CHAPTER VI
Judicial Trend

'We must never forget that it is the Constitution we are expounding'.137


'We are under a Constitution, but the Constitution is what the Judges say it is.'138

.......Governor Hughes.

Protection of minority rights derives its legitimacy from the internationally recognized vulnerability of identity based groups caused by their non-dominance in terms of number and power. Such position makes it difficult for them to achieve equality in the common national domain, while preserving their distinct identity. Minority rights were fully reflected in the Charter of the League of Nations and the treaties in the U.N. system, these rights more comprehensive and definite expression in the binding Article 27 of the International Covenant on Civil and Political Rights (ICCPR) of 1966, and subsequently in the UN Declaration on Rights of Person Belonging to National or Ethnic, Religious & Linguistic minorities (1992) along with the official explanations by the U.N. Human Rights Committee in 1994 Asbjorn Eide in 2001139, which put an obligation on the states to give minorities cultural freedom, and also to create conditions favourable for the preservation and development of their identity.

Article 29 and 30, these two Articles of the Indian Constitution which relate to rights of minority institutions have figured before the Courts ever since the well

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137 McColloch v. Maryland Case 4 Wheaton 316, 407
139 E/CN-4/sub2/AC51/2001/2
known Supreme Court judgment, relating to the Kerala Education Bill\textsuperscript{140}. This protection, enshrined in Articles 29 and 30 and grouped as Cultural and Educational Rights, has given the minorities a sense of security and belonging in the face of aggressive majoritarian tendencies everywhere. However, a certain degree of ambiguity has clouded this protection owing to different judicial interpretations. In the beginning, the Courts were mostly concerned with striking a balance between the guaranteed rights of such institutions on the one hand and demands of public interest, including excellence in academic and organizational standards, on the other hand. In the course of this process, many points arose for consideration.

Constitution of India nowhere defines Minority neither Motilal Nehru’s report nor the Sapru report has tried to define Minority. May be the framers of the Constitution has left it to the wisdom of Courts to decide who would be the inheritors of the rights guaranteed under Article 30 of the Constitution of India. Even after sixty years of independence it is not evident as to who are the inheritors or scions of rights under Article 30 of the Indian Constitution. Neither it is clear as to who constitute minority nor is the law relating to legal rights of Minority Educational Institutes settled in spite of plethora of judgments.

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

\textsuperscript{140} A.I.R. 1958 S.C. 956, [1959] 1 SCR 995
6.1. The State of Bombay v Bombay Education Society and Ors\textsuperscript{141}


In this case, Government order prohibiting admission of students other than those of non-Asiatic descends and Anglo-Indians to English medium schools was challenged. Admission of non Anglo-Indian students was denied. Appeal filed by State of Bombay with a certificate granted by Bombay High Court. Court held, circular imposing such obligation for, receipt of grant, unconstitutional. State was directed to pay costs of respondents.

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

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

\textsuperscript{141} AIR 1954 SC 561
1. The right of students who were neither Anglo-Indians nor of Non-Asiatic
descent to be admitted to the Barnes High School and
2. The right of Barnes High School to admit such students.

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

The Supreme Court rejected the State’s contention that the word “namely” in
the circular was merely illustrative and that the Schools were free to admit not
only Anglo-Indians and citizens of Non-Asiatic descent but were free to admit
pupils belonging to any other section of the citizens, whose language was
English.

**Circular held void**

Attorney general contended that Article 29(2) does not confer any fundamental
right on all citizens generally but guarantees the rights of citizens of minority
groups by providing that they must not be denied admission to 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 and he referred to
the marginal note to the Article. Court held that Article 29(2) confers a special
right on citizens for admission into educational institutions maintained or
aided by the State and cannot be restricted for minorities.

*The ground for denying admission in English school to pupils whose mother
tongue was not English was only language and so the order could not be upheld.
Thus discrimination in matters of admission on basis of language was vetoed by
the Supreme Court under Article 29(2).*

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

6.2. Re Kerala Education Bill case [1958]142


Article 30 (1) first came up for interpretation before a seven judge Constitution Bench constituted to consider the reference made by the President under Article 143 in the present case sponsored by the Communist Government of the State, which was stoutly opposed by Christians and Muslims. The reference was made because grave doubts were raised about the validity of certain provisions of the Bill with regards to Articles 29 and 30. Articles 29 and 30 conferred certain educational and cultural rights as fundamental rights. Chief Justice S. R. Das delivered the majority opinion. He spoke for six judges — the sole dissent by Justice Venkatarama Aiyar being confined to the question whether minority institutions were entitled also to recognition and State aid as part of the right guaranteed by Article 30(1). Chief Justice Das held:

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

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

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

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

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

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

In reference to question 2, the main Articles that confer rights to minority are Articles 29 and 30 are set out in Part III of our Constitution which guarantees our fundamental rights. They are grouped together under the sub-head "Cultural and Educational Rights". The text and the marginal notes of both the Articles show that their purpose is to confer those fundamental rights on certain sections of the community which constitute minority communities. Under clause (1) of Article 29 any section of the citizen residing in the territory of India or any part thereof having a distinct language, script or culture of its own has the right to conserve the same. It is obvious that a minority
community can effectively conserve its language, script or culture by and through educational institutions and, therefore, the right to establish and maintain educational institutions of its choice is a necessary concomitant to the right to conserve its distinctive language, script or culture and that is what is conferred on all minorities by Article 30(1). This right, however, is subject to clause 2 of Article 29 which provides that no citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

The court

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

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

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

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

(3) The educational institution must be established for the members of his or their own community.

The Court held that

_The Anglo-Indians, Christians and Muslims are minority communities in the State of Kerala, since their population is less than 50% of the state’s population._

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

_No limitation placed on the subjects to be taught in minority educational institutions._ Article 30(1) gives rights not only to religious minorities but also to linguistic minorities to establish educational institutions of their choice. It is not necessary that an institution run by a religious minority should impart only religious education or that one run by a linguistic minority should teach language only. As such minorities will ordinarily desire that their children should be brought up properly and efficiently and be eligible for higher university education and go out in the world fully equipped with such intellectual attainments as will make them fit for entering the public services, educational institutions of their choice will necessarily include institutions imparting general secular education also. In other words, the Article leaves it to their choice to establish such educational institutions as will serve both purposes, namely, the purpose of conserving their religion, language or culture, and also the purpose of giving a thorough, good general education to their
children. Thus minority Institutions imparting general secular education are equally protected. The minority has a right to give "a thorough, good general education".

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

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

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

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143 (1955) 1 SCR 568
Clause 3(5): "After the commencement of this Act, the establishment of a new school or the opening of a higher class in any private school shall be subject to the provisions of this Act and the rules made there under and any school or higher class established or opened otherwise than in accordance with such provisions shall not be entitled to be recognized by the Government."

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

Clauses 9 to 13: Clause 9 makes it obligatory on the Government to pay the salary of all teachers in aided schools direct or through the headmaster of the school and also to pay the salary of the non-teaching staff of the aided schools. It gives power to the Government to prescribe the number of persons to be appointed in the non-teaching establishment of aided schools, their salaries, qualifications and other conditions of service. The Government is authorized, under sub-clause (3), to pay to the manager a maintenance grant at such rates as may be prescribed and under sub-clause (4) to make grants-in-aid for the purchase, improvement and repairs of any land, building or equipment of an aided school. Clause 10 requires Government to prescribe the qualifications to be possessed by persons for appointment as teachers in Government schools and in private schools which, by the definition, means aided or recognized schools. The State Public Service Commission is empowered to select candidates for appointment as teachers in Government and aided schools according to the procedure laid down in clause 11. Shortly put, the procedure is that before the 31st May of each year the Public Service Commission shall select for each district separately candidates with due regard to the probable number of vacancies of teachers that may arise in the course of the year, that the list of candidates so selected shall be published in the Gazette and that the manager shall appoint teachers of aided schools only from the candidates so selected for the district in which the school is located subject to the proviso that the manager may, for sufficient reason, with the permission of the
Commission, appoint teachers selected for any other district. Appointments of teachers in Government schools are also to be made from the list of candidates so published. In selecting candidates the Commission is to have regard to the provisions made by the Government under clause (4) of Article 16 of the Constitution, that is to say, give representation in the educational service to persons belonging to the Scheduled Castes or Tribes - a provision which has been severely criticized by learned counsel appearing for the Anglo-Indian and Muslim communities. Clause 12 prescribes the conditions of service of the teachers of aided schools obviously intended to afford some security of tenure to the teachers of aided schools. It provides that the scales of pay applicable to the teachers of Government schools shall apply to all the teachers of aided schools whether appointed before or after the commencement of this clause. Rules applicable to the teachers of the Government schools are also to apply to certain teachers of aided schools as mentioned in sub-clause (2). Sub-clause (4) provides that no teacher of an aided school shall be dismissed, removed, reduced in rank or suspended by the manager without the previous sanction of the authorized officer. Other conditions of service of the teacher of aided schools are to be as prescribed by rules.

*Regulations prescribing the qualifications for teachers were held reasonable. Those relating to protection and security of teachers and to reservations in favor of backward classes which covered government schools and aided schools alike, were "perilously near violating that right", but "at present advised" were held to be permissible regulations. However, provisions centralizing recruitment of teachers through the State Public Service Commission and taking over the collection of fees, etc., were held to be destructive of the rights of minorities to manage the institutions.*

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

A Government may not make any grants or be unable to do so; but if grants were made, conditions must not be attached to those grants which would destroy the fundamental rights. Article 30 guaranteed a fundamental right; Article 45 laid down directive principle of State policy making primary and secondary education free and compulsory. The right under Article 30 was a right to establish and administer educational institutions of their choice and the right to administer effectively did not include a right to mal administer. The Government therefore could impose reasonable regulations to secure proper administration as a condition for giving aid and recognition. Legislative powers under Articles 245 and 246 were subject to the other provisions of the constitution including fundamental rights. The court upheld several clauses of the Bill as imposing permissible regulations, but found it impossible to support Clauses 14 and 15 of the Kerala Education Bill as they were totally destructive of rights guaranteed under Article 30(1).

**Clauses 14 and 15** for reference are stated hereunder:
Clause 14 provides, by sub-clause (1), that the Government, whenever it appears to it that the manager of any aided school has neglected to perform any of the duties imposed by or under the Bill or the rules made there under, and that in the public interest it is necessary so to do, may, after giving a reasonable opportunity to the manager of the Educational agency for showing cause against the proposed action, take over the management for a period not exceeding five years. In cases of emergency the Government may, under sub-clause (2), take over the management after the publication of notification to that effect in the Gazette without giving any notice to the Educational agency or the manager. Where any school is thus taken over without any notice the Educational agency or the manager may, within three months of the publication of the notification, apply to the Government for the restoration of the school showing the cause therefore. The Government is authorized to make orders which may be necessary or expedient in connection with the taking over of the management of an aided school. Under sub-clause (5) the Government is to pay such rent as may be fixed by the Collector in respect of the properties taken possession of. On taking over any school the Government is authorized to run it affording any special educational facilities which the school was doing immediately before such taking over. Right of appeal to the District Court is provided against the order of the Collector fixing the rent. Sub-clause (8) makes it lawful for the Government to acquire the school taken over under this clause if the Government is satisfied that it is necessary so to do in the public interest, in which case compensation shall be payable in accordance with the principles laid down in clause 15 for payment of compensation. Clause 15 gives power to the Government to acquire any category of schools. This power can be exercised only if the Government is satisfied that for standardizing general education in the State or for improving the level of literacy in any area or for more effectively managing the aided educational institutions in any area or for bringing education of any category under their direct control and if in the public interest it is necessary so to do. No notification for taking over any school is to be issued unless the proposal for the taking over is supported by a
resolution of the Legislative Assembly. Provision is made for the assessment and apportionment of compensation and an appeal is provided to the District Court from the order passed by the Collector determining the amount of compensation and its apportionment amongst the persons entitled thereto. Thus the Bill contemplates and provides for two methods of acquisition of aided schools, namely, under sub-clause (8) of clause 14 the Government may acquire a school after having taken possession of it under the preceding sub-clauses or the Government may, under clause 15, acquire any category of aided schools in any specified area for any of the several specific purposes mentioned in that clause.

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

To the state argument that the minorities should not be pampered in maintaining their selfish and sectional interest, the Court held, “So long as the Constitution stands as it is and is not altered, it is, we conceive, the duty of this Court to uphold the fundamental rights and thereby honor our sacred obligation to the minority communities who are of our own. Throughout the ages endless inundations of men of diverse creeds, cultures and races - Aryans and non-Aryans, Dravidians and Chinese, Scythians, Huns, Pathans and Mughals - have come to this ancient land from distant regions and climes. India has welcomed them all. They have met and gathered, given and taken and got mingled, merged and lost in one body. India's tradition has thus been epitomised in the following noble lines:

"None shall be turned away
From the shore of this vast sea of humanity
That is India" 144.

Indeed India has sent out to the world her message of goodwill enshrined and proclaimed in our National Anthem:

"Day and night, thy voice goes out from
land to land,
calling Hindus, Buddhists, Sikhs and Jains
round thy throne
and Parsees, Mussalmans and Christians.
Offerings are brought to thy shrine by
the East and the West
to be woven in a garland of love.

144 Poems by Rabindranath Tagore
Thou bringest the hearts of all peoples
into the harmony of one life,
Thou Dispenser of India’s destiny,
Victory, Victory, Victory to thee.”

6.3. Sidhrajbhai v State of Gujarat


In this case the Government order directing reservation of 80% of seats for Government nominee in a Christian training centre was challenged.

The petitioners profess the Christian faith and belong to the United Church of Northern India. They are members of the Gujarat and Kathiawar Presbyterian Joint Board—hereinafter called ‘the society’ - which conducts in the State of Gujarat, forty two primary schools and a Training College for teachers, known as the “Mary Brown Memorial Training College”, at Borsad, District Kaira. The teachers trained in the colleges were absorbed in the primary schools conducted by the society and those not so absorbed were employed by other Christian Mission Schools conducted by the United Church of Northern India. The cost of maintaining the Training College and the primary schools was met out of donations received from the Irish Presbyterian Mission, fee from scholars and grant-in-aid under the education Code of the State Government. The primary schools and the college were conducted for the benefit of the religious denomination of the United Church of Northern India and Indian Christians generally, though admission was not denied to students belonging to other communities. The training course in the college was of the duration of two years and originally 25 students were admitted in the First Year and 25 in the

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145 Poems by Rabindranath Tagore
146 AIR 1963 SC 540, MANU/SC/0076/1962
Second Year. Till the year 1952 surplus accommodation after admitting students who were to qualify as teachers required for the society's primary schools, was available for other students. The College was recognized by the Government of Bombay for training students for the examination held by the Education Department for granting certificates for trained teachers.

On May 28, 1955, the Government of Bombay issued an order that with effect from the academic year 1955-56, 80% of the seats should be reserved by the Management in non-Government Training Colleges for the District and Municipal School Board teachers to be nominated by the Government. It was recited in the order that there were 40,000 untrained primary teachers employed by District School Boards and Authorized Municipalities, and some more untrained teachers were likely to be selected and appointed as primary teachers during the next academic year and in order that untrained teachers should have the necessary training as soon as possible, Government had decided to expand the existing training facilities with a view to increasing "the output of trained teachers" by opening new Training Colleges and by directing that 80% of the seats in non-Government Training Colleges should be reserved for School Board teachers with effect from the next academic year (1955-56).

On June 13, 1955, the Educational Inspector, Kaira District addressed a letter to the Principal of the College informing him that 80% of the total number of seats in the training college be reserved for school Board teachers "deputed by the Government," and ordered the Principal not to admit private students in his institution in excess of 20% of the total strength in each class without specific permission of the Education Department. The Principal of the College, by letter dated June 15, 1955, expressed his inability to comply with the order. There was correspondence between the society and the Education Department in the course of which the Department insisted that 80% of the seats should be reserved by the College for school Board teachers and that no fresh admissions should be made. By letter dated December 27, 1955, the Educational Inspector, Kaira District informed the management of the College that the
action taken by them in refusing admission to the School Board teachers was highly irregular and "against the Government policy", that the management was severely warned for disregarding the orders issued in that connection, and that in view of the management's defiant attitude it had been decided that no grant would be paid to the College for the current year unless the management agreed to reserve 80% seats for School Board teachers from 1956-57 and that the management should maintain only one division of the second Year class during the year 1956-57 and that it should not admit fresh candidates to the first Year without specific permission from the Director of Education, Poona, failing which severe disciplinary action such, as withdrawal of recognition of the institution would be taken. The society submitted on February 10, 1956 a memorial to the Minister for Education Government of Bombay protesting against the threat to take disciplinary action and to withdraw recognition. By letter dated March 12, 1956, the society was informed that in view of the refusal of the society to reserve seats for the school Board teachers, grant for the current year was withheld. By letter dated March 29, 1956, the Educational Inspector called upon the Principal of the College not to admit private candidates to the 1st year class without obtaining previous permission from the Director of Education, and informed him that the provisional grant of Rs. 8,000/- sanctioned to the College was on "the distinct understanding that 80% of the seats are reserved for School Board teachers from 1956-57 and necessary residential accommodation is made available for them."

On June 9, 1956, the Director of Education again wrote to the society calling upon it to admit all the School Board teachers as may be deputed up to 80% of the seats in the first year class for the year 1956-57, and to provide adequate hostel accommodation for them and if the society failed to communicate its willingness to comply therewith within seven days from the receipt of the letter, the Government would be constrained to withdraw recognition accorded to the 1st year class of the training College under Rule 11 for recognition of non-primary training College framed by the Government under G.R. 11 dated
November 9, 1949. This letter was written in pursuance of the authority assumed under two sets of Rules framed by the Government of Bombay - (i) Rules for Primary Training Colleges, and (2) Rules for the recognition of the Private Training Institutions. By 5(2) of the first set of Rules, it was prescribed that in non-Governmental Institutions, percentage of seats reserved for Board deputed teachers shall be fixed by the Government and the remaining seats shall be filled by students deputed by private schools or by private students. Rules 11, 12 and 14 of the Rules for the recognition of Private Primary Training Institutions were as follows:-

"Rule 11: The Institution will have to be kept open for all students irrespective of caste or creed. It will be open to Government to reserve seats for Board deputed teachers to such extent as is deemed necessary. The institution will have to give such representation on its staff and students to backward classes as may be fixed by Government."

"Rule 12: Women teachers will be admitted in Women's Training Institutions. The Head of such Institutions should be a woman and not less than 50 percent of the Assistant Teachers, should be women. In special cases, men's institutions may be allowed to admit women teachers provided:

(i) Separate classes for women are formed.

(ii) One trained graduate woman teacher is appointed per class for women teachers opened in the college.

(iii) Separate residential arrangement under supervision of a woman teacher is made for women students in the Hostel.

(iv) Satisfactory arrangements are made for teaching Home Science as an auxiliary craft to women students."
(v) Separate sanitary arrangements are made for women teachers in the college and hostel premises."

"Rule 14: It will be open to the Department to withdraw recognition or refuse payment of grant to any private training institution for non-fulfillment of any of the conditions mentioned above, for inefficient management and poor quality of teaching, or for failure to comply with any of the Departmental regulation now in force or that may be issued from time to time by the Government, or by the Director of Education on behalf of Government."

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

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

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

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

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

Unlike Article 19, the fundamental freedom under Article 30(1), is absolute in terms; it is not made subject to any reasonable restrictions of the nature the fundamental freedoms enunciated in Article19 may be subjected to. All minorities, linguistic or religious have by Article 30(1), an absolute right to establish and administer educational institutions of their choice; and any law or executive direction which seeks to infringe the substance of that right under Article 30(1) would to that extent be void. This, however, is not to say that it is not open to the State to impose regulations upon the exercise of this right. The fundamental freedom is to establish and to administer educational institutions: it is a right to establish and administer what are in truth educational institutions, institutions which cater to the educational needs of the citizens, or sections thereof. Regulation made in the true interests of efficiency of instruction, discipline, health, sanitation, morality, public order and the like may undoubtedly be imposed. Such regulations are not restrictions on the
substance of the right which is guaranteed: they secure the proper functioning of the institution, in matters educational.

*Right to administer does not include right to mal-administer.*

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

The court summed up their position in following words:

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

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

6.4. Rev. Father W. Proost and Ors. v The State of Bihar and Ors.147


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

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

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

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

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

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

(viii) One representative of the Patna University.

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

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

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

"48-A. Establishment of a University Service Commission for affiliated colleges not belonging to the State Government and its powers and functions:--

(1) With effect from such date as the State Government may, by notification in the Official Gazette, appoint, there shall be established a Commission by the name of the University Service Commission.

(2) The said Commission shall be a body corporate having perpetual succession and a common seal, and shall by the said name sue and be sued.

(3) The commission shall consist of a Chairman and two other members to be appointed by the State Government who shall be whole time officers, and shall hold office for a term of three years from the date of assumption of charge of office, on the expiration of which term they, or any of them, may be reappointed for only one more term which shall not exceed three years.

(4) There shall be a Secretary to the Commission who shall also be a whole-time officer to be appointed by the State Government.

(5) Other terms and conditions of service of the Chairman, members and the Secretary shall be determined by the State Government.

(6) Subject to the approval of the University, appointments, dismissals, removals termination of service or reduction in rank of teachers of an affiliated college not belonging to the State Government shall be made by the governing body of the college on the recommendation of the Commission.

(7) (i) In making recommendations for appointment to every post of teacher of any such affiliated college, the Commission shall have the assistance of two experts in the subject for which an appointment is to be made, of whom one
shall whenever possible be a teacher of the University to be nominated by the Syndicate and the other shall be a person, other than a teacher of the University, to be nominated by the Academic Council.

(ii) The experts shall be associated with the Commission as assessors whose duty it shall be to give expert advice to the Commission but who shall have no right to vote.

(8) The Commission shall, wherever feasible, recommend to the governing body of a college for appointment to every post of teacher of the college names of two persons arranged in order of preference and considered by the Commission to be the best qualified therefore.

(9) In making appointment to a post of teacher of a college, the governing body of the college shall, within three months from the date of the receipt of the recommendation under Sub-section (8), make its selection out of the names recommended by the Commission, and in no case shall the governing body appoint a person who is not recommended by the Commission.

(10) Notwithstanding anything contained in the preceding sub-sections, it shall not be necessary for the governing body to consult the Commission if the appointment to a post of teacher is not expected to continue for more than six months and cannot be delayed without detriment to the interest of the College:

Provided that if it is proposed to retain the person so appointed in the same post for a period exceeding six months or to appoint him to another post in the college the concurrence of the Commission shall be necessary in the absence of which the appointment shall be deemed to have been terminated at the end of six months.

(11) (ii) The Commission shall be consulted by the governing body of a college in all disciplinary matters affecting a teacher of the college and no memorials or petitions relating to such matters shall be disposed of nor shall any action be
taken against, or any punishment imposed on, a teacher of the college otherwise than in conformity with the finding of the Commission:

Provided that it shall not be necessary to consult the Commission where only an order of censure, or an order withholding increment, including stoppage at an efficiency bar, or an order of suspension pending investigation of charges is passed against a teacher of a college.

(12) It shall be the duty of the Commission to present annually to the University a report as to the work done by the Commission in relation to such colleges affiliated to the University and a copy of the report shall be placed before the Senate at its next meeting, and the University shall further prepare and submit to the State Government a memorandum explaining, as respects the cases, if any, where the advice of the Commission was not accepted, the reasons for such non-acceptance and the State Government shall cause the same to be laid before the Legislature of the State".

While this petition was pending in this Court, the Governor of Bihar promulgated an Ordinance on July 16, 1968. It amended the Bihar State Universities Act, 1960 by inserting Section 48-B after Section 48-A. The new section read:

"48-B. College established and administered by a minority entitled to make appointments etc. with approval of the Commission and the Syndicate.

Notwithstanding anything contained in Sub-section (6), (7), (8), (9), (10) and (11) of Section 48-A, the Governing Body of an affiliated college established by a minority based on religion or language, which the minority has the right to administer, shall be entitled to make appointments, dismissals, removals, termination of service or reduction in rank of teachers or take other disciplinary measures subject only to the approval of the Commission and the
Syndicate of the University. Simultaneously the Magadh University Act, 1961 was also similarly amended.

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

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

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

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

_The Court rejecting the argument held that the width of Article 30(1) cannot be cut down by introducing in it considerations on which Article 29(1) is based._ The latter Article is a general protection which is given to minorities to conserve their language, script or culture. The former is a special right to minorities to establish educational institutions of their choice. This choice is not limited to institution seeking to conserve language, script or culture and the choice is not taken away if the minority community having established an educational institution of its choice also admits members of other communities. That is a circumstance irrelevant for the application of Article 30(1) since no such limitation is expressed and none can be implied. The two articles create two separate rights, although it is possible that they may meet in a given case.
The Court held that St. Xavier's College was founded by a Catholic Minority Community based on religion and that this educational institution has the protection of Article 30(1) of the Constitution. Therefore, it is exempted under Section 48-B of the Act.

6.5 *The Right Rev. Bishop S.K. Patro and Ors. v The State of Bihar and Ors.*


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

A primary school started in 1854 at Bhagalpur was later converted into a Higher Secondary School.

The Legislature of the State of Bihar enacted the Bihar High Schools (Control and Regulation of Administration) Act 13 of 1960 which by Section 8 invested the State Government with power to frame rules. Section 8(1) provides:

The State Government may, after previous publication and subject to the provisions of Articles 29, 30 and 337 of the Constitution of India, make rules not inconsistent with this Act for carrying out the purposes of this Act.

In 1964 rules were framed under the Act by the State Government of Bihar. Rule 41 provides:

These rules shall not apply to the schools established and administered by the minorities whether based on religion or language.

By order dated September 4, 1963, the President of the Board of Secondary Education approved the election of Bishop Parmar as President and Rev. Chest as Secretary of the Church Missionary Society Higher Secondary School. This order was set aside by the Secretary to the Government, Education Department, by order dated May 22, 1967. On June 21, 1967, the Regional Deputy Director of Education, Bhagalpur, addressed a letter to the Secretary, Church Missionary Society School; Bhagalpur, inviting his attention to the order dated May 22, 1967, and requested him to take steps to constitute a Managing Committee of the School "in accordance with that order".

A petition was then filed in the High Court of Patna by four petitioners for a writ quashing the order dated May 22, 1967, and for an order restraining the respondents-the State of Bihar, the Secretary to the Government of Bihar, Government of Education and the educational authorities of the State-from interfering with the right of the petitioners to control, administer and manage the affairs of the School. The High Court of Patna dismissed the petition. The High Court held that the primary School at Bhagalpur was established by the Church Missionary Society of London; that the School had developed into the present Church Missionary Society Higher Secondary School; and that the School was administered in recent times by the Church Missionary Society of the Bhagalpur Diocese; and that the School not being an education institution established by a minority, protection was not afforded thereto by Article 30 of the Constitution. Against the order dismissing the petition, Civil Appeal had been filed in Supreme Court.

Two other petitions were filed in Supreme Court claiming relief on the footing that by the order dated May 22, 1967, of the Government of Bihar the fundamental right of the Christian minority to maintain an educational institution of its choice and guaranteed by Article 30(1) is infringed.
The only question which falls to be determined is whether the petitioners in the two writ petitions and the appellants in appeal were entitled to claim the protection of Article 30 of the Constitution on the ground that the Church Missionary Society Higher Secondary School at Bhagalpur is an educational institution of their choice established by a minority.

**Benefit of Article 30(1) is available to pre constitution and post constitution Educational Institutions.**

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

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

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

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

Rights under Article 30(1) not conferred on nonresident foreigners

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

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

6.6. D.A.V. College, Bhatinda, etc. v. State of Punjab and Ors\(^{149}\).


The petitioners challenged Ss. 4(2) and 5 of Punjabi University Act, 1961 and certain circulars and notifications as unconstitutional and void.

The Petitioners are educational institutions founded by D.A.V. College Trust and Society registered under the Societies Registration Act as an association comprised of Arya Samajis. These Colleges were affiliated to the Punjab University before the reorganization of the State of Punjab in 1966. The Punjabi University had been constituted in 1961 and by a Notification dated June 30, 1962, it was given jurisdiction over a radius of 10 miles from the office of the University at Patiala which seat had earlier been notified on 30-4-1962 as a Seat of the University. As the Writ Petitioners were not within the 10 miles radius of the University they continued to be affiliated to the Punjab University. After the reorganization the Punjab Government by Notification dated 13-5-1969 issued under Sub-section (1) of Section 5 of the Act specified the Districts of Patiala, Sangrur, Bhatinda and Rupar as the areas in which the Punjabi University exercised its power and under Sub-section (3) of the said Section, 30th June 1969 was notified as the date for the purpose of the said Section. The effect of this Notification was that the Petitioners were deemed to be associated with and admitted to the privileges of the University and ceased to be associated in any way with or to be admitted to any privileges of the Punjab University. It may also be mentioned that the Central Government by a Notification dated 12-9-1969 in exercise of the powers conferred on it by Section 72 of the Reorganization Act directed that the Punjab University constituted under the Punjab University Act 1947 shall cease to function and operate in the areas of the very four Districts regarding which the Punjab Government had earlier issued a Notification under Section 5 of the Act.

Thereafter the University by the impugned Circular dated 15-6-1970 issued to all the Principals of the Colleges admitted to the privileges of the University declared that Punjabi “will be the sole medium of instruction and examination for the pre-University even for Science group with effect from the Academic
Session 1970-71. Later the University by a letter dated 2-7-1970 informed the Principals that a decision of the Senate Sub-Committee dated 1-7-1970 as enclosed therewith was made giving "relaxation in some special cases of pre-University students seeking admission for the year 1970". This enclosure was in Punjabi, an English translation of which would show that the relaxation was to permit students who had passed their matriculation examination with English as their medium of examination to be taught and to answer examination papers in the English medium at pre-University level 'only so long as the other Universities and School bodies of Punjab did not adopt Punjabi as their medium of instruction'. On 7-10-70 the University made a further modification and it was decided by the Senate "that English be allowed as an alternative medium of examination for all students for the courses for which the University had adopted the regional language as the medium. It was however understood that qualifying in the elementary Punjabi paper would, as already decided by the University be obligatory in the case of such students offering English medium as had not studied Punjabi as an elective or optional subject even up to the middle standard". The resolution of 1-7-1970 further decided that students availing themselves of the facilities given there under will have to pass a compulsory course in Punjabi of 50 marks of which a minimum of 25 marks will be required to pass that course.

The main contention of the Petitioners however, was that

1. Section 4(2) of the Act does not empower the University to make Punjabi the sole medium of instruction;
2. It is not within the legislative power of the State under Entry 11 of List II to make Punjabi the sole medium of instruction, which power in fact vested in the Union Parliament under entry 66 of List I.
3. In so far as the medium of instruction in Punjabi with Gurumukhi as the script is sought to be imposed on the educational institutions established by the Arya Samajis a religious denomination, they also offend Article
26(1), 29(1) and 30(1) of the Constitution. The impugned Notification and the Circulars were *ultra vires* and Unconstitutional.

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

**Arya Samajis held as religious and linguistic minority in Punjab**

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

**Minority has the right to have a choice of the medium of instruction.**

Minorities who have a distinct language, script and culture and whose right to conserve them, and to administer their institutions are guaranteed under Article 29(1) and 30(1) of the Constitution. The right of the minorities to establish and administer educational institutions of their choice would include the right to have a choice of the medium of instruction also which would be the result of reading Article 30(1) and 29(1). Surely then there was an implicit in such fundamental right the right to impart instruction in their own institutions to the children of their own community in their own language. To hold otherwise will be to deprive Article 29(1) and Article 30(1) of the greater part of their contents.

The State must therefore harmonise its power to prescribe the medium of instruction with the rights of the religious or linguistic minority or any section of the citizens to have the medium of instruction and script of their own choice by either providing also for instruction in the media of these minorities or if there are other Universities which allow such Colleges to be affiliated where the medium of instruction is that which is adopted by the minority institutions, to allow them the choice to be affiliated to them. When the country has been reorganised and formed into linguistic States it may be the natural outcome of
that policy to allow Colleges established by linguistic and religious minorities giving instructions in the medium of language adopted by the Universities in other States to affiliate to them or if it wants Colleges including the minority institutions to be affiliated to it, to make provision for allowing instruction to be given and examination to be conducted in the media and script of the minorities when it imposes a regional language as the medium of instruction for the University. No inconvenience or difficulties, administrative or financial can justify the infringement of the guaranteed rights.

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

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

Section 4(3) of the Act did not empower Punjabi University to prescribe Punjabi in the Gurumukhi script as an exclusive medium of instruction. The University Act having compulsorily affiliated these Colleges must of necessity cater to their needs and allow them to administer their institutions in their own way and impart instructions in the medium and write examination in their own script. The impugned Circulars of 15-6-1970 as amended by Circular of 2-7-1970 in terms of the resolution of the Senate Sub-Committee of 1-7-1970 and that of 7-10-1970 were struck down as being, invalid and ultra vires of the powers vested in the University.

**6.7. State of Kerala etc. v Very Rev. Mother Provincial, Etc**


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

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

The provisions challenged were mainly those contained in Chapters VIII & IX of the Act. By Ss. 48 and 49, an 'Educational Agency' which had established and was maintaining a private college or a 'corporate management' which was managing more than one private college, were required to set up a governing body for a private college or a managing council for private colleges under one corporate management. The sections provided for the composition of the two bodies which were to include the Principals and managers of the private colleges, and nominees of the University and Government, as well as elected representatives of, teachers. Sub-section (2) provided, for the new bodies becoming bodies corporate having perpetual succession and a common seal. Sub-section (4) provided that the members would hold office for four years and by sub-section (5) of each section a duty was cast on the new governing body or the managing council 'to administer' the private college or colleges in accordance with the provisions of the Act. Sub-section (6) in each section laid down that the powers and functions of the new bodies, the removal of members thereof and the procedure to be followed by them shall be prescribed by
statutes. The petitioners challenged the provisions of these two sections as also *inter alia* those of

(a) sub-sections (1), (2), (3) and (9) of s. 53 which conferred on the Syndicate of the University the Power to -veto the decisions of the governing council; and a right of appeal to any person aggrieved by their action;

(b) Section 56, which conferred ultimate power on the University and the Syndicate in disciplinary matters in respect of teachers:

(c) S. 58, which removed membership of the Legislative Assembly as a disqualification for teachers; and

(d) S.63 (I)-Which provided that whenever government was satisfied that a grave situation had arisen in the working of a private college, it could *inter alia*, appoint the University to manage the affairs of such private college for a temporary period.

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

The High Court allowed the writ petitions and declared that sub-Ss. (2) and (4) of s. 48, Sub-Ss. (2) and (4) of s. 49, sub-Ss. (1), (2), (3) and (9) of s. 53, sub-Ss. (2) and (4) of s. 56, s. 58 in so far as the minority institutions are concerned, offensive to Article 30(1) and therefore void.

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

It is obvious that after the erection of the governing body or the managing council the founders or even the minority community had no hand in the administration. The two bodies are vested with the complete administration of the institutions and were not answerable to the founders in this respect. Subsections (2), (4), (5) and (6) of Ss. 48 and 49 clearly vest the management and administration in the hands of the two bodies with mandates from the University. Coupled with this is the power of the Vice-Chancellor and the Syndicate under subsections (2) and (4) of s. 56 to have the final say in respect of disciplinary proceedings against teachers.

Furthermore, the provisions of s.58 granting special privileges to teachers who happened to be members of the Legislative Assembly enabled political parties to come into the picture of administration of minority institutions, and coupled with the choice of nominated members left to Government and the University under Ss. 48 and 49, it was clear there was much room for interference by persons other than those in whom the founding community would have confidence.

The provisions of s. 63 laid down elaborate procedure for management of the private colleges in which the governing body or managing Council would have no say. [The Court expressed no opinion regarding sub- Ss. (1), (2), (3) and (9) of S. 53 and sub-Ss. (2) and (4) of S. 56 vis-a-vis Art. 30.] 

Section 63 was, however, held to offend Art. 31(2) and not saved by Art. 31 A(1)(b) and this declaration was in favour of all the petitioners. It was also declared void as offending Art. 30(1) in so far as the minority institutions was
concerned. The rest of the Act was declared to be valid and the challenge to it was 'rejected.

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

It is declared to be a fundamental right of the minorities, whether based on religion or language, to establish and administer educational institutions of their choice. It is conceded by the petitioners representing minority communities that the State or the University to which these institutions are affiliated may prescribe standards of teaching and the scholastic efficiency expected from colleges. They concede also that to a certain extent conditions of employment of teachers, hygiene and physical training of students can be regulated. '. What they contended is that there is an attempt to interfere with the administration of these institutions and this is an invasion of the fundamental right. The minority communities further claim protection for their property rights in institutions under Arts. 31 and 19(1)(f) and the right to practice any profession or to, carry on any occupation trade or business guaranteed by sub-cl(g) of the latter Article.

*Court held that establishment here means the bringing into being of an institution and it must be, by a minority community. It matters not if a single philanthropic individual with his own means founds the institution or the community at large contributes-the funds. The position in law is the same and the intention in either case must be to found an institution for the benefit of a minority community by a member of that community. It is equally irrelevant that in addition to the minority community others from other minority communities- or even from the majority community can take advantage of these institutions. Such other communities bring in income and they do not have to be turned away to enjoy the protection.*
The next part of the right relates to the administration of such institutions. Administration means ‘management of the affairs’ of the institution. This management must be free of control so that the founders or their nominees can mould the institution as they think fit, and in accordance with their ideas of how the interests of the community in general and the institution in particular will be best served. No part of this management can be taken away and vested in another body without an encroachment upon the guaranteed right.

There is, however, an exception to this and it is that the standards of education are not a part of management as such. These standards concern the body politic and are dictated by considerations of the, advancement of the country and its people. Therefore, if universities establish syllabi for examinations they must be followed, subject however to special subjects which the, institutions may seek to teach, and to a certain extent the State may also regulate the conditions of employment of teachers and the health and hygiene of students. Such regulations do not bear directly upon management as such although they may indirectly affect it. Yet the right of the State to regulate education, educational Standards and allied matters cannot be denied. 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. While the management must be left to them, they may be compelled to keep in step with others.

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


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

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

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provided for the recruitment of the Principal and the teaching staff of colleges, some of the interveners impugned the validity of that section also.

The larger bench was called upon to determine the following questions.

1. Whether the rights conferred on religious and linguistic minorities by Article 30 (1) were confined to the purposes set out in Article 29(1), namely, the preservation of the language, script or culture of the said minorities, or whether those rights extended also to establishing educational institutions imparting general “secular” education?

2. Whether the grant, recognition or affiliation of an educational institution to which Article 30 (1) applied, could be made dependent on the religious and linguistic minorities accepting conditions which would involve the surrender by such minorities of the rights conferred on them by Article 30(1).

3. Whether the right to establish and administer educational institution carried with it a right to grant-in-aid, and/or recognition and /or affiliation.

All the nine judges held that Article 30(1) was not limited by Article 29(1).

Articles 29 and 30 of the Constitution are grouped under the heading "Cultural and educational rights". Article 29(1) deal with right of any section of the citizens residing in India to preserve their language, script or culture. Article 30(1) provides that all religious and linguistic minorities have the right to establish and administer educational institutions of their choice. Article 29(2) prohibits discrimination in matters of admission into educational institutions of the types mentioned therein on grounds only of religion, race, caste, language or any of them. 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.
Articles 29 and 30 confer four distinct rights. First, is the right of any section of the resident citizens to conserve its own language script or culture as mentioned in Article 29(1). Second, is the right of all religious and linguistic minorities to establish and administer educational institutions of their choice as mentioned in Article 30(1). Third, is the right of an educational institution not to be discriminated against in the matter of State aid on the ground that it is under the management of a religious or linguistic minority as mentioned in Article 30 (2). Fourth is the right of the citizen not to be denied admission into any State maintained or State aided educational institution on the ground of religion, caste, race or language, as mentioned in Article 29(2).

It will be wrong to read Article 30(1) as restricting the right of minorities to establish and administer educational institutions of their choice only to cases where such institutions are concerned with language, script or culture of the minorities. The reasons are these. First, Article 29 confers the fundamental right on any section of the citizens which will include the majority section whereas Article 30(1) confers the right on all minorities. Second, Article 29(1) is concerned with language, script or culture, whereas Article 30(1) deals with minorities of the nation based on religion or language. Third, Article 29 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.
All nine judges agreed that recognition or affiliation cannot be offered on terms which would involve surrender of the rights conferred by Article 30(1).

As to affiliation or recognition, the two questions which arose were:

1) Can recognition or affiliation be granted on terms involving a surrender of the rights conferred by Article 30(1)?
   • All nine judges agreed upon that recognition or affiliation cannot be offered on terms which would involve a surrender of rights conferred by Article 30(1).

2) Do the rights conferred by Article 30(1) include right to recognition or affiliation, and what are consequences involved in applying for and obtaining affiliation?

The consistent view of Supreme Court had been that there is no fundamental right of a minority institution to affiliation. An explanation has been put upon that statement of law. It is that affiliation must be a real and meaningful exercise for minority institutions in the matter of imparting general secular education. Any law which provides for affiliation in terms which will involve abridgement of the right of linguistic and religious minorities to administer and establish educational institutions of their choice will offend Article 30(1). The educational institutions set up by minorities will be robbed of their utility if boys and girls cannot be trained in such institutions for University degrees. Minorities will virtually lose their right to equip their children for ordinary careers if affiliation be on terms which would make them surrender and lose their rights to establish and administer educational institutions of their choice under Article 30. The primary purpose of affiliation is that the students reading in the minority institutions will have qualifications in the shape of degrees necessary for a useful career in life. The establishment of a minority institution is not only ineffective but also unreal unless such institution is affiliated to a University for the purpose of conferment of degrees on students.
Affiliation to a University really consists of two parts. One part relates to syllabi, curricula, courses of instruction, the qualifications of teachers, library, laboratories, conditions regarding health and hygiene of students. This part relates to establishment of educational institutions. The second part consists of terms and conditions regarding management of institutions. It relates to administration of educational institutions.

With regard to affiliation a minority institution must follow the statutory measures regulating educational standards and efficiency, the prescribed courses of study, courses of instruction and the principles regarding the qualification of teachers, educational qualifications for entry of students into educational institutions etcetera.

When a minority institution applies to a University to be affiliated, it expresses its choice to participate in the system of general education and courses of instruction prescribed by that University. Affiliation is regulating courses of instruction in institutions for the purpose of coordinating and harmonizing the standards of education. With regard to affiliation to a University, the minority and non-minority institutions must agree in the pattern and standards of education. Regulatory measures of affiliation enable the minority institutions to share the same courses of instruction and the same degrees with the non-minority institutions.

The right conferred on the religious and linguistic minorities to administer educational institutions of their choice is not an absolute right.

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

The right conferred on the religious and linguistic minorities to administer educational institutions of their choice is not an absolute right. This right is not free from regulation. Just as regulatory measures are necessary for maintaining the educational character and content of minority institutions similarly regulatory measures are necessary for ensuring orderly, efficient and sound administration.

These rulings of this Court indicate how and when there is taking away or abridgement of the right of administration of minority institutions in regard to choice of the governing body, appointment of teachers and in the right to administer.

Educational institutions are temples of learning. The virtues of human intelligence are mastered and harmonized by education. Where there is complete harmony between the teacher and the taught, where the teacher imparts and the student receives, where there is complete dedication of the teacher and the taught in learning, where there is discipline between the teacher and the taught, where both are worshippers of learning, no discord or challenge will arise. An educational institution runs smoothly when the teacher and the taught are engaged in the common ideal of pursuit of knowledge. It is, therefore, manifest that the appointment of teachers is an important part in educational institutions. The qualifications and the character of the teachers are really important. The minority institutions have the right to administer institutions. This right implies the obligation and duty of the minority
institutions to render the very best to the students. In the right of administration, checks and balances in the shape of regulatory measures are required to ensure the appointment of good teachers and their conditions of service. The right to administer is to be tempered with regulatory measures to facilitate smooth administration. The best administration will reveal no trace or color of minority. A minority institution should shine in exemplary eclectic in the administration of the institution. The best compliment that can be paid to a minority institution is that it does not rest on or proclaim its minority character.

Regulations which will serve the interest of the students, regulations which will serve the interests of the teachers are of paramount importance in good administration. Regulations in the interest of efficiency of teachers, discipline and fairness in administration are necessary for preserving harmony among affiliated institutions.

Education should be a great cohesive force in developing integrity of the nation. Education develops the ethos of the nation. Regulations are, therefore, necessary to see that there are no divisive or disintegrating forces in administration.

Three sets of regulations are impeached as violative of Article 30. The first set consists of Section 40 and 41 of the Gujarat University Act, 1949 as amended, referred to, as the Act. The second set consists of Section 33 A (1) (a). The third set consists of Sections 51 A and 52 B.

Section 40 of the Act enacts that teaching and training shall be conducted by the university and shall be imparted by teachers of the university. Teachers of the university may be appointed or recognized by the University for imparting instructions on its behalf. As soon as the Court which is one of the authorities of the university determines that the teaching and training shall be conducted by the university the provisions of Section 41 of the Act come into force.
Section 41 of the Act consists of four sub-sections. The first subsection states that all colleges within the university area which are admitted to the privileges of the university under Sub-section (3) of Section 5 of the Act and all colleges which may hereafter be affiliated to the university shall be constituent colleges of the university. It is true that no determination has yet been made by the court of the university under Section 40 of the Act but the power exists. The power may be used in relation to minority institution. Once that is done the minority institutions will immediately become constituent colleges. The real implication of Section 40 of the Act is that teaching and training shall be conducted by the university. The word "conduct" clearly indicates that the university is a teaching university. Under Section 40 of the Act the university takes over teaching of under-graduate classes.

Section 41 of the Act is a corollary to Section 40 of the Act. Section 41 of the Act does not stand independent of Section 40 of the Act. Once an affiliated college becomes a constituent college within the meaning of Section 41 of the Act pursuant to a declaration under Section 40 of the Act it becomes integrated to the university. A constituent college does not retain its former individual character any longer. The minority character of the college is lost. Minority institutions become part and parcel of the university. The result is that Section 40 of the Act cannot have any compulsory application to minority institutions because it will take away their fundamental right to administer the educational institutions of their choice, being the constituent colleges of the university. The second sub-section states that all institutions within the university area shall be the constituent institutions of the university. The third sub-section states that no educational institution situate within the university area shall, save with the consent of the university, and the sanction of the State Government be associated in any way with or seek admission to any privilege of any other university established by law. The fourth sub-section states that the relations of the constituent colleges and constituent, recognized or approved institutions within the university area shall be governed by the statutes to be made in that
behalf and such statutes shall provide in particular for the exercise by the university of the powers enumerated therein in respect of constituent degree colleges and constituent recognized institutions.

Section 41(4) (ii) of the Act confers power on the university to approve the appointment of the teachers made by colleges. Section 41 (4) (iii) of the Act requires colleges to contribute teachers for teaching on behalf of the university. Section 41 (4) (iv) of the Act confers power on the university to co-ordinate and regulate the facilities provided and expenditure incurred by colleges and institutions in regard to libraries, laboratories and other equipments for teaching and research. Section 41(4) (v) confers power on the university to require colleges and institutions when necessary to confine the enrolment of students in certain subjects. Section 41(4) (vi) confers power on the university to levy contributions from colleges and institutions and to make grants to them.

In view of our conclusion that Sections 40 and 41 of the Act hang together and that Section 40 of the Act cannot have any compulsory application to minority institutions, it follows that Section 41 of the Act cannot equally have any compulsory application to minority institutions. It is not necessary to express any opinion on the provisions contained in Section 41 of the Act as to whether such provisions can be applied to minority institutions affiliated to a university irrespective of the conversion of affiliated colleges into constituent colleges.

The provisions contained in Section 33 A (1) (a) of the Act state that every college shall be under the management of a governing body which shall include amongst its members, a representative of the university nominated by the Vice-Chancellor and representatives of teachers, non-teaching staff and students of the college. These provisions are challenged on the ground that this amounts to invasion of the fundamental right of administration. It is said that the governing body of the college is a part of its administration and therefore that administration should not be touched. The right to administer is the right to
conduct and manage the affairs of the institution. This right is exercised through a body of persons in whom the founders, of the institution have faith and confidence and who have full autonomy in that sphere. The right to administer is subject permissible regulatory measures. Permissible regulatory measures are those which do not restrict the right of administration but facilitate it and ensure better and more effective exercise of the right for the benefit of the institution and through the instrumentality of the management of the educational institutions and without displacing the management. If the administration has to be improved it should be done through the agency or instrumentality of the existing management and not by displacing it. Restrictions on the right of administration imposed in the interest of the general public alone and not in the interests of and for the benefit of minority educational institutions concerned will affect the autonomy in administration.

Autonomy in administration means right to administer effectively and to manage and conduct the affairs of the institutions. The distinction is between a restriction on the right of administration and a regulation prescribing the manner of administration. The right of administration is day to day administration. The choice in the personnel of management is a part of the administration. The university will always have a right to see that there is no mal-administration. If there is maladministration, the university will take steps to cure the same. There may be control and check on administration in order to find out whether the minority institutions are engaged in activities which are not conducive to the interest of the minority or to the requirements of the teachers and the students.

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The provisions contained in Section 33 A (1) (b) of the Act were not challenged by the petitioners. The interveners challenged those provisions. The settled practice of this Court is that an intervener is not to raise contentions which are not urged by the petitioners. In view of the fact that notices were given to minority institutions to appear and those institutions appeared and made their submissions a special consideration arises here for expressing the views on Section 33 A (1) (b) of the Act. The provisions contained in Section 33 A (1) (b) of the Act are that for the recruitment of the Principal and the members of the teaching staff of a college there is a selection committee of the college which shall consist, in the case of the recruitment of a Principal, of a representative of the university nominated by the Vice-Chancellor and, in the case of recruitment of a member of the teaching staff of the college, of a representative of the university nominated by the Vice-Chancellor and the Head of the Department if any for subjects taught by such persons. The contention of the
interveners with regard to these provisions is that there is no indication and guidance in the Act as to what types of persons could be nominated as the representative. It was suggested that such matters should not be left to unlimited power as to choice. The provisions contained in Section 33 A (1) (b) cannot therefore apply to minority institutions.

The third set of provisions impeached by the petitioners consists of Sections 51A and 52A, Section 51A states that no member of the teaching, other academic and non-teaching staff of an affiliated college shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges and given a reasonable opportunity of being heard and until (a) he has been given a reasonable opportunity of making representation on any such penalty proposed to be inflicted on him; and (b) the penalty to be inflicted on him is approved by the Vice-Chancellor or any other officer of the university authorized by the Vice-Chancellor in this behalf., Objection is taken by the petitioners to the approval of penalty by the Vice-Chancellor or any other officer of the university authorized by him. First, it is said that a blanket power is given to the Vice-Chancellor without any guidance. Second, it is said that the words "any other officer of the university authorized by him" also confer power on the Vice-Chancellor to authorize any one and no guidelines are to be found there. In short, unlimited and undefined power is conferred on the Vice-Chancellor. The approval by the Vice-Chancellor may be intended to be a check on the administration. The provision contained in Section51A, clause (b) of the Act cannot be said to be a permissive regulatory measure inasmuch as it confers arbitrary power on the Vice-Chancellor to take away the right of administration of the minority institutions. Section 51A of the Act cannot, therefore, apply to minority institutions.

The provisions contained in Section 52A of the Act contemplate reference of any dispute between the governing body and any member of the teaching, other academic and non-teaching staff of an affiliated college which is connected with
the conditions of service of such member to a Tribunal of Arbitration consisting of one member nominated by the governing body of the college, one member nominated by the member concerned and an Umpire appointed by the Vice-Chancellor. These references to arbitration will introduce an area of litigious controversy inside the educational institution. The atmosphere of the institution will be vitiated by such proceedings. The governing body has its own disciplinary authority. The governing body has its domestic jurisdiction. This jurisdiction will be displaced. A new jurisdiction will be created in administration. The provisions contained in Section 52A of the Act cannot, therefore, apply to minority institutions.

In spite of the consistent and categorical decisions which have held invalid certain provisions of the University Acts of some of the States as interfering with the fundamental rights of management of minority in-situations inherent in the right to establish educational institutions of their choice under Article 30(1), the State of Gujarat has incorporated similar analogous provisions to those that have been declared invalid by this Court. No doubt education is a State subject, but in the exercise of that right any transgression of the fundamental right guaranteed to the minorities will have its impact beyond the borders of that State and the minorities in the rest of the country will feel apprehensive of their rights being invaded in a similar manner by other States. A kind of instability in the body politic will be created by action of a State which will be construed as a deliberate attempt to transgress the rights of the minorities where similar earlier attempts were successfully challenged and the offending provisions held invalid.

For these reasons the provisions contained, in Sections 40, 41, 33 A (1) (a), 33 A (1) (b), 51 A and 52A cannot be applied to minority institutions. These provisions violate the fundamental rights of the minority institutions.

The ultimate goal of a minority institution, imparting general secular education is advancement of learning. This Court has consistently held that it is 'not only
permissible but also desirable to regulate everything in educational and academic matters for achieving excellence and uniformity in standards of education.

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

The teachers and the taught form a world of their own where everybody is a votary of learning. They should not be made to know any distinction. Their harmony rests on dedicated and disciplined pursuit of learning. The areas of administration of minorities should be adjusted to concentrate on making learning most excellent. That is possible only when all institutions follow the motto that the institutions are places for worship of learning by the students and the teachers together irrespective of any denomination and distinction.

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minorities where similar earlier attempts were successfully challenged and the offending provisions held invalid.

HELD:
By Majority: (Ray C.J. Palekar, Khanna, Mathew, Beg and Chandrachud, JJ.)
Articles, 29 and 30 are not mutually exclusive. (Jaganmohan Reddy and Alagiriswami, JJ. did not deal with this question.) Dwivedi, J: The content of right under Article 29(1) differs from content of, the right under Article 30(1)

By full Court: There, is no fundamental right to affiliation. But recognition or affiliation is necessary for a meaningful exercise of the right to establish and administer educational institutions.

By majority: (Ray, C. J., Palekar, Jaganmohan Reddy, Khanna, Mathew, Chandrachud and Alagiriswami JJ.) Section 33 A cannot apply to minority institutions. Beg. J: Section 33A would not impinge upon the right under Article 30(1). Dwivedi, J. Section 33A(1)(a) is violative of minority rights.

By majority (Ray C.J., Palekar, Jaganmohan Reddy, Khanna, Mathew, Chandrachud and Alagiriswami. JJ.) Section 40 and 41 cannot have compulsory application to minority institutions. Beg, J.: Sections 40 and 41 would be violative of the right under Article 30(1) and, therefore, do not apply to minority institutions unless they opt for affiliation. Dwivedi, J. :No legitimate objection could be taken of Sections 40 and 41.

By majority(Ray C.J., Palekar, Jaganmohan Reddy, Khanna, Mathew, Chandrachudand Alagiriswami, JJ.) Section 51 (A) (1) and (2) and Section 52A cannot have application to minority institutions. Beg J. did not consider it really necessary on the view he was taking to consider the validity, of Sections 51A(1) and (2) and Section 52(A) of the Act but, after assuming it was

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necessary to do so, held these provisions to be valid. Dwivedi, J. Sections 51A and 52A are not violative of Article 30(1) of the Constitution.

6.9. The Gandhi Faiz-E-Am College, Shahjahanpur v University of Agra and Anr\(^{152}\).

Three Judge Bench consisting of A.C. Gupta, K. K. Mathew and V. R. Krishna Iyer, JJ

An instruction given by university to minority institution regarding new organizational discipline and mutations in administrative body was challenged as it infringed the fundamental right secured under Article 30 to minorities.

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

In August, 1964, an application was made on behalf of the college management to the University for Permission to start teaching in courses of study including Sociology, Sanskrit, Arabic, Military Studies, Drawing and Painting. The University insisted that as condition for recognition of these additional subjects as courses of study, the managing committee of the college must be reconstituted in conformity with Statute 14A by including the Principal and the senior-most member of the staff in it. Statute 14A provides:

‘Each college, already affiliated or when affiliated, which is not maintained exclusively by Government must be under the Management of a regular constituted Governing Body (which term includes Managing Committee) on which the staff of the college shall be represented by the Principal of the College and at least one representative of the teachers of the college to be

appointed by rotation in order of seniority determined by length of service in the college, who shall hold office for one academic year.’

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

The appellant is a registered society formed by the members of the Muslim community at Shahjehanpur. Indubitably, the community ranks as minority in the country and the educational institution run by it has been found to be what may loosely be called a 'minority institution,' within the Constitutional compass of Article 30. The A. V. Middle School was the off-spring of the effort of the Muslim minority resident in Shahjehanpur District. It later became a High School and afterwards attained the status of an Intermediate College. Eventually it blossomed into a degree college affiliated to the University of Agra. In 1948, on the assassination of the Father of the Nation, this college was commemoratively renamed as Gandhi Faiz-e-am College. In August 1964, an application was made on behalf of the college management to the University for permission to start teaching in courses of study including Sociology, Sanskrit, Arabic, military studies, drawing and painting. The University entertained the thought that a new organisational discipline must be brought into the institution and insisted, as a condition of recognition of these additional subjects as course of study, on certain mutations in the administrative body of the college. The bone of contention before Supreme Court and was before the High Court, was that this prescription by the University, in tune with Statute 14-A framed by it, is an invasion of the fundamental right guaranteed to the minority community under Article 30 of the Constitution of India. The High
Court had negatived the plea of the management and the appeal issued from that decision.

Supreme Court held that the principal is the vital, vibrant and lucent presence within the educational campus; no administration can bring out its best in the service of the institution sans the principal. To alienate him is to self-inflict wounds; to associate him is to integrate the academic head into the administrative body for the obvious betterment of managerial insight and proficiency. He is no stranger to the college but the commander appointed by the management itself. A regulation which requires his inclusion in the Governing Council imposes no external element nor exposes the college to the espionage of one with dual loyalties. His membership on the Board is a blessing in many ways and not a curse in any conceivable way. After all the functions of the Managing Committee, as set down in bye-law 15, are:

15. The Managing Committee shall-

(a) Dispose of applications for scholarships and concession etc., received by the Secretary or any other person.

(b) Check and pass account kept by the treasurer, Secretary or Principal.

(c) Have powers to appoint, suspend, remove or otherwise punish or dismiss any servant of the school or college or give them promotion or make reductions in their salaries and grant them leave in accordance with the Agra University rules as the case may be.

Provided that in case of dismissal or removal or fine exceeding one month’s pay or suspension for a period exceeding one month, an appeal shall lie to the Governing Body whose decision shall be final. The period for filing the appeal shall be 15 days from the receipt of the order against which the appeal is to be preferred.
(d) See that the property of the institution, whether movable or immovable, is properly managed and kept.

(e) Generally supervise the work of all the Office bearers.

(f) To pass the annual budget, annual report and dispose of the audit note.

(g) To sanction expenditure upto Rs. 25,000/- in the course of one year, irrespective of the budget provisions.

(h) To acquire by purchase, mortgage or otherwise immoveable or movable property for the institution and to sell or otherwise dispose of movable property.

An activist principal is an asset in discharging these duties which are inextricably interlaced with academic functions. The principal is an invaluable insider—the Management’s own choice—not an outsider answerable to the Vice-Chancellor. He brings into the work of the Managing Committee that intimate acquaintance with educational operations and that necessary expression of student-teacher aspirations and complaints which are so essential for the minority institution to achieve a happy marriage between individuality and excellence. And the role of the senior most teacher, less striking maybe and more un-obtrusive, is a useful input into managerial skills, representing as he does the teachers and being only a seasoned minion chosen by the management itself. After all, two creatures of the Society on a 16-member Managing Committee can bring light, not tilt scales. Moreover, the Managing Committee itself is subject to the hierarchical control of the Governing Body, and the General Council.

The Court found no force in the objection to the two innocuous insider-beings seated on the Managing Committee.
The features of the Agra University Act vis-a-vis the minority institutions are conspicuously different and leave almost unaffected the total integrity of the administration by the religious group save in the minimal inclusion of two internal entities namely the principal of their own choice and the senior most lecturer independently appointed by them.

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

6.10. Lily Kurian v Sr. Lewina and Ors153.

Five Judge Bench consisting of Y. V. Chandrachud, C. J., A. N. Sen, N. L. Untwalia, R. S. Sarkaria and A. D. Koshal, JJ.

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

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

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

On October 30, 1969, there was an unfortunate incident between the appellant and one P.K. Rajaratnam, a lecturer of the College, placed on deputation by the Government. On the basis of a complaint by Rajaratnam, the Managing Board initiated disciplinary proceedings against the appellant and appointed a retired Principal of the Maharaja’s College, Ernakulam, to be the Enquiry Officer. The appellant did not participate in the proceedings. The attitude adopted by the appellant was one of supreme indifference, taking the stand that the Managing Board had no competence whatsoever to initiate any such disciplinary action. The Enquiry Officer by his report dated November 27, 1969, held the appellant guilty of misconduct. The Secretary of the Managing Board accordingly served her with a notice dated December 2, 1969 stating that a meeting of the Board was to be held on December 19, 1969, to consider the representation, if any, made by her and also the punishment to be imposed, on the basis of the findings recorded by the Enquiry Officer.

In the wake of the disciplinary action, on December 16, 1969, the appellant filed a suit O.S. No. 819 of 1969 in the Munsiff’s Court, Ernakulam, challenging the validity of the proceedings of the Managing Board. On December 19, 1969 the Munsiff issued an interim injunction restraining the Management from implementing the decision, if any, taken by it at the meeting to be held on that day. A meeting of the Board had, in fact, been held and a decision was taken to remove the appellant from service. The Provincial of the Congregation by virtue of her office as the President of the Managing Board, by order dated January 2, 1970, dismissed the appellant from service. It was stated that the Managing Board had after giving due notice to the appellant, and on a careful consideration of the enquiry report, and the findings thereon, found that the charges of misconduct were proved. The appellant was accordingly directed to handover all papers, files, vouchers and documents
connected with the College to Sr. Lewina, Professor, without further delay, stating that the order for her dismissal from service would be implemented immediately after the decision of the Munsiff on the application for temporary injunction.

On January 17, 1970, the Munsiff held that the dismissal of the appellant was free from any infirmity and was by the competent authority, that is the Managing Board, and, therefore, she had no prima facie case. The Munsiff accordingly vacated the injunction with a direction that temporary injunction already issued will remain in force for two weeks to enable the appellant, if she wanted to move the Vice-Chancellor and obtain from him a stay of the order of dismissal. The appellant had, in the meanwhile, on January 9, 1970; already filed an appeal before the Vice-Chancellor under Ordinance 33(4), Chapter 57 of the Ordinance framed by the Syndicate, against the order of dismissal. The Vice-Chancellor by his order dated January 24, 1970, stayed the operation of the order of dismissal. The suit filed by the appellant was subsequently dismissed by the Munsiff as withdrawn.

It appears that the appellant was all the while functioning as principal of the College. It was brought to light that she had sent two communications dated October 6, 1969, and November 5, 1969, to the Secretary to the Government, Education Department, calling for termination of deputation of Rajaratnam, appointed as a Lecturer in the College by the Management, as a result of which his deputation was cancelled by the Government on December 9, 1969. The Managing Board viewed the sending of these communications by the appellant without reference to it as an act of insubordination, and, therefore, decided to conduct an enquiry against the appellant and she was suspended pending enquiry. A substitute Principal, Sr. Lewina, was appointed and the appellant was relieved of the duties on April 10, 1970. On April 13, 1970 the appellant filed an appeal to the Vice-Chancellor against the order of suspension under Ordinance 33(1) of Chapter LVII, and the Vice-Chancellor by his order dated
April 20, 1970 directed that the status quo be maintained. In view of this order, the Management was presumably apprehensive that the appellant might force herself upon the College. The substitute Principal, Sr. Lewina, appointed by the Management in place of the appellant accordingly on July 2, 1970 filed the suit O.S. No. 405 of 1970 in the Munsiff's Court, Ernakulam for an injunction restraining the appellant from functioning and from interfering with her discharging the duties as Principal. The Munsiff granted a temporary injunction, in the terms prayed for, which was subsequently confirmed.

The Vice-Chancellor, University of Kerala, by his two orders dated October 19, 1970 held that the order of dismissal from service and the order of suspension passed against the appellant were in breach of the rules of natural justice and fair play and were consequently illegal and null and void, and accordingly directed the Management to allow her to function as Principal. Before the orders were communicated, the Management filed the suit O.S. No. 110 of 1970 in the Munsiff's Court, Ernakulam on October, 22, 1970, seeking an injunction restraining the appellant from functioning as Principal of the College and obtained a temporary injunction. While these two injunctions were in force, the appellant wrote to the Superintendent of the Post Offices demanding delivery of letters addressed to the Principal at her residence. The non-delivery of letters created a deadlock in the administration of the College. On July 22, 1972, the substitute Principal, Sr. Lewine accordingly filed a suit O.S. No. 569 of 1972 in the Munsiff's Court, Ernakulam against the appellant and the Postal Authorities for prohibiting the one from receiving and the other from delivering, the postal articles addressed to the Principal of the College. All the three suits pending in the Munsiff's Court, Ernakulam were transferred, by the order of the District Judge, Ernakulam to the 1st Additional Sub-Court, Ernakulam for disposal.

The trial court by its judgment dated December 6, 1972 dismissed the suits holding that the appellate power conferred on the Vice-Chancellor by Clauses
(1) and (4) of Ordinance 33, Chapter LVII of the Ordinance framed by the Syndicate under Section 19(j) of the Act, was a valid conferment of power on the Vice-Chancellor and even after the commencement of the Kerala University Act, 1969, both the Vice-Chancellor and the Syndicate had concurrent powers of appeal. It, therefore, upheld the orders of the Vice-Chancellor directing reinstatement of the appellant in service. On appeal, the District Judge, Ernakulam by his judgment dated March 17, 1973 held that the orders of the Vice-Chancellor were perfectly valid and within jurisdiction, and that his direction to the Management to continue the appellant as Principal in her office was also legal. He, accordingly dismissed the appeals.

The Kerala High Court, however, by its judgment dated July 19, 1973 reversed the judgment and decree of the court below and decreed the plaintiffs' suit holding that (i) the conferment by the Syndicate of a right of appeal to a teacher against his order of dismissal from service to the Vice-Chancellor cannot be said to be in excess of the permissible limits of the power to prescribe the duties and conditions of service of teachers in private colleges in terms of Section 19(j) of the Act, and (ii) the provisions for a right of appeal contained in Ordinance 33(1) and (4), Chapter LVII of the Ordinance were not violative of the rights guaranteed to the religious minorities under Article 30(1), and were, therefore, valid, following certain observations of its earlier Full Bench decision in v. Rev. Mother Provincial v. State of Kerala154. According to the High Court, although the Vice-Chancellor had the power to hear an appeal against an order of dismissal under Ordinance 33(4), he had not, expressly or impliedly, the power to order reinstatement or even to grant a declaration that the services of the appellant had been wrongly terminated. It held that a statutory tribunal like the Vice-Chancellor could not grant such a relief as the same would amount to specifically enforcing the contract of service. In reaching the conclusion, the High Court observes that this, in effect, "amounts to

eviscerating the right of appeal to the Vice-Chancellor, but the remedy lies elsewhere”, in the light of the authorities cited by it.

On Appeal, Supreme Court held that the power of appeal conferred on the Vice-Chancellor under Ordinance 33(4) is not only a grave encroachment on the institution's right to enforce and ensure discipline in its administrative affairs but it is uncanalised and unguided in the sense that no restrictions are placed on the exercise of the power. The extent of the appellate power of the Vice-Chancellor is not defined; and, indeed, his powers are unlimited. The grounds on which the Vice-Chancellor can interfere in such appeals are also not defined. He may not only set aside an order of dismissal of a teacher and order his reinstatement, but may also interfere with any of the punishments enumerated in items (ii) to (v) of Ordinance 33(2); that is to say, he can even interfere against the infliction of minor punishments. In the absence of any guidelines, it cannot be held that the power of the Vice-Chancellor under Ordinance 33(4) was merely a check on maladministration.

Referring to the principle laid down by the majority in St. Xaviers College's case, Court held such a blanket power directly interferes with the disciplinary control of the managing body of a minority education institution over its teachers. The majority decision of St. Xaviers College's case squarely applies to the facts of the present case and accordingly it must be held that the impugned Ordinance 33(4) of the University of Kerala is violative of Article 30(1) of the Constitution. If the conferment of such power on an outside authority like the Vice-Chancellor, which while maintaining the formal character of a minority institution destroys the power of administration, that is, its disciplinary control, is held justifiable because it is in the public and national interest, though not in its interest as an educational institution, the right guaranteed by Article 30(1) will be, to use the well-known expression, a 'teasing illusion', a 'promise of unreality'.
Thus the Court held that Ordinance 33(4), Chapter LVII of the Ordinances framed by the Syndicate of the University under Section 19(j) of the Kerala University Act, 1969 would not be applicable to an educational institution established and managed by a religious or linguistic minority like St. Joseph's Training College for Women, Ernakulam.

The result, therefore, was that the appeals failed and was dismissed. The judgment of the High Court setting aside the two orders of the Vice-Chancellor of the University of Kerala dated October 19, 1970, was upheld though on a different ground, namely, the Vice-Chancellor under Ordinance 33(1) and (4) had no power to entertain the appeals from the impugned orders of dismissal or suspension of the appellant.


Five Judge Bench consisting of Y. V. Chandrachud, C. J., N. L. Untwalia, O. Chinnappa Reddy, R. S Sarkaria and A. N. Sen, JJ.

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

In the year 1947 Dr. A.G. Pereira, a retired Medical Officer, opened a High School at Kaniyapuram mainly for the benefit of the students of the Christian

community. The sanction of the then Government of Travancore for opening the School was accorded to him by letter dated 21st February, 1947. Subsequently the School was transferred to the Trivandrum Roman Catholic Diocese. For the last more than 25 years the School was administered by this Diocese. The appellant was the corporate Manager of the Schools belonging to the Roman Catholic Diocese of Trivandrum. It was not in dispute that as a matter of fact only boy students were admitted in the School till the end of academic year 1971-72. In the year following the management built a separate building in the School compound to provide accommodation for girl students. The Manager applied to the Regional Deputy Director for permission to admit girl students in the School. By letter dated June 5, 1973 the Regional Deputy Director refused to give sanction for admission of the girl students. The main ground of refusal of the sanction contained in the said letter was that St. Vincent's High School, Kaniyapuram the School in question, was not opened as a mixed School, that is to say, for imparting education both to boys and girls and that "the School had been running purely as a boys' School for the last more than 25 years. There is also facility for the education of the girls of the locality in the near girls' School situated within a radius of one mile." As mentioned in the letter, the Manager of Muslim High School, Kaniyapuram, which was a girl's School said to be situated within a radius of one mile from the School in question seems to have objected to the grant of permission for admission of girl students in the St. Vincent's High School. The girls' School was established by the Muslims and was also a minority institution within the meaning of Article 30 of the Constitution. The appellant filed a revision before the State Government from the order of the Regional Deputy Director and pending revision many girl students were admitted in the School. The District Education Officer wrote the letter dated 2-5-1974, to the authorities of the St. Vincent's High School that since the admission of girl pupils had been prohibited by the Regional Deputy Director no girl should be admitted in the School. The appellant, thereupon, challenged the orders of the educational authorities by filing a Writ Petition in the High Court.
In the judgment under appeal the High Court had said that although girls School has been defined in Rule 6 of Chapter II of the Rules, a boys' School is not defined either in The Kerala Education Act, 1958, hereinafter to be referred to as the Act, or in the Rules, since only boys were admitted in the School for a long time the self-imposed restriction by the management made it a boys' School. The authorities of the School could be prevented from admitting the girls in the School under Rule 12(iii) of Chapter VI of the Rules, even though a separate building has been constructed for them in the same compound. In the opinion of the High Court, to quote its language:-

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

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

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

6.12. **A. P. Christian Medical Educational Society v Government of Andhra Pradesh and Anr.**

Three Judge Bench consisting of G. L. Oza, K. N. Singh and O. Chinnappa Reddy, JJ.

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

It is also worthy of note that neither the memorandum of association nor the articles of association make any reference to any amount of corpus with which the society and the institutions proposed to be founded by it were to be financed initially. It was admitted before the court in answer to a question by the Court to the learned Counsel for the appellant-society that the society had no funds of its own apart from what was collected from the students.
On August 27, 1984, one Professor C.A. Adams was one of the signatories to the memorandum of association of the society, claiming also to be the President of a self-styled National Congress of Indian Christian addressed a letter to Smt. Indira Gandhi, late Prime Minister of India, requesting that the Central Government may grant them permission to establish a Central Christian University of India in Andhra Pradesh, where Christian children would be provided with facilities for education in arts, sciences, engineering and technological courses, medicine, law and theological courses. The Petitions' officer attached to the Prime Minister's office informed Prof. Adams that his letter had been forwarded to the Ministry of Education and Culture for further action. On September 20, 1984, the Deputy Secretary to the Government of India, Ministry of Education and Culture wrote to the President, National Congress of Indian Christians to the effect that universities could only be established under Acts of Parliament or of State Legislatures and there was, therefore, no question of giving permission to any organization to establish a university. However, it was pointed out that it was open to private organizations to establish colleges of higher education which could seek affiliations to the universities in whose jurisdiction they were established. Such colleges could offer courses leading to university degrees only if they were affiliated to a university. Prof. Adams then wrote to the Government of India claiming that there was no legal impediment to the grant of permission by the Government to the establishment of a university. It was said that if necessary, the Government could initiate legislation also. In order to avoid further delay, the letter proceeded to State, they were starting professional courses in rural areas at Vikarabad in Rangareddy District. It was stated "to start with, as per your advice, we are proposing to start the following faculties at Vikarabad where we have our Christian Hospital, High School, Church and other vacant buildings and plenty of vacant land suitable for further expansion belonging to our Christian churches." The Government of India was further requested to address the University of Hyderabad to grant affiliation to their colleges and to recommend to the All-India Institution of Medical Sciences to affiliate their
medical college. The Government was also requested to sanction 'the Central grant' for these colleges. Earlier in the letter it was also mentioned that the Prime Minister was kind enough to agree to grant permission for establishing the Central Christian University of India in Andhra Pradesh for the benefit of two crores of Christians living in India. Most of the statements in the letter were either misleading or false. That the Prime Minister had agreed to the establishment of a Central Christian University was admitted before the Court to be false. Similarly the reference to "Our Christian Hospital, High School, and Church and vacant buildings" would give an impression that the hospital, high-school, etc. were institutions of the self-styled National Congress of Indian Christians. None of those institutions were even remotely connected with this so called organisation. This was admitted before the Court in an answer to a question by the Court. While Prof. Adams in his capacity as the so-called President of the National Congress of Indian Christians correspondent with the Central Government, the same Professor Adams in another capacity, namely Chairman of the Andhra Pradesh Christian Medical Educational Society, entered into a correspondence with the Chief Minister of the Government of Andhra Pradesh and the Vice Chancellor, Osmania University. He and one Christopher, who described himself as the Secretary of the Society addressed a letter to the Chief Minister claiming that under the provisions of Article 30(1) of the Constitution, they, the Christian minority had the right to establish educational institutions of their choice and requested him to initiate necessary action for the establishment of a Central Christian University of India as suggested by the Government of India and to grant permission for establishing a Christian Medical College at Vikarabad. It was mentioned in the letter that the Government of India had informed them that either Parliament or the State Legislature had to initiate action for establishing a university, but the Government of India had permitted them to start professional colleges and seek affiliation of the University within whose jurisdiction they fell. It is unnecessary to repeat that the reference to the grant of permission was false. On November 30, 1984, Christopher, Secretary of the National Congress of Indian Christians
wrote a circular letter to the Vice-Chancellors of the Osmania University, the Hyderabad Central University and eight other universities all over India requesting them to grant affiliation to their colleges. On January 22, 1985, the Registrar of the Osmania University replied stating that it was necessary for the association to submit documentary evidence regarding the fulfillment of the conditions prescribed for affiliation and to submit an application in the prescribed form.

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

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

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

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

Even while narrating the facts, the Court thought that they had enough to justify a refusal by us to exercise our discretionary jurisdiction under Article136 of the Constitution. The Court did not have any doubt that the claim of the petitioner to start a minority educational institution was no more than the merest pretence. Except the words, "As the Christian Minorities Educational Institutions" occurring in one of the objects of the society, as mentioned in the memorandum of association, there is nothing whatever to justify the claim of the society that the institutions proposed to be started by it were 'minority educational institutions'. Every letter written by the society
whether to the Central Government, the State Government or the University, contained false and misleading statements. The petitioner had the temerity to admit or pretend to admit students in the first year MBBS course without any permission being granted by the Government for the starting of the medical college and without any affiliation being granted by the University. The society did this despite the strong protest voiced by the University and the several warnings issued by the university. The society acted in defiance of the University and the Government, in disregard of the provisions of the Andhra Pradesh Education Act, the Osmania University Act and the Regulations of the Osmania University and with total indifference to the interest and welfare of the students. The society has played havoc with the careers of several score students and jeopardised their future irretrievably. Obviously the so-called establishment of a medical college was in the nature of a financial adventure for the so-called society and its office bearers, but an educational misadventure for the students. Many, many conditions had to be fulfilled before affiliation could be granted by the University. Yet the society launched into the venture without fulfilling a single condition beyond appointing someone as principal. No one could have imagined that a medical college could function without a teaching hospital, without the necessary scientific equipment, without the necessary staff, without the necessary buildings and without the necessary funds. Yet that is what the society did or pretended to do. We do not have any doubt that the society and the so-called institutions were started as business ventures with a view to make money from gullible individuals anxious to obtain admission to professional colleges. It was nothing but a daring imposture and skullduggery. Thus status and dignity of a minority institution was not conferred on the society.

It was seriously contended before the Court that any minority, even a single individual belonging to a minority, could found a minority institution and had the right so to do under the Constitution and neither the Government nor the University could deny the society's right to establish a minority institution, at
the very threshold as it were, howsoever they may impose regulatory measures in the interests of uniformity, efficiency and excellence of education. The fallacy of the argument in so far as the instant case is concerned lies in thinking that neither the Government nor the University has the right to go behind the claim that the institution is a minority institution and to investigate and satisfy itself whether the claim is well-founded or ill-founded. The Government, the University and ultimately the Court have the undoubted right to pierce the 'minority veil' with due apologies to the Corporate Lawyers - and discover whether there is lurking behind it no minority at all and in any case, no minority institution. The object of Article 30(1) is not to allow bogies to be raised by pretenders but to give the minorities 'a sense of security and a feeling of confidence' not merely by guaranteeing the right to profess, practice and propagate religion to religious minorities and the right to conserve their language, script and culture to linguistic minorities, but also to enable all minorities, religious or linguistic, to establish and administer educational institutions of their choice. These institutions must be educational institutions of the minorities in truth and reality and not mere masked phantoms'. They may be institutions intended to give the children of the minorities the best general and professional education, to make them complete men and women of the country and to enable them to go out into the world fully prepared and equipped. They may be institutions where special provision is made to the advantage and for the advancement of the minority children. They may be institutions where the parents of the children of the minority community may expect that education in accordance with the basic tenets of their religion would be imparted by or under the guidance of teachers, learned and steeped in the faith. They may be institutions where the parents expect their children to grow in a pervasive atmosphere which is in harmony with their religion or conducive to the pursuit to it. What is important and what is imperative is that there must exist some real positive index to enable the institution to be identified as an educational institution of the minorities. The Court said that in the present case apart from the half a dozen words 'as a Christian minorities
institution' occurring in one of the objects recited in the memorandum of association, there is nothing whatever, in the memorandum or the articles of association or in the actions of the society to indicate that the institution was intended to be a minority educational institution. As already found by Court these half a dozen words were introduced merely to found a claim on Article 30(1). They were a smoke-screen.

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

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

6.13. All Saints High School, Hyderabad and Ors. v Government of Andhra Pradesh and Ors.\textsuperscript{157}

Three Judge Bench consisting of Y. V. Chandrachud, C. J., P. S. Kailasam and S Murtaza Fazal Ali, JJ.

In this case, the question that arose in the appeal was whether sections 3, 4, 5, 6 and 7 of Andhra Pradesh Recognized Private Educational Institutions (Control) Act, 1975 offended the fundamental rights conferred on minorities by Article 30(1). The Court declared Sections 3 (3) (a), 3 (3) (b), 6 and 7 valid while


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Sections 3 (1), 3 (2), 4 and 5 were declared invalid in their application to minority institutions and held that such institutions cannot be proceeded against for violation of provisions which were not applicable to them.

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

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

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

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

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

The form in which Section 3(2) is couched was apt to mislead by creating an impression that its real object was to cast an obligation on the competent authority to approve a proposal under certain conditions. Though the section provided that the competent authority "shall" approve the proposed order if it was satisfied that it was based on adequate and reasonable grounds, its plain and necessary implication was that it shall not approve the proposal unless it was so satisfied. The conferment of such a power on an outside authority, the exercise of which was made to depend on purely subjective considerations arising out of the twin formula of adequacy and reasonableness, cannot but constitute an infringement of the right guaranteed by Article 30(1).
The Court found it difficult to save Sections 3(1) and 3(2) by reading them down in the light of the objects and reasons of the impugned Act. The object of the Act and the reasons that led to its passing were laudable but the Act, in its application to minority institutions, had to take care that it did not violate the fundamental right of the minorities under Article 30(1). Sections 3(1) and 3(2) were in the opinion of the Court unconstitutional in so far as they are made applicable to minority institutions since, in practice, these provisions were bound to interfere substantially with their right to administer institutions of their choice.

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

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

Section 4 of the Act provided that any teacher employed in a private educational institution (a) who is dismissed, removed or reduced in rank or whose appointment is otherwise terminated; or (b) whose pay or allowances or any of whose conditions of service are altered or interpreted to his disadvantage, may prefer an appeal to such authority or officer as may be prescribed. This provision in the opinion of the Court was too broadly worded to be sustained on the touchstone of the right conferred upon the minorities by Article 30(1). In the first place, the section conferred upon the Government the
power to provide by rules that an appeal may lie to such authority or officer as it designates, regardless of the standing or status of that authority or officer. Secondly, the appeal is evidently provided for on all questions of fact and law, thereby throwing open the order passed by the management to the unguided scrutiny and unlimited review of the appellate authority. It would be doing no violence to the language of the section to interpret it to mean that, in the exercise of the appellate power, the prescribed authority or officer can substitute his own view for that of the management, even in cases in which two views are reasonably possible. Lastly, it was strange, and perhaps an oversight may account for the lapse, that whereas a right of appeal was given to the aggrieved teacher against an order passed by the management, no corresponding right was conferred on the management against an order passed by the competent authority under Section 3(2) of the Act. It may be recalled that by Section 3(1), no teacher can be dismissed, removed, etc. except with the prior approval of the competent authority. Section 3(2) confers power on the competent authority to refuse to accord its approval if there were no adequate and reasonable ground for the proposal. In the absence of the provision for an appeal against the order of the competent authority refusing to approve the action proposed by the management, the management is placed in a gravely disadvantageous position vis-a-vis the teacher who is given the right of appeal by Section 4. By reason of these infirmities the Court concluded that Section 4 of the impugned Act was unconstitutional, as being violative of Article 30(1). Section 5 was consequential upon Section 4 and was struck with it.

Section 6 provided that where any retrenchment of a teacher is rendered necessary consequent on any order of the Government relating to education or course of instruction or to any other matter, such retrenchment may be effected with the prior approval of the competent authority. Section 6 aims at affording a minimal guarantee of security of tenure to teachers by eschewing the passing of mala fide orders in the garb of retrenchment. The Court considered it to be implicit in its provisions that the limited jurisdiction which
it confers upon the competent authority was to examine whether, in cases where the retrenchment it stated to have become necessary by reason of an order passed by the Government, it has in fact so become necessary. It was a matter of common knowledge that Governmental orders relating to courses of instruction were used as pretence for terminating the services of teachers. The conferment of a guided and limited power on the competent authority for the purpose of finding out whether, in fact, a retrenchment has become necessary by reason of a Government order, cannot constitute an interference with the right of administration conferred by Article 30(1). Section 6 is therefore held valid.

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


Two Judge Bench consisting of K. N. Singh and N. M. Kasliwal JJ.

In this case minority institutions challenged the validity of sections 3 and 7(2) of Bihar State Madarasa Education Board Act, 1982 as it infringed the rights of minority institutions guaranteed under Article 30(1). The Bihar State Madarasa Education Board had dissolving the Managing Committee of the Minority institution and had appointed adhoc committee to manage the institution. Supreme Court upheld the decision of the High Court that dissolving Managing Committee was valid.

Committee and appointing adhoc committee amounts to take over completely and was violative of Article 30(1).

The State Legislature of Bihar had enacted the Bihar State Madarasa Education Board Act (Act 32 of 1982) providing for the Constitution of an autonomous Board for development and supervision of Madrasa Education in the State of Bihar. "Madarasa" as defined by Section 2 means an educational institutions providing in Islamic, Arabic and Persian studies and recognised as such by the Board. The 'Board' means the Board established under Section 3 of the Act. Section 3 provides for the Constitution of State Madarasa Education Board which was a body corporate with perpetual succession and a common seal. The Board consisted of a Chairman appointed by the State Government, Director of Education (Incharge of Oriental Education), Director, Institution of Post-graduate studies and research in Arabic and Persian, Patna, The Principal, Madarasa Islamia, Shamsul Hoda Patna, Chairman, Bihar, Sunni Wakf Board, Patna, Chairman. Bihar Shia Wakf Board, Patna, Chairman two members of the State Legislature nominated by the Government having interest in Madarasa Education or Islamic studies, two senior teachers of recognised Madarasa nominated by the State Government and three other members nominated by the State Government who had interest in Madarasa Education or Islamic studies. The Board was invested with powers and functions to provide for instruction and research in Arabic, Persian and Islamic studies and to advise the State Government on all matters relating to Madarasa Education. The Act empowered the Board to direct, supervise and control Madarasa Education, to grant recognition to Madrasa in accordance with the regulations framed by it, to conduct different Madrasa examination, to publish results, to make regulations prescribing conditions of employees of the Board, to provide for the Constitution of the Managing Committee to constitute academic committee, recognition committee, examination committee, and for carrying on its powers and functions in regulating the education in Madarasa Institutions. The Board was headed by a Chairman nominated by the State Government.
under Section 10(2), of the Act, it laid down that no person shall be eligible for appointment as Chairman unless he holds adequate administrative experience under the Central or State Government and he had teaching or research experience for not, less than 10 years in post-graduate educational institutions or he was regarded scholar in Arabic, Persian, Islamic studies and he was interested in Madarasa Education. The Board as constituted by the Act was an autonomous body entrusted with the duty to grant recognition, aid, supervise and control the academic efficiency in the Madarasa Institutions, aided and recognised by it. The members of the Board consist of those persons who were connected with or interested in the teaching and research of Arabic, Persian and Islamic studies, and interested in the Madarasa Education. The Legislature has enacted the Act with the primary purpose of providing an autonomous educational authority for regulating the efficiency of Madarasa Institutions where studies are carried on in Arabic, Persian and Islamic studies.

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

Section 7(2)(n) reads thus : Power and functions of the Board (i) it shall be the duty of the Board to provide for instruction and research in Arabic, Persian and Islamic studies and such other branches of knowledge including vocational courses and training which the Board thinks fit and to advise the State Government on all other matters relating to Madarasa Education. Subject to the provisions of this Act and the Rules and Regulations made there under the Board shall have the power to direct, supervise and control Madarasa Education and in particular have the powers....

(n) To get the Managing Committee of Madaras constituted in a manner such as to include the Head Maulvi, two guardian’s representatives and one member nominated by the Board and two other persons interested in Madaras Education or Islamic studies to be composed by the above seven members. The power to dissolve the Managing Committee shall vest in the Board. The above provision confers power on the Board to provide for Constitution and dissolution of Managing Committee of a Madarasa. There was no dispute that the respondent Madarasa was educational institutions established by the Muslim minority community.

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

6.15. St. Stephen's College etc., etc. v The University of Delhi etc., Etc.159

Five Judges Bench consisting of M. H. Kania, K Jagannatha Shetty, M. M. Kasliwal, M Fatima Beevi and Yogeshwar Dayal, JJ

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

Minority educational institutions were directed to make available 50% of the seats of annual admission to other communities purely on merit.

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

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

In the instant case also the impugned directives of the University to select students on the uniform basis of marks secured in the qualifying examinations would deny the right of St. Stephen's College to admit students belonging to Christian community. It has been the experience of the College as seen from the chart of selection produced in the case that unless some concession is provided to Christian students they would have no chance of getting into the college. If they were thrown into the competition with the generality of students belonging to other communities, they would not even be brought within the zone of consideration for the interview. Even after giving concession to a certain
extent, only a tiny number of minority applicants would gain admission. This was beyond the pale of controversy. The Court did not accept that minorities are entitled to establish and administer educational institutions for their exclusive benefit. If such was the aim, Article 30(1) would have been differently worded and it would have contained the words "for their own community". In the absence of such words it is legally impermissible to construe the Article as conferring the right on the minorities to establish educational institution for their own benefit.

The Court opined that 'Even in practice, such claims was likely to be met with considerable hostility. It may not be conducive to have relatively a homogenous society. It may lead to religious bigotry which is the bane of mankind. In the nation building with secular character sectarian schools or colleges; segregated faculties or universities for imparting general secular education was undesirable and they may undermine secular democracy. They would be inconsistent with the central concept of secularism and equality embedded in the Constitution. Every educational institution irrespective of community to which it belongs is a 'melting-pot' in our national life. The students and teachers are the critical ingredients. It is there that they developed respect for, and tolerance of, the cultures and beliefs of others. It is essential therefore, that there should be proper mix of students of different communities in all educational institutions.'

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


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

Mr. B. N. Kirpal, C. J. I. gave the judgment on behalf of himself and on behalf of justices G. B. Pattanaik, S. Rajendra Babu, K. G. Balakrishnan, P. Venkatarama Reddi, Arijit Pasayat, V. N. Khare, Syed Shah Mohammed Quadri, Ruma Pal, S. N. Variava and Ashok Bhan JJ.

Venkatarama Reddi and Arijit Pasayat. Since this judgment is on behalf of six judges out of eleven, it is deemed to be binding verdict by majority of judges.

**Education as powerful tool of upliftment and progress**

The Court acknowledged that India is a land of diversity -- of different castes, peoples, communities, languages, religions and culture. Although these people enjoy complete political freedom, a vast part of the multitude is illiterate and lives below the poverty line. The single most powerful tool for the upliftment and progress of such diverse communities is education. The State, with its limited resources and slow-moving machinery, is unable to fully develop the genius of the Indian people very often the impersonal education that is imparted by the State, devoid of adequate material content that will make the students self-reliant only succeeds in producing potential pen-pushers, as a result of which sufficient jobs are not available.

**Grievances of Educational Institutions**

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

The chequered history of the hearing

The hearing of these cases has had a chequered history. Writ Petition No. 350 of 1993 filed by the Islamic Academy of Education and connected petitions were placed before a Bench of 5 Judges. As the Bench was *prima facie* of the opinion that Article 30 did not clothe a minority educational institution with the power to adopt its own method of selection and the correctness of the decision of this Court in *St. Stephen's College v. University of Delhi*¹⁶¹ was doubted, it was directed that the questions that arose should be authoritatively answered by a larger Bench. These cases were then placed before a Bench of 7 Judges. The questions framed were recast and on 6th February, 1997, the Court directed that the matter be placed a Bench of at least 11 Judges, as it was felt that in view of the Forty-Second Amendment to the Constitution, whereby "education" had been included in Entry 25 of List III of the Seventh Schedule, the question of who would be regarded as a "minority" was required to be considered because the earlier case laws related to the pre-amendment era, when education was only in the State List. When the cases came up for hearing before an eleven Judge Bench, during the course of hearing on 19th March, 1997, the following order was passed:-

Since a doubt has arisen during the course of our arguments as to whether this Bench would feel itself bound by the ratio propounded in -- In *Re Kerala Education Bill*¹⁶² and *the Ahmedabad St. Xaviers College Society v. State of Gujarat*¹⁶³, it is clarified that this sized Bench would not feel itself inhibited by the views expressed in those cases since the present endeavour is to discern

¹⁶¹ (1992) 1 SCC 558
¹⁶² 1959 SCR 955
¹⁶³ [1975]1SCR173
the true scope and interpretation of Article 30(1) of the Constitution, which being the dominant question would require examination in its pristine purity.

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

**All institutions set their claim under fundamental right**

On behalf of all these institutions, the learned counsels had submitted that the Constitution provides a fundamental right to establish and administer educational institutions. With regard to non-minorities, the right was stated to be contained in Article 19(1)(g) and/or Article 26, while in the case of linguistic and religious minorities, the submission was that this right was enshrined and protected by Article 30. It was further their case that private educational institutions should have full autonomy in their administration. While it is necessary for an educational institution to secure recognition or affiliation, and for which purpose rules and regulations or conditions could be prescribed pertaining to the requirement of the quality of education to be provided, e.g., qualifications of teachers, curriculum to be taught and the minimum facilities which should be available for the students, it was submitted that the State should not have a right to interfere or lay down conditions with regard to the administration of those institutions. In particular, objection was taken to the nominations by the State on the governing bodies of the private institutions, as well as to provisions with regard to the manner of admitting students, the fixing of the fee structure and recruitment of teachers through State channels.

**Every party requested to reconsider decision of Unni Krishnan’s Case**

The counsels for these educational institutions, as well as the Solicitor General of India, appearing on behalf of the Union of India, urged that the decision of
this Court in *Unni Krishnan, J.P. and Ors. v. State of Andhra Pradesh*\(^{164}\) case required reconsideration. It was submitted that the scheme that had been framed in *Unni Krishnan's* case had imposed unreasonable restrictions on the administration of the private educational institutions, and that especially in the case of minority institutions, the right guaranteed to them under Article 30(1) stood infringed. It was also urged that the object that was sought to be achieved by the scheme was, in fact, not achieved.

**Contentions of Minorities**

On behalf of the private minority institutions, it was submitted that on the correct interpretation of the various provisions of the Constitution, and Articles 29 and 30 in particular, the minority institutions have a right to establish and administer educational institutions of their choice. The use of the phrase "of their choice" in Article 30(1) clearly postulated that the religious and linguistic minorities could establish and administer any type of educational institution, whether it was a school, a degree college or a professional college; it was argued that such an educational institution is invariably established primarily for the benefit of the religious and linguistic minority, and it should be open to such institutions to admit students of their choice. While Article 30(2) was meant to ensure that these minority institutions would not be denied aid on the ground that they were managed by minority institutions, it was submitted that no condition which curtailed or took away the minority character of the institution while granting aid could be imposed. In particular, it was submitted that Article 29(2) could not be applied or so interpreted as to completely obliterate the right of the minority institution to grant admission to the students of its own religion or language. It was also submitted that while secular laws relating to health, town planning, etc., would be applicable, no other rules and regulations could be framed that would in any way curtail or interfere with the administration of the minority educational institution. It was

\(^{164}\) [1993]1SCR594, MANU/SC/0333/1993
emphasized by the learned counsel that the right to administer an educational institution included the right to constitute a governing body, appoint teachers and admit students. It was further submitted that these were the essential ingredients of the administration of an educational institution, and no fetter could be put on the exercise of the right to administer. It was conceded that for the purpose of seeking recognition, qualifications of teachers could be stipulated, as also the qualification of the students who could be admitted; at the same time, it was argued that the manner and mode of appointment of teachers and selection of students had to be within the exclusive domain of the educational institution.

**Contentions of non minorities**

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

**Union Government’s stand**

The learned Solicitor General did not dispute the contention that the right in establish an institution had been conferred on the non-minorities by Articles 19 and 26 and on the religious and linguistic minorities by Article 30. He agreed with the submission of the counsels for the appellants that the *Unni Krishnan* decision required reconsideration, and that the private unaided educational institutions were entitled to greater autonomy. He, however, contended that Article 29(2) was applicable to minority institutions, and the claim of the minority institutions that they could preferably admit students of
their own religion or language to the exclusion of the other communities was impermissible. In other words, he submitted that Article 29(2) made it obligatory even on the minority institutions not to deny admission on the ground of religion, race, caste, language or any of them.

**States disagree to the arguments advanced by Solicitor General**

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

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

2. The institution should admit only the concerned minority candidates to the extent of sanctioned intake permitted to be filed by the respective managements, and that the Court "ought to permit the State to regulate the intake in minority educational institutions with due regard to the need of the community in the area which the institution is intended to serve. In no case should such intake exceed 50% of the total admissions every year."
The State of **Kerala** has submitted, again without express reference to Article 29(2), "that the Constitutional right of the minorities should be extended to professional education also, but while limiting the right of the minorities to admit students belonging to their community to 50% of the total intake of each minority institution".

The State of **Karnataka** has submitted that "aid is not a matter of right but receipt thereof does not in any way dilute the minority character of the institution. Aid can be distributed on non-discriminatory conditions but in so far as minority institutions are concerned, their core rights will have to be protected.

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

**Attorney General’s submission**

The Attorney General, pursuant to the request made by the Court, made submissions on the Constitutional issues in a fair and objective manner. The Court recorded their appreciation for the assistance rendered by him and the other learned counsel.

**Framing of Issues**

The Court during the hearing had framed and reframed the questions and had come to 11 questions. However, the main judgment given through Chief justice Kirpal identifies five issues as arising in these cases which would encompass the eleven questions.

**The five issues were**
1. Is there fundamental right to set educational institutes and if so, under what provision?

2. Does Unnikrishnan case require reconsideration?

3. In case of private institutions (aided and unaided), can there be government regulations and, if so, to what extent?

4. In order to determine the existence of a religious or linguistic minority in relation to Article 30, what is to be the unit, the State or the country as a whole?

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

Out of these five issues, only the last two relates to minority rights under Articles 29 and 30 of the Constitution of India. The first three questions relate to non-minority educational institutions. So the researcher will discuss the findings and the reasons on the last two issues.

**Issue 4 : IN ORDER TO DETERMINE THE EXISTENCE OF A RELIGIOUS OR LINGUISTIC MINORITY IN RELATION TO ARTICLE 30, WHAT IS TO BE THE UNIT - THE STATE OR THE COUNTRY AS A WHOLE?**

**Religious and linguistic minority at par**

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

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

**State as unit to determine minority**

In the *Kerala Education Bill* case\(^\text{165}\), the question as to whether the minority community was to be determined on the basis of the entire population of India, or on the basis of the population of the State forming a part of the Union was posed. It had been contended by the State of Kerala that for claiming the status of minority, the persons must numerically be a minority in the particular region in which the education institution was situated, and that the locality or ward or town where the institution was to be situated had to be taken as the unit to determine the minority community. No final opinion on this question was expressed, but it was observed that as the Kerala Education Bill "extends to the whole of the State of Kerala and consequently the minority must be determined by reference to the entire population of that State."

In two cases pertaining to the DAV College, this Court had to consider whether the Hindus were a religious minority in the State of Punjab. In *D.A.V. College v. State of Punjab and Ors*\(^\text{166}\), the question posed was as to what constituted a

\(^{165}\) 1959 SCR 955  
\(^{166}\) 1971 (Supp.) SCR 688
religious or linguistic minority, and how it was to be determined. After examining the opinion of this Court in the *Kerala Education Bill* case, the Court held that the Arya Samajis, who were Hindus, were a religious minority in the State of Punjab, even though they may not have been so in relation to the entire country. In another case, *D.A.V. College Bhatinda v. State of Punjab and Ors.*,¹⁶⁷ the observations in the first *D.A.V. College* case were explained, and it was stated that "*what constitutes a linguistic or religious minority must be judged in relation to the State in as much as the impugned Act was a State Act and not in relation to the whole of India.*" The Supreme Court rejected the contention that since Hindus were a majority in India, they could not be a religious minority in the State of Punjab, as it took the State as the unit to determine whether the Hindus were a minority community.

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

The Forty-Second Amendment to the Constitution included education in the concurrent List under Entry 25. Would this in any way change the position with regard to the determination of a "religious" or "linguistic minority" for the purposes of Article 30?

As a result of the insertion of Entry 25 into List III, Parliament can now legislate in relation to education, which was only a State subject previously. The jurisdiction of the Parliament is to make laws for the whole or a part of India. It is well recognized that geographical classification is not violative of Article 14. It would, therefore, be possible that, with respect to a particular State or group of States, Parliament may legislate in relation to education. However, Article 30 gives the right to a linguistic or religious minority of a State to establish and administer educational institutions of their choice. The

¹⁶⁷ MANU/SC/0038/1971: AIR1971SC1731
minority for the purpose of Article 30 cannot have different meanings depending upon who is legislating. Language being the basis for the establishment of different states for the purposes of Article 30 a "linguistic minority" will have to be determined in relation to the State in which the educational institution is sought to be established. The position with regard to the religious minority is similar, since both religious and linguistic minorities have been put at par in Article 30.

**Issue 5: TO WHAT EXTENT CAN THE RIGHTS OF AIDED PRIVATE MINORITY INSTITUTIONS TO ADMINISTER BE REGULATED?**

Under this issue the judgment deals with the interplay of Articles 29(2) and 30(1) and further deals with extent of rights under Article 30(1).

**Rights under Article 25 not absolute**

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

**Rights of religious denominations under Article 26**

The freedom to manage religious affairs is provided by Article 26. This Article gives the right to every religious denomination, or any section thereof, to exercise the rights that it stipulates. However, this right has to be exercised in a manner that is in conformity with public order, morality and health. Clause (a) of Article 26 gives a religious denomination the right to establish and maintain institutions for religious and charitable purposes. There is no dispute that the establishment of an educational institution comes within the meaning of the expression "Charitable purpose".
Secularism and Article 27

Secularism being one of the important basic features of our Constitution, Article 27 provides that no person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated for the payment of expenses for the promotion and maintenance of any particular religion or religious denomination. The manner in which the Article has been framed does not prohibit the State from enacting a law to incur expenses for the promotion or maintenance of any particular religion or religious denomination, but specifies that by that law, no person can be compelled to pay any tax, the proceeds of which are to be so utilized. In other words, if there is a tax for the promotion or maintenance of any particular religion or religious denomination, no person can be compelled to pay any such tax.

Religious instructions cannot be imparted in an educational institution maintained wholly by the State funds. (Article 28)

Article 28 prohibits any educational institution, which is wholly maintained out of state funds, to provide for religious instruction. Moral education dissociation from any denominational doctrine is not prohibited; but, as the State is intended to be secular, an educational institution wholly maintained out of State funds cannot impart or provide for any religious instruction.

Cultural and Educational Rights

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

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

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

**Difference between rights under Article 26 and 30(1)**

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

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

Article 30(1) bestows on the minorities, whether based on religion or language, the right to establish and administer educational institution of their choice. Unlike Article 25 and 26, Article 30(1) does not specifically state that the right under Article 30(1) is subject to public order, morality and health or to other provisions of Part III. This Sub-Article also does not specifically mention that the right to establish and administer a minority educational institution would be subject to any rules or regulations.
Can Article 30(1) be so read as to mean that it contains an absolute right of the minorities, whether based on religion or language, to establish and administer educational institutions in any manner they desire, and without being obliged to comply with the provisions of any law? Does Article 30(1) give the religious or linguistic minorities a right to establish an educational institution that propagates religious or racial bigotry or ill will amongst the people? Can the right under Article 30(1) be so exercised that it is opposed to public morality or health? In the exercise of its right, would the minority while establishing educational institutions not be bound by town planning rules and regulations? Can they construct and maintain buildings in any manner they desire without complying with the provisions of the building by-laws or health regulations?

**Interplay between Article 29 and 30.**

In order to interpret Article 30 and its interplay, if any, with Article 29, our attention was drawn to the Constituent Assembly Debates. While referring to them, the learned Solicitor General submitted that the provisions of Article 29(2) were intended to be applicable to minority institutions seeking protection of Article 30. He argued that if any educational institution sought aid, it could not deny admission only on the ground of religion, race, caste or language and, consequently giving a preference to the minority over more meritorious non-minority students was impermissible. It is now necessary to refer to some of the decisions of this Court insofar as they interpret Articles 29 and 30, and to examine whether any creases therein need ironing out.

**Scope of Article 29(2) as per Srimathi Champakam Dorairajan’s Case**

In *the State of Madras v. Srimathi Champakam Dorairajan* the State had issued an order, which provided that admission to students to engineering and medical colleges in the State should be decided by the Selection Committee strictly on the basis of the number of seats fixed for different communities.

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168 MANU/SC/0007/1951: [1951]2SCR525
While considering the validity of this order this Court interpreted Article 29(2) and held that if admission was refused only on the grounds of religion, race, caste, language or any of them, then there was a clear breach of the fundamental right under Article 29(2). The said order was construed as being violative of Article 29(2), because students who did not fall in the particular categories were to be denied admission. In this connection it was observed as follows:

".....So far as those seats are concerned, the petitioners are denied admission into any of them, not on any ground other than the sole ground of their being Brahmans and not being members of the community for whom those reservations were made....."

This government order was held to be violative of the Constitution and constitutive of a clear breach of Article 29(2). Article 30 did not come up for consideration in that case.

The court after the discussion on the decision of The State of Bombay v. Bombay Education Society and Ors case,\textsuperscript{169} came to the conclusion that in the case of minority educational institutions to which protection was available under Article 30, the provisions of Article 29(2) were indeed applicable. But, it may be seen that the question in the present from i.e., whether in the matter of admissions into aided minority educational institutions, minority students could be preferred to a reasonable extent, keeping in view the special protection given under Article 30(1), did not arise for consideration in that case.

The Court discussed the judgment of Kerala Education Bill case\textsuperscript{170}, which was a reference under Article 143(1) of the Constitution. With reference to Article 29(2), the Court observed that " Article 29(2) provides, that no citizen shall be

\footnotesize{\textsuperscript{169} MANU/SC/0029/1954 : [1955]1SCR568
\textsuperscript{170} 1959 SCR 955}
denied admission into any educational institution receiving did out of State funds on grounds only of religion, race, caste, language or any of them".

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

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

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

The present judgment reviewed the argument addressed and answered in that case as to whether a minority aided institution loses its character as such by admitting non-minority students in terms of Article 29(2). It was observed that the admission of 'sprinkling of outsiders' will not deprive the institution of its minority status. The opinion expressed therein does not really go counter to the ultimate view taken by the Court in regard to the inter-play of Articles 30(1) and 29(2).
The judgment discusses the decision in \textit{Rev. Sidhajbhai Sabhai and Ors. v. State of Bombay and Anr}\textsuperscript{171} and held that it was not an authority for the proposition canvassed before the present judges. However, C J Kirpal clarified a few observations made in the Sidhajbhai case especially with regards to the absoluteness of the right under Article 30 and the permissibility of regulations in the national interest.

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

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

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

Further in the same decision it stated:

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

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

\textsuperscript{171} MANU/SC/0076/1962, [1963]3SCR837
and administer a mere illusion; but the right under Article 30 is not so absolute as to be above the law.”

**Regulations can be made in National Interest**

The Court in the present Judgment clarified the observations in Sidhajbhai’s Case with regards to the permissibility of regulative measures in public and national interest. The Court with regards to Article 30 (1) had held in Sidhajbhai’s case,

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

Chief Justice Kirpal explained the observation as: “As already noted hereinabove, in *Sidhajbhai’s* case, it was laid down that regulations made in the true interests of efficiency of instruction, discipline, health, sanitation, morality and public order could be imposed. If this is so, it is difficult to appreciate how the government can be prevented from framing regulations that are in the national interest, as it seems to be indicated in the passage quoted hereinabove. Any regulation framed in the national interest must necessarily apply to all educational institutions, whether run by the majority or the minority. Such a limitation must necessarily be read into Article 30. The right under Article 30(1) cannot be such as to override the national interest or to prevent the government from framing regulations in that behalf. It is, of course, true that government regulations cannot destroy the minority character of the
institution or makes the right to establish and administer a mere illusion; but the right under Article 30 is not so absolute as to be above the law.

The present judgment quoted and approved the following from the decision of State of Kerala, Etc. v. Very Rev. Mother Provincial, Etc.\(^\text{172}\)

"Article 30(1) has been construed before by this Court. Without referring to those cases it is sufficient to say that the clause contemplates two rights which are separated in point of time. The first right is the initial right to establish institutions of the minority's choice. Establishment here means the bringing into being of an institution and it must be by a minority community. It matters not if a single philanthropic individual with his own means founds the institution or the community at large contributes the funds. The position in law is the same and the intention in either case must be to found an institution for the benefit of a minority community by a member of that community. It is equally irrelevant that in addition to the minority community others from other minority communities or even from the majority community can take advantage of these institutions. Such other communities bring in income and they do not have to be turned away to enjoy the protection.

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

Chief Justice Kirpal further added that an exception to the right under Article 30 was the power with the State to regulate education, educational standards and allied matters. It was held that the minority institutions could not be

allowed to fall below the standards of excellence expected of educational institutions or under guise of the exclusive right of management, allowed to decline to follow general pattern. The Court stated that while the management must be left to minority, they may be compelled to keep in step with others.

The present judgment took note of interplay of Article 29 and Article 30 in D. A. V. College Case,\textsuperscript{173} it was observed that Article 30(1) is subject to 29(2), the question whether the preference to minority students is altogether excluded, was not considered.

The judgment also notices the other observations like Hindus being entitled to minority rights in Punjab, impermissibility of regulations requiring approval of Senate for the governing body and approval of Vice Chancellor for staff and the permissibility of regulations governing the service and conduct of teachers, since this was in the larger interest of the institutions, and in order to ensure their efficiency and excellence.

The present judgment discusses with approval exclusively from The Ahmedabad St. Xaviers College Society and Anr. Etc. v State of Gujarat and Anr.\textsuperscript{174} The Court considered the scope and ambit of the rights of the minorities, whether based on religion or language, to establish and administer educational institutions of their choice under Article 30(1) of the Constitution. In dealing with this aspect, Ray, C.J., at page 192, while considering Article 25 to 30, observed as follows:-

"Every section of the public, the majority as well as minority has rights in respect of religion as contemplated in Articles 25 and 26 and rights in respect of language, script, culture as contemplated in Article 29. The whole object of conferring the right on minorities under Article 30 is to ensure that there will

\textsuperscript{173} 1971 (Supp.) SCR 688
\textsuperscript{174} MANU/SC/0088/1974 : [1975]1SCR173
be equality between the majority and the minority. If the minorities do not have such special protection they will be denied equality."

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

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

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

The judgment refers to the decision of St Xavier’s which it was held that with regard to affiliation, a minority institution must follow the statutory measures regulating educational standards and efficiency, prescribed courses of study, courses of instruction, the principles regarding the qualification of teachers, educational qualifications for entry of students into educational institutions, etc.

**Minorities Right to administer Education institutions.**
The observation of Ray, C.J. regarding the right of the religious and linguistic minorities to administer their educational institutions in St Xavier’s case was quoted:

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

**Minorities do not have right to mal administer**

Minorities’ right to administer is not absolute and that reasonable regulations can be imposed in the interest of the institution. The present judgment relying on the observations of St Xavier’s quotes:

“.....The minority institutions have the right to administer institutions. This right implies the obligation and duty of the minority institutions to render the very best to the students. In the right of administration, checks and balances in the shape of regulatory measures are required to ensure the appointment of good teachers and their conditions of service. The right to administer is to be tempered with regulatory measures to facilitate smooth administration. The best administration will reveal no trace colour of minority. A minority institution should shine in exemplary eclecticism in the administration of the institution. The best compliment that can be paid to a minority institution is that it does not rest on or proclaim its minority character."
Chief Justice observations on desirability of regulations, in St Xavier’s case were further referred:

"The ultimate goal of a minority institution too imparting general secular education is advancement of learning. This Court has consistently held that it is not only permissible but also desirable to regulate everything in educational and academic matters for achieving excellence and uniformity in standards of education.

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

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

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

"The idea of giving some special rights to the minorities is not to have a kind of a privileged or pampered section of the population but to give to the minorities a sense of security and a feeling of confidence. The great leaders of India since time immemorial had preached the doctrine of tolerance and catholicity of outlook. Those noble ideas were enshrined in the Constitution. Special rights for minorities were designed not to create inequality. Their real effect was to bring about equality by ensuring the preservation of the minority institutions and by guaranteeing to the minorities autonomy in the matter of the administration of these institutions. The differential treatment for the minorities by giving them special rights is intended to bring about an equilibrium, so that the ideal of equality may not be reduced to a mere abstract
idea but should become a living reality and result in true, genuine equality, an equality not merely in theory but also in fact."

**Dual test of permissible Regulations was approved**

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

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

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

The present judgment made the reference of *Lilly Kurian v. Sr. Lewina and Ors* case\(^ {175}\) wherein the Supreme Court struck down the power of the Vice-Chancellor to veto the decision of the management to impose a penalty on a teacher. It was held that the power of the Vice-Chancellor, while hearing an appeal against the imposition of the panel was uncanalized and unguided.

The present judgment also took note of in *Christian Medical College Hospital Employees’ Union and Anr. v. Christian Medical College Vellore Association and Ors*\(^ {176}\) wherein the Supreme Court had upheld the application of industrial law to minority colleges, and it was held that providing a remedy against unfair dismissals would not infringe Article 30.

Judgment also referred to, *Gandhi Faizeam College Shahajhanpur v. University of Agra and Anr.*\(^ {177}\) a law which sought to regulate the working of minority institutions by providing that a broad-based management committee could be re-constituted by including therein the Principal and the senior-most teacher, was valid and not violative of the right under Article 30(1) of the Constitution.

The Judgment mentions the decision in *All Saints High School, Hyderabad Etc. Etc. v. Government of A.P. and Ors. Etc.*\(^ {178}\), Wherein a regulation providing that no teacher would be dismissed, removed, or reduced in rank, or terminated otherwise except with the prior approval of the competent authority, was held

\(^{175}\) MANU/SC/0041/1978: [1979]1SCR820  
\(^{176}\) MANU/SC/0041/1978: [1979]1SCR820  
\(^{177}\)MANU/SC/0070/1975: [1975]3SCR810  
to be invalid, as it sought to confer an unqualified power upon the competent authority.

The judgment also takes the note of *Frank Anthony Public School Employees Association v. Union of India and Ors.*\(^{179}\), the regulation providing for prior approval for dismissal was held to be invalid, while the provision for an appeal against the order of dismissal by an employee to a Tribunal was upheld. The regulation requiring prior approval before suspending an employee was held to be valid, but the provision, which exempted unaided minority schools from the regulation that equated the pay and other benefits of employees of recognized schools with those in schools run by the authority, was held to be invalid and violative of the equality clause. It was held by this Court that the regulations regarding pay and allowances for teachers and staff would not violate Article 30.

The Judgment discusses the decision in *St Stephan’s College v The University of Delhi’s Case*\(^{180}\) in detail in which the right of minorities to administer educational institutions and the applicability of Article 29(2) to an institution to which Article 30(1) was applicable, came up for consideration. The Court referred to earlier decision and with regards to Article 30(1) observed as follows: "The minorities whether based on religion or language have the right to establish and administer educational institutions of their choice. The administration of educational institutions of their choice under Article 30(1) means 'management of the affairs of the institution'. This management must be free from control so that the founder or their nominees can mould the institution as they think fit, and in accordance with their ideas of how the interests of the community in general and the institution in particular will be best served. But the standards of education are not a part of the management


as such. The standard concerns the body politic and is governed by considerations of the advancement of the country and its people. Such regulations do not bear directly upon management although they may indirectly affect it. The State therefore has the right to regulate the standard of education and allied matters. Minority institutions cannot be permitted to fall below the standards of excellence expected of educational institutions. They cannot decline to follow the general pattern of education under the guise of exclusive right of management. While the management must be left to them, they may be compelled to keep in step with others...."

**State do have right to regulate all academic matters**

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

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

Judgment discusses the decision of St Stephen’s Case on the issue of selection of students for admission as: Dealing with the question of the selection of students, it was accepted that the right to select students for admission was a part of administration, and that this power could be regulated, but it was held that the regulation must be reasonable and should be conducive to the welfare of the minority institution or for the betterment of those who resort to it. Bearing this principle in mind, this Court took note of the fact that if the College was to admit students as per the circular issued by the University, it would have to deny admissions to the students belonging to the Christian community because of the prevailing situation that even after the concession, only a small number of minority applicants would gain admission. It was the case of the College that the selection was made on the basis of the candidate’s academic record, and his/her performance at the interview keeping in mind his/her all round competence, his/her capacity to benefit from attendance at the College, as well as his/her potential to contribute to the life of the College. While observing that the oral interview as a supplementary test and not as the exclusive test for assessing the suitability of the candidates for college admission had been recognized by this Court, this Court observed that the admission programme of the college "based on the test of promise and accomplishment of candidates seems to be better than the blind method of selection based on the marks secured in the qualifying examinations." The Court accordingly held that St. Stephen's College was not bound by the impugned circulars of the University.

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

It further held that, as pointed out in the Kerala Education Bill case\textsuperscript{181}, the minorities could not establish educational institutions for the benefit of their own community alone. For if such was the aim, Article 30(1) would have been differently worded and it would have contained the words "for their own community". In this regard, it would be useful to bear in mind that the Court noticed that:-

"Even in practice, such claims are likely to be met with considerable hostility. It may not be conducive to have a relatively homogeneous society. It may lead to religious bigotry which is the bane of mankind. 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

\textsuperscript{181} (1959)1SCR995
central concept of secularism and equality embedded in the Constitution. Every educational institution irrespective of community to which it belongs is a 'melting pot' in our national life. The students and teachers are the critical ingredients. It is there they develop respect for, and tolerance of, the cultures and beliefs of others. It is essential therefore, that there should be proper mix of students of different communities in all educational institutions.”

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

The Court then dealt with the contention on behalf of the University that the minority institutions receiving government aid were bound by the mandate of Article 29(2), and that they could not prefer candidates from their own community. The Court referred to the decision in the case of *Champakam Dorairajan’s Case*[^182], but observed as follows:

".....the fact that Article 29(2) applied to minorities as well as non-minorities did not mean that it was intended to nullify the special right guaranteed to minorities in Article 30(1). Article 29(2) deals with non-discrimination and is available only to individuals. General equality by non-discrimination is not the only need of minorities. Minority rights under majority rule imply more than non-discrimination; indeed, it begins with non-discrimination. Protection of interests and institutions and the advancement of opportunity are just as important. Differential treatment that distinguishes them from the majority is a must to preserve their basic characteristics."

**Minority institutions not to be treated differently while giving financial assistance.**

Observations in St Stephen’s case were quoted: "It is quite true that there is no entitlement to State grant for minority educational institutions. There was only

[^182]: AIR 1951 SC 226
a stop-gap arrangement under Article 337 for the Anglo-Indian community to receive State grants. There is no similar provision for other minorities to get grant from the State. But under Article 30(2), the State is under an obligation to maintain equality of treatment in granting aid to educational institutions. Minority institutions are not to be treated differently while giving financial assistance. They are entitled to get the financial assistance much the same way as the institutions of the majority communities."

It was further held that the State could lay down reasonable conditions for obtaining grant-in-aid and for its proper utilization, but that the State had no power to compel minority institutions to give up their rights under Article 30(1). After referring to the Kerala Education Bill case\textsuperscript{183} and Sidhajbhai Sabhai's case,\textsuperscript{184} the Court observed as follows:-

"....In the latter case this Court observed at SCR pages 856-57 that the regulation which may lawfully be imposed as a condition of receiving grant must be directed in making the institution an effective minority educational institution. The regulation cannot change the character of the minority institution. Such regulations must satisfy a dual test; the test of reasonableness, and the test that it is regulative of the educational character of the institution. It must be conducive to making the institution and effective vehicle of education for the minority community or other persons who resort to it. It is thus evident that the rights under Article 30(1) remain unaffected even after securing financial assistance from the government."

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

According to the learned Judges, the question of the interplay of Article 29(2) with Article 30(1) had arisen in St. Stephen's case\textsuperscript{185} for the first time, and had not been considered by the Court earlier, they observed that "we are on virgin

\textsuperscript{183} (1959)1SCR995
\textsuperscript{184} AIR 1963 SC 540
\textsuperscript{185} AIR 1992 SC1630
soil, not on trodden ground". Dealing with the interplay of these two Articles, it was observed, as follows:- "The collective minority right is required to be made functional and is not to be reduced to useless lumber. A meaningful right must be shaped, moulded and created under Article 30(1), while at the same time affirming the right of individuals under Article 29(2). There is a need to strike a balance between the two competing rights. It is necessary to mediate between Article 29(2) and Article 30(1), between letter and spirit of these articles, between traditions of the past and the convenience of the present, between society's need for stability and its need for change."

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

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

**Basic features of St Stephen upheld**

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

**Fundamental rights subject to other fundamental rights**

The Court agreed with the contention of the learned Solicitor General that the Constitution in Part III does not contain or give any absolute right. All rights conferred in Part III of the Constitution are subject to at least other provisions of the said Part. It is difficult to comprehend that the framers of the Constitution would have given such an absolute right to the religious or linguistic minority which would enable them to establish and administer educational institutions in manner so as to be in conflict with the other Parts of the Constitution. We find difficult to accept that in the establishment and administration of educational institutions by the religious and linguistic minorities, no law of the land, even the Constitution, is to apply to them.

**Minority rights to administer not absolute**

Decisions of this Court have held that the right to administer does not include the right to mal-administer. It has also been held that the right to administer is not absolute, but must be subject to reasonable regulations for the benefit of the institutions as the vehicle of education, consistent with national interest. General laws of the land applicable to all persons have been held to be applicable to the minority institutions also -- for example, laws relating to taxation, sanitation, social welfare, economic regulation, public order and morality.
It follows from the aforesaid decisions that even though the words of Article 30(1) are unqualified, this Court has held that at least certain other laws of the land pertaining to health, morality and standards of education apply. The right under Article 30(1) has, therefore, not been held to be absolute or above other provisions of the law, and we reiterate the same. By the same analogy, there is no reason why regulations or conditions concerning, generally, the welfare of students and teachers should not be made applicable in order to provide a proper academic atmosphere; as such provisions do not in any way interfere with the right of administration or management under Article 30(1).

**Preservation of Secularism and Equality through Article 30(1)**

According to the Judges Article 30(1) is a sort of guarantee or assurance to the linguistic and religious minority institutions of their right to establish and administer educational institutions of their choice. Secularism and equality being two of the basic features of the Constitution, Article 30(1) ensures protection to the linguistic and religious minorities, thereby preserving the secularism of the country. Furthermore, the principles of equality must necessarily apply to the enjoyment of such rights. No law can be framed that will discriminate against such minorities with regard to the establishment and administration of educational institutions vis-a-vis other educational institutions. Any law or rule or regulation that would put the educational institutions run by the minorities at a disadvantage when compared to the institutions run by the others will have to be struck down. At the same time, there also cannot be any reverse discrimination. It was observed in *St. Xaviers College* case\(^\text{186}\), at page 192, that "the whole object of conferring the right on minorities under Article 30 is to ensure that there will be equality between the majority and the minority. If the minorities do not have such special protection, they will be dented equality." In other words, the essence of Article 30(1) is to ensure equal treatment between the majority and the minority institutions. No

\(^{186}\) AIR 1974 SC1389
one type or category of institution should be disfavoured or, for that matter, receive more favourable treatment than another. Laws of the land, including rules and regulations, must apply equally to the majority institutions as well as to the minority institutions. The minority institutions must be allowed to do what the non-minority institutions are permitted to do.

**Autonomy to unaided Minority institutions**

The Court held that like any other private unaided institutions, similar unaided educational institutions administered by linguistic or religious minorities are assured maximum autonomy in relation thereto; e.g., method of recruitment of teachers, charging of fees and admission of students. They will have to comply with the conditions of recognition, which cannot be such as to whittle down the right under Article 30.

**Grants and its effect on autonomy of Minority institutions**

The grant of aid is not a constitutional imperative. Article 337 only gives the right to assistance by way of grant to the Anglo-Indian community for a specified period of time. If no aid is granted to anyone, Article 30(1) would not justify a demand for aid, and it cannot be said that the absence of aid makes the right under Article 30(1). The founding fathers have not incorporated the right to grants in Article 30, whereas they have done so under Article 337; what, then, is the meaning, scope and effect of Article 30(2)? Article 30(2) only means what it states, viz that a minority institution shall not be discriminated against when aid to educational institutions is granted. In other words the state cannot, when it chooses to grant aid to educational institutions, deny aid to a religious or linguistic minority institution only on the ground that the management of that institution is with the minority. We would, however, like to clarify that if an object surrender of the right to management is made a condition of aid, the denial of aid would be violative of Article 30(2). However, conditions of aid that do not involve a surrender of the substantial right of
management would not be inconsistent with constitutional guarantees, even if they indirectly impinge upon some fact of administration. If, however, aid were denied on the ground that the educational institution is under the management of a minority, then such a denial would be completely invalid.

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

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

This means that the right under Article 30(1) implies that any grant that is given by the State to the minority institution cannot have such conditions attached to it, which will in any way dilute or abridge the rights of the minority institution to establish and administer that institution. The conditions that can normally be permitted to be imposed, on the educational institutions receiving the grant, must be related to the proper utilization of the grant and fulfillment of the objectives of the grant. Any such secular conditions so laid, such as a proper audit with regard to the utilization of the funds and the manner in which the funds are to be utilized, will be applicable and would not dilute the minority status of the educational institutions. Such conditions would be valid if they are also imposed on other educational institutions receiving the grant.

It cannot be argued that no conditions can be imposed while giving aid to a minority institution. Whether it is an institution run by the majority or the minority, all conditions that have relevance to the proper utilization of the
grant-in-aid by an educational institution can be imposed. All that Article 30(2) states is that on the ground that an institution is under the management of a minority, whether based on religion or language, grant of aid to that educational institution cannot be discriminated against, if other educational institutions are entitled to receive aid. The conditions for grant or non-grant of aid to educational institutions have to be uniformly applied, whether it is a majority-run institution or a minority-run institution. As in the case of a majority-run institution, the moment a minority institution obtains a grant of aid, Article 28 of the Constitution comes into play. When an educational institution is maintained out of State funds, no religious instructions can be provided therein. Article 28(1) does not state that it applies only to educational institutions that are not established or maintained by religious or linguistic minorities. Furthermore, upon the receipt of aid, the provisions of Article 28(3) would apply to all educational institutions whether run by the minorities or the non-minorities. Article 28(3) is the right of a person studying in a State recognized institution or in an educational institution receiving aid from State funds, not to take part in any religious instruction, if imparted by such institution, without his/her consent (or his/her guardian’s consent if such a person is a minor). Just as Article 28(1) and (3) become applicable the moment any educational institution takes aid, likewise, Article 29(2) would also be attracted and become applicable to an educational institution maintained by the State or receiving aid out of State funds. It was strenuously contended that the right to give admission is one of the essential ingredients of the right to administer conferred on the religious or linguistic minority, and that this right should not be curtailed in any manner. It is difficult to accept this contention. If Article 28(1) and (3) apply to a minority institution that receives aid out of State funds, there is nothing in the language of Article 30 that would make the provisions of Article 29(2) inapplicable. Like Article 28(1) and Article 28(3), Article 29(2) refers to "any educational institution maintained by the State or receiving aid out of State funds". A minority institution would fall within the ambit of Article 29(2) in the same manner in which Article 28(1) and Article
28(3) would be applicable to an aided minority institution. It is true that one of the rights to administer an educational institution is to grant admission to the students. As long as an educational institution, whether belonging to the minority or the majority community, does not receive aid, it would, in our opinion, be its right and discretion to grant admission to such students as it chooses or selects subject to what has been clarified before. Out of the various rights that the minority institution has in the administration of the institution, Article 29(2) curtails the right to grant admission to a certain extent. By virtue of Article 29(2), no citizen can be denied admission by an aided minority institution on the grounds only of religion, race, caste, language or any of them. It is no doubt true that Article 29(2) does curtail one of the powers of the minority institution, but on receiving aid, some of the rights that an unaided minority institution has are also curtailed by Article 28(1) and 28(3). A minority educational institution has a right to impart religious instruction - this right is taken away by Article 28(1), if that minority institution is maintained wholly out of state funds. Similarly on receiving aid out of State funds or on being recognized by the State, the absolute right of a minority institution requiring a student to attend religious instruction is curtailed by Article 28(3). If the curtailment of the right to administer a minority institution on receiving aid or being wholly maintained out of State funds as provided by Article 28 is valid, there is no reason why Article 29(2) should not be held to be applicable. There is nothing in the language of Article 28(1) and (3), Article 29(2) and Article 30 to suggest that on receiving aid, Article 28(1) and (3) will apply, but Article 29(2) will not. Therefore, the contention that the institutions covered by Article 30 are outside the injunction of Article 29(2) cannot be accepted.

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

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

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

**Constitutional history of Article 29**

According to the judgment Article 29 carries the head note "Protection of interests of minorities" it does not use the expression "minorities" in its text. The original proposal of the Advisory Committee in the Constituent Assembly recommended the following:-

"(1) Minorities in every unit shall be protected in respect of their language, script and culture and no laws or regulations may be enacted that may operate oppressively or prejudicially in this respect"\(^{187}\)

But after the clause was considered by the drafting Committee on 1st November, 1947, it emerged with substitute of 'section of citizen'\(^{188}\). It was

\(^{187}\) B. Siva Rao, "Select Documents" (1957) Vol. 2 page 281
explained that the intention had always been to use 'minority' in a wide sense, so as to include, for example, Maharashtrians who settled in Bengal."\(^{188}\)

Both Articles 29 and 30 forms a part of the fundamental rights Chapter in Part III of the Constitution. Article 30 is confined to minorities, be it religious or linguistic, and unlike Article 29(1), the right available under the said Article cannot be availed by any section of citizens. The main distinction between Article 29(1) and Article 30(1) is that in the former, the right is confined to conservation of language, script or culture. As was observed in the *Father W. Proost* case, the right given by Article 29(1) is fortified by Article 30(1), insofar as minorities are concerned. In the *St. Xaviers College* case\(^{190}\), it was held that the right to establish an educational institution is not confined to conservation of language, script or culture. When constitutional provisions are interpreted, it has to be borne in mind that the interpretation should be such as to further the object of their incorporation. They cannot be read in isolation and have to be read harmoniously to provide meaning and purpose. They cannot be interpreted in a manner that renders another provision redundant. If necessary, a purposive and harmonious interpretation should be given.

**Interpretation of Article 29 and 30**

Although the right to administer includes within it a right to grant admission to students of their choice under Article 30(1), when such a minority institution is granted the facility of receiving grant-in-aid, Article 29(2) would apply, and necessarily, therefore, one of the right of administration of the minorities would be eroded to some extent. Article 30(2) is an injunction against the State not to discriminate against the minority educational institution and prevent it from receiving aid on the ground that the institution is under the management of a minority. While, therefore, a minority educational institution receiving grant-in-


\(^{189}\) 7 C.A.D. pages 922-23

\(^{190}\) AIR 1974 SC1389
aid would not be completely outside the discipline of Article 29(2) of the Constitution by no stretch of imagination can the rights guaranteed under Article 30(1) be annihilated. It is this context that some interplay between Article 29(2) and Article 30(1) is required. As observed quite aptly in St. Stephen's case "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)." The word "only" used in Article 29(2) is of considerable significance and has been used for some avowed purpose. Denying admission to non-minorities for the purpose of accommodating minority students to a reasonable extent will not be only on grounds of religion etc., but is primarily meant to preserve the minority character of the institution and to effectuate the guarantee under Article 30(1). The best possible way is to hold that as long as the minority educational institution permits admission of citizens belonging to the non-minority class to a reasonable extent based upon merit, it will not be an infraction of Article 29(2), even though the institution admits students of the minority group of its own choice for whom the institution was meant. What would be a 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 in the institution. Usually, at the school level, although it may be possible to fill up all the seats with students of the minority group, at the higher level, either in colleges or in technical institutions, it may not be possible to fill up all the seats with the students of the minority group. However, even if it is possible to fill up all the seats with students of the minority group, the moment the institution is granted aid, the institution will have to admit students of the non-minority group to a reasonable extent, whereby the character of the institution is not annihilated, and at the same time, the rights of the citizen engrafted under Article 29(2) are not subverted. It is for this reason that a variable percentage of admission of minority students depending on the type of institution and education is desirable, and indeed,
necessary, to promote the constitutional guarantee enshrined in both Article 29(2) and Article 30.

**The judgment accept the principle of Stare Decisis**

The Court in this judgment accepted the principle of *Stare Decisis*. The judgment refers to the following observations of B.P. Jeevan Reddy, J., in *Indra Sawhney v. Union of India and Ors*191 at page 657, paragraph 683, as follows:–

"Before we proceed to deal with the question, we may be permitted to make a few observations: The questions arising herein are not only of great moment and consequence, they are also extremely delicate and sensitive. They represent complex problems of Indian society, wrapped and presented to us as Constitutional and legal questions. On some of these questions, the decisions of this Court have not been uniform. They speak with more than one voice. Several opposing points of view have been pressed upon us with equal force and passion and quite often with great emotion. We recognize that these viewpoints are held genuinely by the respective exponents. Each of them feels their own point of view is the only right one. We cannot, however, agree with all of them. We have to find--and we have tried our best to find--answers which according to us are the right ones constitutionally and legally. Though, we are sitting in a larger Bench, we have kept in mind the relevance and significance of the principle of *stare decisis*. We are conscious of the fact that in law certainty, consistency and continuity are highly desirable features. Where a decision has stood the test of time and has never been doubted, we have respected it--unless, of course, there are compelling and strong reasons to depart from it. Where, however, such uniformity is not found, we have tried to answer the question on principle keeping in mind the scheme and goal of our Constitution and the material placed before us."

St. Stephen’s Case Ratio upheld except 50% ceiling to admit students of its community.

The right of the aided minority institution to preferably admit students of its community, when Article 29(2) was applicable, has been clarified by this Court over a decade ago in the St. Stephen’s College case. While upholding the procedure for admitting students, this Court also held that aided minority educational institutions were entitled to preferably admit their community candidates so as to maintain the minority character of the institution, and that the state may regulate the intake in this category with due regard to the area that the institution was intended to serve, but that this intake should not be more than 50% in any case. Thus, St. Stephen's endeavoured to strike a balance between the two Articles. Though we accept the ratio of St. Stephen's, which has held the field for over a decade, we have compelling reservations in accepting the rigid percentage stipulated therein. As Article 29 and Article 30 apply not only to institutions of higher education but also to schools, a ceiling of 50% would not be proper. It will be more appropriate that depending upon the level of the institution, whether it be a primary or secondary or high school or a college, professional or otherwise, and on the population and educational needs of the area in which the institution is to be located the state properly balances the interests of all by providing for such a percentage of students of the minority community to be admitted, so as to adequately serve the interest of the community for which the institution was established.

Admissions in Colleges on the Merit of Minority Candidates

At the same time, the admissions to aided institutions, whether awarded to minority or non-minority students, cannot be at the absolute sweet will and pleasure of the management of minority educational institutions. As the regulations to promote academic excellence and standards do not encroach upon the guaranteed rights under Article 30, the aided minority educational institutions can be required to observe inter se merit amongst the eligible
minority applicants and passage of common entrance test by the candidates, where there is one, with regard to admissions in professional and non-professional colleges. If there is no such test, a rational method of assessing comparative merit has to be evolved. As regards the non-minority segment, admission may be on the basis of the common entrance test and counselling by a state agency. In the courses for which such a test and counselling are not in vogue, admission can be on the basis of relevant criteria for the determination of merit. It would be open to the state authorities to insist on allocating a certain percentage of seats to those belonging to weaker sections of society, from amongst the non-minority seats.

**Aided Linguistic Minority Institutions free to admit reasonable number of students from their own community**

The aided linguistic minority educational institution is given the right to admit students belonging to the linguistic minority to a reasonable extent only to ensure that its minority character is preserved and that the objective of establishing the institution is not defeated. If so, such an institution is under an obligation to admit the bulk of the students fitting into the description of the minority community. Therefore, the students of that group residing in the state in which the institution is located have to be necessarily admitted in a large measure because they constitute the linguistic minority group as far as that state is concerned. In other words, the predominance of linguistic students hailing from the state in which the minority educational institution is established should be present. The management bodies of such institution cannot resort to the device of admitting the linguistic students of the adjoining state in which they are in a majority, under the facade of the protection given under Article 30(1). If not, the very objective of conferring the preferential right of admission by harmoniously constructing Articles 30(1) and 29(2), which we have done above, may be distorted.

**Presumption in favour of Government**
The judgment makes presumptions in favour of Government in the following words, ‘It will be wrong to presume that the government or the legislature will act against the Constitution or contrary to the public or national interest at all times. Viewing every action of the government with skepticism, and with the belief that it must be invalid unless proved otherwise, goes against the democratic form of government. It is no doubt true that the Court has the power and the function to see that no one including the government acts contrary to the law, but the cardinal principle of our jurisprudence is that it is for the person who alleges that the law has been violated to prove it to be so. In such an event, the action of the government or the authority may have to be carefully examined, but it is improper to proceed on the assumption that, merely because an allegation is made, the action impugned or taken must be bad in law. Such being the position, when the government frames rules and regulations or lays down norms, especially with regard to deduction, one must assume that unless shown otherwise, the action taken is in accordance with law. Therefore, it will not be in order to so interpret a Constitution, and Article 29 and 30 in particular, on the presumption that the state will normally not act in the interest of the general public or in the interest of concerned sections of the society.

CONCLUSION

Equality and Secularism

Our country is often depicted as a person in the form of "Bharat Mata -- Mother India". The people of India are regarded as her children with their welfare being in her heart. Like and loving mother, the welfare of the family is of paramount importance for her.

For a healthy family, it is important that each member is strong and healthy. But then, all members do not have the same constitution, whether physical and/or mental. For harmonious and healthy growth, it is natural for the
parents and the mother in particular, to give more attention and food to the weaker child so as to help him/her become stronger. Giving extra food and attention and ensuring private tuition to help in his/her studies will, in a sense, amount to giving the weaker child preferential treatment. Just as lending physical support to the aged and the infirm, or providing a special diet, cannot be regarded as unfair or unjust, similarly, conferring certain rights on a special class, for good reasons, cannot be considered inequitable. All the people of India are not alike, and that is why preferential treatment to a special section of the society is not frowned upon. Article 30 is a special right conferred on the religious and linguistic minorities because of their numerical handicap and to instill in them a sense of security and confidence, even though the minorities cannot be *per se* regarded as weaker sections or underprivileged segments of the society.

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

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

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

**ANSWERS TO ELEVEN QUESTIONS:**

Q.1. What is the meaning and content of the expression "minorities" in Article 30 of the Constitution of India?

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

Q.2. What is meant by the expression "religion" in Article 30(1)? Can the followers of a sect or denomination of a particular religion claim protection
under Article 30(1) on the basis that they constitute a minority in the State, even though the followers of that religion are in majority in that State?

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

Q.3(a) What are the indicia for treating an educational institution as a minority educational institution? Would an institution be regarded as a minority educational institution because it was established by a person(s) belonging to a religious or linguistic minority or its being administered by a person(s) belonging to a religious or linguistic minority?

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

Q3(b) To what extent can professional education be treated as a matter coming under minorities rights under Article 30?

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

Q.4 Whether the admission of students to minority educational institution, whether aided or unaided, can be regulated by the State Government or by the University to which the institution is affiliated?

A. Admission of students to unaided minority educational institutions, viz., schools and undergraduates colleges where the scope for merit-based selection is practically nil, cannot be regulated by the concerned State or University, except for providing the qualifications and minimum conditions of eligibility in the interest of academic standards.
The right to admit students being an essential facet of the right to administer educational institutions of their choice, as contemplated under Article 30 of the Constitution, the State government or the university may not be entitled to interfere with that right, so long as the admission to the unaided educational institutions is on a transparent basis and the merit is adequately taken care of. The right to administer, not being absolute, there could be regulatory measures for ensuring educational standards and maintaining excellence thereof, and it is more so in the matter of admissions to professional institutions.

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

Q5(a) Whether the minority's rights to establish and administer educational institutions of their choice will include the procedure and method of admission and selection of students?
A. A minority institution may have its own procedure and method of admission as well as selection of students, but such a procedure must be fair and transparent, and the selection of students in professional and higher education colleges should be on the basis of merit. The procedure adopted or selection made should not tantamount to mal-administration. Even an unaided minority institution ought not to ignore the merit of the students for admission, while exercising its right to admit students to the colleges aforesaid, as in that event, the institution will fail to achieve excellence.

Q5(b) Whether the minority institutions’ right of admission of students and to lay down procedure and method of admission, if any, would be affected in any way by the receipt of State aid?

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

Q5(c) Whether the statutory provisions which regulate the facets of administration like control over educational agencies, control over governing bodies, conditions of affiliation including recognition/withdrawal thereof, and appointment of staff, employees, teachers and Principal including their service
conditions and regulation of fees, etc. would interfere with the right of administration of minorities?

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

For redressing the grievances of employees of aided and unaided institutions who are subjected to punishment or termination from service, a mechanism will have to be evolved, and in our opinion, appropriate tribunals could be constituted, and till then, such tribunals could be presided over by a Judicial Officer of the rank of District Judge.

The State or other controlling authorities, however, can always prescribe the minimum qualification, experience and other conditions bearing on the merit of an individual for being appointed as a teacher or a principal of any educational institution.

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

Fees to be charged by unaided institutions cannot be regulated but no institution should charge capitation fee.
Q6(a) Where can a minority institution be operationally located? Where a religious or linguistic minority in State 'A' establishes an educational institution in the said State, can such educational institution grant preferential admission/reservations and other benefits to members of the religious/linguistic group from other States where they are non-minorities?

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

Q6(b) Whether it would be correct to say that only the members of that minority residing in State 'A' will be treated as the members of the minority vis-à-vis such institution?

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

Q.7 Whether the member of a linguistic non-minority in one State can establish a trust/society in another State and claim minority status in that State?

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

Q.8 Whether the ratio laid down by this Court in the St. Stephen's case is correct? If no, what order?

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

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Q.9 Whether the decision of this Court in *Unni Krishnan J.P. v. State of A.P*\(^{193}\). (except where it holds that primary education is a fundamental right) and the scheme framed there under required reconsideration/modification and if yes, what?

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

Q.10 Whether the non-minorities have the right to establish and administer educational institution under Article 21 and 29(1) read with Articles 14 and 15(1), in the same manner and to the same extent as minority institutions? And

Q.11 What is the meaning of the expressions "Education" and "Educational Institutions" in various provisions of the Constitution? Is the right to establish and administer educational institutions guaranteed under the Constitution?

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

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

\(^{193}\) MANU/SC/0333/1993 : [1993]1SCR594
All citizens have a right to establish and administer educational institutions under Articles 19(1)(g) and 26, but this right is subject to the provisions of Articles 19(6) and 26(a). However, minority institutions will have a right to admit students belonging to the minority group, in the manner as discussed in this judgment.

6.17. Islamic Academy Of Education Anr. v State Of Karnataka And Others


V. N. Khare, CJI delivered a majority judgment for himself and for S. N. Variava, K. G. Balakrishnan and Arijit Pasayat.

After the judgment of T. M. A. Pai’s case, the Union of India, various State Governments and the educational institutions understood the majority judgment in different perspectives. Different statutes/regulations were enacted/framed by different State Governments. These led to litigations in several Courts. The matters came up before a Bench of Supreme Court, the parties to the writ petitions and special leave petitions attempted to interpret the majority decision in their own way as suited to them and therefore at their request all these matters were placed before a Bench of five Judges. It is under these circumstances that the Bench was constituted so that doubts/anomalies, if any, could be clarified.

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

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

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

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

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

Question No. 1. So far as the first question is concerned, the Court held that the majority view in T. M. A. Pai’s case is clear; there can be no fixing of a rigid fee structure by the government. Each institute must have the freedom to fix its own fee structure taking into consideration the need to generate funds to run the institution and to provide facilities necessary for the benefit of the students. They must also be able to generate surplus which must be used for the betterment and growth of that educational institution. In paragraph 56 of the judgment it has been categorically laid down that the decision on the fees to be charged must necessarily be left to the private educational institutions that do not seek and which are not dependent upon any funds from the Government. Each institute will be entitled to have its own fee structure. The fee structure for each institute must be fixed keeping in mind the infrastructure and facilities available, the investments made, salaries paid to the teachers and staff, future plans for expansion and/or betterment of the institution etc. Of course there can be no profiteering and capitation fees cannot be charged. It thus needs to be emphasized that as per the majority judgment imparting of education is essentially charitable in nature. Thus the surplus/profit that can be generated must be only for the benefit/use of that educational institution. Profits/surplus cannot be diverted for any other use or purpose and cannot be used for personal gain or for any other business or enterprise. The Court held that all statutes/regulations which govern the fixation of fees had not yet been considered for the validity of those statutes/regulations, Court directed that in order to give effect to the judgment
in T. M. A Pai’s case the respective State Governments concerned authority shall set up, in each State, a committee headed by a retired High Court judge who shall be nominated by the Chief Justice of that State. The other member, who shall be nominated by the Judge, should be a Chartered Accountant of repute. A representative of the Medical Council of India (in short 'MCI') or the All India Council for Technical Education (in short 'AICTE'), depending on the type of institution, shall also be a member. The Secretary of the State Government in charge of Medical Education or Technical Education, as the case may be, shall be a member and Secretary of the Committee. The Committee should be free to nominate/co-opt another independent person of repute, so that total number of members of the Committee shall not exceed five.

Each educational Institute must place before this Committee, well in advance of the academic year, its proposed fee structure. Along with the proposed fee structure all relevant documents and books of accounts must also be produced before the committee for their scrutiny. The Committee shall then decide whether the fees proposed by that institute are justified and are not profiteering or charging capitation fee. The Committee will be at liberty to approve the fee structure or to propose some other fee which can be charged by the institute. The fee fixed by the committee shall be binding for a period of three years, at the end of which period the institute would be at liberty to apply for revision. Once fees are fixed by the Committee, the institute cannot charge either directly or indirectly any other amount over and above the amount fixed as fees. If any other amount is charged, under any other head or guise e.g. donations the same would amount to charging of capitation fee. The Governments/appropriate authorities should consider framing appropriate regulations, if not already, framed, where under if it is found that an institution is charging capitation fees or profiteering that institution can be appropriately penalized and also face the prospect of losing its recognition/affiliation.
It must be mentioned that during arguments it was pointed out to in the court that some educational institutions are collecting, in advance, the fees for the entire course i.e. for all the years. It was submitted that this was done because the institute was not sure whether the student would leave the institute midstream. It was submitted that if the student left the course in midstream then for the remaining years the seat would lie vacant and the institute would suffer. In our view an educational institution can only charge prescribed fees for one semester/year, if an institution feels that any particular student may leave in midstream then, at the highest, it may require that student to give a bond/bank guarantee that the balance fees for the whole course would be received by the institute even if the student left in midstream. If any educational institution has collected fees in advance, only the fees of that semester/year can be used by the institution. The balance fees must be kept invested in fixed deposits in a nationalized bank. As and when fees fall due for a semester/year only the fees falling due for that semester/year can be withdrawn by the institution. The rest must continue to remain deposited till such time that they fall duo. At the end of the course the interest earned on these deposits must be paid to the student from whom the fees were collected in advance.

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

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

"Like any other private unaided institutions, similar unaided educational institutions administered by linguistic or religious minorities are assured maximum autonomy in relation thereto; e.g., method of recruitment of teachers, charging of fees and admission of students. They will have to comply with the condition of recognition, which cannot be such as to whittle down the right under Article 30."

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

In answer to question 3 and 4 the Court had held

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

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

The Court directed that the respective State Government to appoint a permanent Committee which will ensure that the tests conducted by the association of colleges to fair and transparent. For each State a separate
Committee shall be formed. The Committee would be headed by a retired Judge of the High Court. The Judge to be nominated by the Chief Justice of that State. The other member, to be nominated by the Judge, would be a doctor or an engineer of eminence (depending on whether the institution is medical or engineering/technical). The Secretary of the State in charge of Medical or Technical Education, as the case may be, shall also be a member and act as Secretary of the Committee. The Committee will be free to nominate/co-opt an independent person of repute in the field of education as well as one of the Vice Chancellors of University in that State so that the total numbers of persons on the Committee do not exceed five. The Committee shall have powers to oversee the tests to be conducted by the association. This would include the power to call for the proposed question paper/s, to know the names of the paper setters and examiners and to check the method adopted to ensure papers are not leaked. The Committee shall supervise and ensure that the test is conducted in a fair and transparent manner. The Committee shall have power to permit an institution, which has been established and which has been permitted to adopt its own admission procedure for the last, at least, 25 years, to adopt its own admission procedure and if the Committee feels that the needs of such an institute are genuine, to admit, students of their community, in excess of the quota allotted to them by the State Government. Before exempting any institute or varying in percentage of quota fixed by the State, the State Government must be heard before the Committee. It is clarified that different percentage of quota for students to be admitted by the management in each minority or non-minority unaided professional college/s shall be separately fixed on the basis of their need by the respective State Governments and in care of any dispute as regards fixation of percentage of quota, it will be open to the management to approach the Committee. It was also clarified that no institute, which has not been established and which has not followed its own admission procedure for the last, at least, 25 years, shall be permitted to apply for or be granted exemption from admitting students in the manner set out hereinabove.
6.18. P. A. Inamdar and Ors. v State of Maharashtra and Ors.\textsuperscript{195}

**Seven Judges bench consisting of R. C. Lahoti, Y. K. Sabharwal, D. M. Dharmadhikari, Arun Kumar, G. P. Mathur, Tarun Chatterjee and P. K. Balasubramanyan JJ.**

The Supreme Court delivered an unanimous judgment by 7 judges on August 12, 2005 declaring that the State can’t impose its reservation policy on minority and non-minority unaided private colleges, including professional colleges.

This judgment was an attempt to bring clarity to two previous judgments by the Supreme Court viz, *T. M. A Pai Foundation and Ors v State of Karnataka and Ors.* delivered on 31\textsuperscript{st} October, 2002 and Islamic Academy of Education and Anr. V State of Karnataka and Ors delivered on 14\textsuperscript{th} August 2003.

The Supreme Court in its judgment on 12\textsuperscript{th} August, 2005 ruled on the following issues in relation to minority and non-minority unaided higher education institutions.

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

**Reservation policy**

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

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

So far as appropriation of quota by the State and enforcement of its reservation policy is concerned, the Court did not see much of difference between non-minority and minority unaided educational institutions. The State cannot insist on private educational institutions which receive no aid from the State to implement State's policy on reservation for granting admission on lesser percentage of marks, i.e. on any criterion except merit.

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

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

**Admission policy**

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

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

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

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

Whether minority or non-minority institutions, there may be more than one similarly situated institutions imparting education in any one discipline, in any State. The same aspirant seeking admission to take education in any one discipline of education shall have to purchase admission forms from several institutions and appear at several admission tests conducted at different places.
on same or different dates and there may be a clash of dates. If the same
candidate is required to appear in several tests, he would be subjected to
unnecessary and avoidable expenditure and inconvenience.
There is nothing wrong in an entrance test being held for one group of
institutions imparting same or similar education. Such institutions situated
in one State or in more than one State may join together and hold a common
entrance test or the State may itself or through an agency arrange for holding
of such test. Out of such common merit list the successful candidates can be
identified and chosen for being allotted to different institutions depending on
the courses of study offered, the number of seats, the kind of minority to which
the institution belongs and other relevant factors. Such an agency conducting
Common Entrance Test (CET, for short) must be one enjoying utmost
credibility and expertise in the matter. This would better ensure the fulfillment
of twin objects of transparency and merit.

The Court seems to be recommending an entrance test like Common Admission
Test (CAT) conducted by the IIMs for management admissions, which is
accepted as the criteria for admissions by over 80 institutions apart from the
IIMs. This works very well for management courses and could well be extended
to other domains.

Pai Foundation has held that minority unaided institutions can legitimately
claim unfettered fundamental right to choose the students to be allowed
admissions and the procedure therefore subject to its being fair, transparent
and non-exploitative. The same principle applies to non-minority unaided
institutions.

Fee Structure

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

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

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

S.B. Sinha, in his opinion in the judgment in the Islamic Academy Case defined what is ‘capitation’ and ‘profiteering’, quoting Black's Law Dictionary, Fifth edition as: "Taking advantage of unusual or exceptional circumstances to make excessive profits" and also said that reasonable surplus should ordinarily vary from 6 per cent to 15 per cent for utilization in expansion of the system and development of education.

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

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

**Regulation and Control by the State**

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

(a) to admit students;

(b) to set up a reasonable fee structure;

(c) to constitute a governing body;

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

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

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

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

The essential ingredients of the management, including admission of students, recruiting of staff and the quantum of fee to be charged, cannot be regulated. Apart from the generalized position of law that right to administer does not include right to mal-administer, an additional source of power to regulate by enacting condition accompanying affiliation or recognition exists. Balance has to be struck between the two objectives:

(i) that of ensuring the standard of excellence of the institution, and
(ii) that of preserving the right of the minority to establish and administer its educational institution.

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

1) the test of reasonableness and rationality,

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

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

**Role of Committees dealing with Admissions and Fees**

The two committees for monitoring admission procedure and determining fee structure in the judgment of Islamic Academy, are in our view, permissive as regulatory measures aimed at protecting the interest of the student community as a whole as also the minorities themselves, in maintaining required
standards of professional education on non-exploitative terms in their institutions. The suggestion made on behalf of minorities and non-minorities that the same purpose for which Committees have been set up can be achieved by post-audit or checks after the institutions have adopted their own admission procedure and fee structure, is unacceptable for the reasons shown by experience of the educational authorities of various States. Unless the admission procedure and fixation of fees is regulated and controlled at the initial stage, the evil of unfair practice of granting admission on available seats guided by the paying capacity of the candidates would be impossible to curb.

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

A fortiori, we do not see any impediment to the constitution of the Committees as a stopgap or adhoc arrangement made in exercise of the power conferred on this Court by Article 142 of the Constitution until a suitable legislation or regulation framed by the State steps in. Such Committees cannot be equated with Unni Krishnan Committees which were supposed to be permanent in nature.

However, we would like to sound a note of caution to such Committees. It was pointed out by citing concrete examples that some of the Committees have indulged in assuming such powers and performing such functions as were never given or intended to be given to them by Islamic Academy.

We expect the Committees, so long as they remain functional, to be more sensitive and to act rationally and reasonably with due regard for realities. They should refrain from generalizing fee structures and, where needed, should go into accounts, schemes, plans and budgets of an individual institution for the purpose of finding out what would be an ideal and reasonable fee structure for that institution.
We make it clear that in case of any individual institution, if any of the Committees is found to have exceeded its powers by unduly interfering in the administrative and financial matters of the unaided private professional institutions, the decision of the Committee being quasi-judicial in nature, would always be subject to judicial review.

6.19 Overview

Researcher studied the cases dealt by Supreme Court interpreting the rights of minority educational institutes. It has been observed that the Court in Sidhrajbhai’s Case\textsuperscript{196} held that the rights under Article 30(1) were absolute and regulations in the interest of the institution can be imposed. In the St. Stephan’s College case\textsuperscript{197} and there after the Court has held that the rights were not absolute and regulations in the interest of nation can also be imposed.

\textsuperscript{196} AIR 1963 SC 540
\textsuperscript{197} AIR 1992 SC1630