8.1 Introduction:

All Democratic States ensure Constitutional Protection for Minority Rights. They can, however, be enforced only by an independent judiciary, comprising judges with a broad, liberal outlook when politicians in the Executive and the Legislature trammel on the rights of minorities.

India is a party to the International Covenant on Civil and Political Rights. Article 27 of the Covenant explicitly recognizes the rights of “Ethnic, religious, or linguistic minorities”. India is bound to report on its enforcement of the Covenant to the United Nations Secretary-General and is answerable to the Human Rights Committee set up under it.

The United Nations General Assembly unanimously adopted on December 18, 1992, a Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.

International guarantees, though helpful, are not enough. It is the country’s ethos that matters. Judges reflect it. In 1958, the Chief Justice of India, S. R. Das, said in the re Kerala Education Bill case\textsuperscript{205}: “So long as the Constitution stands as it is and is not altered, it is, we conceive, the duty of this court to uphold the fundamental rights and thereby honour our sacred obligation to the minority communities who are of our own.”

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

\textsuperscript{205} AIR 1958 SC 956
If fundamental right is infringed the remedy is given under Article 32 and Article 226. A person can directly approach to Supreme Court under Article 32 and High Court under Article 226 in case of violation of his fundamental rights. So, the true spirit and intention of the Constitution is to provide a very formal and water tight arrangement for safeguarding the interest of minorities.

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

8.2. Effect of incorporation/ recognition on the Status of Minority Institutions.

Referring to the *Aligarh Muslim University case* decided in 1968, H.M. Seervai remarked that “This is the first case in which the Supreme Court has departed from the broad spirit in which it had decided cases on Cultural and Educational rights of minorities which was reflected in the words of Das C. J.” The “first case” was followed by not a few in which the court whittled down Article 30. In the Aligarh Muslim University’s case, it ruled, incredibly, that “The University was not established by Muslims”.

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

**Suggestion:** The incorporation of the University should not transform a Minority University into State University. The act of incorporation under University Grant

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206 AIR 1968 SC 662
208 *Azeez Basha v Union of India* [AIR 1968 SC 662]
Commission should be treated as procedural formalities and should have no bearing on the minority character of the institution. Without incorporation the University and without recognition the school will not be eligible to receive grants from the government and students passing out from them will not be eligible for entering the public services as the State will not recognize the examinations conducted by such institutions. The Act of incorporation being a governmental function, should not contravene any fundamental rights. The University Grant Commission may, frame rules imposing reasonable restrictions on the right to establish University. In this manner the Nation’s interested will also be safeguarded without destroying minority rights to Establish and Administer Educational Institutions.

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

Judges at times have based their decision on theories than on Law. In *Stephan’s Case*209 the court held that under Article 30(1), the Minority aided Educational institutions are entitled to prefer their community candidates to maintain the minority character of their institutions subject to, of course, in conformity with the University standards. The State may regulate the intake, with due regards to the need of the community in the area which the institute is intended to serve. But in no case shall exceed 50 percent of the annual admission to the members of the communities other then the minority community. The admission of other community candidates shall be done purely on the basis of merit.

The judgment of the Supreme Court is diametrically opposed to the right of Minorities to preserve their separate identity and consequently runs counter to minority rights. The Court has adopted pragmatic approach rather than Constitutional approach. Neither the Constitution nor the voluminous debate of the Constituent Assembly nor in any earlier decision there is any reference of

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209 AIR 1992 SC 1630
'Melting Pot theory'. *The melting pot theory* is not about *what the law says but what the Judges believe the law should have said.* Supreme Court itself has time and again observed that Judgments cannot be based on theories.

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

It has been more than 60 years, since the Constitution of India has come to being. By now the law regarding legal status of minority institutions under Article 30 need to be settled. Even today the Fundamental Rights provided to the minorities under the Constitution are not automatically available. Minorities have been forced to approach the courts to assert those rights. Journey through the landmark cases show different Judicial trends in interpretation of Article 30. At times judgments reflect personal convictions of the judges; this has led to constant struggle between minorities and the State. Further it has been observed that there if a trend in gradual reduction of scope of rights under Article 30 leading to more regulation by State.

**8.4. Minority Right to Establish and Administer Educational Institution**

In 1935, the Permanent Court of International Justice, in its Advisory opinion on ‘Minority school in Albania’ defining the essence of International Protection of Minorities system held:
'The idea underlying the treaties for the protection of minorities is to secure for certain elements incorporated in a State, the population of which differs from them in race, language or religion, the possibility of living peaceably alongside that population and co-operating amicably with it, while at the same time preserving the characteristics which distinguish them from majority, and satisfying the ensuing special needs'.210

According to the Court, the International Protection of Minorities System was primarily designed to attain two objectives: first, complete equality between nationals of the State belonging to racial, religious or linguistic minorities and other nationals (related to majority) and secondly, “to ensure for the minority elements suitable means for preservation of their racial peculiarities, their traditions and their national characteristics”. These two objectives, said the Court were closely interlocked, for there could be no true equality between the majority and a minority if the latter was deprived of the institutions enabling it to preserve its special characteristics.

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

(1) Is there any right to create educational institutes for minorities and if so under which provision?

210 Minority Schools in Albania (AB/64) 17 (1935)
(2) To what extent can the rights of aided private minority institutions to administer be regulated?

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

8.5. Minority’s right to Establish and Administer Educational Institution as fundamental right

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

8.5.1. Minorities have a Right to Establish –

The Supreme Court has pointed out in Ahmedabad St. Xavier’s College v State of Gujarat that the spirit behind article 30(1) is the conscience of the nation that the minorities, religious as well as linguistic, are not prohibited from

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AIR 1974 SC 1389
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.

There have been instances when Minority Community wanted to start a school in a certain locality but the State disallowed it. Such issue came up before the full bench of Kerala High Court in *Fr Mathew MC Vicar v State of Kerala*. Kerala Education Rules prescribe the procedures for determining the areas where new schools were to be opened. The Petitioner wanted to start an educational school in a particular area since it did not have a Catholic school but as per the rules no schools could be opened till the Director of Education gave a report indicating the areas where schools can be opened. The Petitioner claimed infringement of minority rights under Article 30 (1) and went to Court. Supporting the government decision the Court observed "Regulation of the right, in time as well as space, must, it appears be permissible".

A different approach was adopted by the Karnataka High Court in *Socio Legal Advancement Society vs. State of Karnataka* where a society founded for the benefit of the Malayali minority community has been denied the recognition of a Teachers Training Institute established by the Society. The State felt that allowing another institute would lead to unhealthy competition and bring about a dilution of the Teachers Training Programme. The Court held that a minority institute could not be stopped from establishing such an educational institution.

**8.5.2. Even a single member of minority community may establish an Educational Institution for the benefit of the community.**

In, *State of Kerala v Mother Provincial*, Supreme Court has clarified the position that a Society or Trust consisting of members of a minority

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212 AIR 1978 KER 227
213 AIR 1989 KAR 217
214 AIR 1970 SC 2079

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community, or even a single member of minority community, may establish an educational institution.

The Supreme Court observed, “Establishment means bringing into being of an institution and it must be by a minority community. It matters not if a single philanthropic individual with his own means, institution or the community at large 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 to this right that in addition to the minority community, others from other minority communities or even from the majority community can take advantage of these institutions.

8.5.3. Minorities right to Administer

The provision of Article 30(1) does not however mean that the State can impose no regulations on the minority institutions. In the Kerala Education Bill215, the Supreme Court has observed: “The right conferred on the religious and linguistic minorities to administer educational institutions of their choice is not an absolute right”. It has to be read with regulatory power of the State. Regulations which do not affect the substance of the guaranteed rights, but ensure the excellence of the institutions and its proper functioning in educational matters, are permissible.

Rights though protected by the Constitution have been a bone of contention since the commencement of the Constitution. The cases on Minority Rights, from the State of Madras v S. Srimati Champakam Dorairaj216 (1951) to P. A. Inamdar v State of Maharashtra217 (2005) the issues questioned are almost the same. The issues are regarding

   a. Government grants, Affiliation or Recognition

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215 AIR 1958 SC 956
216 (1959)1SCR995
217 AIR 1954 SC 561
(a) Government Grants, Affiliation or Recognition

At present, the situation is such that an educational institution cannot possibly hope to survive, and function without government grants, nor can it confer degrees without affiliation to a University. Although minorities establish and run their educational institutions with a view to educate their children in an atmosphere congenial to the conservation of their language or culture, yet that is not their only aim. They also desire that their students are well equipped for useful careers in life. The students of unrecognized institutions can neither get admission in institutions of higher learning nor can they enter public service. Therefore, without recognition, a minority run institution cannot fulfill its role effectively and the right conferred by Article 30(1) would be very much diluted. A meaningful or real exercise of the right under Article 30(1) must, therefore, mean the right to establish effective educational institutions which may sub serve the real needs of the minorities and the scholars who resort to them. This necessarily involves recognition or affiliation of minority institutions, for without this the institutions cannot play their role effectively and the right conferred on the minorities by Article 30(1) would be denuded of much of its efficacy. Article 30(2) debars the State from discriminating against minority institutions in the matter of giving grants. In Managing Board, M.T.M v. State of Bihar\(^2\)\(^{18}\), the Supreme Court has emphasized that the right to establish educational institutions of their choice must mean the right to establish real institutions which will effectively serve the needs of their

\(^{218}\) AIR 1984 SC 1757
community and the scholars who resort to them. Clarifying the position as regards the question of affiliation of, or grant to, minority institutions, the Court observed: “There is, no doubt, no such thing as Fundamental Right to recognition by the State but to deny recognition to the educational institutions except upon terms tantamount to the surrender of their Constitutional right of administration of the educational institutions of their choice is in truth and in effect to deprive them of their rights under Article 30(1). The legislative power is subject to the Fundamental Rights and the legislature cannot indirectly take away or abridge the Fundamental Rights which it could not do directly.”

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

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

The issue of recognition came up for discussion before the Supreme Court in Sidhrajbhai’s Case219. The State argued that recognition was not a fundamental right. The Court said this was true but "manifestly, in the absence of recognition by the government, teachers’ training in the college will have little practical utility”.

In All Saints High Schools Case220 the Supreme Court observed “Although Article 30 does not speak of the conditions under which minority educational institution can be affiliated to a College or University yet the Article by its very nature implies that when an affiliation is asked for, the University cannot be

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219 AIR 1963 SC 540
220 1980 2 SCC 478
refused without sufficient reason or try to impose such conditions as would completely destroy the autonomous administration of the institution”.

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

“Right of a Minority Educational Institution to seek affiliation. –
(1) A Minority Educational Institution may seek affiliation to any University of its choice subject to such affiliation being permissible within the Act under which the said University is established.
(2) Any person who is authorised in this behalf by the Minority Educational Institution, may file an application for affiliation under sub-section (1) to a University in the manner prescribed by the Statute, Ordinance, rules or regulations, of the University: Provided that such authorised person shall have right to know the status of such application after the expiry of sixty days from the date of filing of such application.”

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

In, Managing Board of the Milli Talimi Mission Bihar & ors. v State of Bihar & ors221 the Supreme Court has clearly recognized that running a minority institution is also as fundamental and important as other rights conferred on the citizens of the country. If the State Government declines to grant recognition or a University refuses to grant affiliation to a minority educational institution without just and sufficient grounds, the direct consequence would be to destroy the very existence of the institution itself. Thus, refusal to grant recognition or affiliation by the statutory authorities without just and sufficient

221 1984 (4) SCC 500,
grounds amounts to violation of the right guaranteed under Article 30(1) of the Constitution. The right of the minorities to establish educational institutions of their choice will be without any meaning if affiliation or recognition is denied.

It has been held by a Constitutional Bench of the Supreme Court in *St. Xavier’s College, Ahmedabad v State of Gujarat*\(^\text{222}\) that “Affiliation must be a real and meaningful exercise of right for minority institutions in the matter of imparting general secular education. Any law which provides for affiliation on terms which will involve abridgment 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 studying 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.”

It has been held in *T.M.A. Pai foundation Case v State of Karnataka*\(^\text{223}\) that affiliation and recognition has to be available to every institution that fulfils the conditions for grant of such affiliation and recognition. The right of the minorities to establish and administer educational institutions of their choice under Article 30(1) of the Constitution is subject to the regulatory power of the State for maintaining and facilitating the excellence of the standard of education. Reference may, in this connection be made to following observations of their lordships in the clarifying the Apex court verdict in T. M. A. Pai’s case, in judgment rendered by a Constitutional Bench of the Supreme Court in *P.A.*

\(^{222}\) 1974 (1) SCC 717

\(^{223}\) (2002) 8 SCC 481
Inamdar vs. State of Maharashtra224 “Affiliation or recognition by the State or the Board or the University competent to do so, cannot be denied solely on the ground that the institution is a minority educational institution. However, the urge or need for affiliation or recognition brings in the concept of regulation by way of laying down conditions consistent with the requirement of ensuring merit, excellence of education and preventing maladministration. 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 prerequisite 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 the right to administer does not include the right to mal administer an additional source of power to regulate by enacting conditions accompanying affiliation or recognition exists. A balance has to be struck between the two objectives:

i) To ensure the standard of excellence of the institution, and

ii) To preserving the right of the minority to establish and administer its educational Institution of their choice.

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

i) The test of reasonableness and rationality,

ii) 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

iii) The test that there is no inroad into the protection conferred by Article 30(1) of the Constitution, that is by framing the regulations the

224 (2005) 6 SCC 537
essential character of the institution being a minority educational institution, is not taken away.

A minority educational institution seeking recognition or affiliation must fulfill the statutory requirements concerning the academic excellence, the minimum qualifications of eligibility prescribed by the statutory authorities for Head Master, Principal, teachers, lecturers and the courses of studies and curriculum. It must have sufficient infrastructural and instructional facilities as well as financial resources for its growth. No condition should be imposed for grant of recognition or affiliation, which would, in truth and in effect, infringe the right guaranteed under Article 30(1) of the Constitution or impinge upon the minority character of the institution concerned. If an utter surrender of the right guaranteed under Article 30(1) is made a condition of recognition or affiliation, the denial of recognition or affiliation would be violative of Article 30(1).

(b) Conditions for Grants, Affiliation and Recognition

What conditions can be imposed on these institutions as a requisite to giving grants, or according affiliation or recognition to them? This has proved to be a complex and controversial problem. These conditions may be of two kinds. One type of conditions may relate to such matter as syllabi, curriculum, courses, minimum qualifications of teachers, their age of superannuation, library, conditions concerning sanitary, health and hygiene of students, etc. The underlying purpose of such conditions is to promote educational standards and uniformity and help the institutions concerned achieve efficiency and excellence and are imposed not only in the interest of general secular education but also are necessary to maintain the educational character and content of minority institutions. Such conditions cannot be regarded as violative of Article 30(1) and therefore, it is mandatory to be followed by all educational institutions. A right to administer cannot be a right to mal administer. The matter has been succinctly explained by the Supreme Court in re Kerala
Education Bill:225: “The right to administer cannot obviously include the right to mal administer. 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.... Reasonable regulations may certainly be imposed by the state as a condition for aid or even for recognition.”

c) Composition of Managing Bodies

Minority Institutions have the right to choose its governing body in which the founders of the institution have faith and confidence to conduct and manage the affairs of the institution. The freedom to choose the persons to be nominated as members of the governing body has always been recognized as a vital facet of the right to administer the educational institution. Any rule which takes away this right of the management has been held to be interfering with the right guaranteed by Article 30(1) of the Constitution. The management can induct eminent or competent persons from other communities in the managing Committees or Governing Bodies. The management can induct a sprinkling of non-minority members in the managing Committees or Governing Bodies. By inducting a non-minority member into the Managing Committee or Governing Body of the minority educational institution does not shed its character and cease to be a minority institution. The minority character of a minority educational institution is not impaired so long as the Constitution of the Managing Committee or Governing Body provides for an effective majority to the members of the minority community.

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225 AIR 1958 SC 956
The State Government or Statutory authorities cannot induct their nominees in the Managing Committee or Governing Body of a minority educational institution. The introduction of an outside authority, however high it may be, either directly or through its nominees in the Managing Committee or Governing Body of the minority educational institution to conduct the affairs of the institution would be completely destructive of the fundamental right guaranteed by Article 30(1) of the Constitution and would reduce the management to a helpless entity having no real say in the matter and thus destroy the very personality and individuality of the institution which is fully protected by Article 30 of the Constitution.

In the composition of the managing bodies Supreme Court has invariably invalidated provisions seeking to regulate the composition and personnel of the managing bodies of minority institutions. A provision interfering with the minorities’ choice of managing body for an institution has been held to violate Article 30(1). The Gujarat University Act provided that the governing body of every college must include amongst its members a representative of the University nominated by the Vice-Chancellor, representatives of teaching and non-teaching staff and of the college students. In, *St. Xavier’s College Case*, the Supreme Court declared the provision as non-applicable to minority institutions because it displaced the management and entrusted it to a different agency; autonomy in administration was lost and new elements in the shape of representatives of different types were brought in. The court emphasized that while the University could take steps to cure maladministration in a college, the choice of personnel of management was a part of administration which could not be interfered with.

**d) Appointment of Teachers**

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226 AIR 1974 SC 1389
Minority Educational Institution has right to appoint teaching staff and also non-teaching staff; and to take action if there is dereliction of duty on the part of any of its employees.

Autonomy in administration means right to administer effectively and to manage and conduct the affairs of the institution. The State or any University or Statutory authority cannot under the cover or garb of adopting regulatory measures destroy the administrative autonomy of a minority educational institution or start interfering with the administration of the management of the institution so as to render the right of the administration of the institution concerned nugatory or illusory. The State Government or a University cannot regulate the method or procedure for appointment of Teachers, Lecturers, Headmasters, and Principals of a minority educational institution. Once a Teacher, Lecturer, Headmaster, Principal possessing the requisite qualifications prescribed by the State or the University has been selected by the management of the minority educational institution by adopting any rational procedure of selection, the State Government or the University would have no right to veto the selection of those teachers etc.

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

Composition of the Selection Committee for appointment of teaching staff of a minority educational institution should not be such as would reduce the management to a helpless entity having no real say in the matter of selection and appointment of staff and thus destroy the very personality and individuality of the institution which is fully protected by Article 30(1) of the Constitution.

The importance of the right to appoint Teachers, Lecturers, Head Masters, Principals of their choice by the minorities, as an important part of their
fundamental right under Article 30 was highlighted in *St. Xavier’ case*\(^{227}\) thus: “It is upon the principal and teachers of a college that the tone and temper of an educational institution depend. On them would depend its reputation, the maintenance of discipline and its efficiency in teaching. The right to choose the principal and to have the teaching conducted by teachers appointed by the management after an overall assessment of their outlook and philosophy is perhaps the most important facet of the right to administer an educational institution. So long as the persons chosen have the qualifications prescribed by the University, the choice must be left to the management. That is part of the fundamental right of the minorities to administer the educational institution established by them.”

The aforesaid proposition of law enunciated in *St. Xavier* has been approved by the Supreme Court in *T.M.A. Pai Foundation’s Case*. The State has the power to regulate the affairs of the minority educational institution also in the interest of discipline and academic excellence. But in that process the aforesaid right of the management cannot be taken away even if the Government is giving hundred percent grants. The fact that the post of the Teacher, Headmaster, Principal is also covered by the State aid will make no difference. It has been held by the Supreme Court in *Secretary, Malankara Syrian Catholic College v T. Jose*\(^{228}\) that even if the institution is aided, there can be no interference with the said right. Subject to the eligibility conditions, qualifications prescribed by the State or Regulating Authority being met, the minority educational institution will have the freedom to appoint Teachers, Lecturers, Headmasters, Principals by adopting any rational procedure of selection. The imposing of any trammel thereon except to the extent of prescribing the requisite qualifications and experience or otherwise fostering the interests of the institution itself cannot but be considered as a violation of the right guaranteed under Article 30(1) of the Constitution.

\(^{227}\) AIR 1974 SC 1389  
\(^{228}\) 2007 AIR SCW 132
In *A.M. Patroli v E.C. Kesavan*\(^{229}\) it was held that, a rule requiring that the senior most teacher must be promoted to the Head Master’s post cannot be binding on minority schools.

Minority institutions cannot be required to obtain prior approval of the Government or University for appointment of the staff.

**e) Disciplinary Action against the Staff and Salary of Teachers**

A significant facet of the administration of an educational institution is the maintenance of discipline among the members of its staff and to decide over the salary of the teaching staff. The right of the minority institution to take disciplinary action against the teachers and decide salary of teaching staff is a very vital aspect of the management’s fundamental Right to administer the institution. Any rule taking away or interfering with this right cannot be regarded as compatible with article 30(1). Thus, while fair procedural safeguards may be laid down for the purpose, the final power to take disciplinary action and deciding the teaching staff must vest in the management of the institution and be not subjected to the control or veto of any outside body.

The State Government or the University is not empowered to require a minority educational institution to seek its approval in the matter of selection and appointment or initiation of disciplinary action against any member of its teaching or non-teaching staff. The role of the State Government or the University is limited to the extent of ensuring that teachers, lecturers, Headmasters, Principals selected by management of a minority educational institution fulfill the requisite qualifications of eligibility prescribed there for. In, *Lily Kurian v Sr. Lewina*\(^{230}\), a provision enabling an aggrieved member of the staff of a college to make an appeal to the Vice-Chancellor against an order of

\(^{229}\) AIR 1965 Ker 75
\(^{230}\) (1979) 2 SC 124
suspension and other penalties was held to be violative of Article 30(1). Again in *All Saints High School, Hyderabad vs. State of Andhra Pradesh*\(^{231}\), a provision contained in Andhra Pradesh Private Educational institution Control Act, 1995 requiring prior approval of the competent authority of all orders of dismissal, removal or reduction in rank passed against a teacher by management of the college was held to be inapplicable to a minority institution. In *Brahmo Samaj Education Society vs. State of West Bengal*\(^{232}\) the Supreme Court has held that “the State Government shall take note of the declarations of law made by this Court in this regard and make suitable amendments to their laws, rules and regulations to bring them in conformity with the principles set out therein.

It has been brought to the notice of the National Minority Commission that by the memorandum no. 3-1/78/CP dated 12.10.1981, the University Grants Commission has directed all Universities that while framing their statutes, ordinances, regulations, they should ensure that these do not infringe with Article 30(1) of the Constitution relating to administration of minority educational institutions.

(f) Admission of Students and Fee structure

In the *St. Stephen’s College v. University of Delhi*\(^{233}\), the Court ruled out that college was established and administered by a minority community, viz., the Christian community which is indisputably a religious minority in India as well as in the union territory of Delhi where the college is located and hence enjoys the status of a minority institution. On the question of admission of students of the concerned minority community, the Court has ruled that, according to Article 30(1), the minorities whether based on religion or language have the right “to establish and administer” educational institutions of their choice and

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\(^{231}\) 1980 (2) SCC 478

\(^{232}\) (2004) 6 SCC 224

\(^{233}\) AIR 1992 SC 83
the right to select students for admission is a part of administration. On this point, the Court has observed: “It is indeed an important facet of administration. This power also could be regulated but the regulation must be reasonable just like any other regulation. It should be conducive to the welfare of the minority institution or for the betterment of those who resort to it.”

Policy for Reservation in Minority Educational Institutions
The policy of reservation can neither be enforced by the State nor any quota or percentage of admissions can be carved out to be appropriated by the State in a minority educational institution. Minority institutions are free to admit students of their own choice including students of non minority community as also members of their own community from other States, both to a limited extent only and not in a manner and to such an extent that their minority educational institution status is lost. If they do so, they lose the protection of Article 30(1).”

In the case of P.A. Inamdar234 one of the questions framed for being answered was whether private unaided professional colleges are entitled to admit students by evolving their own matter of admission procedure. While answering the question their Lordships have observed as under: - “So far as the minority unaided institutions are concerned to admit students being one of the components of “the right to establish and administer an institution”, the State cannot interfere therewith. Up to the level of undergraduate education, the minority unaided educational institutions enjoy total freedom.”

However, different considerations would apply for graduate and postgraduate level of education, as also for technical and professional educational institutions. Such education cannot be imparted by any institution unless recognised 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 fulfil these objectives, the State can and rather must, in national interest, step in.

234 (2005) 6 SCC 537
The education, knowledge and learning at this level possessed by individuals collectively constitute national wealth.

_T.M.A. Pai Foundation Case_235 has already held that the minority status of educational institutions is to be determined by treating the States as units. Students of that community residing in other States where they are not in minority, shall not be considered to be minority in that particular State and hence their admission would be at par with other non-minority students of that State. Such admissions will be only to a limited extent that is like a “sprinkling” of such admissions, the term used is borrowed from Kerala Education Bill, 1957. In minority educational institutions, aided or unaided, admissions shall be at the State level. Transparency and merit shall have to be assured.

Article 15(5) of the Constitution of India exempts an educational institution covered under Article 30(1) from the policy of reservation in admission. That being so, provisions of the Central Educational Institutions (Reservation in Admission) Act, 2006 cannot be made applicable to an educational institution covered under Article 30(1). Moreover, _P.A. Inamdar_236 is an authority on proposition of law that neither can the policy of reservation be enforced by the State nor can any quota or percentage of admission be carved out to be appropriated by the State in a minority educational institution. The State cannot regulate or control admissions in minority educational institutions so as to compel them to give up a share of the available seats to candidates chosen by the State. This would amount to nationalization of seats which has been specifically disapproved in T.M.A. Pai. Such imposition of quota of State seats or enforcing reservation policy of the State on available seats in minority educational institutions are acts constituting a serious encroachment on the right enshrined in Article 30(1). Such appropriation of seats can also not be held to be a regulatory measure or a reasonable restriction within the meaning of Article 30(1) of the Constitution.

235 (2002) 8 SCC 481
236 (2005) 6 SCC 537
Students from adjoining States can be admitted but to the reasonable extent

In *T M A Pai v State of Karnataka*\(^{237}\) the court held that, ‘The Management can admit students from the adjoining States but the management of a minority institution cannot resort to the device of admitting the minority students of the adjoining state in which they are in majority to preserve minority status of the institution’.

The Supreme Court in *P. A. Inamdar Vs. State of Maharashtra*\(^{238}\) held that the minority institutions are free to admit students of their choice including students of non-minority community and also members of their own community from other State. But admission of non minority students and their own community from other State should be to a reasonable extent only, otherwise the minority educational institution will lose the protection under Article 30(1). The 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 State Government to prescribe percentage governing admission in Minority Educational Institutions:

As regards the prescription of a percentage governing admissions in a minority educational institution, it would be useful to excerpt the following observations of their lordships of the Supreme Court in *T.M.A. Pai foundation Case v State of Karnataka*\(^{239}\), “.......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 the 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

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\(^{237}\) (2002) 8 SCC 481  
\(^{238}\) (2005) 6 SCC 537  
\(^{239}\) (2002) 8 SCC 481
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.”

The State Government can prescribe percentage of the minority community to be admitted in a minority educational institution taking into account the population and educational needs of the area in which the institution is located. There cannot be a common rule or regulation or order in respect of types of educational institutions from primary to college level and for the entire State fixing the uniform ceiling in the matter of admission of students in minority educational institutions. Thus a balance has to be kept between two objectives – preserving the right of the minorities to admit students of their own community and that of admitting “sprinkling of outsiders” in their institutions subject to the condition that the manner and number of such admissions should not be violative of the minority character of the institution. It is significant to mention here that Section 12C (b) of the National Commission for Minority Educational Institution Act, 2004 also empowers the State Government to prescribe percentage governing admissions in a minority educational institution. Thus the State Government has to prescribe percentage governing admissions of students in the minority educational institutions in accordance with the aforesaid principles of law enunciated by their lordships of the Supreme Court in the cases of T.M.A. Pai Foundation’s case and P.A. Inamdar ‘s Case.

Admission to NRI students

The management can admit Non-Resident Indian students in minority educational institution. A limited reservation of such seats not exceeding 15% may be made available to NRIs depending on the discretion of the management subject to two conditions. First, such seats should be utilized bonafide by NRIs
only and for their children or wards. Secondly, within this quota, merit should not be given a complete go-by.

There is also the question of fees chargeable by the unaided minority institutions from its students. It is clear that an unaided minority institution do charge high fees. The reason is that unaided institutions have to meet the cost of imparting education from their own resources and the main source can only be the fees collected from the students. But these institutions cannot be permitted to indulge in commercialization of education. Therefore, it would not be unconstitutional for the government to issue an order which places a restriction on the amount of fee chargeable by an institution, if, on facts, the minority institutions indulge in commercialization of education and maladministration of the educational institutions. This was held in T.M.A. Pai Foundation & others v. State of Karnataka240.

Minority Institutions free to device their own fee structure

Among the law declared in the case of T.M.A. Pai Foundation 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. Reference may, in this connection be also made to the following observations of their Lordships in the case of P.A. Inamdar241

“The two Committees for monitoring admission procedure and determining fee structure in the judgment of Islamic Academy are in our view, permissible 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. Legal provisions made by the State Legislatures or the scheme evolved by the Court for monitoring admission procedure and fee fixation do not violate the right of minorities under Article 30(1) or the right of minorities

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240 (2002) 8 SCC 481
241 (2005) 6 SCC 537
and non-minorities under Article 19(1)(g). They are reasonable restrictions in the interest of minority institutions permissible under Article 30(1) and in the interest of general public under Article 19(6) of the Constitution.”

(g) **Medium of Instruction**

The right of a minority to establish and administer educational institutions of its choice also carries with it the right to impart instruction to its children in its own language. The result of reading Article 29(1) and 30(1) together is that the minority has the choice of medium of instruction and the power of the state to determine the medium of instruction has, therefore, to yield ground, to the extent it is necessary to give effect to this minority right. The most significant case on this point is the *D.A.V College, Bhatinada v. State of Punjab*[^242]. By a notification, the Punjab Government compulsorily affiliated certain colleges to the Punjab University which prescribed Punjabi in the Gurumukhi script as the sole and exclusive medium of instruction and examination for certain courses. The Supreme Court declared that it violated the right of the Arya Samajists to use their own script in the colleges run by them and compulsorily affiliated to the University.

A particular State can validly take a policy decision to compulsorily teach its regional language[^243]. The State Government takes the policy decision keeping in view the larger interest of the State, because the official and common businesses are carried on in that State in the regional language. A proper understanding of the regional language is necessary for easily carrying out the day to day affairs of the people living in that particular State and also for proper carrying out of daily administration. The learning of the regional language of the State would bridge the cultural barriers and will positively contribute for national integration. Hence a regulation imposed by the State upon the religious and linguistic minorities to teach its regional language is a

[^242]: AIR 1971 SC 1731
[^243]: English Medium Students Parent Association v State of Karnataka (1994) 1 SCC 550
reasonable one, which is conducive to the needs and larger interest of the State and it does not in any manner interfere with the right under Article 30(1) of the Constitution. The imposition of official language of a State as the sole medium of instruction cannot be said to be in the interest of general public and has no nexus to public interest. The medium of instruction is one aspect of freedom of speech and expression guaranteed under Article 19 of the Constitution and the State cannot enact a law or frame a rule commanding that a student should express himself in a particular regional language. In view of the clear mandate of Article 13 of the Constitution, the State cannot enact any law or frame a regulation to make the said fundamental right a mere illusion. Moreover, Article 30(1) of the Constitution gives vast discretion and option to the minorities in selecting the type of the institution which they want to establish. The said type of institution includes the type of medium of instruction in which they want to impart education. The question whether the right to choose medium of instruction is a fundamental right and the religious or linguistic minority has a right to choose medium of instruction of their choice has been clinched down by the Supreme Court in T.M.A. Pai’s case. The Supreme Court has declared that the right to establish and administer educational institutions of their choice under Article 30(1) read with Article 29(1) would include the right to have choice of medium of instruction in imparting education. The medium of instruction is entirely choice of the management of the minority institution.

In Associated Managements of (Government Recognised Unaided English Medium) Primary and Secondary Schools in Karnataka (KAMS) vs. State of Karnataka & Ors244 a Full Bench of the Karnataka High Court has declared that the right to choose medium of instruction of their choice is a fundamental right guaranteed under Articles 19(1) (a) (g), 21, 26, 29(1) and 30(1) of the Constitution. The Full Bench has also held that

244 2008 K. L. J. 1
“(i) it is a fundamental right of the parent and child to choose the medium of instruction even in primary school. The police power of the State to determine the medium of instruction must yield to the fundamental right of the parent and the child and that
(ii) the Government policy compelling children studying in Government recognised schools to have primary education in the mother tongue or the regional language is violative of Articles 19(1) (g), 26 and 30 (1) of the Constitution.

8.6. Are the rights under Article 30 (1) absolute?

The Supreme Court has repeatedly held that Article 30 is subject to regulatory measures. In the re Kerala Education Bill\textsuperscript{245} the Supreme Court said, "The right to administer cannot obviously include the right to mal administer".

In Sidhrajbhai’s Case\textsuperscript{246} the Court laid down a very important proposition. It observed that, though the State has a right to impose regulatory measures, this right has to be exercised in the interest of the institution and not on the grounds of public interest or national interest. "If every regulatory order which while maintaining the formal character of a minority institution destroys the power of administration is held justifiable because it is in national or public interest, though not in its interest as an educational institution the right guaranteed under Article 30 (1) will be but a teasing illusion, a promise of unreality. Regulations must be towards making it effective as an educational institution".

In the State of Kerala v Rev Mother Provincial\textsuperscript{247} the Supreme Court said "The Right of the State to regulate education, educational standards and allied matters cannot be denied".

\textsuperscript{245} AIR 1958 SC 956
\textsuperscript{246} AIR 1963 SC 540
\textsuperscript{247} AIR 1970 SC 2079
In the case of *Nanda Ghosh v Guru Nanak Education Trust*\(^{248}\), the Calcutta High Court held that the Education Board cannot interfere with the management of a minority institution by super ceding its managing committee and appointing an administrator to take charge of the school and administer it.

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

**8.7. Does an institution lose the advantages of Article 30 (1) if non-minority students are admitted to it?**

The Courts have held that this is not the case. In *re Kerala Education Bill Case*\(^{249}\) the Supreme Court observed: 'The real import of Article 29 (2) and Article 30 (1) seems to us that they clearly contemplate a minority institution with a sprinkling of outsiders admitted into it'. Minority Institution does not lose its minority character and cease to be a minority institution by admitting a member of non minority into the minority institution.

In case of *State of Kerala v Rev. Mother Provincial*\(^{250}\), the Supreme Court observed: “The first right is the initial right to establish institutions of the minority's choice. Establishment means bringing into being of an institution and it must be by a minority community. It is equally irrelevant that in addition to the minority community others take advantage of these institutions. Such other communities bring in income and they do not have to be turned away to enjoy protection”.

In *St Stephen's College Case*\(^{251}\) it was held that, “The minority institutions shall make available at least 50 % of the annual admission to members of

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\(^{248}\) AIR 1984 CAL 40  
\(^{249}\) AIR 1958 SC 956  
\(^{250}\) AIR 1970 SC 2079  
\(^{251}\) AIR 1992 SC 1630
communities other than the minority community. The admission of other community candidates shall be done purely on the basis of merit”

**Analysis:** Thus the Minority institution does not lose the benefit under Article 30 even if non-minority students are admitted to it.


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

**8.9. State as unit to determine Minority Status**

It has been held by the Eleven Judges Bench of the Supreme Court in *T.M.A. Pai Foundation vs. State of Karnataka*[^252] that a minority, whether linguistic or religious, is determinable only by reference to demography of the State and not by taking into consideration the population of the country as a whole. It ruled that as the reorganization of the States in India had been effected on linguistic lines, for the purpose of determining a minority, the unit would be the State and not the whole of India. Thus, religious and linguistic minorities, who have been placed on par in Article 30, have to be considered in terms of the State concerned. Not surprisingly, this issue surfaced again in *Bal Patil and another v Union of India and others*[^253] and in *Anjuman Madarsa Noorul Islam, Dehra Kalan, Ghazipur v State of Uttar Pradesh*[^254] where the judgment is delivered by Justice S. N. Srivastava (2007); these two judgments have further complicated the question of definition of minorities, as both these judgments relate, for the most part, to definitional issues. Bal Patil questioned the identity of Jains as a

[^252]: (2002) 8 SCC 481
[^253]: AIR 2005 SC 3172
[^254]: Writ petition No 34892 of 2004 decided on 5.4.2007 by single bench of Allahabad High Court.
religious minority while Srivastava J ruled that Muslims, by virtue of their numbers, cannot be considered a minority in Uttar Pradesh.

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

**Suggestion** A more meaningful conception of minority status would include sections of people who, on account of their non-dominant position in the country as a whole (not a specific State), and because of their religion, language, caste or gender, are targets of discrimination and therefore deserving of special

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255 D.A.V. College v State of Punjab AIR 1971 SC 1731
consideration to be considered as minority and Minority communities to be notified at the central level.

8.10. Granting of Minority Status Certificate

As regards the indicia to be prescribed for grant of minority status certificate, a reference to Section 2(g) of The National Commission for Minority Educational Institutions Act of 2004 has become inevitable as it defines a Minority Educational Institution under Section 2 (g) as under: -

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

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

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

(i) that the educational institution was established by a member/ members of the religious minority community;
(ii) that the educational institution was established for the benefit of the minority community; and
(iii) that the educational institution is being administered by the minority community.

The aforesaid facts may be proved either by direct or circumstantial evidence. There must be some positive index to enable the educational institution to be identified with religious minorities. There should be nexus between the means employed and the ends desired. If the minority educational institution concerned is being run by a trust or a registered society, then majority of the trustees of the trust or members of the society, as the case may be, must be from the minority community and the trust deed and Articles of Association or any other document duly executed in this regard must reflect the objective of sub-serving the interest of the minority community. In the absence of any documentary evidence some clear or cogent evidence must be produced to prove the aforesaid facts. In, *S. K. Patro v State of Bihar*, 256 The Court held that there is no bar to the members of other communities to extend their help to the member of a minority community to establish an educational institution of its choice.

In, *N. Ammad v Emjay High School*, 257 the Court held that, ‘A minority educational institution continues to be so whether the Government declares it as such or not. When the Government declares an educational institution as a minority institution, it merely recognizes a factual position that the institution was established and is being administered by a minority community. The declaration is merely an open acceptance of the legal character of the institution which must necessarily have existed antecedent to such declaration.’

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256 AIR 1970 SC 259
257 (1998) 6 SCC 674
State Government not to review earlier order conferring Minority Status on a Minority Educational Institution

As it has been held by the Madras High Court in *T.K.V.T.S.S. Medical Educational & Charitable Trust v State of Tamil Nadu*\(^ {258}\) that a Minority Status cannot be conferred on a Minority Educational Institution for particular period to be renewed periodically like a driving license. It is not open for the State Government to review its earlier order conferring minority status on a minority educational institution unless it is shown that the institution concerned has suppressed any material fact while passing the order of conferral of minority status or there is fundamental change of circumstances warranting cancellation of the earlier order. Reference may, in this connection, be made to the following observations of their lordships: - “…………….In conclusion, we hold that if any entity is once declared as minority entitling to the rights envisaged under Article 30(1) of the Constitution of India, unless there is fundamental change of circumstances or suppression of facts the Government has no power to take away that cherished constitutional right which is a fundamental right and that too, by an ordinary letter without being preceded by a fair hearing in conformity with the principles of natural justice.”

It is now well settled that any administrative order involving civil consequences has to be passed strictly in conformity with the principles of natural justice.\(^ {259}\)

If any order relating to cancellation of minority status granted to a minority educational institution has been passed without affording an opportunity of being heard to such educational institution, it gets vitiated. If a minority status certificate has been obtained by practicing fraud or if there is any suppression of any material fact or any fundamental change of circumstances warranting cancellation of the earlier order, the authority concerned would be within its powers to cancel the minority status certificate after affording an opportunity of being heard to the management of the institution concerned, in conformity with

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\(^ {258}\) AIR 2002 Madras 42

\(^ {259}\) *Mohinder Singh Gill v The Chief Election Commissioner* [AIR 1978 SC 851]
the principles of natural justice. It is also relevant to note that the minority status certificate granted by this Commission or by any authority can be cancelled under Section 12C of the Act on violation of any of the conditions enumerated therein.

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

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

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

The parliamentary paramount has been provided for by Articles 246 and 254 of the Constitution. In view of the mandate of these Articles of the Constitution, the National Commission for Minority Educational Institutions Act, 2004, being a Central law shall prevail over the State law. The State Government cannot add, alter or amend any provision of the Act by issuing executive instructions260.

8.11. Establish and administer to be read conjunctively

In Section 2(g), of National Commission of Minority Educational Institutions Act, (2010 amendment) “Minority Educational Institution” is defined as a college or an educational institution established and administered by minority or minorities.

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

In *Azeez Basha vs. Union of India*\textsuperscript{261} a Constitutional Bench of the Supreme Court has held that the expression “establish and administer” used in Article 30(1) was to be read conjunctively that is to say, two requirements have to be fulfilled under Article 30(1), namely, that the institution was established by the community and its administration was vested in the community. The Court held that Aligarh University was established not only by the Muslims but by the Government of India by virtue of a Statute and therefore is not a Minority Educational Institution. In *S.P. Mittal v Union of India*\textsuperscript{262}, the Supreme Court has held that in order to claim the benefit of article 30(1), the community must show; (a) that it is a religious or linguistic minority, (b) that the institution was established by it. Without specifying these two conditions it cannot claim the guaranteed rights to administer it. Thus the word ‘and’ occurring in the definition of minority educational institution in Section 2(g) of the National Commission for Minority Educational Institutions Act, 2004 has to be read conjunctively as the context showed that it was the intention of the legislature. In *St. Stephen’s College vs. University of Delhi*\textsuperscript{263}, the Supreme Court has declared the St. Stephen’s College as a minority educational institution on the ground that it was established and administered by members of the Christian

\textsuperscript{261} AIR 1968 SC 662,  
\textsuperscript{262} AIR 1983 SC 1  
\textsuperscript{263} (1992) SCC 558
Community. Thus, these were the indicia laid down by the Supreme Court for determining the status of a minority educational institution and they have also been incorporated in Section 2(g) of the National Commission of Minority Educational Institutional Act, 2004. Article 30(1) of the Constitution postulates that members of religious or linguistic minority have the right to establish and administer educational institutions of their choice. It is a matter of proof through production of satisfactory evidence that the institution in question was established by the minority community claiming to administer it. The proof of the fact of the establishment of the institution is a condition precedent for claiming the right to administer the institution. The onus lies on one who asserts that an institution is a minority institution. It has been held by a Division Bench of the Madras High Court in *T.K.V.T.S.S. Medical Educational and Charitable Trust vs. State of Tamil Nadu*\(^{264}\) that “once it is established that the institution has been established by a linguistic minority, and is administered by that minority, that would be sufficient for claiming the fundamental right guaranteed under Article 30(1) of the Constitution.” The same principle applies to religious minority also.

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

\(^{264}\) AIR 2002 Madras 42
**Suggestion:** If the Educational Institution is managed by the minority Community and is effectively contributing for the growth and development of minority community than taking into consideration the present factual situation the institution can be considered as minority Educational Institution.

**8.12. Government, the University and the Court can investigate and satisfy themselves, whether the claim of the institute is well founded**

In *Andhra Pradesh Christian Medical Association vs. Government of Andhra Pradesh*\(^\text{265}\), the Supreme Court has held that the Government, the University and ultimately the Court can go behind the claim that the institution in question is a minority institution and “to investigate and satisfy itself whether the claim is well founded or ill founded.”

The Supreme Court has also held that “What is important and what is imperative is that there must be some real positive index to enable the institution to be identified as an educational institution of the minorities.” Needless to add here that the right enshrined in Article 30(1) of the Constitution is meant to benefit the minority by protecting and promoting its interests. There should be a nexus between the institution and the particular minority to which it claims to belong. The right claimed by a minority community to administer the educational institutions depends upon the proof of establishment of the institution.

**8.13. Minority has vast discretion and option in deciding the type of institute which they want to establish:**

It has to be borne in mind the right guaranteed under Article 30(1) is a right not conferred on individuals but on religious denomination or section of such

\(^{265}\) AIR 1986 SC 1490
denomination. It is also universally recognized that it is the parental right to have education of their children in the educational institutions of their choice. It has been held by a Full Bench of the Karnataka High Court in *Associated Managements of Primary and Secondary Schools in Karnataka v State of Karnataka and Ors.*\(^{266}\) that the words of “their choice” which qualify “Educational institutions” shows the vast discretion and option which minorities have in selecting the type of the institution which they want to establish.”

An educational institution is established to serve or advance the purpose for its establishment. Whereas the minorities have the right to establish and administer educational institutions of their choice with the desire that their children should be brought up properly and be eligible for higher education and go all over the world fully equipped with such intellectual attainments as it will make them fit for entering the public service, surely then there must be implicit in such a fundamental right the corresponding duty to cater to the needs of the children of their own community. The beneficiary of such a fundamental right should be allowed to enjoy it in the fullest measure. Therefore, the educational institutions of their choice will necessarily cater to the needs of the minority community which had established the institution.

**8.14. Minority Educational Institutes primarily for the benefit of Minorities.**

It was emphasized in the *P.A. Inamdar case*\(^{267}\), that the minority educational institution is primarily for the benefit of minority. Sprinkling of the non-minority students in the student population of minority educational institution is expected to be only peripheral either for generating additional financial

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266 2008 K.L.J 1 (Full Bench)
267 (2005) 6 SCC 537
source or for cultural courtesy. Thus, a substantive section of student population in minority educational institution should belong to the minority.

8.15. In a Nut Shell: Right to Establish and Administer Educational Institutions

A stream of Supreme Court decisions commencing with the Kerala Education Bill case and climaxed by the Eleven Judges Bench case in T.M.A. Pai Foundation has settled the law for the present. The proposition of law enunciated in T.M.A. Pai Foundation is reiterated in the clarificatory judgment rendered by another Constitutional Bench of the Supreme Court in P.A. Inamdar vs. State of Maharashtra.\textsuperscript{268} The general principles relating to establishment and administration of educational institution by minorities may be summarized thus:

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

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

The regulations must satisfy a dual test—that it is regulative of the educational character of the institution and is conducive to making the institution an effective vehicle of education for the minority community or other persons who

\textsuperscript{268} 2005 (6) SCC 537
resort to it. Regulations that embraced and reconciled the two objectives could be considered reasonable.

(iii) All laws made by the State to regulate the administration of educational institutions, and grant-in-aid, will apply to minority educational institutions also. But if any such law or regulations interfere with the overall administrative control by the management over the staff, or abridges in any other manner, the right to establish and administer educational institutions, such law or regulations, to that extent, would be inapplicable to minority institutions.

(iv) The general laws of the land relating to national interest, national security, social welfare, public order, morality, health, sanitation, taxation etc. applicable to all, will equally apply to minority educational institutions also.

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

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

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

8.16. Ensuring Minority Status: A futuristic Approach

Having the futuristic approach the researcher would like to devote the last few pages in discussing: How Minority Educational Institutions can ensure their legal status?

1. Problem of Implementation

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

Minorities have limited access to economic resources. Enormous funds are required to establish and administer an educational institute. The cost of establishing an institute of Higher Education is much more. After T.M. A. Pai’s case\textsuperscript{269} the competition has become much more stringent as the unaided non minority institutions are armoured with a new found fundamental rights under Articles 19(1) (g) and 26(a). Minorities have been approaching the High Courts and Supreme Courts to get their rights implemented and in the process spending their depleting resources on litigations.

\textit{Suggestion: Minority institutions should adopt ways and means to avoid litigation as far as possible.}

2. Legal Awareness:

\textsuperscript{269} (2002) 8 SCC 481
Minorities are not aware of their rights and there have been plethora of cases decided by various High Courts and Supreme Court delimiting Minorities rights. It is very difficult for the minorities to keep track of all the judicial pronouncements and the enacted laws. Since law is knowable, minorities should make a deliberate effort to know the extent of their rights and the limits of governmental restrictions. As before going in for major surgery, a prudent man will always go in for second opinion, similarly before going in for litigation minorities should make an effort to find out the available legal remedies. If the Governing body members of minority institutions are aware of the extent of their rights many problems will be solved without approaching the courts. If the members keep themselves well equipped with the relevant regulations and rulings of the High Courts and Supreme Court they would be in position to administer their institutions effectively. A well aware management need to sensitize Staff, Teacher, Students, and Parents about their minority rights and explain its importance.

Suggestion: Members of Managing Committee need to be legally aware about their legal rights and limitations. This will not only help them to run the educational institution effectively but will help nipping the problems in the bud.

3. Transparency and Accountability

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

*Suggestion:* Transparency in all dealing will be backed with community support and effective functioning.

4. **To be just and fair in all dealings**

Justice should not only be done but it should be appeared to be done. In the present era of ‘hire and fire’ there have been many staff disciplinary matters in the court. The strict compliance with the principles of natural justice would prevent lots of litigations. Person should be given a right to hearing before detrimental consequences. Alternate dispute resolution mechanism such as arbitration, conciliation and mediation should be widely used in minority institutions.

*Suggestions:* Following rules of natural justice will instill confidence in the management and there would be less chances of unrest.

5. **Service to nation**

Liberalization and open economic policies will provide minorities ample opportunities of establishing unaided, self financing, and autonomous educational institutes. Minorities can grab this opportunity for establishing institutes of excellence even with foreign collaboration. Despite of regulations and restrictions minorities should make all endeavours to establish aided educational institutes. Such aided institutes will facilitate in reaching out to members of their own communities but also to the other deprived communities.

*Suggestion:* Minority Education Institutes can be used as medium to serve the nation.

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