CHAPTER – VII
FINDINGS AND SUGGESTIONS

7.1 Introduction

This doctoral research work aims at investigating into the constitutional rights and safeguards of the religious and linguistic minorities in India with particular reference to their right to establish and administer professional educational institutions.

Eventually, the minorities in such societies and under some circumstances face the danger of marginalization and exclusion. They develop apprehension and a sense of insecurity and therefore demand adequate constitutional and legal safeguards and effective institutional arrangements for their implementation.

The minority rights and safeguards are still evolving and taking a concrete shape under the UN system and other multilateral arrangements. In a multireligious, multicultural and multiethnic India a variety of minority groups are found. Religion has played an important role in group formation in India and therefore the religious minorities have always been on the centre stage of all socio-political discourses.

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

In 1958, the Chief Justice of India, S. R. Das, said in the re Kerala Education Bill case: “So long as the Constitution stands as it is and is not altered, it is, we conceive, the duty of this court to uphold the fundamental rights and thereby honour our sacred obligation to the minority communities who are of our own.”

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1 AIR 1958 SC 956
Article 30 confers a special right on minorities to establish educational institutions of their own choice. This is an expression of the liberal and tolerant culture of our nation which is reflected in the Constitution. The idea is to foster unity in diversity, i.e. unique characteristic of the Indian way of life. To achieve this, minority educational institutions are allowed to preserve general secular education along with the educational pursuits needed to conserve their culture or language. In this way it can be ensured that there is proper integration between national goals and minority aspirations.

The idea of giving some special rights to the minorities is not to have a kind of a privileged section of the population, but to give to the minorities a sense of security and a feeling of confidence.

Special rights for minorities were designed not to create inequality. The real effect was to bring about equality by ensuring the preservation of minority institutions and by guaranteeing to the minorities autonomy in the matter of administration of those institutions. The differential treatment for the minorities by giving them special rights is intended to bring about equilibrium so that the idea 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.

It is only the minorities who need protection, and Article 30, is intended to afford and guarantee that protection.

Article 30 confers a right on all minorities whether they are based on religion or language, to establish and administer educational institution including professional educational institutions of their choice. This choice includes a number of rights which helps to get recognition and affiliation, to receive financial aid from State in certain situations, to select medium of instruction, to select management bodies, to admit students, to select staff, to take disciplinary action and to determine the kind and character of the institution. Though none of these rights is expressly made available to minorities, yet all of them are recognised by the courts as essential for a meaningful exercise of the principal right, the right to establish and administer educational institutions. Although attempts have been made in the past to whittle down the rights of the minorities in this respect, the
vigilant sections of the minority have resisted such attempt. The Courts have consistently upheld the rights of the minorities embodied in that Article and have ensured that the ambit and scope of the minority rights is not narrowed down.

In other words the basic tenet of protection of minorities is that each minority has concurrently the right to full equality with the majority and to preservation of its separate identity.

The general principles relating to establishment and administration of educational institution by minorities may be summarized thus:

(i) The right of minorities to establish and administer educational institutions of their choice guaranteed under Article 30(1) is subject to the regulatory power of the State for maintaining and facilitating the excellence of educational standard. The minority institutions cannot be allowed to fall below the standards of excellence expected of educational institutions, or under the guise of exclusive right of management, to decline to follow the general pattern.

(ii) The regulations made by the statutory authorities should not impinge upon the minority character of the institution.

The regulations must satisfy a dual 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. Regulations that embraced and reconciled the two objectives could be considered reasonable.

(iii) All laws made by the State to regulate the administration of educational institutions, and grant-in-aid, will apply to minority educational institutions also. But if any such law or regulations interfere with the overall administrative control by the management over the staff, or abridges in any other manner, the right to establish and administer educational institutions, such law or regulations, to that extent, would be inapplicable to minority institutions.
(iv) The general laws of the land relating to national interest, national security, social welfare, public order, morality, health, sanitation, taxation etc. applicable to all, will equally apply to minority educational institutions also.

(v) The fundamental right guaranteed under Article 30(1) is intended to be effective and should not be whittled down by any administrative exigency. No inconvenience or difficulties, administrative and financial, can justify infringement of the fundamental right.

(vi) Receipt of aid does not alter the nature or character of the minority educational institution receiving aid. Article 30(1) clearly implies that any grant that is given by the State to the minority educational institution cannot have such conditions attached to it which will in any way dilute or abridge the rights of the minorities to establish and administer educational institutions. But the State can lay down reasonable conditions for obtaining grant-in-aid and for its proper utilization.

(vii) The State can regulate the service conditions of the employees of the minority educational institutions to ensure quality of education. Any law intended to regulate service conditions of employees of educational institutions will apply to minority educational institutions also, provided that such law does not interfere with the overall administrative control of the managements over the staff. The State can introduce a mechanism for redressal of the grievances of the employees.

7.2 **Problem of Implementation**

Minority Institutions face the major problem in enforcement of their rights to establish and administer educational institutions of their choice. Anti minority prejudices, lack of legal awareness, political opportunism, economic constraints, delay in availability and at times non availability of judicial remedies, etc., are some of the serious problems which hinders the benefits of rights flowing to minority educational institutions.

Minorities have limited access to economic resources. Enormous funds are required to establish and administer an educational institutions. The cost of establishing an institution of higher education is much more. After T.M. A. Pai’s
the competition has become much more stringent as the unaided non-minority institutions are armoured with a new form of fundamental rights under Articles 19(1) (g) and 26(a). Minorities have been approaching the High Courts and Supreme Court to get their rights implemented and in the process spending their depleting resources on litigations.

7.3 Findings

The educational right given to religious and linguistic minorities under Article 30 of the constitution is not well defined. One can speculate that by merely stating the term “minority” in the constitution the framers expected it conception to be sort of self-explanatory. But with the passage of time and the varied contexts requiring its application have rendered a semblance of constancy in its conception imperative. The constitutional ambiguity in this regard has given way for judicial vacillation, which has further confused the public.

The Supreme Court of India on the other hand attempted to define the word “minority” as a “community, which is numerically less than 50 percent” of the total population. The court further said that a minority has to be determined in relation to the particular legislation which is sought to be implemented. If it is a state law, the minorities have to be determined in relation to state population.

This explains the stand of the constitution-makers not to provide the promised fundamental rights automatically but to make minorities assert their demands. Even the wording of the Article was kept vague in order to facilitate regular interpretation by the courts, taking into account the historical and spatial requirements of the nation and equation between the minority and majority—a responsibility, which the courts are fulfilling at regular interval.

It was emphasized in the P.A. Inamdar case that the minority educational institution is primarily for the benefit of minority. Sprinkling of the nonminority students in the student population of minority educational institution is expected to be only peripheral either for generating additional financial source or for cultural courtesy. Thus, a substantive section of student population in minority educational institution should belong to the minority.

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2 (2002) 8 SCC 481
3 (2005) 6 SCC 537
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A stream of Supreme Court decisions commencing with the Kerala Education Bill case and climaxed by the T.M.A. Pai Foundation case has settled the law for the present. The proposition of law enunciated in T.M.A. Pai Foundation is reiterated in the clarificatory judgment rendered by another Constitutional Bench of the Supreme Court in P.A. Inamdar vs. State of Maharashtra. The other findings of the study are summarised as below:

7.3.1 Effect of recognition on the Status of Minority Institutions

Referring to the Aligarh Muslim University case H.M. Seervai remarked that “This is the first case in which the Supreme Court has departed from the broad spirit in which it had decided cases on cultural and educational rights of minorities which was reflected in the words of Das C. J.”. The “first case” was followed by not a few in which the court whittled down Article 30. In the Aligarh Muslim University’s case, it ruled, incredibly, that “The University was not established by Muslims”.

If incorporation of Minority University leads to deprivation of its minority character of Educational Institution as held in Azeez Basha’s case and according to the sections 22 to 24 of University Grant Commission Act, 1956 then it can be said that the fundamental rights are given to minorities by one hand and is taken away by other.

7.3.2 Stephen’s Decision based on ‘Melting Pot’ theory

Judges at times have based their decision on theories than on law. In Stephen’s Case the court held that under Article 30(1), the minority aided educational institutions are entitled to prefer their community candidates to maintain the minority character of their institutions subject to, of course, in conformity with the university standards. The State may regulate the intake, with due regards to the need of the community in the area which the institute is intended to serve. But in no case shall exceed 50 percent of the annual admission to the

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4 AIR 1968 SC 662
6 Azeez Basha v Union of India, AIR 1968 SC 662.
7 AIR 1992 SC 1630
members of the communities other than the minority community. The admission of other community candidates shall be done purely on the basis of merit.

The judgment of the Supreme Court is diametrically opposed to the right of minorities to preserve their separate identity and consequently runs counter to minority rights. The Court has adopted pragmatic approach rather than constitutional approach. Neither the constitution nor the voluminous debate of the Constituent Assembly nor in any earlier decision there is any reference of ‘Melting Pot theory’. ‘The melting pot theory’ is not about what the law says but what the Judges believe the law should have said. Supreme Court itself has time and again observed that judgments cannot be based on theories.

Putting Articles 29(2) and 30(1) together further reduces benefits promised to the minorities through Article 30. The conjunctive use of the two Articles has resulted in quota fixing in the seats for the students from the community in the minority education institutions. The wording of Article 29(2) makes it essentially a fundamental right provided to individuals, hence, not having much scope for quota fixing. The need for a cosmopolitan atmosphere in minority education institution is the stated reason for juxtaposing the two Articles. One agrees in principle with the court judgments that admission should not be denied to any individual if s/he meets the eligibility criteria set by the institution. Nevertheless, the rigid fixing of a ratio of 50:50 in Stephen’s Case frustrates the spirit of Article 30.

It has been more than 65 years, since the Constitution of India has come to being. By now the law regarding legal status of minority institutions under Article 30 need to be settled. Even today the Fundamental Rights provided to the minorities under the Constitution are not automatically available. Minorities have been forced to approach the courts to assert those rights. Journey through the landmark cases show different Judicial trends in interpretation of Article 30. At times judgments reflect personal convictions of the judges; this has led to constant struggle between minorities and the State. Further it has been observed that there is a trend in gradual reduction of scope of rights under Article 30 leading to more regulation by State.
7.3.3 Minority Right to Establish and Administer Professional Educational Institutions

In a vast country like India in order to provide equality and unity among its citizens, as there is a wide difference between the minority and the majority, special rights have been endowed to minorities so that they can develop their personality to the maximum. In accordance to this view various Articles in the Constitution are enshrined and Acts have been enacted, so that the minorities can compete with majority. Among these Articles, Article 30(1) and National Commission for Minority Educational Institutions Act, 2004 provides minorities right to establish and administer educational institutions. Various lacunas have been observed since the birth of these Rights. It has been observed that these Articles and Acts are unable to clear various facets like –

1. Is there any right to create educational institution for minorities and if so under which provision?

2. To what extent can the rights of aided private minority institutions to administer be regulated?

Still answers to these questions are ambiguous in nature. Even National Commission for Minority Educational Institutions Act, 2004 defines, ‘Minority Educational Institute’ means college including professional college or an Educational Institution established and administered by Minority or Minorities. Thus, just on account of the minority identity of the management, an institute is to be accorded the minority status, irrespective of whether or not that particular institute is serving the interests of the minority community in its entirety. Hence, it is imperative to ensure that Minority Institutions admit students on the basis of minority identity and merit.

7.3.4 Minority’s right to Establish and Administer Educational Institution as Fundamental Right

In re Kerala Education Bill Case the Supreme Court observed that Minority Institution does not lose its minority character and cease to be a minority institution by admitting a member of non minority into the minority institution.

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8 AIR 1958 SC 956
In case of *State of Kerala v Rev. Mother Provincial*\(^9\), the Supreme Court observed: “The first right is the initial right to establish institutions of the minority's choice. Establishment means bringing into being of an institution and it must be by a minority community.

Thus the Minority institution does not lose the benefit under Article 30 even if non-minority students are admitted to it.\(^{10}\)

7.3.5. **The National Commission for Minority Educational Institutional Act of 2004**

The National Commission for Minority Educational Institutions Act has been enacted to safeguard the educational rights of the minorities enshrined in Article 30(1) of the Constitution.

Article 30(1) of the Constitution of India gives linguistic and religious minorities a fundamental right to establish and administer educational institutions of their choice. These rights are protected by a prohibition against their violation. The prohibition is contained in Article 13 of the Constitution which declares that any law in breach of the fundamental rights would be void to the extent of such violation. It is well-settled that Article 30(1) cannot be read in a narrow and pedantic sense and being a fundamental right, it should be given its widest amplitude. The width of Article 30(1) cannot be cut down by introducing in it considerations which are destructive to the substance of the right enshrined therein.

The Supreme Court has pointed out in *Ahmedabad St. Xavier's College v. State of Gujarat*\(^{11}\) that the spirit behind article 30(1) is the conscience of the nation that the minorities, religious as well as linguistic, are not prohibited from establishing and administering educational institutions of their choice for the purpose of giving their children the best general education to make them complete men and women of the country.

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9  AIR 1970 SC 2079  
10  In *St. Stephen's College Case*\(^{10}\) it was held that, “The minority institutions shall make available at least 50 % of the annual admission to members of communities other then the minority community. The admission of other community candidates shall be done purely on the basis of merit”  
11  AIR 1974 SC 1389
7.3.6 Even a single member of minority community may establish an Educational Institution for the benefit of the community

In, *State of Kerala v. Mother Provincial*, Supreme Court has clarified the position that a Society or Trust consisting of members of a minority community, or even a single member of minority community, may establish an educational institution.

The Supreme Court observed, “Establishment means 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, institution or the community at large funds 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 to this right that in addition to the minority community, others from other minority communities or even from the majority community can take advantage of these institutions.

7.3.7 Minority’s Right to Administer

The provision of Article 30(1) does not however mean that the State can impose no regulations on the minority institutions. In the *Kerala Education Bill*, the Supreme Court has observed: “The right conferred on the religious and linguistic minorities to administer educational institutions of their choice is not an absolute right”. It has to be read with regulatory power of the State. Regulations which do not affect the substance of the guaranteed rights, but ensure the excellence of the institutions and its proper functioning in educational matters, are permissible.

Rights though protected by the constitution have been a bone of contention since the commencement of the constitution. The cases on minority rights, from the *State of Madras v Champakam Dorairaj* to *P.A. Inamdar v State of Maharashtra* the issues questioned are almost the same. The issues are regarding

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12 AIR 1970 SC 2079  
13 AIR 1958 SC 956  
14 AIR 1951 SC 226  
15 (2005) 6SCC 537
Findings and Suggestions

a. Government grants, Affiliation or Recognition
b. Conditions for State Grants
c. Composition of Managing Bodies
d. Appointment of Teachers
e. Disciplinary Action against the Staff and Salary of Teachers
f. Admission of Students and Fee structure
g. Medium of Instruction

7.3.7.1 Government Grants, Affiliation or Recognition of Professional Educational Institutions

At present, the situation is such that an educational institution cannot possibly hope to survive, and function without government grants, nor can it confer degrees without affiliation to a university. Although minorities right to establish and run their educational institutions including professional educational institutions with a view to educate their children in an atmosphere congenial to the conservation of their language or culture, yet that is not their only aim. They also desire that their students are well equipped for useful careers in life. The students of unrecognized institutions can neither get admission in institutions of higher learning nor can they enter public service. Therefore, without recognition, a minority run institution cannot fulfill its role effectively and the right conferred by Article 30(1) would be very much diluted. A meaningful or real exercise of the right under Article 30(1) must, therefore, mean the right to establish effective educational institutions which may sub serve the real needs of the minorities and the scholars who resort to them. This necessarily involves recognition or affiliation of minority institutions, for without this the institutions cannot play their role effectively and the right conferred on the minorities by Article 30(1) would be denuded of much of its efficacy.

Article 30(2) debars the State from discriminating against minority institutions in the matter of giving grants. In Managing Board, M.T.M v. State of Bihar\(^\text{16}\), the Supreme Court has emphasized that the right to establish educational

\(^{16}\) AIR 1984 SC 1757
institutions of their choice must mean the right to establish real institutions which
will effectively serve the needs of their community and the scholars who resort to
them. Clarifying the position as regards the question of affiliation of, or grant to,
minority institutions, the Court observed: “There is, no doubt, no such thing as
Fundamental Right to recognition by the State but to deny recognition to the
educational institutions except upon terms tantamount to the surrender of their
Constitutional right of administration of the educational institutions of their choice
is in truth and in effect to deprive them of their rights under Article 30(1). The
legislative power is subject to the Fundamental Rights and the legislature cannot
indirectly take away or abridge the Fundamental Rights which it could not do
directly.”

7.3.7.2 Do Minorities also have a fundamental right to claim affiliation,
recognition and aid from the University or Government?

Article 30 (2) is very categorical, "The State shall not, in granting aid to
educational institutions, discriminate against any educational institution on the
ground that it was under the management of a minority, whether based on religion
or language". On recognitions or affiliation though regulatory measures can be
imposed, they cannot be such to erode the core of minority rights.

In All Saints High Schools Case the Supreme Court observed “Although
Article 30 does not speak of the conditions under which minority educational
institution can be affiliated to a College or University yet the Article by its very
nature implies that when an affiliation is asked for, the University cannot refuse it
without sufficient reason or try to impose such conditions as would completely
destroy the autonomous administration of the institution”.

Section 10A of the National Commission for Minority Educational
Institutions Act, 2004 confers a right on a minority educational institution to seek
affiliation to any University of its choice. Section10A is as under: -

“Right of a Minority Educational Institution to seek affiliation. –

17 Ibid., at p. 1781.
18 1980 2 SCC 478
(1) A Minority Educational Institution may seek affiliation to any University of its choice subject to such affiliation being permissible within the Act under which the said University is established.

(2) Any person who is authorised in this behalf by the Minority Educational Institution, may file an application for affiliation under sub-section (1) to a University in the manner prescribed by the Statute, Ordinance, rules or regulations, of the University: Provided that such authorised person shall have right to know the status of such application after the expiry of sixty days from the date of filing of such application.”

Recognition is a facility, which the State grants to an educational institution. No educational institution can survive without recognition by the State Government. Without recognition the educational institutions can not avail any benefit flowing out of various beneficial schemes implemented by the Central Government. Affiliation is also a facility which a University grants to an educational institution.

In, Managing Board of the Milli Talimi Mission Bihar & ors. v. State of Bihar & ors 19 the Supreme Court has clearly recognized that running a minority institution is also as fundamental and important as other rights conferred on the citizens of the country. If the State Government declines to grant recognition or a University refuses to grant affiliation to a minority educational institution without just and sufficient grounds, the direct consequence would be to destroy the very existence of the institution itself. Thus, refusal to grant recognition or affiliation by the statutory authorities without just and sufficient grounds amounts to violation of the right guaranteed under Article 30(1) of the Constitution. The right of the minorities to establish educational institutions of their choice will be without any meaning if affiliation or recognition is denied. 20

It has been held in T.M.A. Pai Foundation v. State of Karnataka 21 that affiliation and recognition has to be available to every institution that fulfils the conditions for grant of such affiliation and recognition. In the judgment rendered

19 1984 (4) SCC 500,
20 St. Xavier’s College, Ahmedabad v. State of Gujarat, 1974 (1) SCC 717
21 (2002) 8 SCC 481
by a Constitutional Bench of the Supreme Court in *P.A. Inamdar vs. State of Maharashtra*\(^{22}\) said “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 maladministration.

Thus, a minority professional educational institution seeking recognition or affiliation must fulfill the statutory requirements concerning the academic excellence, the minimum qualifications of eligibility prescribed by the statutory authorities for Head Master, Principal, teachers, lecturers and the courses of studies and curriculum. It must have sufficient infrastructural and instructional facilities as well as financial resources for its growth.

### 7.3.7.3 Conditions for State Grants

A Government may not at all make any grants either as a matter of policy or because of compulsion of financial circumstances: but once the Government decides to make grants, it cannot attach such conditions to those grants as would destroy the right under Article 30(1). The Court observed it stands to reason 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 institution to be aided.\(^{23}\) Regulations which may lawfully be imposed either by legislative or executive action as a condition for receiving grant must be directed to making the institution while retaining its character as a minority institution effective as an educational institution.\(^{24}\)

The object of imposing conditions by the State is to promote educational standards and uniformity and help the institutions concerned achieve efficiency

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\(^{22}\) (2005) 6 SCC 537

\(^{23}\) In *re Kerala Education Bill* 1957, A.I.R. 1958 S.C. 959 at 983. With equal emphasis, however, the Court pointed out: "No educational institution can in actual practice be carried on without aid from the State and if they will not get it unless they surrender their rights they will: by compulsion of financial necessities, be compelled to give up their rights under Article 30(1).

\(^{24}\) Id. at 976-977.
and excellence and are imposed not only in the interest of general secular education but also are necessary to maintain the educational character and content of minority institutions. Such conditions cannot be regarded as violative of Article 30(1) and therefore, it is mandatory to be followed by all educational institutions.

An analysis of the judicial decisions\(^{25}\) shows that although right to recognition and affiliation is not expressly recognised by Article 30(1), without recognition or affiliation there can be no meaningful exercise of the right to establish and administer under Article 30, and that recognition and affiliation can be given only on conditions that do not render that Article illusory.\(^{26}\) The Courts have emphasised that the State cannot, by employing indirect methods, impose conditions that would adversely affect the minority character of the institution or are made on considerations which are not conducive to the making of the institution as an efficient and excellent vehicle of education.

### 7.3.7.4 Governing Body

Minority Institutions have the right to choose its governing body in which the founders of the institution have faith and confidence to conduct and manage the affairs of the institution. The freedom to choose the persons to be nominated as members of the governing body has always been recognized as a vital facet of the right to administer the educational institution.

The right to 'administer' can best be exercised through a managing body in whom the founders of the institution have faith and confidence. The choice to select a managing body must be unfettered so that the founders can shape and mould the institution as they deem appropriate and in accordance with their ideas of how the interest of the community in general and the institution in particular be best served.


\(^{26}\) Shah, J. observed in Sidhraj Bhai v. State of Bombay, (1963) S.C.R. 837 at 850: “Regulations made in the true interest of the efficiency of institutions, discipline, health, sanitation, morality, public order and the like may undoubtedly be imposed. Such regulations are not restrictions . . . ; they secure the proper functioning of the institution in matters educational”. *Supra*. Chapter IV.
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Any rule which takes away this right of the management has been held to be interfering with the right guaranteed by Article 30(1) of the Constitution would be completely destructive of the fundamental right guaranteed by Article protected by Article 30 of the Constitution.27

7.3.7.5 Appointment of Teachers

Minority Educational Institution has right to appoint teaching staff and also non-teaching staff; and to take action if there is dereliction of duty on the part of any of its employees.

The selection and appointment of teachers for an educational institution is one of the essential ingredients of the right to manage the institution. A right to select staff of their own choice implies the maintenance of discipline and its efficiency in teaching. It is permissible for the State to prescribe the qualifications of teachers, but once the teachers possessing the requisite qualifications are selected by the minorities the State would have no right to veto the selection of those teachers.28

The State Government or the University cannot apply rules, regulations, ordinances to a minority educational institution, which would have the effect of transferring control over selection of staff from the institution concerned to the State Government or the University, and thus, in effect allow the State Government or the University to select the staff for the institution, directly interfering with the right of the minorities guaranteed under Article 30(1).

In T.M.A. Pai Foundation’s Case the Supreme Court has stated that the State has the power to regulate the affairs of the minority educational institution also in the interest of discipline and academic excellence. But in that process the aforesaid right of the management cannot be taken away even if the Government is giving hundred percent grants. The fact that the post of the Teacher, Headmaster, Principal is also covered by the State aid will make no difference. It has been held

27 St. Xavier’s College Case, AIR 1974 SC 1389.
by the Supreme Court in *Secretary, Malankara Syrian Catholic College v T. Jose*\(^{29}\) that even if the institution is aided, there can be no interference with the said right. Subject to the eligibility conditions, qualifications prescribed by the State or Regulating Authority being met, the minority educational institution will have the freedom to appoint Teachers, Lecturers, Headmasters, Principals by adopting any rational procedure of selection.

### 7.3.7.6 Appointment and Disciplinary Action against the Staff and Salary of Teachers

The selection and appointment of teachers for an educational institution is one of the essential ingredients of the right to manage the institution. A right to select staff of their own choice implies the maintenance of discipline and its efficiency in teaching. It is permissible for the State to prescribe the qualifications of teachers, but once the teachers possessing the requisite qualifications are selected by the minorities, the State would have no right to veto the selection of those teachers.\(^{30}\)

A significant facet of the administration of professional educational institution is the maintenance of discipline among the members of its staff and to decide over the salary of the teaching staff. The right of the minority institution to take disciplinary action against the teachers is a vital aspect of the management’s fundamental Right to administer the institution. Any rule taking away or interfering with this right cannot be regarded as compatible with article 30(1).

The right to choose the Principal and to have the teaching conducted by the teachers appointed by the management after an overall assessment of their outlook and philosophy is perhaps the most important fact of the right to administer.\(^{31}\) An analysis of the judicial decisions\(^{32}\) shows that the right to exercise disciplinary

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\(^{29}\) 2007 AIR SCW 132


control over the staff belongs to the institution and cannot be vested in any external authority. But it is open to the Government or the University to frame rules and regulations governing the conditions of service of teachers in order to secure their tenure of service and to appoint a high authority armed with sufficient guidance to see that the said rules are not violated or the members of the staff are arbitrarily treated or innocently victimised.\textsuperscript{33} The Courts have endeavoured to strike a reasonable balance in this regard.

In \textit{All Saints High School, Hyderabad vs. State of Andhra Pradesh}\textsuperscript{34}, a provision contained in Andhra Pradesh Private Educational Institution Control Act, 1995 requiring prior approval of the competent authority of all orders of dismissal, removal or reduction in rank passed against a teacher by management of the college was held to be inapplicable to a minority institution.

\subsection*{7.3.7.7 Admission of Students and Fee Structure}

The very object of incorporation of Article 30(1) was to enable the minorities to educate their children in the institutions established by them. The whole concept of protection under Article 30(1) to which the Constitution so plainly choose to commit itself and to give effect to which the Courts have admitted a very broad interpretation to the ‘word ”choice”\textsuperscript{35} occurring in Article 30(1). This Article seems to have a choice with minorities to confine admission in their institution to their own members.\textsuperscript{36} Any provision for reservation in a minority institution is necessarily in the interest of the public and not in the interest

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\textsuperscript{33} \textit{All Saints High School v. Govt. of A.P.}, A.I.R. 1980 S.C. 1042 at 1067; Fazal Ali, J. observed : “In such a case the purpose is not to interfere with the internal administration or autonomy of the institution but it is merely to improve the excellence and efficiency of education but while setting up such authority care must be taken to see that the said authority is not given blanket powers”. The said view was reaffirmed in \textit{Frank Anthony Public School Employees Association v. Union of India}, (1986) 4 S.C.C. 707; \textit{Theclamma v. Union of India}, A.I.R. 1987 S.C. 1210; \textit{Christian Medical College Hospital Employees Union and others v. Christian Medical College Vellore Association and others}, A.I.R. 1988 S.C. 36.

\textsuperscript{34} 1980 (2) SCC 478

\textsuperscript{35} This choice includes as they have felt, a score of rights, which helped to make the object of establishment and administration a meaningful proposition.

\end{footnotesize}
of the minority institution itself, and no such provision can meet the Sidhraj Bhai\textsuperscript{37} test and hence it is violative of Article 30(1) of the Constitution.

In the St. Stephen’s College v. University of Delhi\textsuperscript{38}, the Court ruled out that college was established and administered by a minority community, viz., the christian community which is indisputably a religious minority. On the question of admission of students of the concerned minority community, the Court has ruled that, according to Article 30(1), the minorities whether based on religion or language have the right “to establish and administer” educational institutions of their choice and the right to select students for admission is a part of administration. On this point, the Apex Court has rightly pointed out, “It is indeed an important facet of administration. This power also could be regulated but the regulation must be reasonable just like any other regulation. It should be conducive to the welfare of the minority institution or for the betterment of those who resort to it.”

The policy of reservation can neither 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 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.

In the case of P.A. Inamdar\textsuperscript{39}, one of the questions was whether private unaided professional colleges are entitled to admit students by evolving their own matter of admission procedure. While answering the question their Lordships have observed as under:- “So far as the minority unaided institutions are concerned to admit students being one of the components of “the right to establish and administer an institution”, the State cannot interfere therewith. Upto the level of undergraduate education, the minority unaided educational institutions enjoy total freedom.”

\textsuperscript{37} The test laid down in Sidhraj Bhai case was as follows : - “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. 

\textsuperscript{38} AIR 1992 SC 1630 

\textsuperscript{39} (2005) 6 SCC 537
However, different considerations would apply for graduate and postgraduate level of education, as also for technical and professional educational institutions. Excellence in education and maintenance of high standards at this level are a must. To fulfil 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.\footnote{T.M.A. Pai Foundation Case, (2002) 8 SCC 481}

\textbf{7.3.7.8 The State Government to prescribe percentage governing admission in Minority Educational Institutions}

The State Government can prescribe percentage of the minority community to be admitted in a minority educational institution taking into account the population and educational needs of the area in which the institution is located.

It is significant to mention here that Sec.12C(b) of the National Commission for Minority Educational Institution Act, 2004 also empowers the State Government to prescribe percentage governing admissions in a minority educational institution. Thus the State Government has to prescribe percentage governing admissions of students in the minority educational institutions in accordance with the aforesaid principles of law enunciated by their lordships of the Supreme Court in the cases of \textit{T.M.A. Pai Foundation’s case}\footnote{(2002) 8 SCC p. 481.} and \textit{P.A. Inamdar’s Case}.\footnote{(2005) 6 SCC 537.}

\textbf{7.3.7.9 Minority Institutions free to device their own fee structure}

Among the law declared in the case of \textit{T.M.A. Pai Foundation}, every minority 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.

\textbf{7.3.7.10 Medium of Instruction}

The right of a minority to establish and administer educational institutions of its choice also carries with it the right to impart instruction to its children in its own language. The result of reading Article 29(1) and 30(1) together is that the
minority has the choice of medium of instruction and the power of the state to determine the medium of instruction has, therefore, to yield ground, to the extent it is necessary to give effect to this minority right. The most significant case on this point is the *D.A.V College, Bhatinada v. State of Punjab*\(^{43}\).

A particular State can validly take a policy decision to compulsorily teach its regional language\(^{44}\). The learning of the regional language of the State would bridge the cultural barriers and will positively contribute for national integration. Hence a regulation imposed by the State upon the religious and linguistic minorities to teach its regional language is a reasonable one, which is conducive to the needs and larger interest of the State and it does not in any manner interfere with the right under Article 30(1) of the Constitution. The question whether the right to choose medium of instruction is a fundamental right and the religious or linguistic minority has a right to choose medium of instruction of their choice has been clinched down by the Supreme Court in *T.M.A. Pai’s case*. The Supreme Court has declared that the right to establish and administer educational institutions of their choice under Article 30(1) read with Article 29(1) would include the right to have choice of medium of instruction in imparting education. The medium of instruction is entirely choice of the management of the minority institution.

In *Associated Managements of (Government Recognised Unaided English Medium) Primary and Secondary Schools in Karnataka (KAMS) vs. State of Karnataka & Ors.*,\(^{45}\) a Full Bench of the Karnataka High Court has declared that the right to choose medium of instruction of their choice is a fundamental right guaranteed under Articles 19(1) (a) (g), 21, 26, 29(1) and 30(1) of the Constitution.

### 7.4 Article 30 and States’ Power to regulate Article 30 (1) absolute?

The Supreme Court has repeatedly held that Article 30 is subject to regulatory measures. In the *re Kerala Education Bill*\(^{46}\) the Supreme Court said, "The right to administer cannot obviously include the right to mal administer".

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\(^{43}\) AIR 1971 SC 1731

\(^{44}\) English Medium Students Parent Association v State of Karnataka[ (1994) 1 SCC 550]

\(^{45}\) 2008 K. L. J. 1

\(^{46}\) AIR 1958 SC 956
In Sidhrajbhai’s Case\textsuperscript{47} the Court laid down a very important proposition. It observed that, though the State has a right to impose regulatory measures, this right has to be exercised in the interest of the institution and not on the grounds of public interest or national interest. "If every regulatory order while maintaining the formal character of a minority institution destroys the power of administration is held justifiable because it is in national or public interest, though not in its interest as an educational institution the right guaranteed under Article 30 (1) will be but a teasing illusion, a promise of unreality. Regulations must be towards making it effective as an educational institution".

In the State of Kerala v Rev Mother Provincial\textsuperscript{48} the Supreme Court said "The Right of the State to regulate education, educational standards and allied matters cannot be denied".

In the case of Nanda Ghosh v Guru Nanak Education Trust\textsuperscript{49}, the Calcutta High Court held that the Education Board cannot interfere with the management of a minority institution by superceding its managing committee and appointing an administrator to take charge of the school and administer it.

Thus it can be said that the Rights of Minorities under Article 30 (1) are not absolute. The States have right to regulate Minority Educational Institution but regulations must be towards making it effective as an educational institution.

7.5 State as unit to determine Minority Status

It has been held by the Eleven Judges Bench of the Supreme Court in T.M.A. Pai Foundation vs. State of Karnataka\textsuperscript{50} that a minority, whether linguistic or religious, is determinable only by reference to demography of the State and not by taking into consideration the population of the country as a whole. It ruled that as the reorganization of the States in India had been effected on linguistic lines, for the purpose of determining a minority, the unit would be the State and not the whole of India. Thus, religious and linguistic minorities, who have been placed on par in Article 30, have to be considered in terms of the State concerned. Not

\begin{footnotesize}
\begin{itemize}
  \item \textsuperscript{47} AIR 1963 SC 540
  \item \textsuperscript{48} AIR 1970 SC 2079
  \item \textsuperscript{49} AIR 1984 CAL 40
  \item \textsuperscript{50} (2002) 8 SCC 481
\end{itemize}
\end{footnotesize}
Findings and Suggestions

surprisingly, this issue surfaced again in Bal Patel and another v Union of India and others\(^{51}\) and in Anjuman Madarsa Noorul Islam, Dehra Kalan, Ghazipur v State of Uttar Pradesh\(^{52}\) where the judgment is delivered by Justice S. N. Srivastava (2007); these two judgments have further complicated the question of definition of minorities, as both these judgments relate, for the most part, to definitional issues. Bal Patil questioned the identity of Jains as a religious minority while Srivastava J ruled that Muslims, by virtue of their numbers, cannot be considered a minority in Uttar Pradesh.

Such a State-specific conception of minorities will result in distortions in minority rights. If this rationale is extended, Hindus in Punjab who are a numerical minority there though they are a majority in relation to India as a whole will be entitled to minority protection there as indeed they would be in Jammu and Kashmir, Nagaland, Meghalaya, Mizoram, and Lakshadweep. Considering another example, as per the statistical test, Sikhs in Punjab and Christians in Nagaland, Mizoram and Meghalaya will be held to be a majority and consequently deprived of constitutionally sanctioned minority rights\(^{53}\). In Punjab, the minority Hindus will be able to set up educational institutions of their choice and apparently Hindus from other States will be eligible for admission to these institutions unless admission is to be limited to minorities domiciled in the State. By the same logic, Christian students will be ineligible for admission in minority educational institutions, such as St. Stephens College or Loyola College, as they will not have a domicile minority status there. In other words, eligibility for admissions to minority educational institutions will be limited to minorities domiciled in the States, and what is more, some minority community applicants will not be able to avail themselves of minority quotas outside their State(s) because they are not a minority in their own States. At the heart of the current controversy is confusion about which groups qualify as minorities.

7.6 Granting of Minority Status Certificate

As regards the indicia to be prescribed for grant of minority status certificate, a reference to Section 2(g) of The National Commission for Minority

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51 AIR 2005 SC 3172
52 Writ petition No 34892 of 2004 decided on 5.4.2007 by single bench of Allahabad High Court.
53 D.A.V. College v. State of Punjab, AIR 1971 SC 1731

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Educational Institutions Act of 2004 has become inevitable as it defines a Minority Educational Institution under Section 2 (g) as under:

“Minority Educational Institution” means a college or institution (other than a University) established or maintained by a person or group of persons from amongst the minorities”.

7.7 Conditions required to be fulfilled for the granting of Minority Status

It needs to be highlighted that Sec. 2 (f) of the Central Educational Institutions (Reservation in Admission) Act, 2006, defines a minority educational institution as under: -“Minority Educational Institution” means an institution established and administered by the minorities under clause (1) of Article 30 of the Constitution and so declared by an Act of Parliament or by the Central Government or declared as a minority educational institution under the National Commission for Minority Educational Institutions Act, 2004; On a reading of Article 30(1) of the Constitution read with several authoritative pronouncements of the Supreme Court and the definitions of Minority Educational Institution in Section 2(g) of the Act and Section 2(f) of the Central Educational Institutions (Reservation in Admission) Act, 2006, the following facts should be proved for grant of minority status to an educational institution on religious basis:

(i) that the educational institution was established by a member/members of the religious minority community;

(ii) that the educational institution was established for the benefit of the minority community; and

(iii) that the educational institution is being administered by the minority community.

The aforesaid facts may be proved either by direct or circumstantial evidence. There must be some positive index to enable the educational institution to be identified with religious minorities. There should be nexus between the means employed and the ends desired. If the minority educational institution concerned is being run by a trust or a registered society, then majority of the trustees of the trust or members of the society, as the case may be, must be from the minority community and the trust deed and Articles of Association or any other
document duly executed in this regard must reflect the objective of sub-serving the interest of the minority community. In the absence of any documentary evidence some clear or cogent evidence must be produced to prove the aforesaid facts. In, S. K. Patro v. State of Bihar, the court held that there is no bar to the members of other communities to extend their help to the member of a minority community to establish an educational institution of its choice.

In, N. Ammad v. Emjay High School, the court held that, ‘A minority educational institution continues to be so whether the government declares it as such or not. When the government declares an educational institution as a minority institution, it merely recognizes a factual position that the institution was established and is being administered by a minority community. The declaration is merely an open acceptance of the legal character of the institution which must necessarily have existed antecedent to such declaration.’

7.8 State Government not to review earlier order conferring Minority Status on a Minority Educational Institution

As it has been held by the Madras High Court in T.K.V.T.S.S. Medical Educational & Charitable Trust v State of Tamil Nadu that a Minority Status cannot be conferred on a Minority Educational Institution for particular period to be renewed periodically like a driving license. It is not open for the State Government to review its earlier order conferring minority status on a minority educational institution unless it is shown that the institution concerned has suppressed any material fact while passing the order of conferral of minority status or there is fundamental change of circumstances warranting cancellation of the earlier order. Reference may, in this connection, be made to the following observations of their lordships : - “……………..In conclusion, we hold that if any entity is once declared as minority entitling to the rights envisaged under Article 30(1) of the Constitution of India, unless there is fundamental change of circumstances or suppression of facts the Government has no power to take away that cherished constitutional right which is a fundamental right and that too, by an
ordinary letter without being preceded by a fair hearing in conformity with the principles of natural justice.”

It is now well settled that any administrative order involving civil consequences has to be passed strictly in conformity with the principles of natural justice.\textsuperscript{57} If any order relating to cancellation of minority status granted to a minority educational institution has been passed without affording an opportunity of being heard to such educational institution, it gets vitiated. If a minority status certificate has been obtained by practicing fraud or if there is any suppression of any material fact or any fundamental change of circumstances warranting cancellation of the earlier order, the authority concerned would be within its powers to cancel the minority status certificate after affording an opportunity of being heard to the management of the institution concerned, in conformity with the principles of natural justice. It is also relevant to note that the minority status certificate granted by this Commission or by any authority can be cancelled under Section 12C\textsuperscript{58} of the Act on violation of any of the conditions enumerated therein in view of the mandate of these Articles 246 and 254 of the Constitution, the National Commission for Minority Educational Institutions Act, 2004, being a Central law shall prevail over the State law. The State Government cannot add, alter or amend any provision of the Act by issuing executive instructions\textsuperscript{59}.

7.9 Establish and administer to be read conjunctively

In Section 2(g), of National Commission of Minority Educational Institutions Act, 2004 (2010 amendment) “Minority Educational Institution” is

\textsuperscript{57} Mohinder Singh Gill \textit{v.} The Chief Election Commissioner [AIR 1978 SC 851]

\textsuperscript{58} Section 12C is as under: - “12C. Power to cancel.-The Commission may, after giving a reasonable opportunity of being heard to a Minority Educational Institution to which minority status has been granted by an authority or Commission, as the case may be, cancel such status under the following circumstances, namely: -

(a) If the constitution, aims and objects of the educational institution, which has enabled it to obtain minority status has subsequently been amended in such a way that it no longer reflects the purpose, or character of a Minority Educational Institution;

(b) If, on verification of the records during the inspection or investigation, it is found that the Minority Educational Institution has failed to admit students belonging to the minority community in the institution as per rules and prescribed percentage governing admissions during any academic year.”

defined as a college or an educational institution established and administered by minority or minorities.

Minority will have the right to administer an educational institution only if the minority has established the educational institution. The word ‘and’ in between ‘establish’ and ‘administer’ is normally conjunctive.

The NCM has drawn the attention of the competent bodies towards the violation of fundamental rights of the minorities guaranteed under Articles 29 and 30 of the Constitution. The NCM was also very critical of the fact that the minority educational institutions faced delay or denial of their recognition by government departments.

In *Azeez Basha vs. Union of India*\(^{60}\) a Constitutional Bench of the Supreme Court has held that the expression “establish and administer” used in Article 30(1) was to be read conjunctively that is to say, two requirements have to be fulfilled under Article 30(1), namely, that the institution was established by the community and its administration was vested in the community. The Court held that Aligarh University was established not only by the Muslims but by the Government of India by virtue of a Statute and therefore is not a Minority Educational Institution. In *S.P. Mittal v Union of India*\(^{61}\), the Supreme Court has held that in order to claim the benefit of Article 30(1), the community must show; (a) that it is a religious or linguistic minority, (b) that the institution was established by it. Without specifying these two conditions it cannot claim the guaranteed rights to administer it. Thus the word ‘and’ occurring in the definition of minority educational institution in Section 2(g) of the National Commission for Minority Educational Institutions Act, 2004 has to be read conjunctively as the context showed that it was the intention of the legislature. In *St. Stephen’s College vs. University of Delhi*\(^{62}\), the Supreme Court has declared the St. Stephen’s College as a minority educational institution on the ground that it was established and administered by members of the christian community. Thus, these were the indicia laid down by the Supreme Court for determining the status of a minority educational institution and they have also been

\(^{60}\) AIR 1968 SC 662  
\(^{61}\) AIR 1983 SC 1  
\(^{62}\) (1992) SCC 558
incorporated in Section 2(g) of the National Commission of Minority Educational Institutional Act, 2004. Article 30(1) of the Constitution postulates that members of religious or linguistic minority have the right to establish and administer educational institution of their choice. It is a matter of proof through production of satisfactory evidence that the institution in question was established by the minority community claiming to administer it. The proof of the fact of the establishment of the institution is a condition precedent for claiming the right to administer the institution. The onus lies on one who asserts that an institution is a minority institution. It has been held by a Division Bench of the Madras High Court in *T.K.V.T.S.S. Medical Educational and Charitable Trust vs. State of Tamil Nadu* that “once it is established that the institution has been established by a linguistic minority, and is administered by that minority, that would be sufficient for claiming the fundamental right guaranteed under Article 30(1) of the Constitution.” The same principle applies to religious minority also.

The research unfolds a disappointing picture of the rights promised to the minorities through Article 30 and their implementation. The rights have not been automatically confirmed but time and again minorities had to assert their demands. As far as interpretation of Article 30 by the courts is concerned, one find that legal Status of Minority Educational institutions is vague and subject to a constant struggle between the minorities and the state. They reflect a trend towards gradually reducing the scope of the Article, giving space to the governmental regulations and control. Example can be given of conjunctive use of the terms ‘establish’ with ‘administration’. Such an approach, it is needless to state, has deprived many minority communities the benefit of the rights due to them.

As a matter of fact, the minorities are finding it difficult to realize their cultural and educational rights in the absence of positive socio-economic and political rights.

The role of the judiciary in the enforcement of constitutional safeguards to minorities is of crucial importance in India as it is the guardian of the constitution and custodian of the rights and liberties of the people. The vulnerable sections of society like minorities look at it as their best friend and protector. An evaluation of

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63 AIR 2002 Madras 42
the role of judiciary in protection of interest of minorities reveals that in most of the cases it has given a generous and sympathetic consideration to claims of minorities. It is more evident in the cases relating to cultural and educational rights of minorities. The Supreme Court has consistently upheld the rights of minorities to establish and administer educational institutions including professional institutions of their choice. It has been protecting the autonomy and the measures necessary for maintaining the minority character of these institutions. Thus the Supreme Court in the *St. Stephen's College case* has permitted the minority aided educational institutions to regulate admissions preferring their own community candidates up to fifty percent as the Court found it essential to maintain the minority character of the institution.

Further, a study on the comparison of constitutions of countries like Pakistan and Bangladesh, which have sizeable religious minorities and ethnic minorities did not contain a similar provision like Articles 29 and 30 of the Constitution of India.

The right under article 30 (1) is absolute and unlike article 19 does not admit any restriction. This does not mean that this right is not subject to regulatory power of the state. The state may provide regulatory measures provided – (1) they are not annihilative of the right itself, (2) are in public interest and in the interest of the institution. But it is also important to note that the regulatory power should not be such that it would invade the fundamental right of the minorities given in article 30(1) of the constitution.

### 7.10 General Suggestions

A more meaningful conception of minority status would include sections of people who, on account of their non-dominant position in the country as a whole (not a specific State). Because of their religion, language, caste or gender, are targets of discrimination and therefore deserving of special consideration to be considered as minority and minority communities to be notified at the central level.

If the educational institutions including professional educational institutions is managed by the minority community and is effectively contributing for the growth and development of minority community, then taking into consideration the
present factual situation such institution can be considered as Minority Educational Institution.

Minority institutions should adopt ways and means to avoid litigation as far as possible. Members of managing committee of minority institutions need to be legally aware about their legal rights and limitations. This will not only help them to run the educational institution effectively but will help nipping the problems in the bud.

Minority institutions should show transparency in all matters affecting, students, staff, parents and public at large. In most of the judgments courts have held that minorities have a right to administer minority institutions but they do not have right to mal administer. If minority institutions ensure that they fix procedure for admissions, appointments and all educational matters and make it known to public at large it will cater to the requirement of transparency. It is necessary to maintain all the records properly and this will not only facilitate smooth functioning but would to a greater extent satisfy the requirement of transparency and accountability.

7.10.1 Suggestions relating to Article 30

1. As far as interpretation of Article 30 by the courts is concerned the judgments are contextual, hence, many times are different, reflecting the personal convictions of the judges. This makes the interpretation of the article vague and subject to constant struggle between the minorities and state.

2. They reflect a trend towards gradually reducing the scope of article, giving space to the governmental regulation and control, for example, the term “establish” with “administration” which are used conjunctively such an approach has deprived many minority communities the benefit of the rights due to them.

3. As can be seen in the *Stephen and the Pai Foundation cases*, judges are influenced by “melting pot” theory working towards building uniformity in the practice and laws. Further putting together Articles 29(2) and 30(1) reduces the benefits promised to the minorities through article 30.
4. But, surprisingly still the matter could not be resolved completely and permanently as certain recitals, observations and findings in the Bench of eleven Judges decision are contradictory *inter se* besides several questions remain unanswered and also there are certain questions which have propped up after the decisions in *Pai Foundation* and *Islamic Academy* and such conflict can be resolved by constituting a still larger Bench.

5. However, issues relating to areas which have already been covered by *Pai Foundation*’s decision and yet open to question shall have to be answered by only a quorum of larger Bench than eleven judges.

6. The judiciary has not applied the principle of 'equality among equals and inequality among unequals' in relation to minorities while discouraging religion-based reservation in the country.

7. Inspite of the above observations, it can be said that the judiciary is considered by the minorities as the most trusted organ of the government consistently preserving their rights and interests. On occasions, they have felt uncomfortable with the decisions of the judiciary yet they consider it their saviour and friend at the time of crisis. Indeed some decisions of the court have seriously and adversely affected the interests of minorities but one can understand that striking a delicate balance between the ideals of secular democracy based on quality and justice for all, on the one hand, and living up to the expectations of minorities with additional safeguards, on the other hand, is a daunting task.

8. The scope of article 30 rests on the fact that right to establish and administer educational institution of their own choice is guaranteed only to linguistic or religious minorities, and no other section of citizens has such a right.

9. The researcher thus suggests that it is time for the Parliament to define the term “minority” and the scope of article 30 so that time and again the right granted to minorities under article 30 to establish and administer educational institutions should not be put to the tests of judicial interpretations.

10. An amendment to Article 30 is required defining the term minority in the light of the intention of the framers of the Constitution of India. It is
suggested that minority based on religion must be defined and ascertained in terms of the population of the whole country irrespective of its being a numerical majority in any particular State and the minority status of linguistic group has to be ascertained in terms of the population of any particular State irrespective of its being a numerical minority in terms of the population of the whole country.

11. While issuing a minority certificate the concerned authority is advised to look into certain factors such as the name of the institutions, the persons involved in the establishment, the source of funds, subjection of an institution to legal provisions, the expression of intention, the strength of the students and staff belonging to that particular community in determining whether such an institution is intended to be for the welfare of the particular minority.

12. Eventhough the Courts have reiterated through many judicial pronouncements that standards and quality of education are not part of the right to establish and administer and as such can be regulated, it will be necessary for the judiciary to have a watchful eye on the extent of the regulatory power of the State on the right of minorities to establish and administer educational institutions, in accordance with the principles already enunciated and applied.

13. Further the minority intake in minority educational institutions is restricted to 50 percent, thus virtually earmarking the remaining 50 percent or so, for the majority community – hence it is suggested that, by the same analogy and for the same purpose, at least 15 percent seats in all non-minority educational institutions should be earmarked by law for the minorities.

14. The meaning and scope of Article 30 of the Constitution has become quite uncertain and diluted due to conflicting judicial interpretations, hence it is suggested that a comprehensive law should be enacted consisting of all aspects of minorities and their right to educational rights including their right to establish professional institutions under that provisions with a view to reinforcing its original dictates in letter and spirit as envisioned by the Constituent Assembly.
15. The National Minority Educational Institution Commission Act should be amended to make it wide based in its composition, powers, functions and responsibilities and to enable it to work as the watch dog for a meticulous enforcement of all aspects of minorities including their right to establish and administer educational institutions.