to administer the institutions of their choice provided they have established them, but not otherwise. It is a matter of proof through production of satisfactory evidence that the institution in question was established by the minority claiming to administer it. The proof of the fact of establishment of the institution is a condition precedent for claiming the right to administer the institution.31 The onus lies on one who asserts that an institution is a minority institution.

The Courts may have to decide whether the institution is minority institution. In, S. P. Mittal v. Union of India32 the Supreme Court laid down that in order to claim the benefit of Article 30(1), the community must show a) that it is a religious or linguistic minority, b) that the institution was established by it. Without satisfying these two conditions it cannot claim the guaranteed rights to administer it.

In Yogendra Nath Singh v. State of Uttar Pradesh33 the Government recognized the institution as a minority institution. This order was challenged in the High Court through a writ petition. Looking into the antecedent history of the institution right from its inception, the Court concluded that the institution was not established as a minority institution, and, therefore, it could not be granted minority status even though presently it was being managed by the minority community. Under Article 30(1), the requirements of establishment and management have to be read conjunctively. The twin requirements are needed to be fulfilled and in the absence of one, an institution cannot be given minority status.

The minority educational institution continues to be so whether the government declares it as such or not. When the government declares the

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31 Mahmood Tahir, Politics of Minority Educational Institutions, Imprint One, Haryana, 2007, p. 93.
32 AIR 1983 SC 1
33 AIR 1999 All 356
institution as a minority educational institution, it merely recognizes a factual position that the institution was established and is administered by the minority community. The declaration is merely an open acceptance of the legal character of the institution which must necessarily have existed antecedents to such declaration. Such a declaration is neither necessary nor decisive of the character of the institution in question as a minority educational institution. The final word in this regard rests with the courts. It is ultimately for the court to decide whether the institution in question is a minority institution or not.

Even if Government has recognized an institution being as minority educational institution does not immunize the institution from judicial scrutiny of its antecedents. The government decision is not binding and it is ultimately for the court to decide whether the institution in question is a minority institution or not.

In *Andhra Pradesh Christian Medical Association v. Government of Andhra Pradesh* the Supreme court has asserted that the Government, the University and ultimately the Court can go behind the claim that the institution in question is a minority institution and to investigate and satisfy itself whether the claim is well founded or ill founded. The Government, the University and ultimately the Court have undoubted right to pierce the minority veil and discover whether there is lurking behind it no minority at all and in any case no minority institution. The Supreme Court emphasized that the object of Article 30 (1) is not to allow bogies to be raised by pretenders. The institution must be an educational institution of minority in truth and reality and not mere masked phantoms.

In this case, the Court held that the institution in question was not a minority institution. The Court clarified that the protection of Article 30(1) is not available if the institution is mere cloak or pretension and the motive was business venture. The institution was started to make money from gullible persons anxious to obtain admission to professional colleges. So, the court refused to treat it as a minority educational institution.

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34 AIR 1986 SC 1490
A minority institution may impart general secular education; it need not confine itself only to the teaching of minority language, culture or religion. Minority institution to be treated as one, it must be shown that it serves or promotes in some manner the interests of the minority community by promoting its religious tenets, philosophy, culture, language or literature.

Article 30(1) gives right to minority community as such and not to an individual member, and the right is meant to benefit the minority by protecting and promoting its interest. A considerable section of the minority must be benefited by the institution. In order to claim the benefit of minority institution it has to show that it any manner it serves or promotes the interest of the minority to which it claims to belong. In *Andhra Pradesh Christian Medical Association v. State of Andhra Pradesh* the Supreme Court emphasized upon that, ‘What is important and what is imperative is that there must exist some real positive index to enable the institution to be identified as an educational institution of the minorities.’

In *Sree Jain Swetamber Terapanthi Vidyalaya v. State of West Bengal* the High Court of Calcutta held that the school was entitled to the benefit of Article 30 (1), since the school was established by the Jain Swetamber Sect. The members of the sect donated considerable amount for the establishment of the institution. The school was run to promote the culture and religious tenets of the primarily along with secular education imparted to the pupils and majority of the pupils belonged to the Jain Swetamber sect.

The educational institution established by linguistic minority i.e. Gujarati, where the medium of instruction was Gujarati and 80% of the teachers were Gujarati–speaking. The Court in *Indulal Hiralal Shah v. S.S. Salgaonkar* characterized the institution as minority institution. Admitting non Gujarati students did not affect the minority character of the institution.

36  AIR 1986 SC 1490
38  AIR 1982 Cal 101
39  AIR 1983 Bom 192
In *St. Stephen’s College v. University of Delhi’s Case*⁴⁰ Supreme Court held that Article 30(1) does not mean that the minority can establish an educational institution solely for the benefit of its own community people. The minorities are not entitled to establish such institutions for their exclusive benefit.

The Court observed that, ‘Every educational institution irrespective of community to which it belongs is a ‘melting pot’ in our national life and that it is essential that there should be a proper mix of students of different communities in all educational institutions. This means that a minority institution cannot refuse admission to students of other minority and majority communities.

The right of religious and linguistic minorities to administer educational institutions of their choice, though couched in absolute terms, is not free from regulations because it is necessary that even the minority institutions must be subjected to some administrative control without impairing their identity or independence as minority institutions. For the application of this right, minority institutions are divided into three classes:

a) Institutions which neither seek aid nor recognition from state;

b) Institutions that seek aid from the state; and

c) Institutions which seek recognition but not aid.

While the institutions which neither seek aid nor recognition from the State cannot be subjected to any regulation except those emanating from the general laws of the land such as labour, contract or tax laws. The institutions that seek recognition only and not aid could be subjected to regulations or restrictions pertaining to the academic standards and better administration of the institution in the interest of that institution itself. Regulations and restriction for any other purpose are not permissible.

**Article 30(2): Prohibits the State from discriminating in granting aid**

Article 30(2) prohibits the State, while granting aid to educational institutions, from discriminating against any educational institution on the ground that it is under the management of linguistic or religious minority. Article 30(2)
mandates that in granting aid to educational institutions, the state shall not discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

Minority educational institutions, under Article 30 (2), cannot claim State aid as matter of right. Minority educational institutions are entitled to get financial assistance much the same way as the educational institutions run by majority community. The state is bound to maintain equality of treatment in granting aid to educational institutions. Minority institutions are not to be treated differently while giving financial assistance.\(^{41}\)

These provisions were to give religious and linguistic minorities’ security and confidence, and develop their own culture by bringing up their children in the manner and with the ideals they preferred that the Constitution of the country embodied a special provision in the list of Fundamental Rights.

As these rights are part of Chapter III of the Constitution, consisting of fundamental rights, they are safeguarded against future infringement. Every legal provision or executive action need to conform to the mandates implied in them. Article 13 of the Constitution of India bars the state from making any law abridging or limiting any of the rights guaranteed under this chapter.\(^{42}\)

**Article 13 of Constitution** of India deals with Laws inconsistent with or in derogation of the fundamental rights.

1. All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void

2. The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void

3. In this Article, unless the context otherwise requires law includes any Ordinance, order, bye law, rule, regulation, notification, custom or usages

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having in the territory of India the force of law; laws in force includes laws passed or made by Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas

4. Nothing in this Article shall apply to any amendment of this Constitution made under Article 368.

As per the Article 13 of the Constitution of India, a State is barred from making any law abridging or limiting any of the fundamental rights guaranteed under chapter III of the Constitution of India. It threatens to veto the laws found inconsistent with the Fundamental Rights.

The promise of enforcement is contained in Article 32 which, conferring practicability to the assertions contained in Article 13, declares that the right to move the Supreme Court by appropriate proceedings for the enforcement of Fundamental Rights is guaranteed and thus imposes a duty upon the highest court to afford protection against any violation and vests a corresponding right in the religious and linguistic minorities to seek remedy in case the rights are threatened with deprivation or infringment. A similar jurisdiction has been conferred upon the High Courts under Article 226. The rights are made justifiable before the courts for double purpose of protecting them against arbitrary action of regulatory authorities wielding the force of state and against excesses of elected legislatures dominated by transient numerical majorities and often swayed by passions and prejudices.

A number of provisions in the Constitution of India provide protection of interest of the linguistic minorities. These are:

1. Art. 345 of the Indian Constitution states very clearly that "Subject to the provisions of Articles 346 and 347, the Legislature of a State may

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43 **Article 13 defines State:** The State includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India. The term 'law' includes within its amplitude any ordinance, order, bye-law, rule, regulation, notification, custom or usage having the force of law; and the prohibition binds all such instrumentalities within the State as having legal authority to formulate such law.
by law adopt anyone or more of the languages in use in the State or Hindi as the language or languages to be used for all or any of the official purposes of that State".

(2) Article 347 is more explicit and states:

"On a demand made in that behalf, the President may, if he is satisfied that a substantial proportion of the population of the State desire the use of any language spoken by them to be recognised by that State, direct that such language shall also be officially recognised throughout that State or any part thereof for such purposes as he may specify”.

The right to conserve a minority language is also provided in the Constitution under the title “Cultural and Educational Rights” in Articles 29 and Article 30.

**Article 347: Special provision relating to language spoken by a section of the population of a State**

On a demand being made in that behalf the President may, if he is satisfied that a substantial proportion of the population of a State desire the use of any language spoken by them to be recognized by that State, direct that such language shall also be officially recognized throughout that State or any part thereof for such purpose as he may specify.

Special provisions have also been made under Articles 350A and 350B to provide smaller communities educational opportunities in their mother tongue and to appoint a special officer for linguistic minorities.

**Article 350: Language to be used in representations for redress of grievances**

Every person shall be entitled to submit a representation for the redressal of any grievance to any officer or authority of the Union or a State in any of the languages used in the Union or in the State, as the case may be.

**Art. 350A: Facilities for instruction in mother-tongue at primary stage**

It shall be the endeavour of every State and of every local authority within the State to provide adequate facilities for instruction in the mother-tongue at the
primary stage of education to children belonging to linguistic minority groups; and the President may issue such directions to any State as he considers necessary or proper for securing the provision of such facilities.

**Art. 350 B: Special Officer for Linguistic Minorities**

1) There shall be a special officer for the linguistic minorities to be appointed by the president.

2) It shall be the duty of the Special Officer to investigate all matters relating to the safeguards provided for linguistic minorities under this Constitution and report to the President upon those matters at such intervals as the President may direct, and the President shall cause all such report to be laid before each House of the Parliament, and sent to the Governments of the State concerned.

These provisions are unique in their thoroughness and seek to accommodate the interest of linguistic minorities. When provisions under Articles 29 and 30 are considered along with other provisions in the Chapter of Fundamental Rights and elsewhere in the Constitution safeguarding the rights of religious, linguistic and racial minorities, it becomes clear that the sole purpose of these provisions is to give linguistic minorities, the right to preserve and develop their language and to facilitate teaching in mother tongue to their children in early ages.\(^{44}\) But the minority status of the language in an area does not have a bearing on the social and economic status of those who speak the minority language. In fact every State has speakers of minority languages though the percentage of speakers varies.

**4.5 Consensual Safeguards for Linguistic Minorities**

In addition to Constitutional safeguards of Article 29 and 30 mentioned earlier, following the reorganization of the states on the linguistic basis, there emerged some safeguards on consensual basis for linguistic minorities. These have been agreed to by the Central and the State Governments through series of meetings of Chief Ministers of all the states.

1. Instruction through minority languages at the Secondary stage of education;

2. Translation and publication of important rules, regulations, notices, etc., into all languages, which are spoken by at least 15% of the total population at district or sub-district level;

3. No insistence upon knowledge of State’s Official Language at the time of recruitment. Test of proficiency in the State’s Official Language to be held before completion of probation.

4.6 National Commissioner of Linguistic Minorities

We have National Commissioner for Linguistic Minorities, an organisation to monitor and implementation of Constitutional and Consensual safeguards for linguistic minorities.

Safeguards provided to the linguistic minorities are of two kinds:

1. Those provided by the Constitution

2. Those arrived at by the consensus by Central and State Governments through series of meetings.

3. The combined scheme.

4.7 Classification of Minority Educational Institutions

Minority Educational Institutions can be classified into recognized and unrecognized institutions. Institutions like schools and colleges that provide secular education are generally recognized by the government, where as informal centers of education like Madrasas, Bible colleges, etc are unrecognized. Recognized schools and colleges are of two kinds Viz: Aided and Unaided. Aid schools and colleges means financial assistance is granted to the said schools or colleges by the Central government, State government or any funding agency established by the government. Unaided schools and colleges are the one which do not receive any funds from the government and they manage the institutions by the funds generated by them.

It would be pertinent to understand the kind of Educational Institutions run by Minority Community.
Recognized – means an institution recognized by an appropriate authority where ‘appropriate authority’ can be defined as administrator or any other officer authorized by Central or State government.

Aided schools or colleges – means a recognized school or college which is receiving aid in the form of maintenance grant from the central government, administrator or local authority or any other authority designated by the central government, administrator or a local authority.

Unaided schools or colleges – means a recognized school or college, which does not receive any aid.

In terms of government regulations also, there is difference between aided and unaided institutions

1) State can’t impose its reservation policy on minority and non-minority on unaided private colleges including professional colleges.

2) Up to the level of undergraduate education, the minority unaided educational institution enjoys total freedom.

3) However, different considerations would apply for graduate and postgraduate level of education as also for technical and professional educational institution i.e. such education cannot be imparted by any institution unless recognized or affiliated by any competent authority created by law such as university, board, central or state government or alike.

4.8 Highlights of Various Acts that Deals with Minority Rights

The Indian Parliament on the 17, May 1992 passed the National Commission for Minorities Act, ordering the Central Government to constitute a body, called the National Commission for Minorities. In 2004 National Commission of Minority Educational Institutions Act was enacted to ensure that the rights guaranteed to minorities were effectively implemented. Hereafter the important provisions of both the Acts are highlighted.

The setting up of Minorities Commission was envisaged in the Ministry of Home Affairs Resolution dated 12.01.1978 which specifically mentioned that, "despite the safeguards provided in the Constitution and the laws in force, there persists among the Minorities a feeling of inequality and discrimination. In order to preserve secular traditions and to promote National Integration the Government of India attaches the 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 enforcement and implementation of all the safeguards provided for the Minorities in the Constitution, in the Central and State Laws and in the government policies and administrative schemes enunciated from time to time. Sometime in 1984 the Minorities Commission was detached from Ministry of Home Affairs and placed under the newly created Ministry of Welfare”.

With a view to evaluating progress and development of minorities, monitoring the working of safeguards provided to them under the Constitution and laws, etc. The Central Government had constituted a non-statutory Minorities Commission in 1978. In 1992, the National Commission for Minorities Act was enacted to provide for constitution of a statutory Commission. The National Commission for Minorities was set up under the Act in 1993.

With the enactment of the National Commission for Minorities Act, 1992, the Minorities Commission became a statutory body and renamed as National Commission for Minorities. The first Statutory National Commission was set up on 17th May 1993, Vide a Gazette notification issued on 23rd October 1993 by Ministry of Welfare, Government of India, five religious communities viz; the Muslims, Christians, Sikhs, Buddhists and Zoroastrians (Parsis) were notified as minority communities. As per the 2001 Census, these five religious minority communities constitute 18.42% of the country’s population.

http://ncm.nic.in/
4.8.2 Functions of National Commission for Minorities

As per Section 9(1) of the NCM Act, 1992, the Commission is required to perform following functions:-

(a) Evaluation of the progress of the development of minorities under the Union and States;

(b) Monitoring of the working of the safeguards for minorities provided in the Constitution and in laws enacted by Parliament and the State Legislatures;

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

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

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

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

(g) Suggesting appropriate measures in respect of any minority to be undertaken by the Central Government or the State Governments;

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

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

4.8.3 Powers vested with National Commission of Minority

The Commission shall, 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 of affidavits.

d) Requisitioning any public record or copy thereof from any court or office.

e) Issuing commissions for the examination of witnesses and documents; and

f) Any other matter which may be prescribed.

4.9 National Commission for Minority Educational Institutions Act, 2004

The National Commission for Minority Educational Institutions Act is the outcome of the UPA Government’s manifesto that called for ‘National Common Minimum Programme’. In the National Common Minimum Programme, in its Section on “National Harmony, Welfare of Minorities,” it was mentioned that a commission for minority educational institutions would be established which will provide direct affiliation for minority professional institutions to Central Universities. The Government brought out an Ordinance in November 2004 establishing the Commission. Later a Bill was introduced in the Parliament in December 2004 and both Houses passed the Bill. The NCMEI Act was notified in January 2005.

The National Commission for Minority Educational Institutions Act, 2004 was enacted to constitute a Commission charged with the responsibilities of advising the Central Government or any State Government on any matter relating to education of minorities that may be referred to it, looking into specific complaints regarding deprivation or violation of rights of minorities to establish and administer educational institutions of their choice, deciding on any dispute relating to affiliation to a scheduled University and reporting its findings to the Central Government for

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46 A Constitution Amendment Bill, viz. the Constitution (One Hundred and Third Amendment) Bill, 2004 has been introduced so as to add a new article, viz, Article 340A to constitute a National Commission for Minorities with a constitutional status. A Bill to repeal the National Commission for Minorities Act, 1992 has simultaneously been introduced.
implementation. The Act was extensively amended in 2006 (Act 18 of 2006), *inter alia*, empowering the Commission to enquire suo moto or on a petition presented to it by any minority educational institution (or any persons on its behalf) into complaints regarding deprivation or violation of rights of minorities to establish and administer an educational institution of its choice and any dispute relating to affiliation to a University and report its finding to the appropriate Government for its implementation. The Act also provides that if any dispute arises between a minority educational institution and a University relating to its affiliation to such University, the decision of the Commission thereon shall be final.

The Commission is mandated to look into specific complaints regarding deprivation or violation of rights of minorities to establish and administer educational institutions of their choice. Protection of rights of minorities are enshrined in Article 30 of the Constitution which states that “all minorities, whether based on religion or language shall have the right to establish and administer educational institutions of their choice”. Thus, the Commission can look into any complaints relating to violation and deprivation of rights of minorities to establish and administer educational institutions of their choice.

This is the first time that a specific Commission has been established for protecting and safeguarding the rights of minorities to establish and administer educational institutions of their choice. This Commission is a quasi-judicial body and has been endowed with the powers of a Civil Court. It is headed by a Chairman who has been a Judge of the Supreme Court and two members to be nominated by Central Government. The Commission has 3 roles namely adjudicatory function, advisory function and recommendatory powers. So far as affiliation of a minority educational institution to a university is concerned, the decision of the Commission would be final.

The Commission has powers to advise the Central Government or any State Government on any question relating to the education of minorities that may be referred to it. The Commission can make recommendations to the Central Government and the State Governments regarding any matter which directly or indirectly deprives the minority community of their educational rights enshrined in Article 30.
Chapter IV

The empowerment of the Commission has provided a much needed forum for the minority educational institutions to highlight their grievances and to get speedy relief. The subject matter of a petition or complaint include non issue of No Objection Certificate (NOC) by the State Governments, delay in issue of NOC, refusal or delay in issue of minority status to minority educational institutions, refusal to allow opening of new colleges, schools or institutions by minorities, refusal to allow additional courses in minority educational institutions, delay or refusal in the release of grants in-aid, refusal to give financial assistance, denial of permission to create new posts of teachers in minority educational institutions even though there is increase in the number of students, approval of appointment of teachers being denied, non equality in pay scales of minority schools teachers as compared to Government school teachers denial of teaching aids and or other facilities like computers, library, laboratory etc. to minority educational institutions on par with Government institution, non availability of books in Urdu in all subject for students of Urdu school, non appointment of Urdu knowing teachers, in adequate payment to Madrasa employees, non-release of grants to Madrasa, non-payment of retirement benefits to teachers and non-teaching staff of minority schools, extension of Sarva Shiksha Abhiyan facilities to minority educational institution especially in the deprived rural areas etc.

4.10 Functions of the Commission

The Functions and Powers of the Commission are enumerated below:-

Notwithstanding anything contained in any other law for the time being in force, the Commission shall –

(a) Advise the Central Government or any State Government on any question relating to the education of minorities that may be referred to it;

(b) Enquire, *suo motu*, or on a petition presented to it by any minority educational institution, or any person on its behalf into complaints regarding deprivation or violation of rights of minorities to establish and administer educational institutions of their choice and any dispute
relating to affiliation to a University and report its finding to the appropriate Government for its implementation;

(c) Intervene in any proceeding involving any deprivation or violation of the educational rights of the minorities before a court with the leave of such court;

(d) Review the safeguards provided by or under the Constitution, or any law for the time being in force, for the protection of educational rights of the minorities and recommend measures for their effective implementation;

(e) Specify measures to promote and preserve the minority status and character of institutions of their choice established by minorities;

(f) Decide all questions relating to the status of any institution as a minority educational institution and declare its status as such;

(g) Make recommendations to the appropriate Government for the effective, implementation of programmes and schemes relating to the minority educational institutions; and

(h) Do such other acts and things as may be necessary, incidental or conducive to the attainment of all or any of the objects of the Commission.

4.11 Powers of the Commission

As enunciated in Section 12 of the NCMEI Act, 2004 the Commission enjoy the following powers.

1. If any dispute arises between a minority educational institution and a University relating to its affiliation to such University, the decision of the Commission thereon shall be final.

2. The Commission shall, for the purposes of discharging its functions under this Act, 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) Subject to the provisions of section 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), requisitioning any public record or document or copy of such record or document from any office;

e) Issuing commissions for the examination of witnesses or documents; and

(f) Any other matter which may be prescribed.

1. Every proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196, of the Indian Penal Code (45 of 1860) and the Commission shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

The Commission is also vested with the powers of appeal against order of competent authority (Section 12A) to decide on minority status of educational institutions (Section 12B) power to cancel the status granted (Section 12C), and to investigate matters relating to deprivation of educational rights of minorities (Section 12D). The Commission has also powers for calling for information from the Central Government or any State Government or any other authority or any organization subordinate thereto, while enquiring into complaints, violation or deprivation of educational rights of minorities (Section 12E).

No court except the Supreme Court and a High Court exercising jurisdiction under Articles 226 and 227 of the Constitution shall entertain any suit, application or other proceedings in respect of any order made by the Commission (Section 12 F).

4.12 Rights of Minority Educational Institutions

The National Commission for Minority Educational Institutions Act 2004 (2 of 2005) as amended by the NCMEI (Amendment Act 2006) lays down rights of Minority Educational Institutions as under:-
Right to establish a Minority Educational Institution:-

1. Any person who desires to establish a Minority Institution may apply to the Competent authority for the grant of no objection certificate for the said purpose.

2. The Competent authority shall:-

   (a) on perusal of documents, affidavits or other evidence, if any; and

   (b) after giving an opportunity of being heard to the applicant, decide every application filed under sub-section (1) as expeditiously as possible and grant or reject the application, as the case may be:

Provided that where an application is rejected, the Competent authority shall communicate the same to the applicant.

3. Where within a period of ninety days from the receipt of the application under sub-section (1) for the grant of no objection certificate:-

   a) the Competent authority does not grant such certificate; or

   b) where an application has been rejected and the same has not been communicated to the person who has applied for the grant of such certificate, it shall be deemed that the Competent authority has granted a no objection certificate to the applicant.

4.13 State-wise and year wise details of Minority Status Certificates issued as on 31.10.2015

Educational institutions have to apply for acquiring the Minority Status to the State Government. Following table gives the details of minority status certificate issued from 2005 to 2015 in the different States of the Country. There are maximum numbers of minority educational institutions in the State of Kerala followed by Uttar Pradesh and West Bengal.

47 Source: ncmei.gov.in
### Table 4.1

**State-wise and Year-wise Details of Minority Status Certificates Issued**

*As on 31.10.2015*

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Total 21 422 737 507 848 1122 1656 1966 1670 1515 920 11,384
4.14 Guidelines Applicable for Granting of Minority Status to Educational Institutions

Minority educational institution means an institution established and administered by a minority having the right to do so under clause (1) of Article 30 of the constitution. Respective State Government while granting recognition to Minority Institution lay down certain conditions. For instance Delhi Government has laid down following conditions for grant of recognition to minority educational institutions:\[48\] [More or less the conditions applied are on the same line everywhere in the country.]:

The following policy guidelines are hereby notified for grant of minority status to educational institutions seeking affiliation to a University and the Board of Technical Education, Delhi:-

1. **Definition of minorities for the purpose of minority-run educational institutions:**

   “Minority communities” for the purpose of establishing minority educational institutions means a community notified as such under the Government of Delhi Minorities Commission Act 1999.

2. **Competent Authority for according recognition to minority Educational Institutions**

   The Competent authority to grant recognition to minority educational institutions in Delhi will be the Secretary of the Department concerned in the Government of Delhi.

3. **Criteria for recognition of Minority Educational Institutions:**

   The educational institution should have been established by a minority community.

   a) The agency managing the institution should have been registered under the Societies Registration Act, 1860.

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48 http://te.delhigovt.nic.in/minor.html
b) The Managing Committee of the Society and Governing body of the institution should be wholly or substantially managed by the representatives of the respective minority community.

c) The educational institution should have been running for at least two academic years in accordance with the regulations laid down by statutory authorities such as the State Government, AICTE, University, Board of Technical Education, etc.’

d) Merely giving a nomenclature as that of belonging to a minority community will not entitle the institutions to be recognized as a minority educational institution.

4. Conditions for grant of recognition to minority Educational Institutions\(^{49}\)

i. The aim and objectives of the educational agency incorporated in its byelaws should clearly specify that it is meant to primarily serve the interest of the minority community to which it belongs.

ii. The minority educational institution shall not compel its students or employees to take part in any of its religious activities.

iii. The minority educational institution shall observe general laws of the land relating to educational institutions.

iv. The minority educational institution will not use its privilege as minority institution for any pecuniary benefit.

v. The minority educational institution shall charge the fees as prescribed by competent authority concerned.

vi. The minority educational institution shall appoint teachers as per the qualifications laid down by the statutory authority concerned from time to time.

vii. In all academic, administrative and financial matters the rules and regulations laid down by the respective statutory authorities from time to time shall be wholly applicable to these institutions.

viii. The minority educational institution shall do nothing which may come in the way of communal and social harmony.

ix. Fifty percent of the seats permitted to be filled up from minority communities shall be equally distributed between ‘free’ and ‘payment’ seats.

5. Admission

All admissions shall be made on the basis of merit as per the Common Entrance Test held by competent authority. No admission outside the merit list shall be allowed until and unless competent authority allows doing so.

6. Procedure for seeking recognition as a Minority Educational Institution:

i) Educational agencies who wish to seek recognition of their institution as a minority institution should submit an application on a prescribed form to the competent authority concerned.

ii) A fee of Rs.10,000/- will be charged for processing the proposal and inspection of the institution. In case of renewal of recognition a fee of Rs.5,000/- shall be charged.

iii) Respective competent authority shall examine the proposals and get the institute inspected, if required.

iv) The recognition given by the competent authority shall be valid for a period of three academic years. During the validity period of recognition the competent authority can withdraw recognition at any time.

v) The institution will have to apply to the competent authority for revalidation of the recognition at least three months before the expiry of the period of validity.
7. **Withdrawal of Recognition**

The competent authority can withdraw the approval or recognition of any minority educational institution on following grounds:

i) If the educational institution subsequent to grant of approval as minority educational institution modified/revises/amends the constitution, aims and objectives on the basis of which approval was accorded.

ii) If the educational institution fails to adhere to the norms and conditions relating to fee structure, admission procedure, staff pattern and other qualifications, etc. prescribed by competent authority.

iii) If at any time the educational institution fails to meet the requirements prescribed by competent authority or other statutory authorities under their policy guidelines for recognition of the institution as minority educational institution.

iv) Any other circumstances which in view of competent authority warrants withdrawal of recognition of minority educational institution.

Provided that recognition once given will not be withdrawn unless competent authority has given sufficient opportunity to the minority institution to show cause as to why the recognition given should not be withdrawn.

There are separate rules for recognition of linguistic minority institutions the criteria being:

1) Institutes conducting definable and verifiable activity for promotion of minorities.

2) Minority language is taught as a language subject of the study.

3) Minority language is medium of instruction.

4.15 **National Minorities Development Finance Corporation (NMDFC)**

National Minorities Development Financial Corporation was incorporated under the aegis of “Ministry of Social Justice and Empowerment”, Government of India on the 30th of September 1994 under the Section 25 of the Companies Act –
1956 with the main objective to promote economic development of the poorer section of Minorities. The people belonging to five communities i.e. Muslims, Christians, Sikhs, Buddhists & Parsis have been notified as minorities under the National Commission for Minorities Act, 1992. The prime mandate of NMDFC has been to provide concessional finance to the minorities living below double the poverty line for self-employment. NMDFC functions under the administrative control of the Ministry of Social Justice & Empowerment, Government of India.50

4.16 The National Commission for Religious and Linguistic Minorities [NCRLM]

National Commission for Religious and Linguistic Minorities also called as Justice Ranganath Misra Commission was constituted by Government of India on 29th October 2004 to look into various issues related to Linguistic and Religious minorities in India. It was chaired by former Chief Justice of India Justice Ranganath Misra. The commission submitted its report to the Government on 21st May 2007.

Initially, the commission was entrusted with the following terms of reference.

(a) To suggest criteria for identification of socially and economically backward sections among religious and linguistic minorities;

(b) To recommend measures for welfare of socially and economically backward sections among religious and linguistic minorities, including reservation in education and government employment; and

(c) To suggest the necessary constitutional, legal and administrative modalities required for the implementation of its recommendations.

After nearly five months of its work the Commission’s Terms of Reference were modified so as to add the following to its original Terms of Reference.

(d) To examine and give recommendation on the demand of the Christian and Muslim dalits to be included in the Scheduled Castes. This issue has gone to

the apex court through several writ petitions filed in that court and in several High Courts.

Major finding of the commissions were as follows:

Criteria for identifying socially and economically backward classes among the religious and linguistic minorities.

In the matter criteria for identifying backward classes there should be absolutely no discrimination whatsoever between the majority community and the minorities; and, therefore, the criteria now applied for this purpose to the majority community - whatever that criteria may be - must be unreservedly applied also to all the minorities.

As a natural corollary to the aforesaid recommendation it is also recommended that all those classes, sections and groups among the minorities should be treated as backward whose counterparts in the majority community are regarded as backward under the present scheme of things.

To be more specific, all those social and vocational groups among the minorities who but for their religious identity would have been covered by the present net of Scheduled Castes should be unquestionably treated as socially backward, irrespective of whether the religion of those other communities recognises the caste system or not.

Also recommend that those groups among the minorities whose counterparts in the majority community are at present covered by the net of Scheduled Tribes should also be included in that net; and also, more specifically, members of the minority communities living in any Tribal Area from pre-independence days should be so included irrespective of their ethnic characteristics.51

(a) The break up within the recommended 15% earmarked seats in institutions shall be 10% for the Muslims (commensurate with their 73 % share of the former in the total minority population at the national level) and the remaining 5 % for the other minorities.

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(b) Minor adjustments inter se can be made in the 15% earmarked seats. In the case of non-availability of Muslim candidates to fill 10% earmarked seats, the remaining vacancies may be given to the other minorities if their members are available over and above their share of 5%; but in no case shall any seat within the recommended 15% go to the majority community.

(c) As is the case with the Scheduled Castes and Scheduled Tribes at present those minority community candidates who can compete with others and secure admission on their own merit shall not be included in these 15% earmarked seats.

As regards the backward sections among all the minorities, the Commission recommended that the concessions now available in terms of lower eligibility criteria for admission and lower rate of fee, now available to the Scheduled Castes and Scheduled Tribes, should be extended also to such sections among the minorities.52

In respect of the Muslims - who are the largest minority at the national level with a countrywide presence and yet educationally the most backward of the religious communities, also recommended certain exclusive measures as follows:-

(i) Select institutions in the country like the Aligarh Muslim University and the Jamia Millia Islamia should be legally given a special responsibility to promote education at all levels to Muslim students by taking all possible steps for this purpose. At least one such institution should be selected for this purpose in each of those states and Union Territories, which has a substantial Muslim population.

(ii) In the funds to be distributed by the Maulana Azad Educational Foundation a suitable portion should be earmarked for the Muslims proportionate to their share in the total minority population. Out of this portion funds should be provided not only to the existing Muslim institutions but also for setting up new institutions from nursery to the highest level and for technical and vocational education anywhere in India but especially in the Muslim-concentration areas.

52 Ibid., p. 38.
(iii) Anganwaris, Navoday Vidyalayas and other similar institutions should be opened under their respective schemes especially in each of the Muslim-concentration areas and Muslim families be given suitable incentives to send their children to such institutions.\textsuperscript{53}

In addition to the above major recommendations, Justice Ranganath Misra also made, the other recommendations like,

i) 15% of jobs in government services and seats in educational institutions be reserved for minorities.

ii) 8.4% of OBC quota of 27% be reserved for minorities

iii) Scheduled Caste reservation benefits be extended to dalit converts.