CHAPTER – VI

MINORITY RIGHT TO ESTABLISH AND ADMINISTER EDUCATIONAL INSTITUTIONS INCLUDING PROFESSIONAL INSTITUTIONS: RECENT DEVELOPMENTS AND JUDICIAL APPROACH

6.1 Introduction

Protection of minority rights derives its legitimacy from the internationally recognized vulnerability of identity based groups caused by their non-dominance in terms of number and power. Such position makes it difficult for them to achieve equality in the common national domain, while preserving their distinct identity. Minority rights were fully reflected in the Charter of the League of Nations and the treaties in the U.N. system, these rights are more comprehensive and definite expression in the binding Article 27 of the International Covenant on Civil and Political Rights (ICCPR) of 1966, and subsequently in the UN Declaration on Rights of Person Belonging to National or Ethinic, Religious & Linguistic minorities (1992) along with the official explanations by the U.N. Human Rights Committee in 2001,\(^1\) which put an obligation on the states to give minorities cultural freedom, and also to create conditions favourable for the preservation and development of their identity.

Articles 29 and 30 of the Indian Constitution which relate to the rights of minority institutions have figured before the Courts ever since the well known Supreme Court judgment, relating to the *Kerala Education Bill*.\(^2\) This protection, enshrined in Articles 29 and 30 and grouped as Cultural and Educational Rights, has given the minorities a sense of security and belonging in the face of aggressive majoritarian tendencies everywhere. However, a certain degree of ambiguity has clouded this protection owing to different judicial interpretations. In the beginning, the Courts were mostly concerned with striking a balance between the guaranteed rights of such institutions on the one hand and demands of public interest, including excellence in academic and organizational standards, on the other hand. In the course of this process, many points arose for consideration.

\(^1\) E/CN-4/sub2/AC51/2001/2
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Constitution of India nowhere defines Minority and neither Motilal Nehru’s report nor the Sapru report has tried to define Minority. May be the framers of the Constitution has left it to the wisdom of Courts to decide who would be the inheritors of the rights guaranteed under Article 30 of the Constitution of India. Even after sixty eight years of independence it is not evident as to who are the inheritors of rights under Article 30 of the Indian Constitution. Neither it is clear as to who constitute minority nor is the law relating to legal rights of Minority Educational Institutions settled in spite of plethora of judgments.

Researcher in this chapter would discuss the judicial attitude related to rights of minority to establish and administer educational institutions including professional educational institutions of their choice as guaranteed under Article 30 of the Indian Constitution. Judicial approach is studied through the pronouncement in relation to landmarks cases here under. Though the cases referred to may have dealt with other issues as well but the researcher has restricted the discussion to minority rights as enshrined in Articles 29 and 30.

Before proceeding to examine the judicial approach towards minority right to establish educational institutions, the scholar has tabulated the landmark decisions of the Hon’ble Supreme Court for easy reference as follows:

The facts and outcome of these cases and opinion of the judiciary have been analysed and examined in detail in this chapter.

Article 30(1) of the Constitution of India provides that all minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.
Table 6.1
List of Cases decided by the Supreme Court of India on Rights of Minority Educational Institutions

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<th>Name of the Case</th>
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<td>1.</td>
<td>State of Bombay v. Bombay Educational Society (AIR 1954 SC 561)</td>
<td>Minorities have right to impart instructions to the children of such community in their own language</td>
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<td>2.</td>
<td>Kerala Education Bill case (AIR 1958 SC 956)</td>
<td>Minority for the purpose of Articles 29 and 30 of the Constitution of India would be determined by reference to the entire population of the state.</td>
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<td>3.</td>
<td>Sidhrajbhai v. State of Gujarat (AIR 1963 SC 540)</td>
<td>The Government orders ‘that the grant in aid and recognition to the minority colleges will be withheld if 80% of the seats to the nominees of the government are not provided in their institutions’ is violative of Article 30(1) of the constitution.</td>
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<td>4.</td>
<td>S. Azeez Basha v. Union of India (AIR 1968 SC 662)</td>
<td>A Minority Institution / University established by central law / statue of the Parliament cannot be considered as institute established by Minority community and therefore not entitled to claim benefits of Article 30.</td>
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<td>5.</td>
<td>Bishop S.K. Patro v. State of Bihar (1969) 1 SCC 863</td>
<td>Minority claiming protection under Article 30(1) must be a minority of persons residing in India</td>
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| 6.      | D.A.V. College v. State of Punjab (AIR 1971 SC 1731) | i) The right provided under Article 30(1) to establish and administer educational institution of its choice includes the right to have a choice of medium of instruction also.  

ii) A University can prescribe qualification for the academic staff but actual selection of teachers must remain in the hands of minority educational institution |
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<th>No.</th>
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<td>7.</td>
<td>St. Xaviers College v. State of Gujarat, (AIR 1974 SC 13890)</td>
<td>The Constitution of Selection Committee for appointment of academic staff of a Minority College must remain in the hands of the administration of the minority educational institution. The University to which college is affiliated can only prescribe qualification for the academic staff.</td>
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<td>8.</td>
<td>Lily Kurian vs. St. Levoine (AIR 1979 SC 52)</td>
<td>The state may regulate the exercise of the right to administration of minority educational institutions but it has no power to impose restrictions which is destructive of the right.</td>
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<td>9.</td>
<td>S.P. Mittal v. Union of India (AIR 1983 SC 1)</td>
<td>The benefit of Art. 30(1) can be claimed by the community only on providing that it is a religious or linguistic minority and that institution was established by it.</td>
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<td>10.</td>
<td>Managing Board, M.T.M. v. State of Bihar (1984) 4 SCC 500</td>
<td>The State can lay down reasonable conditions for maintaining the standard of education before they could be considered for affiliation but refusal of affiliation on terms and conditions which practically denies the progress and autonomy of the institution is violative of Article 30.</td>
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<td>11.</td>
<td>Frank Anthony Public School Employees’ Association v. Union of India 1986 (Vol. IV) SCC 707</td>
<td>Statutory measures regulating terms and conditions of service of teachers and other employees of minority educational institutions for maintaining educational standards and excellence are not violative of Article 30(1).</td>
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<td>12.</td>
<td>St. Stephen’s College v. University of Delhi (AIR 1992 SC 1630)</td>
<td>Minority aided educational institutions may preserve 50 per cent seats for their community candidates and are entitled to give them preference in a admission as it is necessary to maintain the minority character of institutions.</td>
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<td>Case</td>
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<td>13. Unni Krishnan v. State of A.P.</td>
<td>(1993) 1 SCC 645</td>
<td>Minority educational institutions may charge such fee which is required for the betterment and growth of the institution but they should not be an element of profiteering in fixing the fee.</td>
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<td>14. State of Bihar v. Syed Asad Raza</td>
<td>(AIR 1997 SC 2425)</td>
<td>State shall not in granting aid to educational institution, discriminate against any educational institution on the ground that it is under the management of minority.</td>
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<td>15. Yunus Ali Sha v. Mohamed Abdul Kalam</td>
<td>(1999) 3 SCC 676</td>
<td>Management and Administration of the school should be under the control of the managing committee of the minority institution and not State authorities.</td>
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<td>16. Manager, St. Thomas U.P. School, Kerala v. Commr. and Secy. to</td>
<td>(AIR 2002 (2) 1226)</td>
<td>Even a single philanthropic individual from the concerned minority community can establish a minority institution with his own means.</td>
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<td>17. T.M.A. Pai Foundation v. State of Karnataka,</td>
<td>(AIR 2003 SC 355)</td>
<td>An aided minority educational institution would be entitled to have the right of admission of students belonging to the minority group.</td>
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<td>18. Islamic Academy of Education v. State of Karnataka</td>
<td>(AIR 2003 SC 3724)</td>
<td>The Supreme Court has directed to constitute a separate committee in each state to be headed by a retired judge of the high court, to approve the fee structure of the minority institutions.</td>
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<td>19. Brahma Samaj Education Society v. State of West Bengal</td>
<td>2004(6) SCC</td>
<td>Appointment of Staff is the exclusive right of minority educational institutions.</td>
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<td>20. P.A. Inamdar and Others v. State of Maharashtra and others</td>
<td>(AIR 2005 SC 3236)</td>
<td>State can’t impose its reservation policy on minority and non-minority unaided private colleges, including professional colleges.</td>
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<td>Case</td>
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<td>21. St. Stephen’s College vs. University of Delhi and others, (WP(C) 5226/2008 decided on 21-8-2008 by Delhi H.C.)</td>
<td>The right of minority educational institutions to appoint the head of the institutions cannot be taken away by any rule or regulation or by any enactment made by the state even if the institution is receiving 100% aid. A law which interferes with the minority choice of Principal would be violative of Article 30(1).</td>
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<td>22. Cochin University of Science and Technology and Another vs. Thomas P. Joan and others (2008) 8 SCC 82</td>
<td>Minority educational institution must be left to its own devices in the matter of fixation of fees. Profiteering or capitation fee is not permissible but some amount of surplus funds is permissible. If the institution follows broad principles, it is not required to explain minutely the details of its receipt and expenses.</td>
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<td>23. Modern Dental College and Research Centre and others vs. State of Madhya Pradesh and others (2009) 7 SCC 751</td>
<td>Private unaided minority institution have right to devise rational manner of selecting and admitting students. However certain degree of state control’s required since State has duty to see that high standards of education are maintained in all professional institutions.</td>
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<tr>
<td>24. Sindhi Education Society and another vs. Chief Secretary, Government of NCT of Delhi and others (2010) 8 SCC 49</td>
<td>Reservation for SC/ST in minority schools as a precondition for government aid is impermissible. Minority schools have a right to appoint persons compatible with their institution and culture so that their right to conserve their socio-economic-cultural character is not violated.</td>
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<tr>
<td>25. Kolawana Gram Vikas Kendra vs. State of Gujarat (2010) 1 SCC 133</td>
<td>Certain extent of government control is permissible in case of minority educational institution receiving 100% government grant. The government can verify whether there was vacancy as per work load and whether the candidate possessed minimum prescribed qualification.</td>
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Unaided Private minority school over which the government has no administrative control because of their autonomy under Article 30(1) of the Constitution are not “State” within the meaning of Article 12 of the Constitution. Hence they are not subject to public law obligation of State under Article 14 and Article 39(d).

27. Society for Un-aided Private Schools of Rajasthan vs. Union of India and another (2012) 6 SCC 1

Right of Children to Free and Compulsory Education Act, 2009 is not applicable to unaided minority schools. The said 2009 Act and in particular Sections 12(1)(c) and 18(3) infringes the fundamental freedom guaranteed to unaided minority schools under Article 30(1) and, consequently, the said 2009 Act shall not apply to such schools.


“In our view, if the 2009 Act is made applicable to minority schools, aided or unaided, the right of the minorities under Article 30(1) of the Constitution will be abrogated. Therefore, the 2009 Act insofar it is made applicable to minority schools referred in clause (1) of Article 30 of the Constitution is ultra vires the Constitution. We are thus of the view that the majority judgment of this Court in Society for Unaided Private Schools of Rajasthan v. Union of India & Anr. (supra) insofar as it holds that the 2009 Act is applicable to aided minority schools is not correct.”

6.2 *The State of Bombay v. Bombay Education Society and Ors*4

In this case, Government order prohibiting admission of students other than those of non-Asiatic descends and Anglo-Indians to English medium schools was challenged. Admission of non Anglo-Indian students was denied. Appeal filed by State of Bombay with a certificate granted by Bombay High Court. Court held,

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3 (2012) 6 SCC 1
4 AIR 1954 SC 561
circular imposing such obligation for, receipt of grant, unconstitutional. State was directed to pay costs of respondents.

6.2.1 Circular issued for English Medium Schools

In this case writ petitions were filed against the government circular of January 1954 headed “Admission to schools teaching through the medium of English.” The circular order stated, “No primary or secondary school should admit to a school where English was used as a medium of instruction, any pupil other than a pupil belonging to the section of citizens, the language of which was English, namely, Anglo-Indians and citizens of Non-Asiatic descent.”

6.2.2 Circular Challenged

Writ petition was filed by one Christian parent, whose daughter was refused admission by Barnes School, Devlali, Nasik, based on the above order. Similarly, even a member of the Gujarati Hindu community challenged the order since his daughter was refused admission. The Management of the school also filed a petition impugning the Government order. These petitions were consolidated and the High Court of Bombay issued mandamus as prayed for. On appeal the Supreme Court framed two major questions:

1. The right of students who were neither Anglo-Indians nor of Non-Asiatic descent to be admitted to the Barnes High School and

2. The right of Barnes High School to admit such students.

Supreme Court held that Anglo-Indians constitute a religious as well as linguistic minority. They thus enjoy the right to conserve their language, script and culture under Article 29(1) and to establish and administer educational institutions of their choice under Article 30(1).

The Supreme Court consisting of 5 Judges Bench Mehr Chand Mahajan, C.J., S.R. Das, Ghulam Hasan, Bhagwati, and Jagannadhadas, J.J., rejected the State’s contention that the word “namely” in the circular was merely illustrative and that the Schools were free to admit not only Anglo-Indians and citizens of Non-Asiatic descent but were free to admit pupils belonging to any other section of the citizens, whose language was English.
6.2.3 Circular held void

Court held that Article 29(2) confers a special right on citizens for admission into educational institutions maintained or aided by the State and cannot be restricted for minorities.

The ground for denying admission in English school to pupils whose mother tongue was not English was only language and so the 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).

Further the Apex Court held that Article 29(2) ex facie puts no limitation or qualification on the expression “citizen” and therefore the order violated Article 29(2). Moreover, the second proviso to Article 337 provided further that no educational institution shall be entitled to receive any grant under this Article unless at least 40 per cent of the annual admissions therein are made available to members of communities other than Anglo-Indian community therefore the circular was void as it not only violates Articles 29(2), 30(1) but also Article 337. The right of minorities to establish and administer educational institutions of their choice may be subject to regulatory power of the State but such power did not include the right to prescribe a particular language as a medium of instruction.

The order of the court said, it would not be valid, even if the object for making it was the promotion or advancement of national language.

6.3 Re Kerala Education Bill case6 – This case was decided by the Apex Court consisting of Seven Judges Constitution Bench Constitution of Hon’ble Judges:

Article 30 (1) first came up for interpretation before a seven judge Constitution Bench constituted to consider the reference made by the President under Article 143, which was stoutly opposed by Christians and Muslims. The reference was made because grave doubts were raised about the validity of certain

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5 Art. 337.
provisions of the Bill with regard to Articles 29 and 30. Articles 29 and 30 conferred certain educational and cultural rights as fundamental rights. Chief Justice S. R. Das delivered the majority opinion. He spoke for six judges - the sole dissent view by Justice Venkatarama Aiyar being confined to the question whether minority institutions were entitled also to recognition and State aid as part of the right guaranteed by Article 30(1). Chief Justice Das held:

Accordingly in exercise of the powers vested in him by Art. 143(1) the President referred the matter to the Supreme Court, for consideration and reports the following questions:

"(1) Does sub-clause (5) of clause 3 of the Kerala Education Bill, read with clause 36 thereof or any of the provisions of the said sub-clause, offend Article 14 of the Constitution in any particulars or to any extent?

(2) Does sub-clause (5) of clause 3, sub-clause (3) of clause 8 and clauses 9 to 13 of the Kerala Education Bill, or any provisions thereof, offend clause (1) of Article 30 of the Constitution in any particulars or to any extent?

(3) Does clause 15 of the Kerala Education Bill or any provisions thereof, offend Article 14 of the Constitution in any particulars or to any extent?

(4) Does clause 33 of the Kerala Education Bill or any provisions thereof, offend Article 226 of the Constitution in any particulars or to any extent?"

Since question (2) is specifically dealing with the legal status of minority institutions to establish and administer educational institutions of their choice, researcher will focus the discussion on minority rights.

In reference to question 2, the main Articles that confer rights to minority are Articles 29 and 30 are set out in Part III of our Constitution which guarantees our fundamental rights. They are grouped together under the sub-head "Cultural and Educational Rights". The text and the marginal notes of both the Articles show that their purpose is to confer those fundamental rights on certain sections of the community which constitute minority communities. Under clause (1) of Article 29 any section of the citizen residing in the territory of India or any part thereof
having a distinct language, script or culture of its own has the right to conserve the same. It is obvious that a minority community can effectively conserve its language, script or culture by and through educational institutions and, therefore, the right to establish and maintain educational institutions of its choice is a necessary concomitant to the right to conserve its distinctive language, script or culture and that is what is conferred on all minorities by Article 30(1). This right, however, is subject to clause 2 of Article 29 which provides that 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.

As soon as, Article 30(1) was referred, the first question that came up was: What is a minority? The term is not defined in the Constitution. The court was called upon to decide scope and ambit of the right conferred by Article 30(1). It is easy to say that a minority community means a community which is numerically less than 50 per cent, but then the question was not fully answered, for part of the question that yet needed to be answered, namely, 50 per cent of what? Is it 50 per cent of the entire population of India or 50 per cent of the population of a State forming a part of the Union?

After considering the contentions of the parties, the Court held that the Bill extended to the whole of State of Kerala and consequently the minority must be determined by reference to the entire population of that State. By this test Christians, Muslims and Anglo Indians were certainly minorities in the State of Kerala.

The State contended that there are three conditions which must be fulfilled before the protection and privileges of Article 30(1) may be claimed, namely,

(1) There must be a minority community.

(2) One or more of the members of that community should, after the commencement of the Constitution, seek to exercise the right to establish an educational institution of his or their choice, and

(3) The educational institution must be established for the members of his or their own community.
The Court held that - the Anglo-Indians, Christians and Muslims are minority communities in the State of Kerala, since their population is less than 50% of the state’s population.

A right under Article 30(1) exists for institutions established before and after the Constitution. The benefit of Article 30(1) should not be limited only to educational institutions established after the commencement of the Constitution. The language employed in Article 30(1) is wide enough to cover both pre-Constitution and post-Constitution institutions.

No limitation placed on the subjects to be taught in minority educational institutions. Article 30(1) gives rights not only to religious minorities but also to linguistic minorities to establish educational institutions of their choice. It is not necessary that an institution run by a religious minority should impart only religious education or that one run by a linguistic minority should teach language only. As such minorities will ordinarily desire that their children should be brought up properly and efficiently and be eligible for higher university education and go out in the world fully equipped with such intellectual attainments as will make them fit for entering the public services, educational institutions of their choice will necessarily include institutions imparting general secular education also. In other words, the Article leaves it to their choice to establish such educational institutions as will serve both purposes, namely, the purpose of conserving their religion, language or culture, and also the purpose of giving a thorough, good general education to their children. Thus minority Institutions imparting general secular education are equally protected. The minority has a right to give "a thorough, good general education".

Provisions in Clauses 3(5), 8(3) and 9 to 13 of the Kerala Education Bill held void. The court recognized three categories of Educational Institutions:

1. Which neither seek aid nor recognition from the Government.
2. Institutions which wanted Government aid and
3. Institutions which wanted recognition but not aid.

The bill in this matter did not refer to institute of first category. The second class can be further sub divided into two sub classes a) Those eligible for receiving
grants under the Constitution and b) those not so entitled but nevertheless seeking to get aid. Anglo Indian educational institutions came within the sub clause a). Article 366 (2), which defines Anglo Indian, showed that Anglo Indian community was well known minority community in India based on religion as well as language and it has been recognized as such by Supreme Court in *State of Bombay v Bombay Education Society.* The State’s contention was that such schools were only entitled to grant under Article 337 was negatived, for though the word “grant” was used in Article 337, and the word “aid” in Articles 29(2) and 30(2), the word “aid” covered grant referred to in Article 337. The conditions of grants under the Bill would infringe the rights of the educational institution not only under Article 337 but also under Article 30(2). As to grants under Article 337, Clause 3(5), Clause 8(3) and Clauses 9 to 13 of Kerala Education Bill had in substance and effect, infringed the fundamental rights under Article 30(1), and were to that extent void. Relevant clauses are here under discussed for reference.

**Clause 3(5):** "After the commencement of this Act, the establishment of a new school or the opening of a higher class in any private school shall be subject to the provisions of this Act and the rules made there under and any school or higher class established or opened otherwise than in accordance with such provisions shall not be entitled to be recognized by the Government."

**Clause 8(3):** " All fees and other dues, other than special fees, collected from the students in an aided school after the commencement of this section shall, notwithstanding anything contained in any agreement, scheme of arrangement, be made to the Government in such manner as may be prescribed."

**Clauses 9 to 13:** Clause 9 makes it obligatory on the Government to pay the salary of all teachers in aided schools direct or through the headmaster of the school and also to pay the salary of the non-teaching staff of the aided schools. It gives power to the Government to prescribe the number of persons to be appointed in the non-teaching establishment of aided schools, their salaries, qualifications and other conditions of service. The Government is authorized, under sub-clause (3), to pay to the manager a maintenance grant at such rates as may be prescribed and under sub-clause (4) to make grants-in-aid for the purchase, improvement and repairs of

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7 (1955) 1 SCR 568
any land, building or equipment of an aided school. Clause 10 requires Government to prescribe the qualifications to be possessed by persons for appointment as teachers in Government schools and in private schools which, by the definition, means aided or recognized schools.

The State Public Service Commission is empowered to select candidates for appointment as teachers in Government and aided schools according to the procedure laid down in clause 11. Shortly put, the procedure is that before the 31st May of each year the Public Service Commission shall select for each district separately candidates with due regard to the probable number of vacancies of teachers that may arise in the course of the year, that the list of candidates so selected shall be published in the Gazette and that the manager shall appoint teachers of aided schools only from the candidates so selected for the district in which the school is located subject to the proviso that the manager may, for sufficient reason, with the permission of the Commission, appoint teachers selected for any other district.

Appointments of teachers in Government schools are also to be made from the list of candidates so published. In selecting candidates the Commission is to have regard to the provisions made by the Government under clause (4) of Article 16 of the Constitution, that is to say, give representation in the educational service to persons belonging to the Scheduled Castes or Tribes - a provision which has been severely criticized by learned counsel appearing for the Anglo-Indian and Muslim communities.

Clause 12 prescribes the conditions of service of the teachers of aided schools obviously intended to afford some security of tenure to the teachers of aided schools. It provides that the scales of pay applicable to the teachers of Government schools shall apply to all the teachers of aided schools whether appointed before or after the commencement of this clause. Rules applicable to the teachers of the Government schools are also to apply to certain teachers of aided schools as mentioned in sub-clause (2). Sub-clause (4) provides that no teacher of an aided school shall be dismissed, removed, reduced in rank or suspended by the manager without the previous sanction of the authorized officer. Other conditions of service of the teacher of aided schools are to be as prescribed by rules.
Regulations prescribing the qualifications for teachers were held reasonable. Those relating to protection and security of teachers and to reservations in favor of backward classes which covered government schools and aided schools alike, were "perilously near violating that right", but "at present advised" were held to be permissible regulations. However, provisions centralizing recruitment of teachers through the State Public Service Commission and taking over the collection of fees, etc., were held to be destructive of the rights of minorities to manage the institutions.

Grant-in-aid or recognition cannot be offered at the cost of surrendering of rights under Article 30(1). The Court said what cannot be done directly cannot be done indirectly. There is no Constitutional provision for grant-in-aid to educational institutions established by Anglo-Indian community after 1948, or those established by minorities at any time. It is known fact that modern educational institutions to be properly and effectively run, considerable expense was necessary which could not be met fully by fees collected from the schools, private endowments and the like, and therefore educational institutions cannot be maintained effectively without the substantial State aid. Articles 28(3), 29(2) and 30(2) postulated that educational institutions would receive aid from the State funds. The impugned Bill also contemplated making grants-in-aid. The Court rejected the State’s contention that any conditions could be imposed for the grant, since the school can forgo the grant and exercise their right under Article 30(1), and also rejected the schools’ contention that no conditions at all could be imposed upon those rights. Making grant-in-aid was a government function which must be discharged in reasonable manner.

A Government may not make any grants or be unable to do so; but if grants were made, conditions must not be attached to those grants which would destroy the fundamental rights. Article 30 guaranteed a fundamental right; Article 45 laid down directive principle of state policy making primary and secondary education free and compulsory. The right under Article 30 was a right to establish and administer educational institutions of their choice and the right to administer effectively did not include a right to mal administer. The Government therefore could impose reasonable regulations to secure proper administration as a condition
for giving aid and recognition. Legislative powers under Articles 245 and 246 were subject to the other provisions of the constitution including fundamental rights. The court upheld several clauses of the Bill as imposing permissible regulations, but found it impossible to support Clauses 148 and 159 of the Kerala Education Bill as they were totally destructive of rights guaranteed under Article 30(1).

Under sub-clause (5) the Government is to pay such rent as may be fixed by the Collector in respect of the properties taken possession of. On taking over any school the Government is authorized to run it affording any special educational facilities which the school was doing immediately before such taking over. Right of appeal to the District Court is provided against the order of the Collector fixing the rent. Sub-clause (8) makes it lawful for the Government to acquire the school taken over under this clause if the Government is satisfied that it is necessary so to do in the public interest, in which case compensation shall be payable in

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8 Clause 14 of Kerala Education Bill provides, by sub-clause (1), that the Government, whenever it appears to it that the manager of any aided school has neglected to perform any of the duties imposed by or under the Bill or the rules made there under, and that in the public interest it is necessary so to do, may, after giving a reasonable opportunity to the manager of the Educational agency for showing cause against the proposed action, take over the management for a period not exceeding five years. In cases of emergency the Government may, under subclause (2), take over the management after the publication of notification to that effect in the Gazette without giving any notice to the Educational agency or the manager. Where any school is thus taken over without any notice the Educational agency or the manager may, within three months of the publication of the notification, apply to the Government for the restoration of the school showing the cause therefore. The Government is authorized to make orders which may be necessary or expedient in connection with the taking over of the management of an aided school.

9 Clause 15 gives power to the Government to acquire any category of schools. This power can be exercised only if the Government is satisfied that for standardizing general education in the State or for improving the level of literacy in any area or for more effectively managing the aided educational institutions in any area or for bringing education of any category under their direct control and if in the public interest it is necessary so to do. No notification for taking over any school is to be issued unless the proposal for the taking over is supported by a resolution of the Legislative Assembly. Provision is made for the assessment and apportionment of compensation and an appeal is provided to the District Court from the order passed by the Collector determining the amount of compensation and its apportionment amongst the persons entitled thereto. Thus the Bill contemplates and provides for two methods of acquisition of aided schools, namely, under sub-clause (8) of clause 14 the Government may acquire a school after having taken possession of it under the preceding subclauses or the Government may, under clause 15, acquire any category of aided schools in any specified area for any of the several specific purposes mentioned in that clause.
accordance with the principles laid down in clause 15 for payment of compensation.

As regards, the school which sought recognition and not aid, the Court observed that the distinct language, script or culture was not the only object of the choice of minority communities, but they also desired that scholars of their educational institutions should go out into the world fully equipped with the qualifications necessary for a useful career in life. But according to the education code that was in operation, the scholars of unrecognized schools were not permitted to avail themselves of education in the University and were not eligible for entering public services. Without recognition, therefore, the educational institutions established or to be established by minority communities could not fulfill the real objects of their choice and the right under Article 30(1) could not be effectively exercised. Though right to recognition was not a fundamental right, it could not be granted on the condition that no fees should be taken from the students attending primary and secondary classes, as it would, in effect, make it impossible for an educational institution established by the minority to be carried on. Article 45 required the state to provide for free and compulsory education for all children but there was nothing to prevent the State from discharging that obligation through Government and aided schools, and Article 45 did not required that obligation to be discharged at the expense of minority community. So far as institutions which sought only recognition and not aid, even the provisions abolishing fees for primary schools were held impermissible. If fees are to be abolished in pursuance of the directive principle in Article 45, the State should compensate the institution for the loss of fees.

To the state argument that the minorities should not be pampered in maintaining their selfish and sectional interest, the Court held, “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.

The petitioners moved this Court for a writ in the nature of mandamus or other writ directing the State of Bombay and the Director of Education not to compel the society and the petitioners to reserve 80% or any seats in the training
College for "the Government nominated teachers" nor to compel the society and
the petitioners to comply with the provisions of Rules 5(2), 11, 12 and 14 and not
to withdraw recognition of the College or withhold grant-in-aid under Rule 14 or
otherwise.

The petitioners are members of a religious denomination and constitute a
religious minority. The society of which they are members maintains educational
institutions primarily for the benefit of the Christian community, but admission is
not denied to students professing other faiths. They maintain a college for training
women teachers required for their primary schools. The petitioners claim that their
fundamental rights guaranteed by Arts. 30(1), 26(a), (b), (c) and (d) and 19(1)(f)
and (g) are violated by letters dated May 28, 1955, December 27, 1955 and March
29, 1956 threatening to withhold the grant-in-aid and to withdraw recognition of
the College.

6.4 Right to establish, maintain and administer Educational institutions -
Article 30(1) – *Sidhrajbhai Sabbai v. State of Gujarat*

The ability to regulate admissions was once again questioned before the
Supreme Court which examined the nature and scope of Cochin University of
Science & Technology Article 19 in comparison with Article 30(1) in Rev.
*Sidhrajbhai Sabbai v. State of Gujarat.*10 The Court observed that unlike Article
19, the fundamental freedom under Article 30(1) was in absolute terms. All
minorities, linguistic or religious have by Article 30(1) an absolute right to
establish and administer educational institutions of their choice; and any law or
executive direction which sought to infringe the substance of that right under
Article 30(1) would to that extent be void. Still, it was open to the State to impose
regulations. Regulations made in the true interests of efficiency of instruction,
discipline, health, sanitation, morality, public order, etc. could be imposed. Such
regulations were not restrictions on the substance of the right, which was

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10 AIR 1963 SC 540: (1963) 3 SCR 837. In this case the issue before the Court was
regulation imposed on a minority run Training College for Teachers established by the
Gujarat and Kathiawar Presbyterian Joint Board, which stipulated 80% seats to be
allotted to School Board teachers deputed by the government. Recognition and grant-
in-aid were made subject to the compliance of the College with the regulation. The
Supreme Court held this to be violative of fundamental right guaranteed under Article
30(1).
guaranteed: they secured the proper functioning of the institutions in educational matters. The Court observes,

“The right is intended to be effective and is not to be whittled down by so-called regulative measures conceived by the Cochin University of Science & Technology in the interest not of the minority educational institution, but of the public or the nation as a whole.”

Regulations that may lawfully be imposed either by legislative or executive action, as a condition of receiving grant or of recognition had to be directed to making the institution effective as an educational institution even while retaining its character as a minority institution. Such regulation had to satisfy a dual test — the test of reasonableness and the test that it was regulative of the educational character of the institution and was conducive to making the institution an effective vehicle of education for the minority community or other persons who resorted to it.

The Court held that Art. 26(a) conferred on religious denominations a right to establish and maintain institutions for religious and charitable purposes and in a larger sense an educational institution may be regarded as charitable. But in the view of Article 30 (1), it found it unnecessary to consider the case further under Article 26.

6.4.1 Rights under Article 30(1) are absolute but State through legislation or by executive direction may prescribe reasonable regulations to ensure the excellence of institutions aided

The Court held that serious inroads were made by the Rules and orders issued by the Government of Bombay upon the, right vested in the society to administer the training College. Article 30(1) provides that all minorities have the right to establish and administer educational institutions of their choice, and Article 30(2) enjoins the State, in granting aid to educational institutions not to discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language. Clause (2) is

11 AIR 1963 SC 540 at p.547.
only a phase of the non-discrimination clause of the Constitution and does not
derogate from the provisions made in clause (1).

Unlike Article 19, the fundamental freedom under Article 30(1), is absolute
in terms; it is not made subject to any reasonable restrictions of the nature the
fundamental freedoms enunciated in Article 19 may be subjected to. All minorities,
linguistic or religious have by Article 30(1), an absolute right to establish and
administer educational institutions of their choice; and any law or executive
direction which seeks to infringe the substance of that right under Article 30(1)
would to that extent be void. This, however, is not to say that it is not open to the
State to impose regulations upon the exercise of this right. The fundamental
freedom is to establish and to administer educational institutions: it is a right to
establish and administer what are in truth educational institutions, institutions
which cater to the educational needs of the citizens, or sections thereof. Regulation
made in the true interests of efficiency of instruction, discipline, health, sanitation,
morality, public order and the like may undoubtedly be imposed. Such regulations
are not restrictions on the substance of the right which is guaranteed: they secure
the proper functioning of the institution, in matters educational.

6.4.2 Right to administer does not include right to maladminister

The Court rejected the extreme contentions advanced by the Managers of
the educational institutions and by the State, and observed that the right to
administer did not include a right to mal-administer, and the minority could not ask
for aid or recognition for an educational institution run by them in unhealthy
surroundings, without any competent teachers possessing any semblance of
qualification, and which did not maintain even a fair standard of teaching or which
taught matters subversive of the welfare of the scholars. The constitutional right to
administer an educational institution of their choice, it was observed, does not
necessarily militate against the claim of the State to insist that in order to grant aid
the State may prescribe reasonable regulations to ensure the excellence of
institutions to be aided, but the State could not grant aid in such a manner as to
take away fundamental right of the minority community under Article 30(1).

The court summed up the position in following words:
“The right established by Article 30(1) is a fundamental right declared in terms absolute. Unlike the fundamental freedoms guaranteed by Article 19, it is not subject to reasonable restrictions. It is intended to be a real right for the protection of the minorities in the matter of setting up of educational institutions of their own choice. The right is intended to be effective and is not to be whittled down by so-called regulative measures conceived in the interest not of the minority educational institution, but of the public or the nation as a whole. If every order which while maintaining the formal character of a minority institution destroys the power of administration if held justifiable because it is in the public or national interest, though not in its interest as an educational institution, the right guaranteed by Article 30(1) will be but a "teasing illusion", a promise of unreality. Regulations which may lawfully be imposed either by legislative or executive action as a condition of receiving grant or of recognition must be directed to making the institution while retaining its character as a minority institution effective as an educational institution. Such regulation must satisfy a dual test - the test of reasonableness, and the test that it is regulative of the educational character of the institution and is conducive to making the institution an effective vehicle of education for the minority community or other persons who resort to it.”

The Court was of the view that the Rule 5(2) of the Rules for Primary Training Colleges, and Rules 11 and 14 for recognition of Private Training institutions, insofar as they relate to reservation of seats therein under orders of Government, and directions given pursuant thereto regarding reservation of 80% of the seats and the threat to withhold grant-in-aid and recognition of the college, infringe the fundamental freedom guaranteed to the petitioners under Article 30(1).

6.5 Rev. Father W. Proost and Ors. v. The State of Bihar and Ors.12

The Principal and the Rector of St. Xavier's College, Ranchi and two parents of students, in an Article 32 petition, challenged Section 48-A of the Bihar State Universities (University of Bihar, Bhagalpur and Ranchi) Act, 1960 as amended by Second Amendment Act, 1961 as *ultra vires* to Articles 29 and 30 of the Constitution.

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St. Xavier's College was established by the Jesuits of Ranchi. It was affiliated to Patna University in 1944. The management of the college vests in a Governing Body consisting of 11 members. They were:

"(i) The Superior Regular of Ranchi Jesuit Mission--President ex-officio.

(ii-v) Four Counselors to the Superior Regular to be nominated by the Jesuit Mission authorities.

(vi) The Principal of the College--Vice-president and Secretary ex-officio.

(vii) One representative of the teaching staff of the college elected by the members of the staff.

(viii) One representative of the Patna University.

(ix-xi) Three persons to represent Hindu, Muslim and Aboriginal interests."

The terms of service of Religious staff are determined by the Jesuit Mission Authorities, but those of the members of the Lay staff including their appointment are determined by the Governing Body. All appointments to the teaching staff, both Religious and Lay are reported to the Syndicate of the Patna University. The object of founding the college inter alia is 'to give Catholic youth a full course of moral and liberal education, by imparting a thorough religious instruction and by maintaining a Catholic atmosphere in the institution.' The college is, however, open to all non-catholic students. All non-catholic students receive a course of moral science.

The College was thus founded by a Christian minority and the petitioners claim they had a right to administer it, as Constitutional right guaranteed to minorities by Article 30. The petitioners' complaint is that the Bihar Legislature passed an amending Act and introduced in the Bihar Universities Act Section 48-A to come into force from March 1, 1962, which deprives them of this protection and is, therefore, ultra vires.

While this petition was pending in this Court, the Governor of Bihar promulgated an Ordinance on July 16, 1968. It amended the Bihar State Universities Act, 1960 by inserting Section 48-B after Section 48-A. The new
section read: "48-B. College established and administered by a minority entitled to
make appointments etc. with approval of the Commission and the Syndicate.

The petitioners, therefore, claim the protection of Section 48-B and submit
that as an affiliated college established by a minority based on religion or
language, they are exempt from the operation of Section 48-A (6), (7), (8), (9), (10)
and (11), They say that if this position is accepted, they will withdraw the petition
which has become superfluous now.

The Supreme Court held that section 48 A completely took away the
autonomy of the governing body of the college in the favour of University Services
Commission.

6.5.1 Article 29(1) and Article 30(1) create separate rights

The State conceding that the Jesuits answer the description of minority
based on religion, argued that the protection was available only if the institution
was founded to conserve 'language, script or culture' and since the college is open
to all sections of the people and there is no programme of this kind, the protection
of Article 30(1) would not available.

The Court rejecting the argument held that the width of Article 30(1)
cannot be cut down by introducing in it considerations on which Article 29(1) is
based. The latter Article is a general protection which is given to minorities to
conserve their language, script or culture. The former is a special right to
minorities to establish educational institutions of their choice. This choice is not
limited to institution seeking to conserve language, script or culture and the choice
is not taken away if the minority community having established an educational
institution of its choice also admits members of other communities. That is a
circumstance irrelevant for the application of Article 30(1) since no such limitation
is expressed and none can be implied. The two Articles create two separate rights,
although it is possible that they may meet in a given case.

The Court held that St. Xavier's College was founded by a Catholic
Minority Community based on religion and that this educational institution has the
protection of Article 30(1) of the Constitution. Therefore, it is exempted under
Section 48-B of the Act.
6.6  Rev. Bishop S.K. Patro and Ors. v The State of Bihar and Ors.\textsuperscript{13}

Church Missionary Society School Bhagalpur, challenged the Government order, directing school to constitute managing committee in accordance with the Order, as it interfered with the rights of minority under Article 30(1), to control affairs of school.

Two other petitions were also filed in Supreme Court claiming relief on the footing that by the order dated May 22, 1967, of the Government of Bihar, the fundamental right of the Christian minority to maintain an educational institution of its choice and guaranteed by Article 30(1) is infringed.

The only question which falls to be determined is whether the petitioners in the two writ petitions and the appellants in appeal were entitled to claim the protection of Article 30 of the Constitution on the ground that the Church Missionary Society Higher Secondary School at Bhagalpur is an educational institution of their choice established by a minority.

6.6.1 Benefit of Article 30(1) is available to pre constitution and post constitution educational institutions

There is no reason why the benefit of Article 30(1) should be limited only to educational institutions established after the commencement of the Constitution. The language employed in Article 30(1) is wide enough to cover both pre-Constitution and post-Constitution institutions. It must not be overlooked that Article 30(1) gives the minorities two rights, namely, (a) to establish, and (b) to administer, educational institutions of their choice. The second right clearly covers pre-Constitution schools just as Article 26 covers the right to maintain pre-Constitution religious institutions.

6.6.2 Funds received from foreign country for assisting the school is not a
ground for denying the protection under Article 30(1) on the ground
that it is not established by minority

The Court held that High Court had not correctly appreciated important
documentary evidence which showed that in 1854 the school was set up by local
Christians in buildings erected from funds collected by them. Although substantial
assistance was obtained from Church Missionary Society of London, it could not
be said on that account that the school was not educational institution established
by a minority. The fact that funds were obtained from the United Kingdom for
assisting in setting up and developing the School or that the management of the
institution was carried on by some persons who may not have been born in India is
not a ground for denying the protection of Article 30(1).

6.6.3 Citizenship is not a qualification for members of minority to avail the
benefit of Article 30(1)

Supreme Court disagreeing with Patna High Court held that there was no
settled concept Indian Citizenship in the year 1854 independently of the citizenship
of the British Empire, to incorporate in the interpretation of Article 30 in respect of
an institution established by a minority the condition that it must in addition be
proved to have been established by persons who would, if the institution had been
set up after the Constitution, have claimed Indian citizenship, is to whittle down
the protection of Article 30 in a manner not warranted by the provisions of the
Constitution. It could not be said that the Christian Missionaries who had settled in
India and the local Christian residents of Bhagalpur did not form a minority
community.

6.6.4 Rights under Article 30(1) not conferred on non-resident foreigners

Court opined that Article 30(1) did not confer upon nonresident foreigners
the right to set up educational institutions of their choice in India- persons setting
up such institutions must be resident of India and form a well defined religious and
linguistic minority.

The order passed by the Educational authorities requiring the Secretary of
the Church Missionary Society Higher Secondary School to take steps to constitute
a Managing Committee in accordance with the order dated May 22, 1967, was declared invalid.

6.7  Issues of Admission and Medium of Instruction–D.A.V. College, Bhatinda, etc. v State of Punjab and Ors. 14

In this case the petitioners challenged Ss. 4(2) and 5 of Punjab University Act, 1961 and certain circulars and notifications as unconstitutional and void.

The main contention of the Petitioners however, was that

1. Section 4(2) of the Punjab University Act does not empower the University to make Punjabi the sole medium of instruction;

2. It is not within the legislative power of the State under Entry 11 of List II to make Punjabi the sole medium of instruction, which power in fact vested in the Union Parliament under entry 66 of List I.

3. In so far as the medium of instruction in Punjabi with Gurumukhi as the script is sought to be imposed on the educational institutions established by the Arya Samajis a religious denomination, they also offend Article 26(1), 29(1) and 30(1) of the Constitution. The impugned Notification and the Circulars were ultra vires and Unconstitutional.

The prepositions that culled out from the judgment are as under:

6.7.1  Arya Samajis held as religious and linguistic minority in Punjab

Arya Samajis who are part of the Hindu community, in Punjab are a religious minority and that they had a distinct script of their own the Devnagri which entitled them to invoke the guarantees under Article 29(1) and 30(1) of the Constitution.

6.7.2  Minority has the right to have a choice of the medium of instruction

Minorities who have a distinct language, script and culture and whose right to conserve them, and to administer their institutions are guaranteed under Article 29(1) and 30(1) of the Constitution. The right of the minorities to establish and

administer educational institutions of their choice would include the right to have a choice of the medium of instruction also which would be the result of reading Article 30(1) and 29(1). Surely then there was an implicit in such fundamental right the right to impart instruction in their own institutions to the children of their own community in their own language. To hold otherwise will be to deprive Article 29(1) and Article 30(1) of the greater part of their contents.

6.7.3 State does not have legislative competence to prescribe any particular medium of instruction

The Court took the view that neither the University nor the State could provide for imparting education in a medium of instruction in a language and script which stifles the language and script of any section of the citizens. It vetted the issue on the touchstone of Articles 29 and 30 and held that such a course would trespass on the rights of those sections of the citizens who have a distinct language or script, which they have a right to conserve through educational institutions of their own.

The issue of minority educational rights came up before the Supreme Court in the context of a right to establish and gain recognition for minority owned educational institutions.

It is also worthy of note that no State has the legislative competence to prescribe any particular medium of instruction in respect of higher education or research and scientific or technical instructions, if it interferes with the Power of the Parliament under item 66 of List I to coordinate and determine the standards in such institutions.

Section 4(3) of the Act did not empower Punjab University to prescribe Punjabi in the Gurumukhi script as an exclusive medium of instruction. The University Act having compulsorily affiliated these Colleges must cater to their

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15 *D.A.V. College v. State of Punjab*, (1971) 2 SCC 269: AIR 1971 SC 1737. In this case, the Arya Samajists objected to the compulsory re-affiliation of their college with the Guru Nanak University. Earlier it was affiliated to the Punjab University. The petitioners apprehended that since the Guru Nanak University was established to promote the Sikh religion and Punjabi language in Gurumukhi script, their compulsory affiliation to the University would violate their rights under Articles 29(1) and 30(1). The Court held that promoting the study of Punjabi or the study of a great Saint of India being the avowed objectives of the University would in no way infringe the fundamental right of the petitioners and hence declined to interfere.
needs and allow them to administer their institutions in their own way and impart instructions in the medium and write examination in their own script. The impugned Circulars of 15-6-1970 as amended by Circular of 2-7-1970 in terms of the resolution of the Senate Sub-Committee of 1-7-1970 and that of 7-10-1970 were struck down as being, invalid and *ultra vires* of the powers vested in the University.

### 6.8 *State of Kerala v. Very Rev. Mother Provincial, etc.,*\(^{16}\)

In *State of Kerala v. Very Rev. Mother Provincial,*\(^{17}\) the Supreme Court struck down certain sections of the Kerala University Act, 1969 (9 of 1969) as *ultra vires* Articles 30(1) and 19.\(^{18}\)

In this case the Petitioners challenged the validity of the following sections of the Kerala University Act 9 of 1969, on the ground that they violated Article 30: Ss. 48, 49, 53, 56, 58 and 63.

The Kerala University Act 1969 was passed to reorganise the University of Kerala with a view to establishing a teaching, residential and affiliating University for the southern districts of the State of Kerala. Some of its provisions affected private colleges, particularly those founded by minority communities in the State. Their constitutional validity was challenged by some members of those communities on various grounds in writ petitions filed in the High Court.

It was contended that these provisions of the new Act were violative of Article 30, which protects the rights of the minorities to establish and administer educational institutions of their choice as also Articles 19(1) (f), and 14 of the Constitution. The High Court allowed the writ petitions and declared some of the provisions of the Act invalid.

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17 AIR 1970 SC 2079.
18 Sub-sections (2), (4) and (6) of Ss. 48 and 49 are *ultra vires* Article 30(1) since these clearly vest the management and administration in the hands of two bodies with mandates from the University. Sub-sections (1), (2), (3) and (9) of S. 53, sub-sections (2) and (4) and S. 56, (S. 58) insofar as it removes disqualification which founders may not like to agree to) and S. 63 are *ultra vires* Article 30(1) in respect of minority institutions. The provisions (except S. 63) are also offensive to Article 19(1)(f) insofar as the petitioners are citizens of India both in respect of majority as well as minority institutions.
The High Court allowed the writ petitions and declared that sub-Ss. (2) and (4) of s. 48, Sub-Ss. (2) and (4) of s. 49, sub-Ss. (1), (2), (3) and (9) of s. 53, sub-Ss. (2) and (4) of s. 56, s. 58 in so far as the minority institutions are concerned, offensive to Article 30(1) and therefore void.

On appeal to Supreme Court, held: The High Court was right in holding that sub-Ss. (2) and (4) of Ss. 48 and 49 are *ultra vires* to Article 30 (1). Sub-section (6) of each of these two sections is also *ultra vires*: they offend more than the other two of which they are a part and parcel. The High Court was also right in declaring that sub-Ss. (1), (2), (9) and of s. 53, sub-Ss. (2) and (4) of s. 56, are *ultra vires* as they fall within Ss. 48 and 49; that s. 58 (in so far as it removes disqualification which the founders may not like to agree to, and s. 63 are *ultra vires* Article 30(1) in respect of the minority institutions.

On the question of establishment of Universities, the Court observed that Article 30(1) contemplates two rights, which are separated in point of issue. The first was the initial right to establish institutions of the minority’s choice. Establishment in this context meant the bringing into being of an institution and it must be by a minority community. Next was administration of such an institution. Administration meant ‘management of the affairs’. The minority Cochin University of Science & Technology institutions could not be allowed to fall below the standards of excellence of educational institutions or be allowed to refuse to follow the general pattern under the guise of conclusive right to management.

The main contentions of the minorities came from Article 30 (1) of the Constitution. Which states as: All minorities, whether based on religions or language, shall have the right to establish and administer educational institutions of their choice.

It is declared to be a fundamental right of the minorities, whether based on religion or language, to establish and administer educational institutions of their choice. It is conceded by the petitioners representing minority communities that the State or the University to which these institutions are affiliated may prescribe standards of teaching and the scholastic efficiency expected from colleges.
Court held that establishment here means the bringing into being of an institution and it must be, by a minority community. It matters not if a single philanthropic individual with his own means founds the institution or the community at large contributes-the funds.

The next part of the right relates to the administration of such institutions. Administration means 'management of the affairs' of the institution. This management must be free of control so that the founders or their nominees can mould the institution as they think fit, and in accordance with their ideas of how the interests of the community in general and the institution in particular will be best served. No part of this management can be taken away and vested in another body without an encroachment upon the guaranteed right.

Supreme Court held that though the provisions of the Act were made bona fide and in the interest of education but unfortunately they do affect the administration of these institutions and rob the founders of that right which the Constitution desires should be theirs. The provisions, even if salutary, cannot stand in the face of the constitutional guarantee. The result of the above analysis of the provisions which have been successfully challenged discloses that High Court was right in its appreciation of the true position in the light of the Constitution. Supreme Court agreed with the High Court that sub-Ss. (2) and (4) of Ss. 48 and 49 are ultra vires Art. 30(1) and that sub-Ss. (6) of these two sections were also ultra vires. They offend more than the other two of which they are a part and parcel. Court also agreed that sub-Ss. (1), (2), (3) and (9) of s. 53, sub-Ss. (2) and (4) of s. 56 were ultra vires as they fall with Ss. 48 and 49. Court also agreed that Section 58 (in so far as it removes disqualification which the founders may not like to agree to) and Sec. 63 are ultra vires Articles 30(1) in respect of the minority institutions. Thus Supreme Court upheld the decision of the High Court under appeal.
6.9 *The Ahmedabad St. Xavier's College Society and Anr. v. State of Gujarat and Anr.*

The Petitioner Society and St Xavier’s College seek to provide higher education to Christian students. Children, however, of all classes and creeds provided they attain qualifying academic standards are admitted to the St. Xavier’s College. The college was an affiliated college under the Gujarat University Act, 1949.

St. Xavier’s College Society and St. Xavier’s College challenged the validity of the following sections of the Gujarat University (Amendment) Act, 1972, on the ground that they violated Article 30: Section 33A (1) (a), which provided for the constituting of the Governing Body and selection committee; Ss 40 and 41, which converted affiliated colleges into constituent colleges; and Ss 51 A and 52 B which provided for the dismissal, removal and termination of the services of members of the staff of colleges, and the reference of disputes to arbitration. Although the petitioners did not impugn the validity of S 33A (1) (b) which provided for the recruitment of the Principal and the teaching staff of colleges, some of the interveners impugned the validity of that section also.

6.9.1 **Right to recognition and article 30(1) - Duty to Good Administration**

The fundamental question addressed by the *Supreme Court in Ahmedabad St. Xavier’s College Society v. State of Gujarat,* was whether the right of recognition or affiliation was part of the fundamental right under Article 30(1). The Court held that any law, which provided for affiliation on terms that abridge the right of linguistic and religious minorities to administer and establish educational institutions of their choice, would offend Article 30(1). However, affiliation being related to the academic and educational character of the institutions, the regulatory measures on the courses of study, the qualifications, appointment and conditions of employment of teachers, the health and hygiene of students, facilities for libraries and laboratories, were for affiliation, uniformity, efficiency and excellence in educational courses and hence did not violate any fundamental right of the minority institutions under Article 30(1).

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In the opinion of Jaganmohan Reddy and Alagiriswami, JJ., the meaningful exercise of the right under Article 30(1) would and must necessarily involve recognition of the secular education imparted by the minority institutions. Where the educational institutions of a minority found it inconvenient or impossible to secure such a recognition even from outside the State in which they are established, then education including University education being a State subject and the legislative power of the State also being subject to Article 29(1) and Article 30(1), the minorities could insist on recognition to the educational qualifications awarded by them that conformed to the educational standards prescribed by the State even where affiliation was not provided for by the University statutes.

Khanna, J., opined that Article 30(1) was designed not only to prevent disabilities of the minorities but also to create positive rights for them. It was not permissible to exact from the minorities in lieu of the recognition or affiliation of their institutions a price that would entail the abridgement or extinguishment of the right under Article 30(1).

In the opinion of Mathew and Chandrachud, JJ., while no educational institution established by a religious or linguistic minority could claim total immunity from regulations by the legislature or the University if it wanted affiliation or recognition such regulations were permissible if they were relevant to the purpose of securing or promoting the object of recognition or affiliation.

Beg, J, opined that if the object of an enactment was to compel a minority institution, even indirectly, to give up the exercise of its fundamental rights, the provisions which had this effect would be void or inoperative against the minority institution.21

Dwivedi, J., was of the opinion that there was no express or implied grant of the right of affiliation in Article 30(1) and since Article 30(1) did not grant the

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21 The price of affiliation cannot be a total abandonment of the right to establish and administer a minority institution conferred by Article 30(1) of the Constitution. Right of affiliation is a statutory and not a fundamental right. It is open to the minority institution concerned to free itself from any statutory control or fetters if freedom from them is considered by it to be essential for the full exercise of its fundamental rights under Article 30(1) of the Constitution.
right of affiliation, the State was not under an obligation to have an affiliating University. It was open to a State to establish only a teaching University.

Ray, C.J. and Palekar, J., were of the view that the right to administer consisted of four principal matters. First was the right to choose its managing or governing body. Second was the right to choose its teachers. Third was the right not to be compelled to refuse admission to students and fourth, the right to use its properties and assets for the benefit of its own institution. The right conferred on the religious and linguistic minorities to administer educational institutions of their choice was not an absolute right. Autonomy in administration meant the right to administer effectively and to manage and conduct the affairs of the institutions and this involved a correlative duty of good administration.

Khanna, J. opined that the right conferred by Article 30(1) being in absolute terms was not subject to restrictions as in the case of rights conferred by Article 19 of the Constitution. Provisions calculated to safeguard the interest of teachers would result in security of tenure and inevitably attracted competent persons for the posts of teachers. Regulations made for this purpose were in the interest of minority educational institutions and as such they would not violate Article 30(1).

Mathew and Chandrachud, JJ., were of the view that just because Article 30(1) was couched in absolute terms, it did not follow that the right guaranteed was not subject to regulatory laws which would not amount to its abridgement. Even if an educational institution established by a religious or linguistic minority did not seek recognition, affiliation, or aid, its activity could be regulated in various ways provided the regulations did not take away or abridge the guaranteed right.

Beg, J., was of the opinion that the essence of the right guaranteed by Article 30(1) of the Constitution was freedom to minority institutions to choose the pattern of education as well as of the administration of their educational institutions. Despite the ‘absoluteness’ of the terms used there was a power in the State to regulate the exercise of that freedom, but the degree of reasonably permissible control must vary from situation to situation.
In the view of Dwivedi, J., absolute words did not confer absolute rights, since the generality of the words might have been cut down by the context and the scheme of the statute or the Constitution.\textsuperscript{22}

On the question of whether Article 30(1) was to be read subject to Article 29(1) thus limiting the scope and ambit of the rights of religious and linguistic minorities to establish and administer educational institutions of their choice to establishing educational institutions only for conserving their language, script or culture, the Court’s opinion was expressed in the following manner.

Ray, C.J. and Palekar, J., considered Articles 29 and 30 to confer four distinct rights. (1) The right of any section of the resident citizens to conserve its own language, script or culture as mentioned in Article 29(1); (2) the right of all religious and linguistic minorities to establish and administer educational institutions of their choice as mentioned in Article 30(1); (3) the right of an educational institution not to be discriminated against in the matter of State aid on the ground that it was under the management of a religious or linguistic minority as mentioned in Article 30(2), and (4) the right of the citizen not to be denied admission into any State-maintained or State-aided educational institution on the ground of religion, caste, race or language, as mentioned in Article 29(2). Their Lordships were of the opinion that it would be wrong to read Article 30(1) as restricting the right of minorities to establish and administer educational institutions of their choice only to cases where such institutions are concerned with language, script or culture of the minorities.\textsuperscript{23}

\textsuperscript{22} A glance at the context and scheme of Part III of the Constitution would show that the Constitution-makers did not intend to confer absolute rights on a religious or linguistic minority to establish and administer educational institutions. Articles 29(3), 15(4) and 28(3) place certain express limitations on the right in Article 30(1). There are also certain implied limitations on this right. It is impossible for a member of a civilised community to have absolute rights. The right under Article 30(4) is also subject to regulation for the protection of various social interests such as health, morality, security of State, public order and the like, for the good of the people is the supreme law.

\textsuperscript{23} The reasons are these. First, Article 29 confers the fundamental right on any section of the citizens which will include the majority section whereas Article 30(1) confers the right on all minorities. Second. Article 29(1) is concerned with language, script or culture, whereas Article 30(1) deals with minorities of the nation based on religion or language. Third, Article 29(1) is concerned with the right to conserve language, script or culture, whereas Article 30(1) deals with the right to establish and administer
According to Khanna, J., in order to invoke the benefit of Article 29(1), all that was essential was that a section of the citizens residing in the territory of India or any part thereof should have a distinct language, script or culture of its own. Once that was proved, those citizens had the right to conserve their language, script or culture irrespective of the fact whether they were members of the majority community or minority community.24

Mathew and Chandrachud, JJ., concluded that while Article 29 did not deal with education as such, Article 30 dealt only with the establishment and administration of educational institutions. In a given case, the two articles might overlap but Article 29(1) could not limit the width of Article 30(1). The right guaranteed to a religious or linguistic minority under Article 30(1) was the right to establish any educational institution of its choice.

Beg, J., also echoed the same view. According to him, although, Articles 29 and 30 might supplement each other so far as certain rights of minorities were educational institutions of the minorities of their choice. Fourth, the conservation of language, script or culture under Article 29(1) may be by means wholly unconnected with educational institutions and similarly establishment and administration of educational institution by a minority under Article 30(1) may be unconnected with any motive to conserve language, script or culture. A minority may administer an institution for religious education which is wholly unconnected with any question of conserving a language, script or culture. The scope of Article 30 rests on linguistic or religious minorities and no other section of citizens of India has such a right. The whole object of conferring the right on minorities under Article 30 is to ensure that there will be equality between the majority and the minority. If the minorities do not have such special protection they will be denied equality. It is, therefore, not at all possible to exclude secular education from Article 30.

24 Clause (1) of Article 29 and clause (1) of Article 30 deal with distinct matters and it is not permissible to circumscribe or restrict the right conferred by clause (1) of Article 30 by reading in it any limitation imported from clause (1) of Article 29. It is difficult to subscribe to the view that educational institutions mentioned in Article 30(1) are only those which are intended to conserve language, script or culture of the minority. Clause (1) of Article 30 also contains the words "of their choice". These words which qualify "educational institutions" show the vast discretion and option which the minorities have in selecting the type of institutions which they want to establish. In case an educational institution is established by a minority to conserve its distinct language, script or culture, the right to establish and administer such institution would fall both under Article 29(1) as well as under Article 30(1). The minorities can, however, choose to establish an educational institution which is purely of a general secular character and is not designed to conserve their distinct language, script or culture. The right to establish and administer such an institution is guaranteed by Article 30(1) and the fact that such an institution does not conserve the distinct language; script or culture of a minority would not take it out of the ambit of Article 30(1).
concerned, yet, Article 29 of the Constitution did not impose in any way a limit on the kind or character of education which a minority might choose to impart through its institution to the children of its own members or to those of others who might choose to send their children to its schools.

According to Dwivedi, J., the scope of Article 30(1), as regards both the content of the right and the beneficiaries of the right, was wider than that of Articles 25 and 26. Article 30(1) secured the right to a secular activity to a religious or linguistic minority. Such a minority might establish and administer institutions for imparting secular general education. While Article 29(1) gave security to an interest, Article 30(1) gave security to any activity. The words ‘of their choice’ merely made patent what was latent in Article 30(1). Those words were not intended to enlarge the areas of choice already implied in the right conferred by Article 30(1). The right to establish an educational institution under Article 30(1) was not confined to the purposes specified in Article 29(1).

On the question of special rights to minorities and the equality clause with respect to Articles 29, 30 and 14 the Court held that the equality between members of the majority and of the minority must be effective, genuine equality, not just in theory but also in fact, and was nothing but juridical equality.

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25 Jaganmohan Reddy and Alagiriswami, J.J., opines that equality of treatment of minority and majority or equality before law precludes discrimination. The equality between members of the majority and of the minority must be effective, genuine equality.

26 Khanna, J., was of the view that the idea of giving some special rights to the minorities is not to have a kind of a privileged or pampered section of the population but to give to the minorities a sense of security and a feeling of confidence. The differential treatment for the minorities by giving them special rights is intended to bring about an equilibrium, so that the ideal of equality may not be reduced to a mere abstract idea but should become a living reality and result in true, genuine equality, an equality not merely in theory but also in fact.

27 Mathew and Chandrachud, J.J., explained that the problem of the minorities was not really a problem of the establishment of equality because if taken literally, such equality would mean absolute identical treatment of both the minorities and the majorities. This would result only in equality-in-law but inequality-in-fact. So minorities can be protected not only if they have equality but also, in certain circumstances, differential treatment. Juridical equality postulates that religious minority should have a guaranteed right to establish and administer its own educational institutions where it can impart secular education in a religious atmosphere. Whatever spiritual mission of promoting unity the Government may have, it is conditioned by its primal duty of promoting justice, respecting guaranteed rights and ensuring equality of difference. A condition
While there could not be too many additional conditions for recognition, there could not be oppression or exploitation of educational staff and maladministration. In *Frank Anthony Public School Employees’ Assn. v. Union of India*,\(^2^8\) which was an important case in this context, the Court considered the constitutionality of statutory measures regulating terms and conditions of service of employees of minority educational institutions for maintaining educational standards and excellence in the context of Articles 30(1) and 14 and held it as not offending Article 30(1).\(^2^9\) It reasoned that since the maintenance of educational standard and excellence of the educational institutions would depend directly on the excellence of the teaching staff, and in turn, that would depend on the quality and the contentment of the teachers, the conditions of service pertaining to minimum qualifications of teachers, their salaries, allowances and other conditions of service which ensure security, contentment and decent living standards to teachers and which would consequently enable them to render better service to the institution and the pupils could not be said to be violative of Article 30(1). The management of a minority educational institution could not be permitted under the guise of Article 30(1) to oppress or exploit its employees any more than any other private employee.\(^3^0\) Oppression or exploitation of the teaching staff of an

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\(^2^8\) (1986) 4 SCC 707. The Court observed that the objection to the reference to an Arbitration Tribunal in *Ahmedabad St. Xavier's College Society case* was to the wide power given to the Tribunal to entertain any manner of dispute and the provision for the appointment of umpire by the Vice-Chancellor and the provisions for an appeal to the Syndicate was considered objectionable in *Very Rev. Mother Provincial case* as it conferred the right on the university.

\(^2^9\) The regulatory measures under Ss. 8 to 11, except S. 8(2), of Delhi School Education Act for recognised private schools were held to be not violative of Article 30(1). S.12 of that Act, which excluded the teachers and other employees of unaided minority schools from the beneficial provisions of Ss. 8 to 11, except S. 8(2) were held to be unconstitutional. The teachers and employees of Frank Anthony Public School, New Delhi, being a recognised unaided private minority school were held entitled to parity in pay scales and other conditions of service with those available to their counterparts in Government schools of Delhi.

\(^3^0\) Chapter IV of the Delhi School Education Act consisting of Ss. 8 to 12 deals with “Terms and conditions of service of employees of recognised private schools”. But S. 12 excludes operation of Ss. 8 to 11 to unaided minority schools. As a result of this exclusion, (1) the Administrator may not make rules regulating the conditions of service of employees of unaided minority schools; (2) the prior approval of the Director need not be obtained for the dismissal, removal, reduction in rank or termination of service otherwise than by dismissal or removal of an employee of an
educational institution was bound to lead to discontent and deterioration of the standard of instruction imparted in the institution affecting adversely the object of making the institution an effective vehicle of education for the minority community or other persons who resort to it. The management of a minority institution could not complain of invasion of the fundamental right to administer the institution when it denied the members of its staff the opportunity to achieve the very object of Article 30(1), which was to make the institution an effective vehicle of education.

Commenting on the nature of the right under Article 30(1) in the context of the constitutionality of regulatory measures restricting such right the Court observed that the right as guaranteed to religious and linguistic minorities by Article 30(1) was twofold:— (1) to establish and (2) to administer educational institutions of their choice. It explained that the key to the Article lied in the words ‘of their own choice’ and that these words indicated that the extent of the right was to be determined, not with reference to any concept of State necessity and general societal interest but with reference to the goal of making the minority institutions ‘effective vehicles of education for the minority community or other persons who resort to them.’ It held that the regulatory measures which were designed towards the achievement of this goal could not be considered to impinge upon the right guaranteed by Article 30(1) and that the question in each case was whether the particular measure was designed to achieve such goal, without nullifying any part of the right of management in substantial measure.

unaided minority school; (3) against such dismissal, removal or reduction in rank, there is to be no appeal; (4) neither prior nor subsequent approval of the Director need be obtained to suspend any of the employees of an unaided minority school; (5) the scales of pay and allowances, medical facilities, pension, gratuity, provident fund and other benefits which may be given to employees are subject to no regulation except that they should be contained in a written contract of service and need not conform to the scales of pay and allowances etc. of the employees of the corresponding status in schools run by the appropriate authority as in the case of other recognised private schools. The Frank Anthony Public School New Delhi is a recognised private unaided minority school. The pay scales and other terms and conditions of service of the teachers and other employees of this school compared unfavourably with those of teachers and employees of Government schools. Since by virtue of S. 12, the beneficial provisions of Ss. 8 to 11 of the Act were inapplicable to this school, the Employees’ Association of the school moved a writ petition before Supreme Court seeking a declaration that S. 12 was unconstitutional as being violative of Articles 14, 21 and 23.
In the context of minority rights the Supreme Court had occasion to compare the scope of Articles 29(2) and 30(1).


Three Judges Bench consisting of A.C. Gupta, K. K. Mathew and V. R. Krishna Iyer, JJ. An instruction given by university to minority institution regarding new organizational discipline and mutations in administrative body was challenged as it infringed the fundamental right secured under Article 30 to minorities.

The question was whether Statute 14A framed by the University of Agra abridged the fundamental right guaranteed under Article 30(1) of the Constitution of the Muslim community of Saharan-pur, a religious minority, to administer the Gandhi Faizeam College, Sahajahanpur, established by it.

In the writ petition filed before the High Court, the appellant contended that Statute 14A abridged its fundamental right under Article 30 (1). But the High Court negatived the contention holding that even if Statute 14A is implemented by the religious minority, the right of the minority to administer the educational institution would not be taken away or destroyed and dismissed the writ petition.

The matter was taken to the Supreme Court stating that Statute 14-A framed by the University of Agra, is an invasion of the fundamental right guaranteed to the minority community under Article 30 of the Constitution of India.

The Court found no force in the objection to the two innocuous insider-beings seated on the Managing Committee.

The features of the Agra University Act vis-a-vis the minority institutions are conspicuously different and leave almost unaffected the total integrity of the administration by the religious group save in the minimal inclusion of two internal entities namely the principal of their own choice and the senior most lecturer independently appointed by them.

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The Supreme Court, upheld the statutes of the Agra University Ordinance which laid down that no private college would be accorded recognition unless its governing body included the Principal and senior most teachers. The court said that, the statute was facilitative promotion and calculated to improve the one and temper of the administration of the educational institution. Justice Krishna Iyer denied any absolute right to constitute the governing body. But prior to this decision the Supreme Court held constitution of governing bodies is an interference in the minority’s right to administer or management.\(^{32}\) Similarly it was also held it is not necessary and required as per Articles 30(1) that, constitution of Board of Minority’s Educational Institution should consist of majority of members of minority community.\(^{33}\)

The Supreme Court being satisfied that the regulatory clauses challenged before them improved the administration and did not inhibit its autonomy and were therefore good and valid. Court therefore held that the statute impugned was neither vulnerable nor void.

### 6.11 Lilly Kurian v Sr. Lewina and Ors.\(^{34}\)

The case deals with the question whether an educational institution established and managed by a religious or linguistic minority is bound by the provisions of Ordinance 33(4) Chapter 57 of Ordinance framed by Syndicate of University and under Section 19(j). The Court held that Ordinance 33 (4) Chapter 57 of Ordinance framed by Syndicate of University under Section 19 (j) would not be applicable to an educational institution established and managed by religious or linguistic minority.

Smt. Lilly Kurian, the appellant in this case, was appointed as Principal of the St. Joseph Training College for Women, Ernakulam in the year 1957. The College was established by the Congregation of the Mothers of Carmal, which is a religious society of Nuns belonging to the Roman Catholic Church, and is


\(^{33}\) Bihar State Madrasa Education Board Patna v Managing Committee of Madrasa Hanfia Arabic College, A.I.R 1990 S.C 695

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affiliated to the University of Kerala. It is administered by a Managing Board, and
the Provincial of the Congregation as its President.

On October 30, 1969, on the basis of a complaint by Rajaratnam a Lecturer
of the College, the Managing Board initiated disciplinary proceedings against the
appellant and appointed a retired Principal of the Maharaja's College, Ernakulam,
to be the Enquiry Officer. The Enquiry Officer by his report dated November 27,
1969, held the appellant guilty of misconduct. The Secretary of the Managing
Board accordingly served her with a notice dated December 2, 1969 stating that a
meeting of the Board was to be held on December 19, 1969, to consider the
representation, if any, made by her and also the punishment to be imposed, on the
basis of the findings recorded by the Enquiry Officer.

In the wake of the disciplinary action, on December 16, 1969, the appellant
filed a suit O.S. No. 819 of 1969 in the Munsiff's Court, Ernakulam, challenging
the validity of the proceedings of the Managing Board.

The Munsiff held that the dismissal of the appellant was free from any
infirmity and was by the competent authority, that is the Managing Board, and,
therefore, she had no prima facie case.

The appellant had, in the meanwhile, filed an appeal be for the Vice-
Chancellor, University of Kerala against the order of dismissal. Vice-Chancellor,
by his two orders dated October 19, 1970 held that the order of dismissal from
service and the order of suspension passed against the appellant were in breach of
the rules of natural justice and fair play and were consequently illegal and null and
void, and accordingly directed the Management to allow her to function as
Principal.

The labour court by its judgment dated December 6, 1972 dismissed the
suits holding that the appellate power conferred on the Vice-Chancellor by Clauses
(1) and (4) of Ordinance 33, Chapter LVII of the Ordinance framed by the
Syndicate under Section 19(j) of the Act, was a valid conferment of power on the
Vice-Chancellor and even after the commencement of the Kerala University Act,
1969, both the Vice-Chancellor and the Syndicate had concurrent powers of
appeal. It, therefore, upheld the orders of the Vice-Chancellor directing reinstatement of the appellant in service.

The Kerala High Court, however, by its judgment dated July 19, 1973 reversed the judgment and decree of the court below and decreed the plaintiffs' suit holding that (i) the conferment by the Syndicate of a right of appeal to a teacher against his order of dismissal from service to the Vice-Chancellor cannot be said to be in excess of the permissible limits of the power to prescribe the duties and conditions of service of teachers in private colleges in terms of Section 19(j) of the Act, and (ii) the provisions for a right of appeal contained in Ordinance 33(1) and (4), Chapter LVII of the Ordinance were not violative of the rights guaranteed to the religious minorities under Article 30(1), and were, therefore, valid, following certain observations of its earlier Full Bench decision in Rev. Mother Provincial v. State of Kerala.35

On Appeal, Supreme Court held that the power of appeal conferred on the Vice-Chancellor under Ordinance 33(4) is not only a grave encroachment on the institution's right to enforce and ensure discipline in its administrative affairs but it is unchannelised and unguided in the sense that no restrictions are placed on the exercise of the power.

While referring to the principle laid down by the majority in St. Xaviers College's case, Supreme Court held such a blanket power directly interferes with the disciplinary control of the managing body of a minority education institution over its teachers. The majority decision of St. Xaviers College's case squarely applies to the facts of the present case and accordingly it must be held that the impugned Ordinance 33(4) of the University of Kerala is violative of Article 30(1) of the Constitution. If the conferment of such power on an outside authority like the Vice-Chancellor, which while maintaining the formal character of a minority institution destroys the power of administration, that is, its disciplinary control, is held justifiable because it is in the public and national interest, though not in its interest as an educational institution, the right guaranteed by Article 30(1) will be, to use the well-known expression, a 'teasing illusion', a 'promise of unreality'.

Thus the Court held that Ordinance 33(4), Chapter LVII of the Ordinances framed by the Syndicate of the University under Section 19(j) of the Kerala University Act, 1969 would not be applicable to an educational institution established and managed by a religious or linguistic minority like St. Joseph's Training College for Women, Ernakulam. The judgment of the High Court setting aside the two orders of the Vice-Chancellor of the University of Kerala dated October 19, 1970, was upheld.

The decision of the Supreme Court shows that it is absolutely impossible to have a peaceful co-existence of the rights of minorities and the rights of the general public without any encroachment. One is a special right and the other is a general right of the entire citizens. A perfect balance is impossible. Judiciary has a significant role in protecting the minority rights and should stand to reconcile this with the rights of other citizens. Fairness to minorities is necessary. It can be explained in the words of the court in *Lilly Kurian v. Sister Lewina.*[^36]

> “Protection of the minorities is an article of faith in the Constitution of India.”


The case was an appeal by special leave from the judgment of the Kerala High Court dismissing the appellant's writ application for quashing the order dated June 5, 1973 of the Regional Deputy Director of Public Instruction, Trivandrum and the order dated May 2, 1974 of the District Education Officer issued pursuant to the order aforesaid of the Regional Deputy Director. The constitutional question involved in this appeal was about the *vires* of Rule 12(iii) of Chapter VI of the Kerala Education Rules, 1959. The question was whether the said rule is violative of Article 30(1) of the Constitution.

The appellant, thereupon, challenged the orders of the educational authorities by filing a Writ Petition in the High Court.

The High Court of Kerala said, the authorities of the School could be prevented from admitting the girls in the School under Rule 12(iii) of Chapter VI

[^36]: SA.I.R. 1979 S.C. 52
of the Rules, even though a separate building has been constructed for them in the same compound.

‘The basis of the rule seems to be that it will be better for the girls to get instruction in girls' schools as far as possible; and if there is a girls' school why the parents of the minority community should insist on admission of the girls in boys' school is un-understandable. By the time the child reaches the secondary school stage it would have grown up a little. At that age to keep them under proper guidance and discipline the rule is made that they should as far as possible be given education in girls' Schools only. This is only in the nature of a regulation for discipline and morality. It does not interfere with the power of administration of an educational institution by a minority community’.

The language of Clause (i) of Rule 12 indicated that in all Primary Schools admission shall be open to boys and girls alike and such schools shall be deemed to be mixed schools. But it is open to the Director to exempt a particular institution from this Rule meaning thereby that if the school authorities so wanted; they may run the school for the admission of the boys or the girls only. Similarly Clause (ii) of Rule 12 suggests that admission to Secondary Schools which are specifically recognized as Girls' Schools shall be restricted to girls only, but with the permission of the Director boys below the age of twelve may be admitted. The purport of impugned Clause (iii), however, was to enable the Director to permit the admission of girls into Secondary Schools for boys in areas and towns where there are no girls' schools. In other words if there are other girls' schools permission may be refused for admission of the girls in a school which has been run for imparting education to boys only.

Supreme Court examined the constitutionality of Rule 12(iii) contained in Chapter VI of the Rules and the validity of the impugned orders. The Court observed that dominant object of the said Rule does not seem to be for the sake of discipline or morality. Any apprehension of deterioration in the moral standards of students if co-education is permitted in Secondary Schools does not seem to be the main basis of this Rule, although it may be a secondary one. The very fact that girls can be admitted into a boy’s school situated at a place where there was no girls' school in the town or the area leads to this conclusion. It is to be remembered
that no category of a school as a boys' school was specified in the Act or the Rules. Nor was Court’s attention drawn to any provision enabling the educational authorities to force the school authorities to admit girls in a school where they don't want to admit them. The self imposed restriction by the management in vogue for a number of years restricting the admission for boys only, per se, is wholly insufficient to cast a legal ban on them not to admit girls. The ban provided in Rule 12(iii) as already adverted to is of a very limited character and for a limited purpose. Permission was granted to Dr. Pereira for opening the school in 1947 as a High School. No restriction in terms was imposed for not admitting any girl students. If the successor school authorities wanted to depart from the self-imposed restriction, they could only be prevented from doing so on valid, legal and reasonable grounds and not otherwise. As was apparent from the impugned order dated 5-6-1973 of the Regional Deputy Director of Public Instruction as also from the passage of the High Court judgment which is extracted above, the permission sought for by the appellant for admission of girls in the St. Vincent's School was refused not on the ground of any apprehended deterioration of morality or discipline but mainly, or perhaps, wholly in the interest of the existing Muslim girls' school, respondent No. 4, in the locality. The basis of the Rule, as remarked by the High Court, seems to be "that it will be better for the girls to get instructions in girls' schools as far as possible." If that be so, then clearly the Rule violates the freedom guaranteed to the minority to administer the school of its choice. But, as already stated, in our opinion this is not the dominant object of the rule. The Christian community in the locality, for various reasons which are not necessary to be alluded to here, wanted the girls also to receive their education in this school and especially of their community. They did not think it in their interest to send them to the Muslim girls' school which is an educational institution run by the other minority community. In that view of the matter the Rule in question in its wide amplitude sanctioning the with-holding of permission for admission of girl students in the boy's minority school is violative of Article 30. If so widely interpreted it crosses the barrier of regulatory measures and comes in the region of interference with the administration of the institution, a right which is guaranteed to the minority under Article 30. The Rule, therefore, must be interpreted narrowly and was held to be inapplicable to a minority educational institution. It follows,
therefore, that the impugned orders dated 5-6-1973 and 2-5-1974 passed by the Regional Deputy Director and the District Education Officer respectively are bad and invalid and must be quashed.


This case is about a brazen and bizarre exploitation of the naive and foolish, eager and ready-to-be-duped, aspirants for admission to professional collegiate courses, behind the veil of the right of the minorities to establish and administer educational institutions of their choice. A society styling itself as the 'Andhra Pradesh Christian Medical Educational Society' was registered on August 31, 1984. The first of the objectives mentioned in the memorandum of association of the society was, "to establish, manage and maintain educational and other institutions and impart education and training at all stages, primary, secondary, collegiate, Post-graduate and doctoral, as a Christian Minorities' Educational Institutions." Another object was "to promote, establish, manage and maintain Medical colleges, Engineering colleges, Pharmacy colleges, Commerce, Literature, Arts and Sciences and Management colleges and colleges in other subjects and to promote allied activities for diffusion of useful knowledge and training." Other objects were also mentioned in the Memorandum of Association. None of the objects, apart from the first extracted object, had anything to do with any minority. Even the first mentioned object did not specify or elucidate what was meant by the statement that education and training at all stages was proposed to be imparted in the institutions of that society "As Christian Minorities" Educational Institutions'. Apparently the words "as Christian minorities' educational institutions" were added in order to enable the society to claim the rights guaranteed by Article 30(1) of the Constitution and for no other purpose.

It is also worthy to note that neither the memorandum of association nor the articles of association make any reference to any amount of corpus with which the society and the institutions proposed to be founded by it were to be financed initially. It was admitted before the court in answer to a question by the Court to

the learned Counsel for the appellant-society that the society had no funds of its own apart from what was collected from the students.

On August 27, 1984, one Professor C.A. Adams was one of the signatories to the memorandum of association of the society, claiming also to be the President of a self-styled National Congress of Indian Christian addressed a letter to Smt. Indira Gandhi, late Prime Minister of India, requesting that the Central Government may grant them permission to establish a Central Christian University of India in Andhra Pradesh, where Christian children would be provided with facilities for education in arts, sciences, engineering and technological courses, medicine, law and theological courses. The Petitions' officer attached to the Prime Minister's office informed Prof. Adams that his letter had been forwarded to the Ministry of Education and Culture for further action.

On September 20, 1984, the Deputy Secretary to the Government of India, Ministry of Education and Culture wrote to the President, National Congress of Indian Christians to the effect that universities could only be established under Acts of Parliament or of State Legislatures and there was, therefore, no question of giving permission to any organization to establish a university. However, it was pointed out that it was open to private organizations to establish colleges of higher education which could seek affiliations to the universities in whose jurisdiction they were established. Such colleges could offer courses leading to university degrees only if they were affiliated to a university. Prof. Adams then wrote to the Government of India claiming that there was no legal impediment to the grant of permission by the Government to the establishment of a university. It was said that if necessary, the Government could initiate legislation also. In order to avoid further delay, the letter proceeded to State, they were starting professional courses in rural areas at Vikarabad in Rangareddy District. It was stated "to start with, as per your advice, we are proposing to start the following faculties at Vikarabad where we have our Christian Hospital, High School, Church and other vacant buildings and plenty of vacant land suitable for further expansion belonging to our Christian churches."

The Government of India was further requested to address the University of Hyderabad to grant affiliation to their colleges and to recommend to the All-India
Institution of Medical Sciences to affiliate their medical college. The Government was also requested to sanction 'the Central grant' for these colleges. Earlier in the letter it was also mentioned that the Prime Minister was kind enough to agree to grant permission for establishing the Central Christian University of India in Andhra Pradesh for the benefit of two crores of Christians living in India. Most of the statements in the letter were either misleading or false. That the Prime Minister had agreed to the establishment of a Central Christian University was admitted before the Court to be false. Similarly the reference to "Our Christian Hospital, High School, and Church and vacant buildings" would give an impression that the hospital, high-school, etc. were institutions of the self-styled National Congress of Indian Christians. None of those institutions were even remotely connected with this so called organisation. This was admitted before the Court in an answer to a question by the Court. While Prof. Adams in his capacity as the so-called President of the National Congress of Indian Christians correspondent with the Central Government, the same Professor Adams in another capacity, namely Chairman of the Andhra Pradesh Christian Medical Educational Society, entered into a correspondence with the Chief Minister of the Government of Andhra Pradesh and the Vice Chancellor, Osmania University. He and one Christopher, who described himself as the Secretary of the Society addressed a letter to the Chief Minister claiming that under the provisions of Article 30(1) of the Constitution, they, the Christian minority had the right to establish educational institutions of their choice and requested him to initiate necessary action for the establishment of a Central Christian University of India as suggested by the Government of India and to grant permission for establishing a Christian Medical College at Vikarabad. It was mentioned in the letter that the Government of India had informed them that either Parliament or the State Legislature had to initiate action for establishing a university, but the Government of India had permitted them to start professional colleges and seek affiliation of the University within whose jurisdiction they fell. It is unnecessary to repeat that the reference to the grant of permission was false.

On November 30, 1984, Christopher, Secretary of the National Congress of Indian Christians wrote a circular letter to the Vice-Chancellors of the Osmania University, the Hyderabad Central University and eight other universities all over India requesting them to grant affiliation to their colleges. On January 22, 1985,
the Registrar of the Osmania University replied stating that it was necessary for the association to submit documentary evidence regarding the fulfillment of the conditions prescribed for affiliation and to submit an application in the prescribed form.

The National Congress of Indian Christians was requested to furnish information as required in the annexure in 10 copies. Thereafter on March 19, 1983, Professor Adams as Chairman of the Christian Medical Education Society wrote to the Registrar, Osmania University informing the latter that the Management was taking necessary action in regard to the various matters mentioned in the letter of the University dated January 22, 1985 and that one Dr. K. Sanjeeva Rao had been appointed as Principal of that College. It was stated in the letter that there was no need to get the permission of the State Government as the Christian Community had a right to establish its own educational institutions under Article 30 of the Constitution. But if permission was necessary permission had already been granted by the Central Government in their letter dated September 20, 1984. It was also mentioned that 'plans and estimates' of the proposed medical college at Muttangi, Medak District were enclosed. The University was further informed that 60 students had already been admitted to the first year of University MBBS course of 1984 session and that the classes were functioning from February 25, 1985. The University was requested to send its screening Committee to inspect the college. The University was also requested to grant temporary affiliation. The letter contained the usual false statements. The statement that the Central Government had granted permission was of course false. The statement referring to 'plans and estimates' of the proposed college building at Muttangi, Medak District was again a misleading statement as it was admitted before the Court that the society does not own any land in Muttangi. Though the University had called upon the society to fulfil several conditions before affiliation could be granted, it is clear from the letter that apart from appointing somebody as Principal of the College, nothing whatever had been done to comply with any of the other conditions. The society itself did not refer to any effort made by it to fulfil any of the other conditions.
The admission of 60 students into the first year MBBS course was in defiance of the conditions laid down by the University. It was audacious since the society had no right to admit any student without getting affiliation from the University. By purporting to admit students into the so-called medical college, the society had perpetrated a huge hoax on innocent boys and girls. The University wrote to the society on May 23, 1985 pointing out that according to the procedure laid down, affiliation could not be granted without obtaining the feasibility report of the Screening Committee. It was also pointed out that it was necessary to obtain the permission of the State Government and the Medical Council of India in order to start a medical college. The society was informed that their action in admitting students in the first year MBBS course was highly irregular and illegal and the society was asked to cancel the admissions made by them. It was also pointed out that attendance at the institutions not affiliated or recognised by the University would not qualify a candidate for admission to any examination conducted by the university.

At this juncture, it is necessary to mention that the Andhra Pradesh Christian Medical Education Society inserted an advertisement in the 'Deccan Chronicle' of December 9, 1984 inviting applications from candidates for admission to the first year MBBS course of the Andhra Pradesh Central Institute of Medical Sciences. When the advertisement came to the notice of the University authorities, they published a notification informing the public in general and the student community in particular that the Osmania University had neither permitted nor granted affiliation in the MBBS course to the above institution and ‘whoever seeks admission in the above institution will be doing so at his/her own risk’. The society appears to have been inserting advertisements off and on inviting applications for admission to the MBBS course. So on March 4, 1985 the University once again published a notification in the newspapers containing a similar warning. The warning was also broadcast on the radio and telecast on the television. Despite all this, the society again inserted an advertisement in the newspapers inviting applications from candidates for admission to the first year MBBS course for the 1985 session.
The University once again, had to publish a notification warning the public. On June 5, 1985, the society inserted an advertisement in the 'Decean Chronicle' styled as a 'reply notice', signed by an Advocate. The notice contained the oft-repeated false allegation that the Central Government had granted permission to the society to start professional colleges and that the Prime Minister herself had recommended the grant of permission. It was claimed that the Osmania University had no power to interfere with the affairs of the Christian Medical College and that the notification published by the Osmania University was unconstitutional and uncalled for. It was also stated that the management was seeking affiliation with other universities and had made good progress. This of course is another false statement. There was nothing whatever to indicate that the institution had made any progress in obtaining affiliation from any other university.

On July 24, 1985, the Government of Andhra Pradesh wrote to the society informing them that permission to start a private medical college could not be granted as it was the policy of the Government of India and the Medical Council of India not to permit opening of new medical colleges. Before us, the petitioner society disputed the statement that there was any policy decision of the Government of India or the Medical Council of India not to permit opening of new Medical colleges. But two letters - one from the Medical Council of India to the Government of Andhra Pradesh and another from the Government of India to the Medical Council of India - have been brought to the notice of Court. In the letter dated January 16, 1981 from the Medical Council of India to the Government of Andhra Pradesh it was stated, "The council is against the starting of any new medical colleges until all the existing ones are put on a firm footing." In the letter of the Government of India to the Medical Council of India, it is stated, "At present there are 106 medical colleges in the country with an annual output of 12,500 medical graduates per year. This output is considered sufficient to meet the medical manpower requirements of the country. Therefore, the present policy of the Government of India is not to permit setting up of new medical colleges."

On the refusal of the Government of Andhra Pradesh to grant permission to the society to start a medical college, the society filed a, writ petition in the High Court of Andhra Pradesh seeking a writ to quash the refusal of permission by the
Government of Andhra Pradesh and to direct the Government to grant permission and the University to grant affiliation. The claim for the issue of a writ was based on the fundamental right guaranteed by Article 30(1) of the Constitution. The writ petition was dismissed in limine by the High Court by a speaking order on the ground that there were no circumstances to justify compelling the Government to grant permission to the society to start a new medical college in view of the restriction placed by an expert body like a Medical Council of India that no further medical college should be started. The society has filed this appeal by special leave of this Court under Article136 of the Constitution.

Even while narrating the facts, the Court thought that they had enough to justify a refusal by us to exercise our discretionary jurisdiction under Article136 of the Constitution. The Court did not have any doubt that the claim of the petitioner to start a minority educational institution was no more than the merest pretence. Except the words, "As the Christian Minorities Educational Institutions" occurring in one of the objects of the society, as mentioned in the memorandum of association, there is nothing whatever to justify the claim of the society that the institutions proposed to be started by it were 'minority educational institutions'. Every letter written by the society whether to the Central Government, the State Government or the University, contained false and misleading statements. The petitioner had the temerity to admit or pretend to admit students in the first year MBBS course without any permission being granted by the Government for the starting of the medical college and without any affiliation being granted by the University.

The society did this despite the strong protest voiced by the University and the several warnings issued by the university. The society acted in defiance of the University and the Government, in disregard of the provisions of the Andhra Pradesh Education Act, the Osmania University Act and the Regulations of the Osmania University and with total indifference to the interest and welfare of the students. The society has played havoc with the careers of several score students and jeopardised their future irretrievably. Obviously the so-called establishment of a medical college was in the nature of a financial adventure for the so-called society and its office bearers, but an educational misadventure for the students.
Many, many conditions had to be fulfilled before affiliation could be granted by the University. Yet the society launched into the venture without fulfilling a single condition beyond appointing someone as principal.

No one could have imagined that a medical college could function without a teaching hospital, without the necessary scientific equipment, without the necessary staff, without the necessary buildings and without the necessary funds. Yet that is what the society did or pretended to do. We do not have any doubt that the society and the so-called institutions were started as business ventures with a view to make money from gullible individuals anxious to obtain admission to professional colleges. It was nothing but a daring imposture and skullduggery. Thus status and dignity of a minority institution was not conferred on the society.

It was seriously contended before the Court that any minority, even a single individual belonging to a minority, could found a minority institution and had the right so to do under the Constitution and neither the Government nor the University could deny the society's right to establish a minority institution, at the very threshold as it were, howsoever they may impose regulatory measures in the interests of uniformity, efficiency and excellence of education. The fallacy of the argument in so far as the instant case is concerned lies in thinking that neither the Government nor the University has the right to go behind the claim that the institution 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 the undoubted right to pierce the 'minority veil' with due apologies to the Corporate Lawyers - and discover whether there is lurking behind it no minority at all and in any case, no minority institution.

The court held that the object of Article 30(1) is not to allow bogies to be raised by pretenders but to give the minorities 'a sense of security and a feeling of confidence' not merely by guaranteeing the right to profess, practice and propagate religion to religious minorities and the right to conserve their language, script and culture to linguistic minorities, but also to enable all minorities, religious or linguistic, to establish and administer educational institutions of their choice. These institutions must be educational institutions of the minorities in truth and reality and not mere masked phantoms'. They may be institutions intended to give the
children of the minorities the best general and professional education, to make them complete men and women of the country and to enable them to go out into the world fully prepared and equipped. They may be institutions where special provision is made to the advantage and for the advancement of the minority children. They may be institutions where the parents of the children of the minority community may expect that education in accordance with the basic tenets of their religion would be imparted by or under the guidance of teachers, learned and steeped in the faith. They may be institutions where the parents expect their children to grow in a pervasive atmosphere which is in harmony with their religion or conducive to the pursuit to it. 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. The Court said that in the present case apart from the half a dozen words 'as a Christian minorities institution' occurring in one of the objects recited in the memorandum of association, there is nothing whatever, in the memorandum or the articles of association or in the actions of the society to indicate that the institution was intended to be a minority educational institution. As already found by Court these half a dozen words were introduced merely to found a claim on Article 30(1). They were a smoke-screen.

It was contended before the Court that the permission to start a new medical college could not be refused by the Government nor could affiliation be refused by the University to a minority institution on the ground that the Government of India and the Medical Council of India had taken a policy decision not to permit the starting of new medical colleges. It was said that such a policy decision would deny the minorities their right to establish an educational institution of their choice, guaranteed by Article 30(1) of the Constitution. The argument was that the right to establish an educational institution was an absolute right of the minorities and that no restriction, based on any ground of the public interest or state or social necessity could be placed on that right so as to destroy that right itself. It was said that to deny permission to a minority to start a medical college on the ground that there were already enough medical colleges in the country was tantamount to denying the right of the minority guaranteed under Article 30(1). On the other hand, it was said, when in the pursuit of general or professional educational for its members, a minority community joins the mainstream of
national life, it must subject itself to the national interest. The right guaranteed by Article 30(1) gives the minority the full liberty to establish educational institutions of its own choice. If the minority community expresses its choice and opts to join the scheme of national educational policy, it must naturally abide by the terms of that policy unless the terms require the surrender of the right under Article 30(1). It was said that a medical college needed very heavy investment and that to produce doctors beyond need would be a national waste apart from creating a problem of unemployment in a sphere where there should be none. It appears, if one may borrow the words of Sir Roger de Coverley, 'there is much to be said on both sides'. In view of our conclusion on the other issues we do not want to venture an opinion on this question.

Shri K.K. Venugopal, learned Counsel for the students who have been admitted into the MBBS course of this institution, pleaded that the interests of the students should not be sacrificed because of the conduct or folly of the management and that they should be permitted to appear at the University examination notwithstanding the circumstance that permission and affiliation had not been granted to the institution. He invited our attention to the circumstance that students of the Medical College established by the Daru-Salaam Educational Trust were permitted to appear at the examination notwithstanding the fact that affiliation had not by then been granted by the University. Shri Venugopal suggested that we might issue appropriate directions to the University to protect the interests of the students. We do not think that we can possibly accede to the request made by Shri Venugopal on behalf of the students. Any direction of the nature sought by Shri Venugopal would be in clear transgression of the provisions of the University Act and the regulations of the University. We cannot by our fiat direct the University to disobey the statute to which it owes its existence and the regulations made by the University itself. We cannot imagine anything more destructive of the rule of law than a direction by the Court to disobey the laws. The case of the medical college started by the Daru-Salaam Trust appears to stand on a different footing as we find from the record placed before us that permission had been granted by the State Government to the Trust to start the medical college and on that account, the University had granted provisional affiliation. We also find that the Medical Council of India took strong and serious exception to the grant of
provisional affiliation whereupon the University withdrew the affiliation granted to
the college. We are unable to treat what the University did in the case of the Daru-
Salaam Medical College as a precedent in the present case to direct the University
to do something which it is forbidden from doing by the University Act and the
regulations of the University. We regret that the students who have been admitted
into the college have not only lost the money which they must have spent to gain
admission into the college, but have also lost one or two years of precious time
virtually jeopardising their future careers. But that is a situation which they have
brought upon themselves as they sought and obtained admission in the college
despite the warnings issued by the University from time to time. We are happy to
note that the University acted watchfully and wake-fully, issuing timely warnings
to those seeking admission to the institution. We are sure many must have taken
heed of the warnings issued by the university and refrained from seeking
admission to the institution. If some did not heed the warnings issued by the
university, they are themselves to blame. Even so if they can be compensated in
some manner, there is no reason why that may not be done. We are told that the
assets of the institutions, which have sprung out of the funds collected from the
students, have been frozen. It is up to the State Government to devise suitable
ways, legislative and administrative, to compensate the students at least
monetarily. The appeal filed by the society was dismissed with costs which Court
quantified at Rs. 10,000. The writ petition filed by the students was dismissed but,
in the circumstances, without costs.

6.14 **All Saints High School, Hyderabad and Ors. v. Government of Andhra Pradesh and Ors.**\(^{39}\)

In this case, the question that arose in the appeal was whether sections 3, 4, 5, 6 and 7 of offended the fundamental rights conferred on minorities by Article 30(1). The Court declared Sections 3 (3) (a), 3 (3) (b), 6 and 7 valid while Sections 3 (1), 3 (2), 4 and 5 were declared invalid in their application to minority institutions and held that such institutions cannot be proceeded against for violation of provisions which were not applicable to them.

The impugned Andhra Pradesh Recognized Private Educational Institutions (Control) Act, 1975 by reason of Section 1(3), applied to all private educational institutions, whether or not they are established by minorities. The appellants' contention was that several provisions of the Act were violate the guarantee contained in Article 30(1) by permitting or compelling interference with the internal administration of private educational institutions established by minorities. The appellants were particularly aggrieved by the provisions of Sections 3 to 7 of the Act, the validity whereof was challenged on the ground that they deprive the appellants of their right to administer the affairs of minority institutions by vesting the ultimate administrative control in an outside authority. These contentions having been rejected by the High Court of Andhra Pradesh, the appellants had filed these appeals by special leave.

Section 3(1) of the Act provided that, subject to any rule that may be made in this behalf, no teacher employed in any private educational institution shall be dismissed, removed or reduced in rank nor shall his appointment be otherwise terminated, except with the prior approval of the competent authority. The proviso to the section says that if any educational institution contravenes the aforesaid provision, the teacher affected by the contravention shall be deemed to be in service. Section 3(2) requires that where the proposal to dismiss, remove or reduce in rank or otherwise terminate the appointment of any teacher employed in any private educational institution is communicated to the competent authority, that authority shall approve the proposal, if it is satisfied that there are adequate and reasonable grounds for the proposal.

For appreciating their true meaning and effect, Sections 3(1) and 3(2) have to be read together. The requirement of prior approval of the competent authority to an order of dismissal, removal, etc. may not by itself be violative of Article 30(1) because it may still be possible to say, on a reasonable construction of the provision laying down that requirement, that its object is to ensure compliance with the principles of natural justice or the elimination of mala fides or victimization of teachers. But Court found it difficult to read down Section 3(1) so as to limit its operation to these or similar considerations. In the first place, the section did not itself limit its operation in that manner; on the contrary, it gave an unqualified
mandate that no teacher shall be dismissed, removed, etc. except with the prior approval of the competent authority. Under the provision contravention of the section resulted in a total invalidation of the proposed action. If the section is contravened the teacher shall be deemed to be in service. Secondly, Section 3(1) not only applied to cases in which a teacher was, what is generally termed as 'punished', by an order of dismissal, removal or reduction in rank, but it also applied to cases in which an appointment is otherwise terminated. An order of termination simpliciter which involves no stigma or aspersion and which does not result in any evil consequences was also required to be submitted for the prior approval of the competent authority. The argument that the principles of natural justice have not been complied with or the argument of mala fides and victimization has seldom any relevance if the services are terminated in accordance with the terms of a contract by which the tenure of the employment was limited to a specified period. This shows that the true object of Section 3(1) was not that which one could liberally assume by reading down the section.

Section 3(1) was subject to any rules that may be made in behalf of the matter covered by it. If the State Government were to frame rules governing the matter, there would have been some tangible circumstances or situations in relation to which the practical operation of Section 3(1) could have been limited. But in the absence of any rules furnishing guidelines on the subject, it was difficult to predicate that, in practice, the operation of the section was limited to a certain class of cases only. The absence of rules on the subject makes the unguided discretion of the competent authority the sole arbiter of the question as to which cases would fall within the section and which would fall outside it.

Any doubt as to the width of the area in which Section 3(1) operated and was intended to operate, was to remove by the provision contained in Section 3(2), by virtue of which the competent authority "shall" approve the proposal, "if it was satisfied that there were adequate and reasonable grounds" for the proposal. This provision, under the guise of conferring the power of approval, confers upon the competent authority an appellate power of great magnitude. The competent authority was made by that provision the sole judge of the propriety of the proposed order since it was for that authority to see whether there were reasonable
grounds for the proposal. The authority was indeed made a judge both of facts and law by the conferment upon it of a power to test the validity of the proposal on the vastly subjective touch-stone of adequacy and reasonableness. Section 3(2), in court opined that it, leaves no scope for reading down the provisions of Section 3(1). The two sub-sections together confer upon the competent authority, in the absence of proper rules, a wide and untrammeled discretion to interfere with the proposed order, whenever, in its opinion, the order, is based on grounds which do not appear to it either adequate or reasonable.

The form in which Section 3(2) is couched was apt to mislead by creating an impression that its real object was to cast an obligation on the competent authority to approve a proposal under certain conditions. Though the section provided that the competent authority "shall" approve the proposed order if it was satisfied that it was based on adequate and reasonable grounds, its plain and necessary implication was that it shall not approve the proposal unless it was so satisfied. The conferment of such a power on an outside authority, the exercise of which was made to depend on purely subjective considerations arising out of the twin formula of adequacy and reasonableness, cannot but constitute an infringement of the right guaranteed by Article 30(1).

The Court found it difficult to save Sections 3(1) and 3(2) by reading them down in the light of the objects and reasons of the impugned Act. The object of the Act and the reasons that led to its passing were laudable but the Act, in its application to minority institutions, had to take care that it did not violate the fundamental right of the minorities under Article 30(1). Sections 3(1) and 3(2) were in the opinion of the Court unconstitutional in so far as they are made applicable to minority institutions since, in practice, these provisions were bound to interfere substantially with their right to administer institutions of their choice.

Section 3(3)(a) provided that no teacher employed in any private educational institution shall be placed under suspension except when an inquiry into the gross misconduct of such teacher was contemplated. Section 3(3)(b) provides that no such suspension shall remain in force for more than a period of two months and if the inquiry is not completed within that period the teacher shall, without prejudice to the inquiry, be deemed to have been restored as a teacher. The
proviso to the Sub-section confers upon the competent authority the power, for reasons to be recorded in writing, to extend the period of two months for a further period not exceeding two months if, in its opinion, the inquiry could not be completed within the initial period of two months for reasons directly attributable to the teacher.

The Court held that discipline was not to be equated with dictatorial methods in the treatment of teachers. The institutional code of discipline must therefore conform to acceptable norms of fairness and cannot be arbitrary or fanciful. The Court did not think that in the name of discipline and in the purported exercise of the fundamental right of administration and management, any educational institution can be given the right to 'hire and fire' its teachers. After all, though the management may be left free to evolve administrative policies of an institution, educational instruction has to be imparted through the instrumentality of the teachers; and unless, they have a constant assurance of justice, security and fair play it will be impossible for them to give of their best which alone can enable the institution to attain the ideal of educational excellence. Section 3(3)(a) contains but an elementary guarantee of freedom from arbitrariness to the teachers. The provision is regulatory in character since it neither denies to the management the right to proceed against an erring teacher nor indeed did it place an unreasonable restraint on its power to do so. It assumed the right of the management to suspend a teacher but regulates that right by directing that a teacher shall not be suspended unless an inquiry into his conduct is contemplated and unless the inquiry is in respect of a charge of gross misconduct. Fortunately, suspension of teachers is not the order of the day, for which reason the court do not think that these restraints which bear a reasonable nexus with the attainment of educational excellence can be considered to be violative of the right given by Article 30(1). The limitation of the period of suspension initially to two months, which can in appropriate cases be extended by another two months, partakes of the same character as the provision contained in Section 3(3)(a). In the generality of cases, a domestic inquiry against a teacher ought to be completed within a period of two months or say, within another two months. A provision founded so patently on plain reason was difficult to construe as an invasion of the right to administer an institution, unless that right carried with it the right to maladminister. The Court therefore held that Sections
3(3)(a) and 3(3)(b) of the Act do not offend against the provisions of Article 30(1) and were valid.

Section 4 of the Act provided that any teacher employed in a private educational institution (a) who is dismissed, removed or reduced in rank or whose appointment is otherwise terminated; or (b) whose pay or allowances or any of whose conditions of service are altered or interpreted to his disadvantage, may prefer an appeal to such authority or officer as may be prescribed. This provision in the opinion of the Court was too broadly worded to be sustained on the touchstone of the right conferred upon the minorities by Article 30(1). In the first place, the section conferred upon the Government the power to provide by rules that an appeal may lie to such authority or officer as it designates, regardless of the standing or status of that authority or officer. Secondly, the appeal is evidently provided for on all questions of fact and law, thereby throwing open the order passed by the management to the unguided scrutiny and unlimited review of the appellate authority. It would be doing no violence to the language of the section to interpret it to mean that, in the exercise of the appellate power, the prescribed authority or officer can substitute his own view for that of the management, even in cases in which two views are reasonably possible. Lastly, it was strange, and perhaps an oversight may account for the lapse, that whereas a right of appeal was given to the aggrieved teacher against an order passed by the management, no corresponding right was conferred on the management against an order passed by the competent authority under Section 3(2) of the Act. It may be recalled that by Section 3(1), no teacher can be dismissed, removed, etc. except with the prior approval of the competent authority. Section 3(2) confers power on the competent authority to refuse to accord its approval if there were no adequate and reasonable ground for the proposal. In the absence of the provision for an appeal against the order of the competent authority refusing to approve the action proposed by the management, the management is placed in a gravely disadvantageous position vis-a-vis the teacher who is given the right of appeal by Section 4. By reason of these infirmities the Court e concluded that Section 4 of the impugned Act was unconstitutional, as being violative of Article 30(1). Section 5 was consequential upon Section 4 and was struck with it.
Section 6 provided that where any retrenchment of a teacher is rendered necessary consequent on any order of the Government relating to education or course of instruction or to any other matter, such retrenchment may be effected with the prior approval of the competent authority. Section 6 aims at affording a minimal guarantee of security of tenure to teachers by eschewing the passing of mala fide orders in the garb of retrenchment. The Court considered it to be implicit in its provisions that the limited jurisdiction which it confers upon the competent authority was to examine whether, in cases where the retrenchment it stated to have become necessary by reason of an order passed by the Government, it has in fact so become necessary. It was a matter of common knowledge that Governmental orders relating to courses of instruction were used as pretence for terminating the services of teachers. The conferment of a guided and limited power on the competent authority for the purpose of finding out whether, in fact, a retrenchment has become necessary by reason of a Government order, cannot constitute an interference with the right of administration conferred by Article 30(1). Section 6 is therefore held valid.

Section 7 provided that the pay and allowances of a teacher shall be paid on or before such day of a month, in such manner and by or through such authority, officer or person, as may be prescribed. The Court held that the provision was regulatory in character and was, therefore, valid. By a majority, Court held that Sections 3(3)(a), 3(3)(b), 6 and 7 were valid while Sections 3(1), 3(2), 4 and 5 were invalid in their application to minority education institutions.

6.15 **Bihar State Madarasa Education Board, Patna v. Madarasa Hanfia Arabic College Jamalía and Ors.**

In this case minority institutions challenged the validity of sections 3 and 7(2) of Bihar State Madarasa Education Board Act, 1982 as it infringed the rights of minority institutions guaranteed under Article 30(1). The State Legislature of Bihar had enacted the Bihar State Madarasa Education Board Act (Act 32 of 1982) providing for the constitution of an autonomous Board for development and supervision of Madrasa Education in the State of Bihar. The Bihar State Madarasa Education Board had dissolved the Managing Committee of the Minority

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institution and had appointed adhoc committee to manage the institution. Supreme Court upheld the decision of the High Court that dissolving Managing Committee and appointing adhoc committee amounts to take over completely and was violative of Article 30(1).

The Hanfia Arabic College Jamalia and Madarasa Shamsul Uloom institutions were Madarasa institutions aided and recognised by the Board under the provisions of the Act, as such the institutions wear subjected to the provisions of the Act and the regulations framed by the Board in matters relating to their management and administration. The committees of management of the two respondent institutions failed to comply with the directions issued by the Board with regard to payment of salary to teachers, whereupon the Board in exercise of its power under Section 7(2)(n) of the Act dissolved the Managing Committee of the respondent's institution and appointed Ad Hoc Committee to manage the institutions. The outgoing Managing Committee of the institutions and some of the affected members of the Committee filed writ petitions before the High Court of Patna under Article 226 of the Constitution challenging the Order of the Board, dissolving the Committee of Management and appointing Ad Hoc Committee. Before the High Court, the outgoing Committee members submitted that Section 7(2)(n) of the Act which confers power on the Board to dissolve Managing Committee of a Madarasa was violative of Article 30(1) of the Constitution as it interfered with their right of Management of institutions. The High Court upheld the outgoing Committee members plea and declared Section 7(2)(n) unconstitutional as it confers power on the Board to dissolve Committee of Management of a Madarasa. The Board had preferred appeal by leave against the aforesaid judgment of the High Court.

The Supreme Court was called upon to decide the validity of sections 3 and 7 (2) (n) of the Bihar State Madarasa Education Board Act, 1982. The question which arose for consideration was whether Section 7(2)(n) which confers power on the Board to dissolve the managing, committee of an aided and recognised Madarasa Institution violates the minorities constitutional right to administer its educational institution according to their choice. The Court had all along held that though the minorities have right to establish and administer educational institution
of their own choice but they had no right to maladminister and the State has power to regulate management and administration of such institutions in the interest of educational need and discipline of the institution. Such regulation may have indirect effect on the absolute right of minorities but that would not violate Article 30(1) of the Constitution as it is the duty of the State to ensure efficiency in educational institutions. The State had, however, no power to completely take over the management of a minority institution under the guise of the regulating the educational standards to secure the efficiency of the institution, the State is not entitled to frame rules or regulations compelling the management to surrender its right of administration. The order of the Board dissolving the Managing Committee of the minority institutions and appointing ad-hoc committee was thus quashed.

6.16 **St. Stephen's College etc., etc. v. The University of Delhi Etc., Etc.**

The major question that was answered by this case was, whether the minority institutions receiving grant-in-aid from the government was entitled to accord preference to or reserve seats for students of their own community or whether such preference would be invalid under Article 29(2) which prohibits discrimination in admission into any educational institution maintained or receiving funds out of State funds on grounds only of religion, race, caste, language or any of them. Article 30(1) was made subject to Article 29(2). The court strike the balance between the competing rights provided in Article 30(1) and 29(2). It held that minority aided educational institutions were entitled to prefer the candidates of their community to maintain minority character of the institutions but such preference was limited to 50% of annual admission. Minority educational institutions were directed to make available 50% of the seats of annual admission to other communities purely on merit.

The case is related to St. Stephen's College at New Delhi and Allahabad Agricultural Institute at Naini both premier and renowned institutions. The former affiliated to the Delhi University and the latter to the U. P. University. Both were aided educational institutions and getting grant from the State funds. They had their own admission programme which they followed every academic year. The
admission programme provided for giving preference in favour of Christian students. It was claimed that they were entitled to have their own admission programme since they were religious minority institutions. The validity of the admission programme and the preference given to Christian students were the issues that needed to be resolved in this case. The questions were of great constitutional importance and consequence to all minority institutions in the country.

The major issue that the case dealt with was, whether St. Stephen's College and the Allahabad Agricultural Institute were entitled to accord preference to or reserve seats for students of their own community and whether such preference or reservation would be invalid under Article 29 (2) of the Constitution?

In the instant case also the impugned directives of the University to select students on the uniform basis of marks secured in the qualifying examinations would deny the right of St. Stephen's College to admit students belonging to Christian community. The Court did not accept that minorities are entitled to establish educational institutions for their exclusive benefit. If such was the aim, Article 30(1) would have been differently worded and it would have contained the words "for their own community". In the absence of such words it is legally impermissible to construe the Article as conferring the right on the minorities to establish educational institution for their own benefit.

The Court opined that, Every educational institution irrespective of community to which it belongs is a 'melting-pot' in our national life. The students and teachers are the critical ingredients. It is there that they developed respect for, and tolerance of, the cultures and beliefs of others. It is essential therefore, that there should be proper mix of students of different communities in all educational institutions.'

In the light of all the principles and factors and in view of the importance which the Constitution attaches to protective measures to minorities under Article 30(1), the Court held that minority aided educational institutions are entitled to prefer their community candidates to maintain the minority character of the institutions subject of course in conformity with the University standard. The State may regulate the intake in this category with due regard to the need of the
community in the area which the institution is intended to serve. But in no case such intake shall exceed fifty per cent of the annual admission. The minority institutions shall make available at least fifty per cent of the annual admission to members of communities other than the minority community. The admission of other community candidates shall be done purely on the basis of merit.

6.17 T. M. A. Pai Foundation and Ors. v State of Karnataka and Ors.

The case was decided by 11 Judges Bench Presided by B.N. Kirpal C.J. The case deals with the fundamental rights of minority to establish and administer educational institutions of their choice. The Court held that minority educational institutions can admit non-minority students of their choice in the left over seats in each year as Article 29(2) of the Constitution does not override Article 30(1). Grant of aid by the State cannot alter the character of minority institution, including, its choice of students. Fixing a percentage for intake of minority students in minority educational institutions would infringe upon the right under Article 30 as it would amount to cutting down that right. Best way to ensure compliance with Article 29(2) as well as Article 30(1) is to consider individual cases where denial of admission of a nonminority student by a minority educational institution is alleged to be in violation of Article 29(2) and provide appropriate relief.

Mr. B. N. Kirpal, C.J., gave the judgment on behalf of himself and on behalf of justices G. B. Pattanaik, S. Rajendra Babu, K. G. Balakrishnan, P. Venkatarama Reddi and Arijit Pasayat. Since this judgment is on behalf of six judges out of eleven, it is deemed to be binding verdict by majority of judges.

6.17.1 Education as powerful tool of upliftment and progress

The Court acknowledged that India is a land of diversity -- of different castes, peoples, communities, languages, religions and culture. Although these people enjoy complete political freedom, a vast part of the multitude is illiterate and lives below the poverty line. The single most powerful tool for the upliftment and progress of such diverse communities is education. The State, with its limited resources and slow-moving machinery, is unable to fully develop the genius of the

Indian people very often the impersonal education that is imparted by the State, devoid of adequate material content that will make the students self-reliant only succeeds in producing potential pen-pushers, as a result of which sufficient jobs are not available.

**6.17.2 Lack of Quality Education**

There is a lack of quality education in the country and adequate number of schools and colleges that private educational institutions have been established by educationists, philanthropists and religious and linguistic minorities. Their grievance was that the unnecessary and unproductive load on their back in the form of governmental control, by way of rules and regulations, has thwarted the progress of quality education. It was their contention that the government must get off their back, and that they should be allowed to provide quality education uninterrupted by unnecessary rules and regulations, laid down by the bureaucracy for its own self-importance. The private educational institutions, both aided and unaided, established by minorities and non-minorities, in their desire to break free of the unnecessary shackles put on their functioning as modern educational institutions and seeking to impart quality education for the benefit of the community for whom they were established, and others, had filed the present writ petitions and appeals asserting their right to establish and administer educational institutions of their choice unhampered by rules and regulations that unnecessarily impinge upon their autonomy.

**6.17.3 The chequered history of the hearing**

The hearing of these cases has had a chequered history. Writ Petition No. 350 of 1993 filed by the Islamic Academy of Education and connected petitions were placed before a Bench of 5 Judges. As the Bench was *prima facie* of the opinion that Article 30 did not clothe a minority educational institution with the power to adopt its own method of selection and the correctness of the decision of this Court in *St. Stephen's College v. University of Delhi* 43 was doubted, it was directed that the questions that arose should be authoritatively answered by a larger Bench. These cases were then placed before a Bench of 7 Judges. The questions

43 (1992) 1 SCC 558
framed were recast and on 6th February, 1997, the Court directed that the matter be placed a Bench of at least 11 Judges, as it was felt that in view of the Forty-Second Amendment to the Constitution, whereby "education" had been included in Entry 25 of List III of the Seventh Schedule, the question of who would be regarded as a "minority" was required to be considered because the earlier case laws related to the pre-amendment era, when education was only in the State List. When the cases came up for hearing before an eleven Judge Bench, during the course of hearing on 19th March, 1997, the following order was passed:-

Since a doubt has arisen during the course of our arguments as to whether this Bench would feel itself bound by the ratio propounded in -- In Re Kerala Education Bill\textsuperscript{44} and the Ahmedabad St. Xaviers College Society v. State of Gujarat,\textsuperscript{45} it is clarified that this sized Bench would not feel itself inhibited by the views expressed in those cases since the present endeavour is to discern the true scope and interpretation of Article 30(1) of the Constitution, which being the dominant question would require examination in its pristine purity.

When the hearing of these cases commenced, some questions out of the eleven referred for consideration were reframed. The Court proposed to give answers to those questions after examining the rival contentions on the issues arising therein.

**6.17.4 All institutions set their claim under Fundamental Right**

On behalf of all these institutions, the learned counsels had submitted that the Constitution provides a fundamental right to establish and administer educational institutions. With regard to non-minorities, the right was stated to be contained in Article19(1)(g) and/or Article 26, while in the case of linguistic and religious minorities, the submission was that this right was enshrined and protected by Article 30. It was further their case that private educational institutions should have full autonomy in their administration. While it is necessary for an educational institution to secure recognition or affiliation, and for which purpose rules and regulations or conditions could be prescribed pertaining to the requirement of the quality of education to be provided, e.g., qualifications of teachers, curriculum to

\textsuperscript{44} 1959 SCR 955
\textsuperscript{45} [1975]1SCR173
be taught and the minimum facilities which should be available for the students, it was submitted that the State should not have a right to interfere or lay down conditions with regard to the administration of those institutions. In particular, objection was taken to the nominations by the State on the governing bodies of the private institutions, as well as to provisions with regard to the manner of admitting students, the fixing of the fee structure and recruitment of teachers through State channels.

6.17.5 Requested to reconsider decision of Unni Krishnan’s Case

The counsels for these educational institutions, as well as the Solicitor General of India, appearing on behalf of the Union of India, urged that the decision of this Court in Unni Krishnan, J.P. and Ors. v. State of Andhra Pradesh case46 required reconsideration. It was submitted that the scheme that had been framed in Unni Krishnan's case had imposed unreasonable restrictions on the administration of the private educational institutions, and that especially in the case of minority institutions, the right guaranteed to them under Article 30(1) stood infringed. It was also urged that the object that was sought to be achieved by the scheme was, in fact, not achieved.

6.17.6 Contentions of Minorities

On behalf of the private minority institutions, it was submitted that on the correct interpretation of the various provisions of the Constitution, and Articles 29 and 30 in particular, the minority institutions have a right to establish and administer educational institutions of their choice. The use of the phrase "of their choice" in Article 30(1) clearly postulated that the religious and linguistic minorities could establish and administer any type of educational institution, whether it was a school, a degree college or a professional college; it was argued that such an educational institution is invariably established primarily for the benefit of the religious and linguistic minority, and it should be open to such institutions to admit students of their choice. While Article 30(2) was meant to ensure that these minority institutions would not be denied aid on the ground that they were managed by minority institutions, it was submitted that no condition

which curtailed or took away the minority character of the institution while granting aid could be imposed. In particular, it was submitted that Article 29(2) could not be applied or so interpreted as to completely obliterate the right of the minority institution to grant admission to the students of its own religion or language. It was also submitted that while secular laws relating to health, town planning, etc., would be applicable, no other rules and regulations could be framed that would in any way curtail or interfere with the administration of the minority educational institution. It was emphasized by the learned counsel that the right to administer an educational institution included the right to constitute a governing body, appoint teachers and admit students. It was further submitted that these were the essential ingredients of the administration of an educational institution, and no fetter could be put on the exercise of the right to administer. It was conceded that for the purpose of seeking recognition, qualifications of teachers could be stipulated, as also the qualification of the students who could be admitted; at the same time, it was argued that the manner and mode of appointment of teachers and selection of students had to be within the exclusive domain of the educational institution.

6.17.7 Contentions of non-minorities

On behalf of the private non-minority unaided educational institutions, it was contended that since secularism and equality were part of the basic structure of the Constitution the provisions of the Constitution should be interpreted so that the right of the private non-minority unaided institutions were the same as that of the minority institutions. It was submitted that while reasonable restrictions could be imposed under Article 19(6), such private institutions should have the same freedom of administration of an unaided institution as was sought by the minority unaided institutions.

6.17.8 Union Government’s Stand

The learned Solicitor General did not dispute the contention that the right in establish an institution had been conferred on the non-minorities by Articles 19 and 26 and on the religious and linguistic minorities by Article 30. He submitted that Article 29(2) made it obligatory even on the minority institutions not to deny admission on the ground of religion, race, caste, language or any of them.
6.17.9 **States disagree to the arguments advanced by Solicitor General**

Several States have totally disagreed with the arguments advanced by the learned Solicitor General with regard to the applicability of Article 29(2) and 30(1). The States of Madhya Pradesh, Chhattisgarh and Rajasthan have submitted that the words "their choice" in Article 30(1) enabled the minority institutions to admit members of the minority community, and that the inability of the minority institutions to admit others as a result of the exercise of "their choice" would not amount to a denial as contemplated under Article 29(2). The State of Andhra Pradesh has not expressly referred to the inter play between Article 29(2) and Article 30(1), but has stated that "as the minority educational institutions are intended to benefit the minorities, a restriction that at least 50 per cent of the students admitted should come from the particular minority, which has established the institution should be stipulated as a working rule", and that an institution which fulfilled the following conditions should be regarded as minority educational institutions:

1. All the office bearers, members of the executive committee of the society must necessarily belong to the concerned religious/linguistic minority without exception.

2. The institution should admit only the concerned minority candidates to the extent of sanctioned intake permitted to be filed by the respective managements, and that the Court "ought to permit the State to regulate the intake in minority educational institutions with due regard to the need of the community in the area which the institution is intended to serve. In no case should such intake exceed 50% of the total admissions every year."

The State of **Kerala** has submitted, again without express reference to Article 29(2), "that the Constitutional right of the minorities should be extended to professional education also, but while limiting the right of the minorities to admit students belonging to their community to 50% of the total intake of each minority institution".

The State of **Karnataka** has submitted that "aid is not a matter of right but receipt thereof does not in any way dilute the minority character of the institution."
Chapter VI

Aid can be distributed on non-discriminatory conditions but in so far as minority institutions are concerned, their core rights will have to be protected.

On the other hand, the States of Tamil Nadu, Punjab, Maharashtra, West Bengal, Bihar and Uttar Pradesh have submitted that Article 30(1) is subject to Article 29(2), arguing that a minority institution availing of State aid loses the right to admit members of its community on the basis of the need of the community.

6.17.10 Religious and linguistic minority at par

Article 30(1) deal with religious minorities and linguistic minorities. The opening words of Article 30(1) make it clear that religious and linguistic minorities have been put at par, insofar as that Article is concerned. Therefore, whatever the unit, whether a State or the whole of India, for determining a linguistic minority, it would be the same in relation to a religious minority. India is divided into different linguistic States. The States have been carved out on the basis of the language of the majority of persons of that region. For example, Andhra Pradesh was established on the basis of the language of that region. viz., Telugu. "Linguistic minority" can, therefore, logically only be in relation to a particular State. If the determination of "linguistic minority" for the purpose of Article 30 is to be in relation to the whole of India, then within the State of Andhra Pradesh, Telugu speakers will have to be regarded as a "linguistic minority". This will clearly be contrary to the concept of linguistic States.

If, therefore, the State has to be regarded as the unit for determining "linguistic minority" vis-a-vis Article 30, then with "religious minority" being on the same footing, it is the State in relation to which the majority or minority status will have to be determined.

6.17.11 State as unit to Determine Minority

In the Kerala Education Bill case,\textsuperscript{47} the question as to whether the minority community was to be determined on the basis of the entire population of India, or on the basis of the population of the State forming a part of the Union was posed. It had been contended by the State of Kerala that for claiming the status of minority,

\textsuperscript{47} 1959 SCR 955

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the persons must numerically be a minority in the particular region in which the education institution was situated, and that the locality or ward or town where the institution was to be situated had to be taken as the unit to determine the minority community. No final opinion on this question was expressed, but it was observed that as the Kerala Education Bill "extends to the whole of the State of Kerala and consequently the minority must be determined by reference to the entire population of that State."

In two cases pertaining to the DAV College, this Court had to consider whether the Hindus were a religious minority in the State of Punjab. In *D.A.V. College v. State of Punjab and Ors.*, the question posed was as to what constituted a religious or linguistic minority, and how it was to be determined. After examining the opinion of this Court in the *Kerala Education Bill* case, the Court held that the Arya Samajis, who were Hindus, were a religious minority in the State of Punjab, even though they may not have been so in relation to the entire country. In another case, *D.A.V. College Bhatinda v. State of Punjab and Ors.*, the observations in the first *D.A.V. College* case were explained, and it was stated that "what constitutes a linguistic or religious minority must be judged in relation to the State in as much as the impugned Act was a State Act and not in relation to the whole of India." The Supreme Court rejected the contention that since Hindus were a majority in India, they could not be a religious minority in the State of Punjab, as it took the State as the unit to determine whether the Hindus were a minority community.

There can, therefore, be little doubt that this Court has consistently held that, with regard to a State law, the unit to determine a religious or linguistic minority can only be the State.

### 6.17.12 Regulation of Aided Private Minority Institutions to Administer be Regulated?

Rights of Aided Private Minority Institutions to Administer -
Rights under Article 25 not absolute

Article 25 give to all persons the freedom of conscience and the right to freely profess, practice and propagate religion. This right, however, is not absolute. The opening words of Article 25(1) make this right subject to public order, morality and health, and also to the other provisions of Part III of the Constitution.

6.17.13 Rights of religious denominations under Article 26

The freedom to manage religious affairs is provided by Article 26. This Article gives the right to every religious denomination, or any section thereof, to exercise the rights that it stipulates. However, this right has to be exercised in a manner that is in conformity with public order, morality and health. Clause (a) of Article 26 gives a religious denomination the right to establish and maintain institutions for religious and charitable purposes. There is no dispute that the establishment of an educational institution comes within the meaning of the expression "Charitable purpose".

6.17.14 Cultural and Educational Rights

The judgment of TMA Pai Foundation, discusses Articles 29 and 30 as a group of Articles relating to Cultural and Educational rights.

Right under Article 30 not absolute in view of Article 29(2)

The right under Article 30 is not absolute. Article 29(2) provides that, where any educational institution is maintained by the State or receives aid out of State funds no citizen shall be denied admission on the grounds only of religion, race, caste, language or any of them. The use of the expression "any educational institution" in Article 29(2) would refer to any educational institution established by anyone, but which is maintained by the State or receives aid out of State funds. In other words, on a plain reading, state maintained or aided educational institutions, whether established by the Government or the majority or a minority community cannot deny admission to a citizen on the grounds only of religion, race, caste or language.
6.17.15 Difference between rights under Article 26 and 30(1)

The Bench pointed out that the right of the minorities to establish and administer educational institutions is provided for by Article 30(1). To some extent, Article 26(1)(a) and Article 30(1) overlap, in so far as they relate to the establishment of educational institutions but whereas Article 26 gives the right both to the majority as well as minority communities to establish and maintain institutions for charitable purposes, which would inter alia, include educational institutions, Article 30(1) refers to the right of minorities to establish and maintain educational institutions of their choice. Another difference between Article 26 and Article 30 is that whereas Article 26 refers only to religious denominations, Article 30 contains the right of religious as well as linguistic minorities to establish and administer educational institutions of their choice.

6.17.16 No limitation imposed to Article 30 as compared to Articles 25 and 26

Article 30(1) bestows on the minorities, whether based on religion or language, the right to establish and administer educational institution of their choice. Unlike Article 25 and 26, Article 30(1) does not specifically state that the right under Article 30(1) is subject to public order, morality and health or to other provisions of Part III. This Sub-Article also does not specifically mention that the right to establish and administer a minority educational institution would be subject to any rules or regulations.

6.17.17 Relation between Article 29 and 30

In order to interpret Article 30 and its interplay, if any, with Article 29, our attention was drawn to the Constituent Assembly Debates. While referring to them, the learned Solicitor General submitted that the provisions of Article 29(2) were intended to be applicable to minority institutions seeking protection of Article 30. He argued that if any educational institution sought aid, it could not deny admission only on the ground of religion, race, caste or language and, consequently giving a preference to the minority over more meritorious nonminority students was impermissible. It is now necessary to refer to some of the decisions of this Court insofar as they interpret Articles 29 and 30, and to examine whether any creases therein need ironing out.
The Court discussed the judgment of *Kerala Education Bill case*,\(^{50}\) which was a reference under Article 143(1) of the Constitution. With reference to Article 29(2), the Court observed that "Article 29(2) provides, that no citizen shall be denied admission into any educational institution receiving did out of State funds on grounds only of religion, race, caste, language or any of them".

The Court took special note of the observation in *Kerala Education Bill Case* that: The real import of Article 29(2) and Article 30(1) seems to us to be that they clearly contemplate a minority institution with a sprinkling of outsiders admitted into it. By admitting a non-member into it the minority institution does not shed its character and cease to be a minority institution.

The judgment quotes with approval the concluding part of the case:

"...We have already observed that Article 30(1) gives two rights to the minorities, (1) to establish and (2) to administer, educational institutions of their choice. The right to administer cannot obviously include the right to maladminister. The minority cannot surely ask for aid or recognition for an educational institution run by them in unhealthy surroundings, without any competent teachers, possessing any semblance of qualification, and which does not maintain even a fair standard of teaching or which teaches matters subversive of the welfare of the scholars. It stands to reason, then, that the constitutional right to administer an educational institution of their choice does not necessarily militate against the claim of the State to insist that in order to grant aid the State may prescribe reasonable regulations to ensure the excellence of the institutions to be aided....."

The present judgment reviewed the argument addressed and answered in that case as to whether a minority aided institution loses its character as such by admitting non-minority students in terms of Article 29(2). It was observed that the admission of 'sprinkling of outsiders' will not deprive the institution of its minority status. The opinion expressed therein does not really go counter to the ultimate view taken by the Court in regard to the inter-play of Articles 30(1) and 29(2).

\(^{50}\) 1959 SCR 955
The judgment discusses the decision in Rev. Sidhajbhai Sabhai and Ors. v. State of Bombay and Anr. and held that it was not an authority for the proposition canvassed before the present judges. However, C J Kirpal clarified a few observations made in the Sidhajbhai case especially with regards to the absoluteness of the right under Article 30 and the permissibility of regulations in the national interest.

6.17.18 Rights under Article 30(1) not so absolute as to be above law

There are few observations in Sidhajbhai decision which describes the right under Article 30 as absolute. While interpreting Article 30, it was observed by this Court as under:-

"....All minorities, linguistic or religious have by Article 30(1) an absolute right to establish and administer educational institutions of their choice; ……"

Further in the same decision it stated:

"The right established by Article 30(1) is a fundamental right declared in terms absolute. Unlike the fundamental freedoms guaranteed by Article 19, it is not subject to reasonable restrictions.”

Clarifying the decision of the Court in Sidhajbhai’s case the Apex Court held that: The aforesaid decision does indicate that the right under Article 30(1) is not so absolute as to prevent the government from making any regulation whatsoever. As already noted hereinabove, in Sidhajbhai Sabhai’s case, it was laid down that regulations made in the true interests of efficiency of instruction, discipline, health, sanitation, morality and public order could be imposed. It further clarified, It is, of course, true that government regulations cannot destroy the minority character of the institution or make the right to establish and administer a mere illusion; but the right under Article 30 is not so absolute as to be above the law.”

6.17.19 Regulations can be made in National Interest

The Court in the present Judgment clarified the observations in Sidhajbhai’s Case with regards to the permissibility of regulative measures in

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public and national interest. The Court with regards to Article 30 (1) had held in Sidhajbhai’s case,

“The right is intended to be effective and is not to be whittled down by so-called regulative measures conceived in the interest not of the minority educational institution, but of the public or the nation as a whole. If every order which while maintaining the formal character of a minority institution destroys the power of administration is held justifiable because it is in the public or national interests, though not in its interest as an educational institution, the right guaranteed by Article 30(1) will be but a "teasing illusion", a promise of unreality.”

Chief Justice Kirpal explained the observation as: “As already noted hereinabove, in Sidhajbhai’s case, it was laid down that regulations made in the true interests of efficiency of instruction, discipline, health, sanitation, morality and public order could be imposed. If this is so, it is difficult to appreciate how the government can be prevented from framing regulations that are in the national interest, as it seems to be indicated in the passage quoted hereinabove. Any regulation framed in the national interest must necessarily apply to all educational institutions, whether run by the majority or the 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. It is, of course, true that government regulations cannot destroy the minority character of the institution or makes the right to establish and administer a mere illusion; but the right under Article 30 is not so absolute as to be above the law.

6.17.20 Establishment of Minority Institutions – Judicial view

The Judges also quoted and approved the following, from the decision of State of Kerala, v. Very Rev. Mother Provincial;52

"Article 30(1) has been construed before by this Court. Without referring to those cases it is sufficient to say that the clause contemplates two rights which are separated in point of time. The first right is the initial right to establish institutions of the minority's choice. Establishment here means the bringing into being of an

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institution and it must be by a minority community. 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 a member of that community. It is equally irrelevant that in addition to the minority community others from other minority communities or even from the majority community can take advantage of these institutions. Such other communities bring in income and they do not have to be turned away to enjoy the protection.

The next part of the right relates to the administration of such institutions. Administration means 'management of the affairs' of the institution. This management must be free of control so that the founders or their nominees can mould the institution as they think fit, and in accordance with their ideas of how the interest of the community in general and the institution in particular will be best served. No part of this management can be taken away and vested in another body without an encroachment upon the guaranteed right.

Chief Justice Kirpal further added that an exception to the right under Article 30 was the power with the State to regulate education, educational standards and allied matters. It was held that the minority institutions could not be allowed to fall below the standards of excellence expected of educational institutions or under guise of the exclusive right of management, allowed to decline to follow general pattern. The Court stated that while the management must be left to minority, they may be compelled to keep in step with others.

**Meaning and intent of Article 30(1)**

Elaborating on the meaning and intent of Article 30, the learned Chief Justice further observed as follows:-

"The real reason embodied in Article 30(1) of the Constitution 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 minorities are given this
protection under Article 30 in order to preserve and strengthen the integrity and unity of the country. The sphere of general secular education is intended to develop the commonness of boys and girls of our country. This is in the true spirit of liberty, equality and fraternity through the medium of education. If religious or linguistic minorities are not given protection under Article 30 to establish and administer educational institutions of their choice, they will feel isolated and separate. General secular educations will open doors of perception and act as the natural light of mind for our countrymen to live in the whole."

6.17.21 Minorities Right to administer Education Institutions

The basic concern is to explore and find out how to determine the constitutional ambit of minorities’ right to ‘establish and administer educational institutions of their choice’ under article 30(1) of the Constitution. The right to ‘establish and administer’, prima facie, includes all such elements as the right to determine the complexion of courses, the right to admit students, the right to determine students’ fee structure, the right to engage teachers, the right to employ administrative staff and for that matter, the right to do all the things that are needed to run an educational institutions. The moment recognition/affiliation is sought in respect of such educational institutions, with or without aid, from the state, the issue becomes of wider import. Then it needs to be considered wither the complexion of minorities’ right to management is in anyway affected. And, if so, to what extent?

The right of the religious and linguistic minorities to administer their educational institutions and the same has been quoted in *TMA Pai Case*. Ray C.J. observed that, in St Xavier’s

".....The right to administer is said to consist of four principal matters. First is the right to choose its managing or governing body. It is said that the founders of the minority institution have faith and confidence in their own committee or body consisting of persons selected by them. Second is the right to choose its teachers. It is said that minority institutions want teachers to have compatibility with the ideals, aims and aspirations of the institution. Third is the right not to be compelled to refuse admission to students. In other words, the minority institutions want to have the right to admit students of their choice subject to reasonable regulations
about academic qualifications. Fourth is the right to use its properties and assets for the benefit of its own institution."

Minorities’ right to administer is not absolute and that reasonable regulations can be imposed in the interest of the institution.

Chief Justice observations on desirability of regulations, in *St. Xavier’s case* were further referred:

In the field of administration it is not reasonable to claim that minority institutions will have complete autonomy. Checks on the administration may be necessary in order to ensure that the administration is efficient and sound and will serve the academic needs of the institution. The right of a minority to administer its educational institution involves, as part of it, a correlative duty of good administration."

**Rationale for differential treatment to minority under Article 30**

The judgment also refers with acceptance the observations of Justice Khanna in *St. Xavier’s case* which explains the rationale of Article 30.

Chief Justice Kirpal in the present case, approves and endorsed the views of Justice Khanna in *St. Xavier’s case* in the following words: Recognizing that the right to administer educational institutions could not include the right to mal-administer, it was held that regulations could be lawfully imposed, for the receiving of grants and recognition, while permitting the institution to retain its character as a minority institution. The regulation "*must satisfy a dual test -- the test of reasonableness, and the test that it is regulative of the educational character of the institution and is conducive to making the institution an effective vehicle of education for the minority community or other persons who resort to it.*" It was permissible for the authorities to prescribe regulations, which must be complied with, before a minority institution could seek or retain affiliation and recognition. But it was also stated that the regulations made by the authority should not impinge upon the minority character of the institution. Therefore, a balance has to be kept between the two objectives -- that of ensuring the standard of excellence of the institution, and that of preserving the right of the minorities to establish and administer their educational institutions. Regulations that embraced and reconciled
the two objectives could be considered to be reasonable. This, in our view, is the correct approach to the problem.

6.17.22 Minorities do have right to choose teachers and have disciplinary control

The present Judgment discussed St. Xavier's case, where Justice Khanna after referring to the earlier cases in relation to appointment of teachers noted that a law which interfered with a minority's choice of qualified teachers, or its disciplinary control over teachers and other members of the staff of the institution, was void, as it was violative of Article 30(1). While it was permissible for the State and its educational authorities to prescribe the qualifications of teachers, it was held that once the teachers possessing the requisite qualifications were selected by the minorities for their educational institutions, the State would have no right to veto the selection of those teachers. The selection and appointment of teachers for an educational institution was regarded as one of the essential ingredients under Article 30(1).53

The present judgment made the reference of Lilly Kurian v. Sr. Lewina and Ors.,54 wherein the Supreme Court struck down the power of the Vice-Chancellor to veto the decision of the management to impose a penalty on a teacher. It was held that the power of the Vice-Chancellor, while hearing an appeal against the imposition of the panel was uncanalized and unguided.

The present judgment also took note of in Christian Medical College Hospital Employees' Union and Anr. v. Christian Medical College Vellore Association and Ors.,55 wherein the Supreme Court had upheld the application of industrial law to minority colleges, and it was held that providing a remedy against unfair dismissals would not infringe Article 30.

54 [1979] 1 SCR 820.
55 [1979] 1 SCR 820. The judgment also took note of Frank Anthony Public Employees Association vs. Union of India and others, (1987) 1 SCR 238. This decision was followed by the Delhi High Court in CBSE v. Mount Carmel School Society and others decided on 15th Jan. 2016 LAWS (Delhi) 2016 (1) p. 91.
6.17.23 State do have right to regulate all academic matters

The Apex Court Bench in *TMA Pai case* referred to the observation in *St. Stephen’s Case* that the right under Article 30(1) had to be read subject to the power of the State to regulate education, educational standards and allied matters. The Court had observed:

"The need for a detailed study on this aspect is indeed not necessary. The right to minorities whether religious or linguistic, to administer educational institutions and the power of the State to regulate academic matters and management is now fairly well settled. The right to administer does not include the right to maladminister. The State being the controlling authority has right and duty to regulate all academic matters. Regulations which will serve the interests of students and teachers, and to preserve the uniformity in standards of education among the affiliated institutions could be made. The minority institutions cannot claim immunity against such general pattern and standard or against general laws such as laws relating to law and order, health, hygiene, labor relations, social welfare legislations, contracts, torts, etc. which are applicable to all communities. So long as the basic right of minorities to manage educational institution is not taken away, the State is competent to make regulatory legislation. Regulations, however, shall not have the effect of depriving the right of minorities to educate their children in their own institution. That is a privilege which is implied in the right conferred by Article 30(1).

The Apex Court then dealt with the question as to whether a preference in favour of, or a reservation of seats for candidates belonging to, its own community by the minority institutions would be invalid under Article 29(2) of the Constitution. After referring to the Constituent Assembly Debates and the proceedings of the Draft Committee that led to the incorporation of Articles 29 and 30, this Court proceeded to examine the question of the true import and effect of Articles 29(2) and 30(1) of the Constitution. On behalf of the institutions, it was argued that a preference given to minority candidates in their own educational institutions, on the ground that those candidates belonged to that minority community, was not violative of Article 29(2), and that in the exercise of Article 30(1), the minorities were entitled to establish and administer educational
institutions for the exclusive advantage of their own community's candidates. This contention was not accepted by this Court on two grounds. Firstly, it was held that institutional preference to minority candidates based on religion was apparently an institutional discrimination on the forbidden ground of religion -- the Court stated that "if an educational institution says yes to one candidate but says no to other candidate on the ground of religion, it amounts to discrimination on the ground of religion. The mandate of Article 29(2) is that there shall not be any such discrimination."

It further held that, as pointed out in the *Kerala Education Bill case*, the minorities could not establish educational institutions for the benefit of their own community alone. For if such was the aim, Article 30(1) would have been differently worded and it would have contained the words "for their own community". In this regard, it would be useful to bear in mind that the Court noticed that:

Every educational institution irrespective of community to which it belongs is a 'melting pot' in our national life. The students and teachers are the critical ingredients. It is there they develop respect for, and tolerance of, the cultures and beliefs of others. It is essential therefore, that there should be proper mix of students of different communities in all educational institutions.”

**Article 29(2) not to nullify the special right guaranteed to minorities in Article 30(1)**

The Supreme Court then dealt with the contention on behalf of the University that the minority institutions receiving government aid were bound by the mandate of Article 29(2), and that they could not prefer candidates from their own community. The Court referred to the decision in the case of *Champakam Dorairajan’s Case*, but observed as follows:

".....the fact that Article 29(2) applied to minorities as well as non-minorities did not mean that it was intended to nullify the special right guaranteed to minorities in Article 30(1). Article 29(2) deals with non-discrimination and is

56  (1959)1SCR995
57  AIR 1951 SC 226
available only to individuals. General equality by non-discrimination is not the only need of minorities. Minority rights under majority rule imply more than non-discrimination; indeed, it begins with non-discrimination. Protection of interests and institutions and the advancement of opportunity are just as important. Differential treatment that distinguishes them from the majority is a must to preserve their basic characteristics.

6.17.24 Minority institutions not to be treated differently while giving financial assistance

The Bench further observed, that the State could lay down reasonable conditions for obtaining grant-in-aid and for its proper utilization, but that the State had no power to compel minority institutions to give up their rights under Article 30(1). After referring to the Kerala Education Bill case\(^{58}\) and Sidhajbhai Sabhai's case\(^ {59}\) the Court observed as follows:-

The regulation cannot change the character of the minority institution. Such regulations must satisfy a dual test; the test of reasonableness, and the test that it is regulative of the educational character of the institution. It must be conducive to making the institution and effective vehicle of education for the minority community or other persons who resort to it. It is thus evident that the rights under Article 30(1) remain unaffected even after securing financial assistance from the government."

**Striking a balance between Article 30(1) and Article 29(2)**

The court while referring to the case of St. Stephen’s\(^ {60}\) observed, “The collective minority right is required to be made functional and is not to be reduced to useless lumber. A meaningful right must be shaped, moulded and created under Article 30(1), while at the same time affirming the right of individuals under Article 29(2). There is a need to strike a balance between the two competing rights. It is necessary to mediate between Article 29(2) and Article 30(1), between letter and spirit of these articles, between traditions of the past and the convenience of the present, between society's need for stability and its need for change."

\(^{58}\) AIR 1963 SC 540  
\(^{59}\) AIR 1992 SC1630  
\(^{60}\) AIR 1992 SC1630
The two competing rights are the right of the citizen not to be denied admission granted under Article 29(2), and right of the religious or linguistic minority to administer and establish an institution of its choice granted under Article 30(1). While treating Article 29(2) as a facet of equality, the Court gave a contextual interpretation to Articles 29(2) and 30(1) while rejecting the extreme contention on both sides, i.e., on behalf of the institutions that Article 29(2) did not prevent a minority institution to preferably admit only members belonging to the minority community, and the contention on behalf of the State that Article 29(2) prohibited any preference in favour of a minority community for whose benefit the institution was established. The Court concluded, as follows:-

“In the light of all these principles and factors, and in view of the importance which the Constitution attaches to protective measures to minorities under Article 30(1), the minority aided educational institutions are entitled to prefer their community candidates to maintain the minority character of the institutions subject of course to conformity with the University standard. The State may regulate the intake in this category with due regard to the need of the community in the area which the institution is intended to serve. But in no case such intake shall exceed 50 per cent of the annual admission. The minority institutions shall make available at least 50 per cent of the annual admission to members of communities other than the minority community. The admission of other community candidates shall be done purely on the basis of merit.”61

The judges opined that if they kept these basic features, as highlighted in St. Stephen’s case, in view, then the real purposes underlying Articles 29(2) and 30 could be better appreciated.

Preservation of Secularism and Equality through Article 30(1)

According to the Judges, Article 30(1) is a sort of guarantee or assurance to the linguistic and religious minority institutions of their right to establish and administer educational institutions of their choice. Secularism and equality being two of the basic features of the Constitution, Article 30(1) ensures protection to the linguistic and religious minorities, thereby preserving the secularism of the

61 Ibid., at p.
country. Furthermore, the principles of equality must necessarily apply to the enjoyment of such rights. No law can be framed that will discriminate against such minorities with regard to the establishment and administration of educational institutions vis-a-vis other educational institutions. Any law or rule or regulation that would put the educational institutions run by the minorities at a disadvantage when compared to the institutions run by the others will have to be struck down. At the same time, there also cannot be any reverse discrimination. It was observed in *St. Xaviers College* case, at page 192, that "the whole object of conferring the right on minorities under Article 30 is to ensure that there will be equality between the majority and the minority. If the minorities do not have such special protection, they will be dented equality." In other words, the essence of Article 30(1) is to ensure equal treatment between the majority and the minority institutions. No one type or category of institution should be disfavoured or, for that matter, receive more favourable treatment than another. Laws of the land, including rules and regulations, must apply equally to the majority institutions as well as to the minority institutions. The minority institutions must be allowed to do what the non-minority institutions are permitted to do.

**Granting of aid will not affect the minority character of the institution**

The 11 Judges Bench explained, the implication of Article 30(2) is also that it recognizes that the minority nature of the institution should continue, notwithstanding the grant of aid. In other words, when a grant is given to all institutions for imparting secular education, a minority institution is also entitled to receive it subject to the fulfillment of the requisite criteria, and the state gives the grant knowing that a linguistic or minority educational institution will also receive the same. Of course, the State cannot be compelled to grant aid, but the receipt of aid cannot be a reason for altering the nature of character of the incipient educational institution.

This means that the right under Article 30(1) implies that any grant that is given by the State to the minority institution cannot have such conditions attached to it, which will in any way dilute or abridge the rights of the minority institution to establish and administer that institution. The conditions that can normally be

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62 AIR 1974 SC1389
permitted to be imposed, on the educational institutions receiving the grant, must be related to the proper utilization of the grant and fulfillment of the objectives of the grant. Any such secular conditions so laid, such as a proper audit with regard to the utilization of the funds and the manner in which the funds are to be utilized, will be applicable and would not dilute the minority status of the educational institutions. Such conditions would be valid if they are also imposed on other educational institutions receiving the grant.

It cannot be argued that no conditions can be imposed while giving aid to a minority institution. Whether it is an institution run by the majority or the minority, all conditions that have relevance to the proper utilization of the grant-in-aid by an educational institution can be imposed. All that Article 30(2) states is that on the ground that an institution is under the management of a minority, whether based on religion or language, grant of aid to that educational institution cannot be discriminated against, if other educational institutions are entitled to receive aid. The conditions for grant or non-grant of aid to educational institutions have to be uniformly applied, whether it is a majority-run institution or a minority-run institution.

**Two interpretations of Article 29(2)**

The judgment examines the true scope of Article 29(2) in context of minority institutions. Article 29(2) is capable of two interpretations. One interpretation, which is put forth by the Solicitor General and the other counsel for the different States, is that a minority institution receiving aid cannot deny admission to any citizen on the grounds of religion, race, caste, language or any of them. In other words, the minority institution, once it takes any aid, cannot make any reservation for its own community or show a preference at the time of admission, i.e., if the educational institution was a private unaided minority institution, it is free to admit all students of its own community, but once aid is received, Article 29(2) makes it obligatory on the institution not to deny admission to a citizen just because he does not belong to the minority community that has established the institution.

The other interpretation that is put forth is that Article 29(2) is a protection against discrimination on the ground of religion, race, caste or language, and does
not in any way come into play where the minority institution prefers students of its choice. To put it differently, denying admission, even though seats are available, on the ground of the applicant's religion, race, caste or language, is prohibited, but preferring students of minority groups does not violate Article 29(2).

Article 30 is a special right conferred on the religious and linguistic minorities because of their numerical handicap and to instill in them a sense of security and confidence, even though the minorities cannot be \textit{per se} regarded as weaker sections or underprivileged segments of the society.

The one billion population of India consists of six main ethnic groups and fifty two major tribes; six major religions and 6,400 castes and sub-castes; eighteen major languages and 1,600 minor languages and dialects. The essence of secularism in India can best be depicted if a relief map of India is made in mosaic, where the aforesaid one billion people are the small pieces of marble that go into the making of a map. Each person, whatever his/her language, caste, religion has his/her individual identity, which has to be preserved, so that when pieced together it goes to form a depiction with the different geographical features of India. These small pieces of marble, in the form of human beings, which may individually be dissimilar to each other, when placed together in a systematic manner, produce the beautiful map of India. Each piece, like a citizen of India, plays an important part in making of the whole. The variations of the colours as well as different shades of the same colour in a map is the result of these small pieces of different shades and colours of marble, but even when one small piece of marble is removed, the whole map of India would be scarred, and the beauty would be lost.

The Constitution recognizes the differences among the people of India, but it gives equal importance to each of them, their differences notwithstanding, for only then can there be a unified secular nation. Recognizing the need for the preservation and retention of different pieces that go into the making of a whole nation, the Constitution, while maintaining, \textit{inter alia}, the basic principle of equality, contains adequate provisions that ensure the preservation of these different pieces.

The essence of secularism in India is the recognition and preservation of the different types of people, with diverse languages and different beliefs, and
placing them together so as to form a whole and united India. Articles 29 and 30 do not more than seek to preserve the differences that exist, and at the same time, unite the people to form one strong nation.

The bulk of questions formulated and answered by the Supreme Court in *TMA Pai case* centres around this issue.

Ques: What is the meaning and content of the expression "minorities" in Article 30 of the Constitution of India?

Ans: Linguistic and religious minorities are covered by the expression "minority" under Article 30 of the Constitution. Since reorganisation of the State in India has been on linguistic lines, therefore, for the purpose of determining the minority the unit will be the State and note the whole of India. Thus, religious and linguistic minorities, who have been put at par in Article 30, have to be considered State-wise.

Ques: What is meant by the expression "religion" in Article 30(1)? Can the followers of a sect or denomination of a particular religion claim protection under Article 30(1) on the basis that they constitute a minority in the State, even though the followers of that religion are in majority in that State?

Ans: This question need not be answered by this Bench; it will be dealt with by a regular Bench.

Ques: To what extent can professional education be treated as a matter coming under minorities rights under Article 30?

Ans: Article 30(1) gives religious and linguistic minorities the right to establish and administer educational institutions of their choice. The use of the words "of their choice" indicates that even professional educational institutions would be covered by Article 30.

Ques: Whether the admission of students to minority educational institution, whether aided or unaided, can be regulated by the State Government or by the University to which the institution is affiliated?

Ans: Admission of students to unaided minority educational institutions, viz., schools and undergraduates colleges where the scope for merit-based
selection is practically nil, cannot be regulated by the concerned State or University, except for providing the qualifications and minimum conditions of eligibility in the interest of academic standards.

The right to admit students being an essential facet of the right to administer educational institutions of their choice, as contemplated under Article 30 of the Constitution, the State government or the university may not be entitled to interfere with that right, so long as the admission to the unaided educational institutions is on a transparent basis and the merit is adequately taken care of. The right to administer, not being absolute, there could be regulatory measures for ensuring educational standards and maintaining excellence thereof, and it is more so in the matter of admissions to professional institutions.

A minority institution does not cease to be so; the moment grant-in-aid is received by the institution. An aided minority educational institution, therefore, would be entitled to have the right of admission of students belonging to the minority group and at the same time, would be required to admit a reasonable extent of non-minority students, so that the rights under Article 30(1) are not substantially impaired and further the citizens rights under Article 29(2) are not infringed. What would be a reasonable extent would vary from the types of institution, the courses of education for which admission is being sought and other factors like educational needs. The concerned State Government has to notify the percentage of the non-minority students to be admitted in the light of the above observations. Observance of inter se merit amongst the applicants belonging to the minority group could be ensured. In the case of aided professional institutions, it can also be stipulated that passing of the common entrance test held by the state agency is necessary to seek admission. As regards non-minority students who are eligible to seek admission for the remaining seats, admission should normally be on the basis of the common entrance test held by the state agency followed by counselling wherever it exists.

Ques: Whether the minority's rights to establish and administer educational institutions of their choice will include the procedure and method of admission and selection of students?
Ans: A minority institution may have its own procedure and method of admission as well as selection of students, but such a procedure must be fair and transparent, and the selection of students in professional and higher education colleges should be on the basis of merit. The procedure adopted or selection made should not tantamount to mal-administration. Even an unaided minority institution ought not to ignore the merit of the students for admission, while exercising its right to admit students to the colleges aforesaid, as in that event, the institution will fail to achieve excellence.

Ques: Whether the minority institutions' right of admission of students and to lay down procedure and method of admission, if any, would be affected in any way by the receipt of State aid?

Ans: While giving aid to professional institutions, it would be permissible for the authority giving aid to prescribe by-rules or regulations, the conditions on the basis of which admission will be granted to different aided colleges by virtue of merit, coupled with the reservation policy of the State qua non-minority students. The merit may be determined either through a common entrance test conducted by the concerned University or the Government followed by counselling, or on the basis of an entrance test conducted by individual institutions--the method to be followed is for the university or the government to decide. The authority may also devise other means to ensure that admission is granted to an aided professional institution on the basis of merit. In the case of such institutions, it will be permissible for the government or the university to provide that consideration should be shown to the weaker sections of the society.

A. Right to admission to unaided schools and undergraduate Colleges

Since the scope of merit-based selection in such institutions is practically nil, the concerned state or the university cannot regulate the admission of students “except providing the qualifications and minimum conditions of eligibility in the interest of academic standards.”

63 (2002) 9 SC 25 at pp. 73-76 para 162.
Regarding Minorities’ right to run unaided professional institutions, the Bench observed,

(i) Minority educational institutions may have their own procedure and method of admission. Such a procedure and method, however, “should not tantamount to maladministration.”

(ii) So long as the admission to such institutions is “fair” and on a “transparent basis,” and the merit is “adequately taken care,” the state government or the university is not entitled to interfere with the minorities' right to admit students.

(iii) It best there could be only “regulatory measures for ensuring educational standards and maintaining excellence thereof.”

(iv) “[T]he condition of recognition as well as the conditions of affiliation to a university or board have to be complied with.”

(v) In the matter of day-to-day management, “like the appointment of staff, teaching and non-teaching, and administrative control over them, the management should have the freedom and there should not be any external controlling agency.”

(vi) For the selection of teaching staff and for taking disciplinary action, “a rational procedure” has to be evolved by the management itself.”

(vii) For redressing the grievances of employees, in case of punishment or termination from service, there is a need to evolve appropriate tribunals, and till then, the tribunals could be presided over by the judicial officer of the rank of district judge.

(viii) The state or other controlling authorities could always prescribe the minimum qualification, experience and other conditions bearing on the merit of an individual or a principal of any educational institution.

(ix) Fee to be charged cannot be regulated by the state or affiliating university, but no institution should charge capitation fee.
So far as Minorities’ right to run aided educational institution – professional and non-professional, the judges viewed

(i) An aided minority educational institution would be “entitled to have the right of admission of students belonging to the minority group and at the same time would be required to admit a reasonable extent of non-minority students, so that the rights under Article 30(1) are not substantially impaired and further the citizens’ rights under Article 29(2) are not infringed.

(ii) The reasonable extent would vary from the types of the institution, the courses of education for which the admission is being sought, and other factors like population and educational needs of minorities.

(iii) The concerned state government has to notify the percentage of the non-minority students to be admitted in the light of the factors as stated in the preceding paragraph.

(iv) “Observance of inter-se merit amongst the applicants belonging to the minority group could be ensured.”

(v) In addition to the stipulations regarding aided non-professional minority educational institutions, in the case of aided professional “it can also be stipulated that passing of the common entrance test held by the state agency is necessary to seek admission.”

(vi) “As regards non-minority students who are eligible to seek admission for the remaining seats, admission should normally be on the basis of the common entrance test held by the state agency followed by counseling wherever it exists.”

(vii) In the case of Minority Institutions, “it will be permissible for the government or the University to provide that consideration would be shown to the weaker sections of the society.”

(viii) Regulations governing service conditions of teaching and other staff for whom aid is provided by the state can be framed, but without
interfering with the overall administrative control of the management over the staff.”

For redressing grievances of employees who are subjected to punishment or termination from service, appropriate tribunals could be constituted, and till then, such tribunals could be presided over by a judicial officer of the rank of district judge, as in the case of unaided Minority Educational Institutions.

Ques: Whether the statutory provisions which regulate the facets of administration like control over educational agencies, control over governing bodies, conditions of affiliation including recognition/ withdrawal thereof, and appointment of staff, employees, teachers and Principal including their service conditions and regulation of fees, etc. would interfere with the right of administration of minorities?

Ans: So far as the statutory provisions regulating the facets of administration are concerned, in case of an unaided minority educational institution, the regulatory measure of control should be minimal and the conditions of recognition as well as the conditions of affiliation to an university or board have to be complied with, but in the matter of day-to-day management like the appointment of staff, teaching and non-teaching, and administrative control over them, the management should have the freedom and there should not be any external controlling agency. However, a rational procedure for the selection of teaching staff and for taking disciplinary action has to be evolved by the management itself.

Ques: Whether the ratio laid down by this Court in the *St. Stephen's case* is correct? If no, what order?

Ans: The basic ratio laid down by this Court in the *St. Stephen's College* case is correct, as indicated in this judgment. However, rigid percentage cannot be stipulated. It has to be left to authorities to prescribe a reasonable percentage having regard to the type of institution, population and educational needs of minorities.

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Ques: Whether the decision of this Court in *Unni Krishnan J.P. v. State of A.P.*\(^65\) (except where it holds that primary education is a fundamental right) and the scheme framed there under required reconsideration/ modification and if yes, what?

Ans: The scheme framed by this Court in *Unni Krishnan's* case and the direction to impose the same, except where it holds that primary education is fundamental right, is unconstitutional. However, the principle that there should not be capitation fee or profiteering is correct. Reasonable surplus to meet cost of expansion and augmentation of facilities does not, however, amount to profiteering.

Ques: Whether the non-minorities have the right to establish and administer educational institution under Article 21 and 29(1) read with Articles 14 and 15(1), in the same manner and to the same extent as minority institutions? and

What is the meaning of the expressions "Education" and "Educational Institutions" in various provisions of the Constitution? Is the right to establish and administer educational institutions guaranteed under the Constitution?

Ans: The expression "education" in the Articles of the Constitution means and includes education at all levels from the primary school level up to the postgraduate level. It includes professional education. The expression "educational institutions" means institutions that impart education, where "education" is as understood hereinabove.

The right to establish and administer educational institutions is guaranteed under the Constitution to all citizens under Articles 19(1)(g) and 26, to minorities specifically under Article 30.

All citizens have a right to establish and administer educational institutions under Articles 19(1)(g) and 26, but this right is subject to the provisions of Articles 19(6) and 26(a). However, minority institutions will have a right to admit students belonging to the minority group, in the manner as discussed in this judgment.

\(^65\) MANU/SC/0333/1993 : [1993]1SCR594
6.18 *Islamic Academy of Education Anr. v. State of Karnataka And Others*66

After *T.M.A. Pai’s case*, the Union of India, various State Governments and the educational institutions understood the judgment in different perspectives. Different statutes/regulations were enacted/framed by different State Governments. These led to litigations in several Courts. The matters came up before a Five Judges Bench of Supreme Court, the parties to the writ petitions and special leave petitions attempted to interpret the majority decision of *TMA Pai case* in their own way as suited to them and therefore at their request all these matters were placed before the Bench.

In view of the rival submissions the following questions arose for consideration:

1) Whether the educational institutions are entitled to fix their own fee structure;

2) Whether minority and non minority educational institutions stand on the same footing and have the same rights;

3) Whether private unaided professional colleges are entitled to fill in their seats, to the extent of 100% and if not to what extent; and

4) Whether private unaided professional colleges are entitled to admit students by evolving their own method of admission;

Ques: No. 1. So far as the **first question** is concerned, the Court held that the majority view in *T.M.A. Pai’s case* is clear; there can be no fixing of a rigid fee structure by the government. Each institute must have the freedom to fix its own fee structure taking into consideration the need to generate funds to run the institution and to provide facilities necessary for the benefit of the students. They must also be able to generate surplus which must be used for the betterment and growth of that educational institution.

In para. 56 of the judgment it has been categorically laid down that the decision on the fees to be charged must necessarily be left to the private educational institutions that do not seek and which are not dependent upon any funds from the Government. Each institute will be entitled to have its own fee structure.

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Chapter VI

The fee structure for each institute must be fixed keeping in mind the infrastructure and facilities available, the investments made, salaries paid to the teachers and staff, future plans for expansion and/or betterment of the institution etc. Of course there can be no profiteering and capitation fees cannot be charged. It thus needs to be emphasized that as per the majority judgment imparting of education is essentially charitable in nature. Thus the surplus/profit that can be generated must be only for the benefit/use of that educational institution. Profits/surplus cannot be diverted for any other use or purpose and cannot be used for personal gain or for any other business or enterprise.

The Court held that all statutes/regulations which govern the fixation of fees had not yet been considered for the validity of those statutes/regulations, Court directed that in order to give effect to the judgment in T. M. A Pai's case the respective State Governments, concerned authority shall set up, in each State, a committee headed by a retired High Court judge who shall be nominated by the Chief Justice of that State. The other member, who shall be nominated by the Judge, should be a Chartered Accountant of repute. A representative of the Medical Council of India (in short 'MCI') or the All India Council for Technical Education (in short 'AICTE'), depending on the type of institution, shall also be a member. The Secretary of the State Government in charge of Medical Education or Technical Education, as the case may be, shall be a member and Secretary of the Committee. The Committee should be free to nominate/co-opt another independent person of repute, so that total number of members of the Committee shall not exceed five.

Each educational Institute must place before this Committee, well in advance of the academic year, its proposed fee structure. The Committee shall then decide whether the fees proposed by that institute are justified and are not profiteering or charging capitation fee. The Committee will be at liberty to approve the fee structure or to propose some other fee which can be charged by the institute. The fee fixed by the committee shall be binding for a period of three years, at the end of which period the institute would be at liberty to apply for revision. Once fees are fixed by the Committee, the institute cannot charge either directly or indirectly any other amount over and above the amount fixed as fees. If
any other amount is charged, under any other head or guise e.g. donations the same would amount to charging of capitation fee. The Governments/appropriate authorities should consider framing appropriate regulations, if not already, framed, where under if it is found that an institution is charging capitation fees or profiteering that institution can be appropriately penalized and also face the prospect of losing its recognition/affiliation.

Question No. 2 The next question for consideration was whether minority and non minority educational institution stand on the same footing and have the same rights under the Judgment. In support of the contention that the minority and non minority educational institutions had the same rights reliance was placed upon paragraphs 138 and 139 of the Judgment. These read as follows;

“Para. 138. As we look at it, Article 30(1) is a sort of guarantee or assurance to the linguistic and religious minority institutions of their right to establish and administer educational institutions of their choice. Secularism and equality being two of the basic features of the Constitution, Article 30(1) ensures protection to the linguistic and religious minorities; thereby preserving the secularism of the country. Furthermore, the principles of equality must necessarily apply to the enjoyment of such rights. No law can be framed that will discriminate against such minorities with regard to the establishment and administration of educational institutions vis-a-vis other educational institutions. Any law or rule or regulation that would put the educational institutions run by the minorities at a disadvantage when compared to the institutions run by the others will have to be struck down. At the same time, there also cannot be any reverse discrimination. It was observed in *St. Xaviers College case*, at page 192, that “the whole object of conferring the right on minorities under Article 30 is to ensure that there will be equality between the majority and the minority. If the minorities do not have such special protection, they will be denied equality.” In other words, the essence of Article 30(1) is to ensure equal treatment between the majority and the minority institutions.

As per Judgement, minority educational institutions have a guarantee or assurance to establish and administer educational institutions of their choice. These paragraphs merely provide that laws, rules and regulations cannot be such that they
favour majority institutions over minority institutions. We do not read these paragraphs to mean that non minority educational institutions would have the same rights as those conferred on minority educational institutions by Article 30 of the Constitution of India. Non minority educational institutions do not have the protection of Article 30. Thus, in certain matters they cannot and do not stand on similar footing as minority educational institutions. Even though the principle behind Article 30 is to ensure that the minorities are protected and are given an equal treatment yet the special right given under Article 30 does give them certain advantages. Just to take a few examples, the Government may decide to nationalize education. In that case it may be enacted that private educational institutions will not be permitted. Non minority educational institutions may become bound by such an enactment. However, the right given under Article 30 to minorities cannot be done away with and the minorities will still have a fundamental right to establish and administer educational institutions of their choice. Similarly even though the government may have a right to take over management of a non minority educational institution the management of a minority educational institution cannot be taken over because of the protection given under Article 30. Of course we must not be understood to mean that even in national interest a minority institute cannot be closed down. Further minority educational institutions have preferential right to admit students of their own community/language. No such rights exist so far as non minority educational institutions are concerned.

In answering to question 3 and 4 the Five Judges Bench held,

It was clarified that a minority professional college can admit, in their management quota, a student of their own community/language in preference to a student of another community even though that other student is more meritorious. However, whilst selecting/admitting students of their community/language the inter-se merit of those students cannot be ignored. In other words whilst selecting/admitting students of their own community/language they cannot ignore the inter-se merit amongst students of their community/language. Admission, even of members of their community/language, must strictly be on the basis of merit except that in case of their own students it has to be merit inter-se those students only. Further if the seats cannot be filled up from members of their community/
language, then the other students can be admitted only on the basis of merit based on a common entrance test conducted by government agencies.

It is brought to our notice of the Court that several institutions, have since long, had their own admission procedure and that even though they have been admitting only students of their own community, no finger has ever been raised against them and no complaints have been made regarding fairness or transparency of the admission procedure adopted by them. These institutions submit that they have special features and that they stand on a different footing from other minority non-aided professional institutions. It is submitted that their cases are not based only on the right flowing from Article 30(1) but in addition they have some special features which requires that they be permitted to admit in the manner they have been doing for all these years. A reference was made to few such institutions i.e. Christian Medical College, Vellore, St. Johns Hospital, Islamic Academy of Education etc. The claim of these institutions was disputed. However the Court did not think it necessary to go into those questions. The Court left it open to the institutions which have been established and who have had their own admission procedure for, at least, the last 25 years to apply to the Committee set out hereinafter.

The Court directed that the respective State Government to appoint a permanent Committee which will ensure that the tests conducted by the association of colleges to be fair and transparent. For each State a separate Committee shall be formed. The Committee would be headed by a retired Judge of the High Court. The Judge to be nominated by the Chief Justice of that State. The other member, to be nominated by the Judge, would be a doctor or an engineer of eminence (depending on whether the institution is medical or engineering/technical). The Secretary of the State in charge of Medical or Technical Education, as the case may be, shall also be a member and act as Secretary of the Committee. The Committee will be free to nominate/co-opt an independent person of repute in the field of education as well as one of the Vice-Chancellors of University in that State so that the total numbers of persons on the Committee do not exceed five. The Committee shall have powers to oversee the tests to be conducted by the association. This would include the power to call for the proposed question
paper/s, to know the names of the paper setters and examiners and to check the method adopted to ensure papers are not leaked. The Committee shall supervise and ensure that the test is conducted in a fair and transparent manner. The Committee shall have power to permit an institution, which has been established and which has been permitted to adopt its own admission procedure for the last, at least, 25 years, to adopt its own admission procedure and if the Committee feels that the needs of such an institute are genuine, to admit, students of their community, in excess of the quota allotted to them by the State Government. Before exempting any institute or varying in percentage of quota fixed by the State, the State Government must be heard before the Committee. It is clarified that different percentage of quota for students to be admitted by the management in each minority or nonminority unaided professional college/s shall be separately fixed on the basis of their need by the respective State Governments and in care of any dispute as regards fixation of percentage of quota, it will be open to the management to approach the Committee. It was also clarified that no institute, which has not been established and which has not followed its own admission procedure for the last, at least, 25 years, shall be permitted to apply for or be granted exemption from admitting students in the manner set out hereinabove.

6.19  **P.A. Inamdar and Ors. v. State of Maharashtra and Ors.**\(^{67}\)

The Supreme Court Seven Judges bench consisting of R.C. Lahoti, Y.K. Sabharwal, D.M. Dharmadhikari, Arun Kumar, G.P. Mathur, Tarun Chatterjee and P.K. Balasubramanyan JJ. delivered an unanimous judgment on August 12, 2005 declaring that the State can’t impose its reservation policy on minority and non-minority unaided private colleges, including professional colleges.

This judgment was an attempt to bring clarity to two previous judgments of the Supreme Court viz, **T.M.A. Pai Foundation and Ors v. State of Karnataka and Ors.**\(^{68}\) delivered on 31st October, 2002 and **Islamic Academy of Education and Anr. v. State of Karnataka and Ors.**\(^{69}\) delivered on 12\(^{th}\) August 2003.

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\(^{68}\) (2002) 8SCC481

\(^{69}\) AIR 2003 SC 3724
The Supreme Court in its judgment dealt on the following issues in relation to minority and non-minority unaided higher education institutions.

- Reservation policy,
- Admission policy,
- Fee structure,
- Regulation and control by the State and
- The role of committees dealing with admission and fees,

### 6.19.1 Reservation Policy

Neither the policy of reservation can be enforced by the State nor any quota or percentage of admissions can be carved out to be appropriated by the State in a minority or non-minority unaided educational institution.

Minority institutions are free to admit students of their own choice including students of non-minority community as also members of their own community from other States, both to a limited extent only and not in a manner and to such an extent that their minority educational institution status is lost.

The State cannot insist on private educational institutions which receive no aid from the State to implement State's policy on reservation for granting admission on lesser percentage of marks, i.e. on any criterion except merit.

Merely because the resources of the State in providing professional education are limited, private educational institutions, which intend to provide better professional education, cannot be forced by the State to make admissions available on the basis of reservation policy to less meritorious candidate. Unaided institutions, as they are not deriving any aid from State funds, can have their own admissions if fair, transparent, non-exploitative and based on merit.

A limited reservation of seats, not exceeding 15%, in our opinion, may be made available to NRIs depending on the discretion of the management subject to two conditions. First, such seats should be utilized bona fide by the NRIs only and for their children or wards. Secondly, within this quota, the merit should not be given a complete go-by. The amount of money, in whatever form collected from such NRIs, should be utilized for benefiting students such as from economically
weaker sections of the society, whom, on well defined criteria, the educational
institution may admit on subsidized payment of their fee. To prevent misutilization
of such quota or any malpractice referable to NRI quota seats, suitable legislation
or regulation needs to be framed. So long as the State does not do it, it will be for
the Committees (constituted pursuant to the judgment in the Islamic Academy of
Education case) to regulate.

6.19.2 Admission Policy

Upto the level of undergraduate education, the minority unaided educational institutions enjoy total freedom.

Presumably this means upto and including undergraduate education in nontechnical or non-professional courses, since the Court treats technical and professional education differently below.

However, different considerations would apply for graduate and post-graduate level of education, as also for technical and professional educational institutions. Such education cannot be imparted by any institution unless recognized by or affiliated with any competent authority created by law, such as a University, Board, Central or State Government or the like. Excellence in education and maintenance of high standards at this level are a must. To fulfill these objectives, the State can and rather must, in national interest, step in. The education, knowledge and learning at this level possessed by individuals collectively constitute national wealth.

In minority educational institutions, aided or unaided, admissions shall be at the State level. Transparency and merit shall have to be assured. The State can also provide a procedure of holding a common entrance test in the interest of securing fair and merit-based admissions and preventing maladministration.

Whether minority or non-minority institutions, there may be more than one similarly situated institutions imparting education in any one discipline, in any State. The same aspirant seeking admission to take education in any one discipline of education shall have to purchase admission forms from several institutions and appear at several admission tests conducted at different places on same or different dates and there may be a clash of dates. If the same candidate is required to appear
in several tests, he would be subjected to unnecessary and avoidable expenditure and inconvenience. There is nothing wrong in an entrance test being held for one group of institutions imparting same or similar education. Such institutions situated in one State or in more than one State may join together and hold a common entrance test or the State may itself or through an agency arrange for holding of such test. This would better ensure the fulfillment of twin objects of transparency and merit.

6.19.3 Fee Structure

To set up a reasonable fee structure is also a component of "the right to establish and administer an institution" within the meaning of Article 30(1) of the Constitution, as per the law declared in the Pai Foundation case. Every institution is free to devise its own fee structure subject to the limitation that there can be no profiteering and no capitation fee can be charged directly or indirectly, or in any form.

According to the Constitution bench in the Islamic Academy Case, a provision for reasonable surplus can be made to enable future expansion. The relevant factors which would go into determining the reasonability of a fee structure, in the opinion of majority in the judgment in the Islamic Academy Case are:

(i) the infrastructure and facilities available,
(ii) the investments made,
(iii) salaries paid to the teachers and staff,
(iv) future plans for expansion and betterment of the institution etc.

S.B. Sinha, J., in his opinion in the judgment in the Islamic Academy Case defined what is 'capitation' and 'profiteering'.

Presumably the Court in this judgment concurs with Justice Sinha's opinion in the Islamic Academy Case on anything up to 15% being a reasonable surplus. Justice Sinha in his opinion also stated "Future planning or improvement of facilities may be provided for. An institution may want to invest in an expensive
device (for medical colleges) or a powerful computer (for technical college). These factors are also required to be taken care of."

Despite the legal position, this Court cannot shut its eyes to the hard realities of commercialization of education and evil practices being adopted by many institutions to earn large amounts for their private or selfish ends. If capitation fee and profiteering is to be checked, the method of admission has to be regulated so that the admissions are based on merit and transparency and the students are not exploited. It is permissible to regulate admission and fee structure for achieving the purpose just stated.

6.20 Regulation and Control by the State

The Bench observed that, the judgment in the Pai Foundation Case is unanimous on the view that the right to establish and administer an institution, the phrase as employed in Article 30(1) of the Constitution (Right of minorities to establish and administer educational institutions), comprises of the following rights:

(a) to admit students;

(b) to set up a reasonable fee structure;

(c) to constitute a governing body;

(d) to appoint staff (teaching and non-teaching); and

(e) to take action if there is dereliction of duty on the part of any of the employees.

A minority educational institution may choose not to take any aid from the State and may also not seek any recognition or affiliation. Such institutions cannot indulge in any activity which is violative of any law of the land. They are free to admit all students of their own minority community if they so choose to do. (para 145, Pai Foundation)

Affiliation or recognition by the State or the Board or the University competent to do so, cannot be denied solely on the ground that the institution is a minority educational institution. However, the urge or need for affiliation or recognition brings in the concept of regulation by way of laying down conditions
consistent with the requirement of ensuring merit, excellence of education and preventing mal-administration. For example, provisions can be made indicating the quality of the teachers by prescribing the minimum qualifications that they must possess and the courses of studies and curricula. The existence of infrastructure sufficient for its growth can be stipulated as a pre-requisite to the grant of recognition or affiliation. However, there cannot be interference in the day-to-day administration.

The essential ingredients of the management, including admission of students, recruiting of staff and the quantum of fee to be charged, cannot be regulated.

Apart from the generalized position of law that right to administer does not include right to mal-administer, an additional source of power to regulate by enacting condition accompanying affiliation or recognition exists. Balance has to be struck between the two objectives:

(i) that of ensuring the standard of excellence of the institution, and

(ii) that of preserving the right of the minority to establish and administer its educational institution.

Subject to reconciliation of the two objectives, any regulation accompanying affiliation or recognition must satisfy the triple tests:

1) the test of reasonableness and rationality,

2) the test that the regulation would be conducive to making the institution an effective vehicle of education for the minority community or other persons who resort to it, and

3) that there is no in-road on the protection conferred by Article 30(1) of the Constitution, that is, by framing the regulation the essential character of the institution being a minority educational institution, is not taken away. (para 122, of the *Pai Foundation case*)

6.21 Role of Committees dealing with Admissions and Fees

The two committees for monitoring admission procedure and determining fee structure in the judgment of *Islamic Academy*, are in our view, permissive as
regulatory measures aimed at protecting the interest of the student community as a whole as also the minorities themselves, in maintaining required standards of professional education on non-exploitative terms in their institutions. Unless the admission procedure and fixation of fees is regulated and controlled at the initial stage, the evil of unfair practice of granting admission on available seats guided by the paying capacity of the candidates would be impossible to curb.

Non-minority unaided institutions can also be subjected to similar restrictions which are found reasonable and in the interest of student community. Professional education should be made accessible on the criterion of merit and on non-exploitative terms to all eligible students on a uniform basis.

The Supreme Court, lastly observed, “We expect the Committees, so long as they remain functional, to be more sensitive and to act rationally and reasonably with due regard for realities. They should refrain from generalizing fee structures and, where needed, should go into accounts, schemes, plans and budgets of an individual institution for the purpose of finding out what would be an ideal and reasonable fee structure for that institution.”

“We make it clear that in case of any individual institution, if any of the Committees is found to have exceeded its powers by unduly interfering in the administrative and financial matters of the unaided private professional institutions, the decision of the Committee being quasi-judicial in nature, would always be subject to judicial review.”

It may be inferred that in so far as the cases dealt by Supreme Court interpreting the rights of minority educational institutions the Apex Court in Sidhrajbai’s Case held that the rights under Article 30(1) were absolute and regulations in the interest of the institution can be imposed.

After a thorough analysis of case laws, the scholar has observed that by holding the ceiling of not more than 50% in favour of minority students imposed by the Supreme Court earlier in the case of St. Stephen’s College as ‘rigid’ or ‘unreasonable’ and also by having two separate lists of qualifying candidates - one for minority and another for all the rest. So the scholar fees perhaps we are

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70 AIR 1963 SC 540
unwittingly perhaps, opening doors for admitting students on basis other than academic merit in the name of, “educational needs of minorities”.

In *P.A. Inamdar & Ors. v. State of Maharashtra & Ors.*, the Supreme Court disapproved the interpretation of T.M.A. Pal given in *Islamic Academy of Education v. State of Karnataka* allowing for the government to provide for ‘a certain percentage_ of seats’ in cases of non-minority professional colleges to be reserved for admission by the management according to local needs keeping in mind the provisions to be made for the poorer and backward sections of the society.

It was for the State to provide the necessary infrastructure needed for empowering people through education. Education was the prime responsibility of the State and it had to meet the requirement of all the sections of the people especially of those who have a fundamental right for it under the Constitution.71

Having recognised the failure of the State to fulfil its mandate ad the Supreme Court's interpretation of the situation as laid down in Inamdar case, it is worthwhile to reflect upon the earlier expressed views of the political scientist Dr. M.V. Pylee on the fundamental right on education available to the minorities.72

“The rights of the minorities, however cannot be absolute. They must be subject to restrictions in the interest of education as well as in pursuance of socio-economic objectives embodied in the Constitution. The purpose of the right was not to create vested interests in separateness of minorities but to maintain their individuality as well as distinct identity of their language and culture. But the preservation of such distinctiveness should not result in the minorities remaining isolated from the mainstream of national life. As the nation makes progress, the barriers that divide citizens into majority and minority compartments should gradually disappear.

71  http://www.academics-india.com/SC-ruling.htm [internet accessed on 25th August. 2005]. The decision throws up an opportunity for the government to establish and provide adequate educational facilities to ensure that all aspirants to education, whether primary or secondary or professional, get access to the education of their choice.

In effect, the decision in *Inamdar* being contrary to social justice may also be an indication of a policy shift from socialism to capitalism.\(^{73}\)

### 6.22 Right to establish and Administer Professional Educational Institutions

In *Pushpagiri Medical Society v. State of Kerala*,\(^{74}\) which is a consequence of the decision in the *Inamdar* decision, the challenge was against the constitutionality of the State Government’s statute to regulate admission to professional education.\(^{75}\) The Kerala Professional Colleges or Institutions (Prohibition of Capitation Fee, Regulation of Admission, Fixation of Non-Exploitative Fee and other Measures to Ensure Equity and Excellence in

\(^{73}\) A. Raghunadha Reddy. “Role of Morality in Law-Making: A Critical Study”. 49 JILI (2007) 194-211 at p. 210 - “In *P.A. Inamdar v. Maharashtra* (AIR 2005 SC 3226) the court's ruling was against social justice wherein quota system was done away within private educational institutions. This was neutralized by constitutional 93rd Amendment Act, 2005 in the same way when the first ever constitutional Amendment, 1951 was passed to undo *State of Madras v. Champakam Dorairajan*, (AIR 1951 SC 226). The legislative measure seeks to harmonises the claims of the citizen's right to freedom with the obligation of the state to fulfill the promise of social justice to weaker sections. This clearly shows that there is a set-back to pro-poor interpretation of the Supreme Court inspired by value-oriented jurisprudence. Is it due to change in economic policy of the government? (For details see *Hombe Gowda Educational Trust v. Karnataka*, (2006) 1 SCC 430; *U.P. State Brass Ware Corporation Ltd. v. Uday Narayon Pandey*, (2006) 1 SCC 479). Does it augur well particularly when country's economy is in transition? This will definitely lend its credence to the statement that the shift towards market economy does make social justice irrelevant.”

\(^{74}\) WP(C) No. 18899 of 2006 in the High Court of Kerala, judgement dated 4th January, 2007.

\(^{75}\) The High Court observed that both the parties were culling stray sentences from the *Inamdar* decision in their favour and observed thus: “It may be recalled that a Constitution Bench of seven Judges was constituted in *Inamdar’s case*. primarily with a view to clarify the law laid down in *T.M.A. Pai’s case* and Islamic Academy’s case. The educational institutions and the Government were interpreting these judgments in their favour. They were so interpreting these judgments in their favour as some observations were made in favour of both. It is interesting to note that even at this stage. when the Constitution Bench has rendered the judgment in *Inamdar’s case*, both parties are relying upon the same judgment. It is thus clear that there are some sentences which may go in favour of the petitioners and others in favour of the State. The State appears to have picked up only such sentences or observations which go in their favour. be it *T.M.A. Pai’s case, Islamic Academy’s case or Inamdar’s case*. However, while doing so, the State ought to have seen the reference and context in which such observations were made. It is for that reason that at the very outset the Constitution Bench in Inamdras case mentioned that “it is dangerous to take one or two observations out of a long judgment and to treat the same as if they give the ratio decidendi of the said case”. The statements of law made in the Preamble around which the Act of 2006 has been hedged appear to be by making a vital mistake of taking one or two observations out of the long judgment and treating the same to be the ratio decidendi of the case.
Professional Education) Act, 2006 (Act 19 of 2006) was avowedly to “provide for prohibition of capitation fee, regulation of admission, fixation of non-exploitative fee, allotment of seats to Scheduled Castes. Scheduled Tribes and other socially and economically backward classes and other measures to ensure equity and excellence in professional education and for matters connected therewith or incidental thereto”.

The High Court divided the provisions of the Act into two main categories with one relating to procedure for admission, fixation of fee structure, determining factors of minority and quota and the other as an entirely separable part dealing with the constitution of the Admission Supervisory Committee as per Section 4, and Fee Regulatory Committee as per Section 6. The Court upheld the constitutionality of the second part and struck down the essential provisions relating to the former. It struck down as unconstitutional the provisions of the Act contained in Section 3,76 which related to the method of admissions, Section 7,77 which related to determination of fee. Further, Section 8(b) and (c), deals with according recognition and conferring status as unaided minority professional college or institution and Section 10 which related to allotment of seats. The Court

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76 The Kerala Professional Colleges or Institutions (Prohibition of Capitation Fee, Regulation of Admission, Fixation of Non-Exploitative Fee and other Measures to Ensure Equity and Excellence in Professional Education) Act, 2006. Section 3 reads thus: “Method of admission in Professional Colleges or Institutions – Notwithstanding anything contained in any other law for the time being in force or in any judgment, decree or order of any Court or any other authority, admission of students in all professional colleges or institutions to all seats except Non-Resident Indian seats shall be made through Common Entrance Test conducted by the State followed by centralised counselling through a single window system in the order of merit by the State Commissioner for Entrance Examinations in accordance with such procedure as may be specified by the Government from time to time”.

77 Section 7 reads thus: “Factors for determination of fee.—The Fee Regulatory Committee shall determine and fix the fee or fees to be charged by an unaided professional college or institution taking into consideration the factors, such as, - (a) the obligation on the part of all unaided professional colleges or institutions to provide free ship to a minimum of fifty per cent of the students admitted and the additional expenses. if any, required for the same over and above the excess funds generated from Non-Resident Indians, charity on the part of managements and contribution by the Government for providing free ship for scheduled caste or scheduled tribe students; (b) the nature of the professional course; (c) the available infrastructure; (d) the expenditure on administration and maintenance; (e) a reasonable surplus required for the growth and development of the college; (f) any other factor as the Committee may deem fit”.

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also struck down Rule 10,\textsuperscript{78} which dealt with allotment of seats, and Rule 11,\textsuperscript{79} which dealt with distribution of freeships. The Court found these to be opposed to Article 14 and violating the fundamental rights of the petitioner institutions under Articles 19(1)(g), 26(a) and 30 of the Constitution of India.

The main reason for the striking down of these provisions was the stifling regulations that were placed by the government which the Court feared would choke and shut down the institutions even while their very presence was indicative of the failure of the State to provide quality education as needed for the society. The Court also reiterated the power of the State to regulate and protect within Constitutional limits its obligations towards the weaker sections\textsuperscript{80} and under Article 15(5).\textsuperscript{81}

\textbf{6.23 Sindhi Education Society & Another vs. Chief Secretary of NCT, Delhi \textsuperscript{82}}

Every linguistic minority may have its own socio, economic and cultural limitations. It has a constitutional right to conserve such culture and language. Thus, it would have a right to choose teachers, who possess the eligibility and qualifications, as provided, without really being impressed by the fact of their religion and community.

\textsuperscript{78} Kerala Professional Colleges or Institutions (Prohibition of Capitation Fee, Regulation of Admission, Fixation of Non-Exploitative Fee and Other Measures to Ensure Equity and Excellence in Professional Education) Rules. 2006. Rule 10 reads thus: “Allotment of Seats - (l) Allotment of seats in an un-aided professional college or institution shall be done college or institution wise.

\textsuperscript{79} Rule 11 reads thus: “Freeship and its disbursement - (1) All un-aided professional colleges or institutions, including minority and non-minority colleges or institutions shall provide freeship to a minimum of 50% of the students admitted in each college, subject to the stipulations regarding income limit. Full remission will be given to all SC/ST students, irrespective of their income, whether admitted under specified category or under general merit category.

\textsuperscript{80} It is equally true that such strata of the society who may be socially or economically weak also deserves quality education (paragraph 92).

\textsuperscript{81} The reservation for SC/ST and other backward classes is permissible. As mentioned above, there cannot be any exception to the same, subject to the validity of Article 15(5). (para 90). The Government would be well within its rights to provide reservation for classes as mentioned above and may do even now but the same has to be done after taking into consideration the factors as enumerated above.

\textsuperscript{82} (2010) 8 SCC 49 followed in \textit{Sri Venkataramana Education Trust, Udupi vs. Karnataka State}, writ Appeal No. 8730 of 2012, judgement dated 8\textsuperscript{th} August 2013.
The direction, as contemplated under Rule 64(1) (b) of the Delhi School Education Rules could be enforced against the general or majority category of the Government aided school but, it may not be appropriate to enforce such condition against linguistic minority schools. This may amount to interference with their right of choice and, at the same time, may dilute their character of linguistic minority. It would be impermissible in law to bring such actions under the cover of equality which in fact, would diminish the very essence of their character or status. Linguistic and cultural compatibility can be legitimately claimed as one of the desirable features of a linguistic minority in relation to selection of eligible and qualified teachers.

A linguistic minority institution is entitled to the protection and the right of equality enshrined in the provisions of the Constitution. The power is vested in the State to frame regulations, with an object to ensure better organization and development of school education and matters incidental thereto. such power must operate within its limitation while ensuring that it does not, in any way, dilute or impairs the basic character of linguistic minority. Its right to establish and administer has to be construed liberally to bring it in alignment with the constitutional protections available to such communities. The minority society can hardly be compelled to perform acts or deeds which per se would tantamount to infringement of its right to manage and control. In fact, it would tantamount to imposing impermissible restriction. A school which has been established and granted status of a linguistic minority for years, it will not be proper to stop its grant-in-aid for the reason that it has failed to comply with a condition or restriction which is impermissible in law, particularly, when the teacher appointed or proposed to be appointed by such institution satisfy the laid down criteria and/or eligibility conditions. The minority has an inbuilt right to appoint persons, which in its opinion are better culturally and linguistically compatible to the institution.

For the reasons afore-stated, we allow the appeal and hold that Rule 64(1)(b) and the circular of September, 1989, are not enforceable against the linguistic minority school in the NCT of Delhi.
6.24 Christian Medical College Vellore Vs. Union of India the NEET case

The Supreme Court has consistently held that the right to administer an educational institution would also include the right to admit students, which right, in our view, could not be taken away on the basis of Notifications issued by the MCI and the DCI which had no authority, either under the 1956 Act or the 1948 Act, to do so. The MCI and the DCI are creatures of Statute, having been constituted under the Indian Medical Council Act, 1956, and the Dentists Act, 1948, and have, therefore, to exercise the jurisdiction vested in them by the Statutes and they cannot wander beyond the same. Of course, under Section 33 of the 1956 Act and Section 20 of the 1948 Act, power has been reserved to the two Councils to frame Regulations to carry out the purposes of their respective Acts. It is pursuant to such power that the MCI and the DCI has framed the Regulations of 1997, 2000 and 2007, which set the standards for maintaining excellence of medical education in India. The right of the MCI and the DCI to prescribe such standards has been duly recognised by the Courts. However, such right cannot be extended to controlling all admissions to the M.B.B.S., the B.D.S. and the Post-graduate Courses being run by different medical institutions in the country. At best, a certain degree of control may be exercised in regard to aided institutions, where on account of the funds being provided by the Government, it may have a say in the affairs of such institutions.

The rights of private individuals to establish and administer educational institutions under Article 19(1)(g) of the Constitution are now well-established and do not require further elucidation. The rights of unaided and aided religious and linguistic minorities to establish and administer educational institutions of their choice under Article 19(1)(g), read with Article 30 of the Constitution, have come to be crystalised in the various decisions of this Court referred to hereinabove, which have settled the law that the right to admit students in the different educational and medical institutions is an integral part of the right to administer and cannot be interfered with except in cases of maladministration or lack of transparency. The impugned Regulations, which are in the nature of delegated legislation, will have to make way for the Constitutional provisions. The freedom

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83 TC (C) No. 98/2012 decided on 18.7.2013
and rights guaranteed under Articles 19(1) (g), 25, 26 and 30 of the Constitution to all citizens to practise any trade or profession and to religious minorities to freedom of conscience and the right freely to profess, practise and propagate religion, subject to public order, morality and health and to the other provisions of Part III of the Constitution, and further to maintain institutions for religious and charitable purposes as guaranteed under Articles 25 and 26 of the Constitution, read with the rights guaranteed under Article 30 of the Constitution, are also well-established by various pronouncements of this Court. Over and above the aforesaid freedoms and rights is the right of citizens having a distinct language, script or culture of their own, to conserve the same under Article 29(1) of the Constitution.

Nowhere in the Indian Medical Council 1956 Act nor in the MCI Regulations, has the Council been vested with any authority to either conduct examinations or to direct that all admissions into different medical colleges and institutions in India would have to be on the basis of one common National Eligibility-cum-Entrance Test (NEET), thereby effectively taking away the right of the different medical colleges and institutions, including those run by religious and linguistic minorities, to make admissions on the basis of their own rules and procedures.

The Supreme Court held Regulations on Graduate Medical Education (Amendment) 2010 (Part II) and the “Post Graduate Medical Education (Amendment) Regulation, 2010 (Part II)”, whereby the Medical Council of India introduced the single National Eligibility-cum-Entrance Test and the corresponding amendments in the Dentists Act, 1948, are ultra vires the provisions of Articles 19(1)(g), 25, 26(a), 29(1) and 30(1) of the Constitution, since they have the effect of denuding the States, State-run Universities and all medical colleges and institutions, including those enjoying the protection of the above provisions, from admitting students to their M.B.B.S., B.D.S. and Post-graduate courses, according to their own procedures, beliefs and dispensations, which has been found by this Court in the T.M.A. Pai Foundation case, to be an integral facet of the right to administer. In our view, the role attributed to and the powers conferred on the MCI and the DCI under the provisions of the Indian-Medical Council Act, 1956, and the Dentists Act, 1948, do not contemplate anything different and are
restricted to laying down standards which are uniformly applicable to all medical colleges and institutions in India to ensure the excellence of medical education in India. The role assigned to the MCI under Sections 10A and 19A(1) of the 1956 Act vindicates such a conclusion.

As with the result, the Medical Council of India is not empowered under the 1956 Act, to actually conduct the NEET.

6.25 **Pramati Educational and Cultural Trust & Others vs. Union of India**, \(^{84}\) 2014 : Supreme Court on Right to Education

The Hon’ble Supreme Court has upheld the Right to Education in case of all Private Schools except the minority schools (aided or unaided) in the case.

Fourteen petitioners, mostly charitable organisations that run private schools in Karnataka, challenged the newly inserted Article 15 (5) [The Constitution (Ninety-third Amendment) Act, 2005], the fundamental right to education under Article 21A and the RTE Act before a constitutional bench at the Supreme Court in 2013. Additionally, two parties intervened in this challenge-minority aided institutions and Azim Premji Foundation.

This petition challenged the insertion of Article 15 (5) under the Constitution (93\(^{rd}\) Amendment) Act, 2005, Article 21A inserted by the Constitution (86th Amendment) Act, 2002 and the RTE Act. A further challenge was posed to the judgments of the *Supreme Court in Society for Unaided Private Schools of Rajasthan and Ors. v. Union of India and Anr.* \(^{85}\) and *Indian Medical Association v. Union of India & Ors.* \(^{86}\) on the grounds that these benches were not competent to adjudicate upon a matter involving substantial question of law under the Constitution under Article 145 (3).

The petitioners argued inter alia that Art. 19 (6) allows the State to impose reasonable restrictions on one rights under Art. 19 (1) (g), however these restrictions must not result in favouring minority institutions over non-minority

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85 [(2012) 6 SCC 1].

86 [(2011) 6 S.C.R.]
unaided institutions. Hence such classification fills the balance between Articles 15(5), 19(1)(g) and 30(1) which allows minority communities to establish and administer educational institutions of their choice, and creates a disequilibrium of in the constitution.

Article 15(5) of the Constitution empowers the state to enact laws that mandate reservations in private unaided institutions except minority institutions) for students belonging to socially and educationally backward classes (SEBC). The petitioners contend that this provision enables the state to infringe upon the freedom of occupation conferred upon educational institutions under Article 19 (1) (g). The argument stems from the articulation of autonomy and the rights of educational institutions in *T.M.A Pai Foundation vs. State of Karnataka*\(^{87}\) wherein it was held that private unaided educational institutions were entitled to the following rights under Article 19 (1) (g):

1. the right to establish education institutions
2. the right to administer institutions
3. the right to appoint staff
4. the right to take disciplinary action against errant staff and students
5. the right to admit students of their choice.

The Hon’ble Supreme Court has now held that RTE 2009 Act is not ultra vires Article 19(1)(g) of the Constitution for Private (non-minority schools) as it did not find any merit in the submissions made on behalf of the non-minority private schools that Article 21A of the Constitution and the 2009 Act violate their right under Article 19(1)(g) of the Constitution.

However, for minority schools aided or unaided, the Hon’ble Supreme Court has held that “2009 Act in so far as it applied to minority schools, aided or unaided, covered under clause (1) of Article 30 of the Constitution is ultra vires the Constitution”. If the 2009 Act is made applicable to minority schools, aided or unaided, the right of the minorities under Article 30(1) of the Constitution will be abrogated. Therefore, the 2009 Act in so far it is made applicable to minority

\(^{87}\) [(2003)6 SCC 697]
schools referred in clause (1) of Article 30 of the Constitution is ultra vires the Constitution.”

We further find that under Section 12(2) of the 2009 Act such a school shall be reimbursed expenditure so incurred by it to the extent of per-child-expenditure incurred by the State, or the actual amount charged from the child, whichever is less, in such manner as may be prescribed. Thus, ultimately it is the State which is funding the expenses of free and compulsory education of the children belonging to weaker sections and several groups in the neighbourhood, which are admitted to a private unaided school. These provisions of the 2009 Act, in our view, are for the purpose of providing free and compulsory education to children between the age group of 6 to 14 years and are consistent with the right under Article 19(1)(g) of the Constitution, as interpreted by this Court in *T.M.A. Pai Foundation* and are meant to achieve the constitutional goals of equality of opportunity in elementary education to children of weaker sections and disadvantaged groups in our society. We, therefore, do not find any merit in the submission made on behalf of the non-minority private schools that Article 21A of the Constitution and the 2009 Act violate their right under Article 19(1)(g) of the Constitution.

Under Article 30(1) of the Constitution, all minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice. Religious and linguistic minorities, therefore, have a special constitutional right to establish and administer educational schools of their choice and this Court has repeatedly held that the State has no power to interfere with the administration of minority institutions and can make only regulatory measures and has no power to force admission of students from amongst non-minority communities, particularly in minority schools, so as to affect the minority character of the institutions.

Thus, a minority aided school is put under a legal obligation to provide free and compulsory elementary education to children who need not be children of members of the minority community which has established the school. We also find that under Section 12(1)(c) read with Section 2(n)(iv) of RTE Act, 2009, an unaided school has to admit into twenty-five per cent of the strength of class-I
children belonging to weaker sections and disadvantaged groups in the neighbourhood. Hence, unaided minority schools will have a legal obligation to admit children belonging to weaker sections and disadvantaged groups in the neighbourhood who need not be children of the members of the minority community which has established the school.

In the result, we hold that the Constitution (Ninety-third Amendment) Act, 2005 inserting clause (5) of Article 15 of the Constitution and the Constitution (Eighty-Sixth Amendment) Act, 2002 inserting Article 21A of the Constitution do not alter the basic structure or framework of the Constitution and are constitutionally valid. We also hold that the 2009 Act insofar as it applied to minority schools, aided or unaided, covered under clause (1) of Article 30 of the Constitution is ultra vires the Constitution. Accordingly the Writ Petition filed on behalf of Muslim Minority Schools Managers’ Association is allowed and writ petitions filed on behalf on non-minority private in aided educational institutions are dismissed.

6.26 Researcher’s Analysis of Judicial Approach

In this chapter, the researcher examined and analysed the leading landmark judgements of the Supreme Court and Other High Courts in interpreting the rights of minority to establish and administer educational institutions including professional educational Institutions. It has been observed that the Court in Sidhrajibhai’s Case\(^88\) held that the rights under Article 30(1) were absolute and regulations in the interest of the institution can be imposed. In the St. Stephan’s College case\(^89\) and there after the Court has held that the rights were not absolute and regulations in the interest of nation can also be imposed.

Article 30 is a special right conferred on the religious and linguistic minorities because of their numerical handicap and to instill in them a sense of security and confidence, even though the minorities cannot be per se regarded as weaker sections or underprivileged segments of the society.

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\(^{88}\) AIR 1963 SC 540
\(^{89}\) AIR 1992 SC 1630
The Constitution recognizes the differences among the people of India, but it gives equal importance to each of them, their differences notwithstanding, for only then can there be a unified secular nation.

The essence of secularism in India is the recognition and preservation of the different types of people, with diverse languages and different beliefs, and placing them together so as to form a whole and united India. Articles 29 and 30 do not more than seek to preserve the differences that exist, and at the same time, unite the people to form one strong nation.

The right to admit students being an essential facet of the right to administer educational institutions of their choice, as contemplated under Article 30 of the Constitution, the State government or the university may not be entitled to interfere with that right, so long as the admission to the unaided educational institutions is on a transparent basis and the merit is adequately taken care of. The right to administer, not being absolute, there could be regulatory measures for ensuring educational standards and maintaining excellence thereof, and it is more so in the matter of admissions to professional institutions.

A minority institution does not cease to be so; the moment grant-in-aid is received by the institution. An aided minority educational institution, therefore, would be entitled to have the right of admission of students belonging to the minority group and at the same time, would be required to admit a reasonable extent of non-minority students, so that the rights under Article 30(1) are not substantially impaired and further the citizens rights under Article 29(2) are not infringed.

While giving aid to professional institutions, it would be permissible for the authority giving aid to prescribe by-rules or regulations, the conditions on the basis of which admission will be granted to different aided colleges by virtue of merit, coupled with the reservation policy of the State qua non-minority students. The merit may be determined either through a common entrance test conducted by the concerned University or the Government followed by counselling, or on the basis of an entrance test conducted by individual institutions—the method to be followed is for the university or the government to decide. The authority may also devise other means to ensure that admission is granted to an aided professional institution
on the basis of merit. In the case of such institutions, it will be permissible for the government or the university to provide that consideration should be shown to the weaker sections of the society.

The expression "education" in the Articles of the Constitution means and includes education at all levels from the primary school level up to the postgraduate level. It includes professional education. The expression "educational institutions" means institutions that impart education, where "education" is as understood hereinabove.

The right to establish and administer educational institutions is guaranteed under the Constitution to all citizens under Articles 19(1)(g) and 26, to minorities specifically under Article 30. All citizens have a right to establish and administer educational institutions under Articles 19(1)(g) and 26, but this right is subject to the provisions of Articles 19(6) and 26(a). However, minority institutions will have a right to admit students belonging to the minority group, in the manner as discussed in this judgment.