CHAPTER V

Relation between Article 29 and 30

5.1 Introduction

Articles 29 and 30 of the Constitution are grouped under the heading "Cultural and Educational rights". These both Articles protect and guarantee certain collective rights for the minorities to help them preserve their language, religion and culture. These rights also contribute to preserve the rich diversity of the country and give minority a sense of security. Over the decades, the interplay of these two Articles has been the cause of intense debate, Firstly, touching on issues such as secularism and secondly, the degree of control over private educational institutions maintained by the State or receiving aid out of State funds; on grounds only of religion, race, caste, language or any of them. This chapter begins with the discussion of rights guaranteed under Articles 29 and 30 of the Constitution of India. Further it discusses judicial approach relating to each Sub Clause of Articles 29 and 30. Subsequently, the researcher has discussed the judicial interpretation relating to the relation between Articles i.e. 29 and 30.

Article 29(1) deal with right of any section of the citizens residing in India to preserve their language, script or culture. In order to invoke Article 29(1), all that is essential is that a section of the citizens, residing in India should have a distinct language, script or culture of its own. If so, then they will have the right to conserve the same. Article 29(2) prohibits discrimination in matters of admission into educational institutions on grounds only of religion, race, caste, language or any of them. This provision guarantees the rights of individual irrespective of the community to which he belongs. Article 30 (1) provides that all religious and linguistic minorities have the right to establish and administer educational institutions of their choice. Article 30(2) prevents States from
making any discrimination against any educational institution in granting aid on the ground that it is managed by a religious or linguistic minority.

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

Article 29(1) is not subjected to any reasonable restrictions. The right conferred upon the citizens to conserve their language, Script and culture is made absolute by the Constitution. In *D. A.V College Jullunder v State of Punjab’s case*\(^{104}\), it was held that were a legal provision required the Guru Nanak University to promote studies and research in Punjabi language and literature, and to undertake measures for the development of Punjabi language, literature and culture, did not infringe Article 29(1). The Supreme Court had emphasized that the purpose and object of the linguistic States, which has come to stay in India, is to provide greater facility for the development of the people of the area educationally, socially and culturally in the regional language. The concern State or the University has every right to provide for the education of the majority in the regional medium.

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

The Supreme Court observation in the case was:

\(^{104}\) AIR 1971 SC 1737
“The provision, as we construe it, is for the promotion of Punjabi studies and research and development of the Punjabi language, literature and culture which is far from saying that the University can under that provision compel the affiliated colleges particularly those of the minority to give instruction in the Punjabi language, or in any way impede the right to conserve their languages, script and culture.”

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

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

The right guaranteed under this Article is not restricted to minorities but extends to all citizens whether belonging to majority or minority. In State of Bombay v Bombay Education Society’s Case\(^{105}\) held that limiting this right only to minority groups will amount to holding that the citizens of the majority group have no right to be admitted into an educational institution for the maintenance of which they contribute by the way of taxes. In Ravneet Kaur v Christian Medical College, Ludhiana’s Case,\(^{106}\) the Court held that a private

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\(^{105}\) AIR 1954 SC 561

\(^{106}\) AIR 1998 P&H 1
institution receiving aid from the State cannot discriminate on grounds of religion, caste, race language or any of them.

**Ambit of Article 29(2).**

In *State of Madras v Champakam’s Case*,\(^\text{107}\) for the first time the question of application of Article 29(2) was challenged. The communal Government Order of the State of Madras allotted seats in medical and engineering colleges in the State proportionately to the several communities, viz, non-Brahmin Hindus, Backward Hindus, Brahmins, Harijans, Anglo Indians, Christians, and Muslims. A Brahmin candidate who could not be admitted to an engineering college challenged the Government Order as being inconsistent to Article 29(2).

The Supreme Court held that the classification in the Government order was based on religion, race and caste which were inconsistent with Article 29(2). Even though the petitioner had got much higher marks than secured by many non-brahmins who were admitted in the seats allotted to them, he could not be admitted into any institution. The only reason for the denial of admission to him was that he was a Brahmin and not a non-Brahmin.

In the *State of Bombay v Bombay Education Society*,\(^\text{108}\) an order issued by the Bombay Government banning admission of those whose language was not English to a school using English as a medium of instruction, was declared invalid under Article 29(2).

The Government had argued that the order did not debar citizens from the admission into English medium schools only on the ground of religion, race, caste, language, but on the ground that such denial would promote the advancement of the national language. Rejecting the contention the Supreme Court pointed out that the argument over looked the distinction between the

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107 AIR 1951 SC 226  
108 AIR 1954 SC 561
The object underlying the order was laudable but even then its validity had to be judged by the method of its operation and its effect on the Fundamental Rights guaranteed under Article 29(2). The immediate ground for denying admission in English schools to pupils whose mother tongue was not English was only language and so order could not be upheld. Thus, discrimination in matters of admission on the basis of language was vetoed by the Supreme Court under Article 29(2).

**5.4. Article 30(1): Rights of minorities to establish and administer educational institutions of their choice.**

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

i) Right to establish, and

ii) Right to administer educational Institutions of their choice.

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

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

In *re Kerala Education Bill case*¹⁰⁹ Supreme Court held that Article 30(1) covers institutions imparting general secular education. The object of Article 30(1) is to enable children of linguistic and religious minorities to go out in the world fully equipped. Protection guaranteed to minority under Article 30 is to

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¹⁰⁹ AIR 1958 SC 956
preserve and strengthen the integrity and unity of the country. The sphere of general secular education will develop the commonness among the students of the country. This is in true spirit of liberty, equality, and fraternity through the medium of education. The minorities will feel isolated and separated if they are not given the protection under Article 30.

In *Sidhrajbhai’s Case*₁₁₀, it was held that under Article 30(1) fundamental right declared is in term absolute and is not subject to reasonable restrictions. It is intended to be a real right for the protection of minorities in the matter of setting up of educational institutions of their choice. The right is intended to be effective and not to be whittled down by so-called regulatory measures conceived in the interest not of the minority educational institution, but of the public or the nation as a whole.

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

In *Rt. Rev Mark Netto v State of Kerala,*₁₁¹ the Supreme Court held that refusal of Regional Deputy Director of Public Instruction to admit girl students was violative of Article 30(1). The principle that can be deduced from these decisions is that Article 30(1) is absolute in terms and said right cannot be whittled down by regulatory measures conceived in the interest not of minority institutions but of the public or the nation as a whole.

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₁₁₀ AIR 1963 SC 540
₁₁¹ (1979) 1 SCC 23
In *D. A. V. College Jullunder v State of Punjab*\(^{112}\) the Court held that a linguistic minority for the purpose of Article 30(1) is one which has separate spoken language. It is not necessary that language should also have separate script. India has number of languages which do not have script of its own but nonetheless, people speaking such a language will constitute a linguistic minority to claim protection of Article 30(1).

In *Ahmedabad St. Xavier’s College v State of Gujarat*\(^{113}\), Supreme Court has pointed out that the spirit behind Article 30(1) is the conscience of the nation that the minorities, religious as well as linguistic, are not prohibited from establishing and administrating educational institutions of their choice for the purpose of giving their children the best general education to make them complete men and women of the country.

The Supreme Court in *S. K. Patro v State of Bihar*\(^{114}\) ruled that a minority claiming privilege under Article 30 should be minority of persons residing in India.外国人 not residing in India do not fall within the scope of Article 30(1). Residents in India and forming the well defined religious or linguistic minority fall under the protection of Article 30. Further, Article 30(1) does not expressly refer to citizenship as a qualification for the members of the minorities. The fact that funds have been obtained from outside India for setting up and developing a school is no ground for denying to it protection under Article 30(1).

*T.M.A Pai Foundation v State of Karnataka*,\(^{115}\) over ruled the proposition that no regulation can be cast in the interest of the nation if it does not serve the interest of minority as well. Justice Kirpal C. J. had ruled, that “any regulation framed in the national interest must necessarily apply to all educational institutions, whether run by majority or minority. Such a limitation must

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\(^{112}\) AIR 1971 SC 1737

\(^{113}\) AIR 1974 SC 1389

\(^{114}\) AIR 1970 SC 259

\(^{115}\) (2002) 8 SCC 481
necessarily be read into Article 30. The right under Article 30(1) cannot be such as to override the national interest or to prevent the Government from framing regulations in that behalf. Court further was of the view that no right can be absolute. Whether a minority or a non minority, no community can claim its interest to be above national interest.

The words ‘Establish’ and ‘Administer’ in Article 30(1) have been read conjunctively. Therefore, a minority can claim a right to administer an educational institution only if it has established by it but not otherwise. A religious minority cannot claim the right to administer an educational institution establish by someone else, merely because, for some reason or other, it had been administering the institution before Constitution came into force.

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

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

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116 (2002) 9 SCC 497
117 (1970) 2 SCC 417
in either case must be to found an institution for the benefit of a minority community by the member of that community.’

In *S. Azeez Basha v Union of India*\(^{118}\), it was held that the Aligarh Muslim University was established by the Central legislature Act of 1920. It could not therefore be said to have been establish by the Muslim community. No degree granting institution can be established in India without a statute. Accordingly, the validity of a statute regulating administrative arrangements in the University could not be adjudged under Article 30(1). The material factor to attract Article 30(1) is the establishment of the institution by the minority concerned.

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

The Courts may have to decide whether the institution is minority institution. In, *S. P. Mittal v Union of India*\(^{119}\) the Supreme Court laid down that in order to claim the benefit of Article 30(1), the community must show a) that it is a religious or linguistic minority, b) that the institution was established by it. Without satisfying these two conditions it cannot claim the guaranteed rights to administer it.

\(^{118}\) AIR 1968 SC 662
\(^{119}\) AIR 1983 SC 1
In *Yogendra Nath Singh v State of Uttar Pradesh*, the Government recognized the institution as a minority institution. This order was challenged in the High Court through a writ petition. Looking into the antecedent history of the institution right from its inception, the Court concluded that the institution was not established as a minority institution, and, therefore, it could not be granted minority status even though presently it was being managed by the minority community. Under Article 30(1), the requirements of establishment and management have to be read conjunctively. The twin requirements are needed to be fulfilled and in the absence of one, an institution cannot be given minority status.

The minority educational continues to be so whether the government declares it as such or not. When the government declares the institution as a minority educational institution, it merely recognizes a factual position that the institution was established and is administered by the minority community. The declaration is merely an open acceptance of the legal character of the institution which must necessarily have existed antecedents to such declaration. Such a declaration is neither necessary nor decisive of the character of the institution in question as a minority educational institution. The final word in this regard rests with the courts. It is ultimately for the court to decide whether the institution in question is a minority institution or not.

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

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120 AIR 1999 All 356
In *Andhra Pradesh Christian Medical Association v Government of Andhra Pradesh*, the Supreme court has asserted that the Government, the University and ultimately the Court can go behind the claim that the institution in question is a minority institution and to investigate and satisfy itself whether the claim is well founded or ill founded. The Government, the University and ultimately the Court have undoubted right to pierce the minority veil and discover whether there is lurking behind it no minority at all and in any case no minority institution. The Supreme Court emphasized that the object of Article 30(1) is not to allow bogies to be raised by pretenders. The institution must be an educational institution of minority in truth and reality and not mere masked phantoms.

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

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

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

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

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

In *St Stephen’s College v University of Delhi’s Case*, Supreme Court held that Article 30(1) does not mean that the minority can establish an educational institution solely for the benefit of its own community people. The minorities are not entitled to establish such institutions for their exclusive benefit.

The Court observed that, ‘Every educational institution irrespective of community to which it belongs is a ‘melting pot’ in our national life and that it is essential that there should be a proper mix of students of different communities in all educational institutions. This means that a minority

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122 AIR 1986 SC 1490  
123 AIR 1982 Cal 101  
124 AIR 1983 Bom 192  
125 AIR 1992 SC 1630
institution cannot refuse admission to students of other minority and majority communities.

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

a) Institutions which neither seek aid nor recognition from state;
b) Institutions that seek aid from the state; and
c) Institutions which seek recognition but not aid.

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

5.5. Article 30(2): Bars the State from discriminating in granting aid

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

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

5.6. Relation between Article 29 and 30

The Supreme Court has consistently held that the right to establish and administer an educational institution under Article 30(1) is not confined only to purpose specified under Article 29(1). Though an educational institution may serve as a means for conserving script, language and culture as mentioned in Article 29(1), but Article 30(1) enables the religious and linguistic minority to establish an institution which may have no concern with the object of conserving its script, language or culture. The words “of their choice’ occurring in the Article 30(1) does not put any limitation on any particular type of educational institution and includes the right to impart general secular education also for enriching the children of minorities intellectually, morally and financially and enabling them to face the realities of life.

The width of Article 30(1) cannot be cut down by imposing into it the consideration on which Article 29(1) is based because firstly, if the educational institutions referred to in Article 30(1) must only be those institutions which has been established for the purpose of language, script or culture then it will render Article 30(1) redundant, for this Article also grants rights to a religious minority to establish an educational institution which may be wholly unconnected with the conservation of language, script or culture. eg. A religious minority may impart purely religious education in its institution. Secondly, While the right under Article 29(1) are available to “any section of citizens” whether belonging to majority or minority, Article 30(1) applies to “all minorities whether based on religion or language” and no other section of citizen can claim this right. Thirdly, while educational institution falling under 29(1) can be set up only for conserving language, script or culture, where as
Article 30(1) enables the religious and linguistic minorities to establish and administer any type of educational institution of their choice.

The Court in Rev. Father Proost v State of Bihar126 said that the width of Article 30 could not be cut down by introducing any consideration on which Article 29(1) is based. Article 29(1) is a general protection given to sections of citizens to conserve their language, script or culture. Article 30(1) is a special right to minorities to establish educational institutions of their choice. This Court said that the two Articles create two separate rights though it is possible that the rights might meet in a given case.

A.N. Ray, C.J. in St Xavier’s Case127 held that under Article 30(1) minority is not restricted 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. They reasons cited by him were First, Article 29(1) 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 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 institutions 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.

126 (1969) 2 SCR 73
127 AIR 1974 SC 1389
All nine judges were unanimous in their opinion that Articles 29(1) and 30(1) deal with distinct matters and may be considered supplementing each other so far as certain cultural rights of minorities are concerned.

If the scope of Article 30(1) is to establish and administer the educational institutions to conserve language, script or culture of minorities it will render Article 30 superfluous. If rights under Articles 29(1) and 30(1) are the same then the consequence will be that any section of citizens not necessarily linguistic or religious minorities will have the right to establish and administer educational institutions of their choice. The scope of Article 30 rests on linguistic or religious minorities and no other section of citizens of India has such a right.

The right to establish and administer educational institutions of their choice has been conferred on religious and linguistic minorities so that the majorities who can always have their rights by having proper legislation do not pass a legislation prohibiting minorities to establish and administer educational institutions of their choice. If the scope of Article 30(1) is made an extension of the right under Article 29(1) as the right to establish and administer educational institutions for giving religious instruction or for imparting education in their religious teachings or tenets, the fundamental right of minorities to establish and administer educational institution of their choice will be taken away.

In Catena of decisions by various High Courts and Supreme Court, the Court has interpreted the law contained in Articles 29(2) and 30(1) and their inter-relation without any unanimity. In some cases judicial interpretation of the Court is that minority institutions that receives government aid are bound by Article 29(2). Other interpretation is that minority institutions which are receiving government aid while admitting students from their own communities in the institutions established by them are free to admit students from other communities. The students of other communities may even belong to majority.
Admission of such students in the minority institutions does not destroy the minority character of the institutions. In some cases interpretation given by the judiciary is that there can be no communal reservation for admission in Government or Government aided institutions.

In, Ashu Gupta v State of Punjab, the Court held that unaided minority institutions have complete freedom to select their students. It held that all minority institutions not receiving aid from the government were wholly out of the ambit of Article 29(2)’.

In State of Bombay v Bombay Education Society, the Court held that, Article 29 (1) gives protection to any section of the citizens having distinct language, script or culture by guaranteeing their right to conserve the same. Article 30(1) secures all minorities, whether based on religion or language, the right to establish and administer educational institution of their choice. Article 29(2) is not designed for the protection of minority. Article 29(2) confers a special right on citizens for admission into educational institutions maintained or aided by the State. To limit this right only to the citizens belonging to minority groups will be to provide a double protection for such citizens and to hold that the citizens of the majority group have no special educational rights in the nature of a right to be admitted into an educational institution for the maintenance of which they make contributions by the way of taxes.

In State of Kerala v Very Rev. Mother Provincial, the Court held that it is permissible that minority institution while admitting students from its community may also admit students from majority community. Admission of such non-minority students would bring income and these students need not be turned away to enjoy protection. The principle that can be deduced from these decisions is that a minority educational institution while admitting

\[128\] AIR 1987 P&H 227
\[129\] AIR 1954 SC 561
\[130\] (1970) 2 SCC 417
members from its own community is free to admit students from the non-minority community also.

In *Re Kerala Education Bill Case,* the Court held that there is no such limitation in Article 30(1) on the part of minority institutions that they cannot admit students from other communities. To accept such limitation will necessarily involve the addition of the words “for their community” in the Article which is ordinarily not permissible according to the well established rules of interpretation. Nor is it reasonable to assume that the purpose of Article 29(2) was to deprive minority educational institutions of the aid they receive from the State. To say that an institution which receives aid on account of its being a minority educational institution must not refuse to admit any member of any other community only on the grounds therein mentioned and then to say that as soon as such institution admits such an outsider it will cease to be a minority institution is tantamount to saying that minority institutions will not remain, as minority institutions, be entitled to any aid. The real import of Article 29(2) and Article 30(1) seems to us to be that they clearly contemplate a minority institutions 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.

In *D. A. V. College Jullunder v State of Punjab,* the question relating to Articles 29(2) and 30(1) were considered by the Supreme Court. The Court concluded that a religious or linguistic minority has a right to establish and administer educational institutions of its choice for effectively conserving its distinctive language, script or culture, which right however, is subject to the regulatory power of the State for maintaining and facilitating the excellence of its standards. This right is further subject to 29(2) which provide that no citizen shall be denied admission into any educational institution which is

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131 AIR 1958 SC 956
132 AIR 1971 SC 1737
maintained by the State or receives aid out of State funds, on grounds only of religion, race, caste, language or any of them.

In *St Stephen’s College v University of Delhi*, the right of minority educational institutions under Article 30 (1) and the applicability of Article 29(2) to an institution to which Article 30(1) was applicable were considered. The Court held that the fact that Article 29(2) applies to minorities as well as non-minorities does not mean that it was intended to nullify the special right guaranteed to minorities in Article 30(1). Supreme Court had held that even a minority institution receiving aid from state funds was entitled to accord preference to or reserve seats for candidates belonging to its own community on the basis of religion or language. However, the Court allowed such institutions to admit students of its own community to the extent of 50 per cent of the annual intake and insisted that such differential treatment must be in conformity with the University's standards. The Court held that differential treatment of students in the admission process did not violate Article 29(2) or Article 14 (equality before law) and it was essential to maintain the minority character of the institution. Minority cannot have an educational institution solely for the benefit of its own community people. It should provide 50 percent seats for the benefit of other communities. The principle that can be culled out from these decisions is that Article 30(1) is subject to Article 29(2).

In *T. M. A. Pai’s Case*, the Supreme Court held that a minority aided institution would be entitled to have the right of admission belonging to the minority group but would be required to admit a reasonable extent of non-minority students. State government can notify such percentages for admission for non-minorities. Ratio laid down in St Stephan’s College v University of Delhi is correct but rigid percentage cannot be stipulated. The authorities can

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133 AIR 1992 SC 1630
134 (2002) 8 SCC 481
stipulate reasonable percentage in accordance to the type of institution, population and educational needs of the minorities.

The eleven judges bench held in T. M. A. Pai’s case that denying admission even though seats are available on the grounds of applicant’s religion, race, caste or language is prohibited, but preferring students of minority groups did not violate Article 29(2). Examining the word “only” used in Article 29(2) six judges of the bench Viz. Justices B. N. Kirpal, G. B. Pattanaik, S. Rajendra Babu, K. G. BalaKrishnan, P. Venkatarama Reddi, and Arijit Pasayat said that denying admission to non minorities for the purpose of accommodating minority students to reasonable extent will not be only on the grounds of religion and so on, but is primarily meant to preserve the minority character of the institute and to effectuate the guarantee under Article 30(1). They held that as long as the minority educational institutions permitted the admission of non minorities to a reasonable extent based on merit, it would not be an infraction of Article 29(2), even though the minority educational institute admitted students of the minority group of its own choice for whom it was meant.

The Court held, “What would be reasonable extent would depend upon variable factors. And it may not be advisable to fix any specific percentage. The situation would vary according to the type of institution and the nature of education that is being imparted at the institution. A variable percentage of admission of minority depending on the type of institution and education is desirable, and indeed necessary to promote the Constitutional guarantees enshrined in both, Article 29(2) and Article 30(1),” the six judges said. The six judges endorsed the ratio laid down in St Stephen’s Case but removed the 50 percent ceiling fixed in that case. They said that they believed that it would be more appropriate, depending on the level of the institution and the population and educational needs of the area in which minority educational institute was located, the State properly balanced the interests of all the providing for such a percentage of students of the minority community to be admitted so as to serve
adequately the interests of all by providing for such a percentage of students of minority community to be admitted so as to serve adequate the interest of community for which the minority educational institutes were established.

5.7. Conclusion:

It is settled in case of *St. Xavier’s College v State of Gujarat*135 that Articles 29(1) and 30(1) deal with distinct matters and may be considered supplementing each other so far as certain cultural rights of minorities are concerned. However, the relation between Article 30(1) and Article 29(2) is paradoxical generating confusions like; can minority education institutions deny admission to any student on the basis of religion or language? Whether in admission to minority education institutions, preferences can be given to minority students, overruling the criteria of merit?

In large number of cases the court has held that unaided minority institutions have complete freedom to select their students. It held that all minority institutions not receiving aid from the government ‘are wholly out of the ambit of Article 29(2)’.

The case of *St Stephan’s College*136 decided by a bench of five judges of the Supreme Court is a landmark case as far as relation between Article 29(2) and Article 30(1) is concerned. Tackling the issue of admission the Court advocated the theory of melting pot and attempted to strike a balance between the two Articles.

It stated, in the nation building with secular character sectarian schools or colleges; segregated faculties or universities for imparting general secular education are undesirable and they may undermine secular democracy. They would be inconsistent with the central concept of secularism and equality.

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135 AIR 1974 SC 1389
136 AIR 1992 SC 1654
embedded in the Constitution. Every educational institution irrespective of the 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.

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 their institutions subject to, 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 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 then the minority community.