Chapter IV

INDIAN JUDICIARY AND MINORITY RIGHTS: A STUDY OF SELECT CASES
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An independent and impartial judiciary is always viewed by the minorities as the best and most trusted saviour of their rights. If minorities lose faith in judiciary, it leads to their alienation from the state and the institutions thereunder. This may subsequently lead to dangerous tendencies amongst them. In fact, loss of faith in judiciary means a sense of gross injustice prevailing in the minds of minorities. Therefore, Judiciary has to constantly maintain its image of the guardian of constitutional guarantees and upholder of the genuine rights of minorities. Indian judiciary has more or less maintained the image of the best friend of minorities in given circumstances. Despite many shockingly strange and disturbing judgments delivered by judiciary, it still commands the respect and trust of minorities to an appreciable extent. This is the reason that any change in the attitude of the judiciary gives severe jerks to minorities.\(^1\)

The Indian Constitution is one of the bulkiest\(^2\) constitutions of the world yet there are many provisions and terms used in the Constitution that were not defined. Thus, it was left on the judicial wisdom to interpret those provisions and terms in their true perspectives. This provides a space to judiciary to act upon according to the exigency of the time and needs. In fact, the judiciary in India has stood tall as one of the best judicial systems in the world. The wisdom and foresightedness of Indian judiciary has been appreciated by many jurists and scholars. It has been applauded for safeguarding the rights and freedom of the people in general and for preserving and promoting the cause of vulnerable groups and weaker sections in particular.
A perspicacious analysis of the judicial response to minority issues on the basis of critical evaluation of select cases may prove quite useful in understanding the position and status of minorities in India.

**Determination of Minorities: A Definitional Dilemma**

Defining minority is always a difficult task. This is the reason perhaps that we do not find any universally accepted definition of minority. Attempts have been made at different levels (international and national) to objectively and empirically determine and define minority but all in vain. An analysis of the various definitions offered by the scholars and relevant bodies reveals that there are three basic features of a minority: 'numerical inferiority', 'non-dominant status' and 'distinct identity'.

Numerical inferiority is a relative term which is viewed in relation to entire population of a state. Hence, a group of people distinct from the majority, with less than 50 per cent population of a state in a non-dominant position is a minority. The question of distinct identity attracts our attention towards the identity imposed on a particular group by the dominant majority. In fact, this undesirable identity imposed upon a group by the majority cannot be a criterion of determining minority. Hence, there must be a strong will or wish in the minority to preserve the identity it cherishes. The untouchables in India were forced to live a life, which they never wanted to lead. In fact, it was their desire to come out of yoke of animal-like treatment and colossal exploitation and integrate or assimilate into mainstream. Therefore, the untouchables in India were 'minorities by compulsion not by choice'. Thus not only the characteristics of distinct identity but a strong wish to preserve these characteristics is significant in determining minority on the ground of distinct identity.

The Constituent Assembly of India went for prolonged discussions on rights and safeguards of minorities. In fact, no other
issue had puzzled the Constituent Assembly for so long than the question of minorities and their rights to be incorporated in the Constitution. Yet, interestingly, the Constituent Assembly did not bother to define the term minority and quite amazingly very rarely used the term in the Constitution. Thus, there is no group explicitly mentioned as minority in the Constitution. The framers perhaps wanted to leave the issue of defining and determining minorities for judiciary in due course of time.

The issue of defining minority came before the Supreme Court for the first time in 1957 in Re Kerala Education Bill. The Supreme Court in its advisory opinion on the Bill observed:

“What is a minority? That is a term, which is not defined in the Constitution. It is easy to say that a minority community means community which is numerically less than 50 Percent, but then the question is not fully answered, for part of the question has yet to be answered, namely, 50 percent of what? Is it 50 percent of the population of a state forming a part of the Union?”

The state of Kerala contended that in order to constitute a minority which may claim the fundamental rights guaranteed to minorities by Articles 29 (1) and 30 (1) the person must numerically be a minority in the particular region in which the educational institution in question is or intended to be situated. The Supreme Court disagreed with the contention of the state of Kerala and raised a pertinent question.

If a particular region is to be taken as a unit to determine minority then where is the line to be drawn and which is the unit which will have to be taken? Are we to take as our unit a district, or a sub-division or a taluk or a town or its suburbs or a municipality or its wards?
The Supreme Court answered the question and declared:

"...for the Bill before us extends to the whole of the state of Kerala and consequently this minority must be determined by reference to the entire population of the State".\textsuperscript{10}

Since then the Supreme Court of India and the High Courts of states seem to maintain the position that state as a unit is to be taken into consideration while determining a minority. The unanimous judgment of the Supreme Court in \textit{D.A.V. College-Jullunder v. State of Punjab}\textsuperscript{11} is a pointer to the fact. The Supreme Court held that Arya Samajis being Hindu constitute a religious minority in Punjab.\textsuperscript{12} The Court also explained the meaning of linguistic minority and declared

"A linguistic minority for the purpose of Article 30(1) is one which must at least have a separate spoken language. It is not necessary that the language should also have distinct script for those who speak it to be a linguistic minority. There are in the country some languages, which have no script of their own, but nonetheless those sections of the people who speak that language will be a linguistic minority entitled to the protection of Article 30(1)".\textsuperscript{13}

Similarly, the Patna High Court established the example of judicial liberalism when it declared that Arya Samaj was a religious minority in Bihar\textsuperscript{14}. The same Court also declared Brahmo Samaj a minority entitled to avail the rights under Article 30(1).\textsuperscript{15}

The Delhi High Court in \textit{Arya Samaj Education Trust}\textsuperscript{16} categorically rejected the plea that Arya Samaj was a minority based on religion. In its ruling, the Court held:

"The word 'minority' used in the expression 'Minorities' based on religion used in Article 30(1) connotes only those religious minorities which have claimed political rights separate from those
of the Hindus prior to the Constitution such as the Muslims and the Sikhs.... Because of the political origins of the sense in which the word minority was used in India, it was never applied to a part or a section of the Hindus.... In Article 30 (1) therefore, the word minority cannot apply to a class or section of Hindus”.17

A survey of various judgments pronounced by the Supreme Court and High Courts reveals that the settled position of the judiciary on the question of determination of minority is that it is to be determined in reference to the particular legislation, which is sought to be enforced. Thus, the entire population of the state shall be taken into account for a state law. However, it is not very clear from these judgments that what would be the criteria if the question of defining minorities arises in relation to an impugned central law.18 The Central Government has not defined minorities at national level. The National Commission for Minorities Act 1992 (passed by the Parliament of India) under section 2(c) states that ‘Minority’ for the purposes of this Act means “a community notified as such by the Central Government”.19

The criteria of determination of minority adopted by the judiciary suffer from many flaws. Firstly, the simple arithmetical formula of less than 50 percent of the entire population of a state may create confusion. Keeping in view the continuing process of creation of new states and consequent demographic changes, the population of a state may be so diverse and fragmented in terms of religion, language or culture that no group or community may constitute 50 percent of the entire population. Under such conditions, the determination of minority on simple arithmetical basis will not be feasible and consequently either all communities or no community will enjoy the benefit of protection under Articles 29 and 30.
Secondly, there may emerge a situation in a state where a particular group is more than 50 percent in terms of religion but less than 50 percent in terms of language, then it will be quite difficult for the state whether to take language or religion into consideration for the determination of minority.

Thirdly, the criterion of less than 50 percent of the entire population of a state for the determination of minority may not be defended on logically respectable ground. For example, 49 percent population of a state may be more organized, politically and economically dominant, whereas 51 percent of the population comprising the majority may be fragmented and divided resulting in its non-dominant position. However, the 49 percent dominant group will enjoy the protection under Articles 29 and 30 and the 51 percent non-dominant group will be placed under the general category. Thus, a highly prosperous, educationally developed and socially dominant minority of 49% may enjoy the benefit of maintaining and administering its own educational institutions and can get waiver against the affirmative actions of the state like reservation of the Scheduled Castes, Scheduled Tribes and Other Backward Classes.

Fourthly, there must be specifically identified 'minorities based on religion' on a national basis. At the time of framing of the Constitution, the minorities were conceived at national level but the Supreme Court’s settled position of determining minorities at state level has created a duality. Thus, Christians in Nagaland or Mizoram and Sikhs in Punjab are not minorities but if they travel outside these states, they assume the status of minority. This duality creates confusion and therefore, must be addressed by the Hon’ble Supreme Court.

Therefore, the determination of minority on the basis of numerical test seems to be a temporary measure. Merely numerical basis of determination of minority may not hold good in the long run.
So a more comprehensive and logical criterion is to be fixed by the judiciary for identifying minorities in India. The judicial interpretations applied to defining minorities must satisfy the international standard. Besides commonsensical numerical test applied to determine minority, the factors like non-dominant status, level of marginalization and exclusion, threat to security, identity and the will or desire of the group to preserve its distinct religious, linguistic or cultural identity are to be taken into account.

**Cultural and Educational Rights: Nature and Scope**

Cultural and educational rights enshrined in Articles 29 and 30 of the Constitution are supposed to be the special or specific rights conferred upon minorities. The judiciary has been appreciated by scholars and legal experts for its commitments to enforce and protect these cultural and educational rights. It has consistently upheld the special rights of minorities provided by Articles 29 and 30 of the Constitution and has ensured that the scope of minority rights is not narrowed down. Noted Constitutional expert H.M. Seervai has also paid tribute to Indian judiciary 'for upholding the cultural and educational rights of minorities with the lone exception of the Aligarh Muslim University case.' However, there are many judgments pronounced by the judiciary on the spirit and scope of Articles 29 and 30 which are alleged to have undermined the cultural and educational rights of minorities.

**Articles 29 and 30: A Critical Analysis**

The scope and ambit of Articles 29 and 30 has been an issue of debate in legal and political circles thanks to the last moment changes brought in the proposed rights of minorities in the Constitution. There is a major difference between the scope and ambit of Articles 29 and 30. Article 29 (1) seems relating to minorities but its scope is much
broader as it is available to “any section of citizens residing in the territory of India.” It also includes the majority. It should be also borne in mind that Article 29 (1) protects group right whereas Article 29 (2) safeguards any individual citizen against discrimination in admission on grounds of religion, race, caste, language or any of them to any educational institution maintained by or receiving aid from the State.

Thus Article 29 (2) has been invoked by the judiciary as a non-discriminatory clause which also includes educational institutions established and maintained by minorities. In some cases it has been found that the judiciary has tried to interpret the educational and cultural rights embodied in Articles 29 and 30 in such a manner that Article 29 (2) has acted upon as a controlling grip over Article 30 (1) which is a special right granted to minorities. Any such interpretation given to these Articles is unfortunate and goes contrary to the spirit of educational and cultural rights of minorities.

“The whole history of this clause through various stages in the constituent Assembly..., especially Sardar Patel's explicit statement explaining the intent and purpose of the clause, its positioning below Article 29 (1) and not below Article 30 (1), its phrasing which does not make use of the standard formula “notwithstanding anything in” Article 30 (1), and lastly—but importantly - its figuring even after the last-moment change from “minority” to “citizen” under the same sub-heading ‘protection of interest of minorities’ should suffice to make it abundantly clear that this clause is not there to throttle the main right but in the words of the mover of the amendment to broaden the right by prohibiting state-aided and maintained institutions (other than those established by a minority) from discriminating in admission against members of minority groups.”
The Supreme Court's advisory opinion in *Re Kerala Education Bill* is considered to be one of the most detailed and significant steps taken by the apex Court to deal with the rights of minorities in India. The generous and sympathetic approach of the Court towards minorities can be gauged in the light of the following lines, appeared in the opinion of the Court:

"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. 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 epitomized in the following noble lines:

None shall be turned away

From the shores of this vast sea of humanity

That is India

Indeed India has sent out to the World her message of good will 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 garland of love.
Thou bringest the hearts of all people into the harmony of one life.

Thou Dispenser of India’s destiny, victory, victory, victory to thee".27

Besides dealing with the determination of minority, the Court dealt with the rights of minorities to establish and administer educational institution of their choice. The following observations of the Court are important for determining the scope and ambit of cultural and educational rights of minorities:

1. The benefit of Article 30 (1) extends to both Pre-Constitution and Post-Constitution institutions.28

2. 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. Indeed the object of conservation of the distinct language, script and culture of a minority may be better served by propagating the same amongst non-member of the particular minority community.29

3. Aid given by the State does not empower it to unnecessarily interfere in the administration of institutions. The State must not grant aid in such manner as will take away the fundamental right of the minority under Article 30 (1). However, the right to administer cannot obviously include the right to mal-administer. It means reasonable regulation may certainly be imposed by the State.30

4. 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 surrender to 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 Act 30 (1).31

5. It is interesting to note that the minority opinion of Venkatarama Aiyar J. was that the right under Article 30(1) is not only to establish institutions but also get them recognized.32
Right to Preferential Admissions

Reservation of minorities in admissions to educational institutions run by state or even established and maintained by minorities has always been a contentious issue. We find that the Supreme Court or judiciary has frustrated every attempt of reservation of minorities in educational institutions run by state. It was in Champakam Dorairajan v. state of Madras\(^3\) that the Supreme Court rejected reservation on communal ground. The Government of India subsequently brought about the first constitutional amendment and added clause (4) in Article 15. This amendment enabled government to go for affirmative action and reserve seats for Backward Classes, SCs and STs. However, despite this amendment the Judiciary has not allowed the government to give reservation to linguistic or religious minorities. Nevertheless, reservation on the basis of caste has found favour from the judiciary.

Not only this, minorities have not found favour to get reservation in state- run educational institutions but also the educational institution established and administered by minorities have not been allowed to reserve more than 50 percent seats for their own community. The Supreme Court judgment in St. Stephens College v. University of Delhi\(^4\) is a pointer to the fact. It dealt with three important questions.

(i) Whether St. Stephen’s College is a minority-run institution?

(ii) Whether St. Stephen’s college as minority institution is bound by the university circulars dated June 5, 1980 and June 9, 1980 directing that the college shall admit students on the basis of merit or the percentage of marks secured by the students in the qualifying examinations?

(iii) Whether St. Stephen’s College and the Allahabad Agricultural Institute are 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?
The Supreme Court answered the above questions and observed that St. Stephen’s College is a minority institution entitled to enjoy protection under Act 30 (1). It is interesting to note that the Court took into consideration the history of establishment of the college, its emblem, motto, prayer room, religious instruction, managing society, freedom of choice of Principal etc while ruling that the college has a visible minority character.

On the contention that St. Stephen’s College after being affiliated to the Delhi University has lost its minority character, the Court declared that the State or any instrumentality of the State cannot deprive the character of the institution founded by a minority community by compulsory affiliation since Article 30 (1) is a special right to minorities to establish educational institutions of their choice.

On the second question the Supreme Court observed:

"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 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 state therefore has the right to regulate the standard of education and allied matters".

The Court further observed that though Article 30 (1) is couched in absolute terms in marked contrast with other fundamental rights in part III of the Constitution, it has to be read subject to the power of the State to regulate education, educational standards and allied matters. The Court also cautioned that Article 30 (1) is not a charter for mal-administration and held:
“So long as the basic right of minorities to manage educational institution is not taken away, the State is competent to make regulatory legislation. Regulation, however shall not have the effect of depriving the right of minorities to educate their children in their institution. That is a privilege which is implied in the right conferred by Article 30 (1)”.

The Court concluded the answer to question (2) by observing that uniform basis of marks would keep many students of Christian community out leading thereby to loss of minority character of the institution. Therefore, St. Stephen’s College is not bound by the impugned circular of the university.

Dealing with the question third the Supreme Court tried to strike a balance between the conflicting claims of Article 29 (2) and Article 30 (1). The Court observed that 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 Court declared:

“It is well said that in order to treat some person equally, we must treat them differently, we have to recognize a fair degree of discrimination in favour of minorities. The Supreme Court also asserted that it is now an accepted jurisprudence and practice that the concept of equality before the law and the prohibition of certain kinds of discrimination do not require identical treatment. The equality means the relative equality, namely the principle to treat equally what are equal and unequally what are unequal. To treat unequal differently according to their inequality is not only permitted but required”.
The Supreme Court while allowing the preferential treatment to minority community in minority institutions concluded:

"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 percent of the annual admission. The minority institutions shall make available at least 50 percent of the annual admission to members of communities other than the minority community".44

The judgment of the Supreme Court in the case is a milestone and trend-setting in judicial response to rights of minorities in India. It is a quite welcome sign that their lordships have taken into considerations the international jurisprudence and international instruments on minority rights while delivering the judgment. They have referred to Article 27 of the International Covenant on Civil and Political Rights. It is also satisfying that their lordships tried to interpret the scope and spirit of Articles 29 (2) and 30 (1) in the light of debates of the Constituent Assembly. An endeavour was also made to strike a balance between conflicting and competing claims of Article 29 (2) dealing with individual rights of citizens and Article 30 (1) covering the special group right of the recognized minorities of India. However, their lordships could not settle the apparent conflict between these two Articles forever. "One wishes their lordships had taken the argument about the nature of group rights to its logical conclusion."45 Thus Article
30 (1) could not be emancipated from the suffocating and strangulating grip of Article 29 (2).

The judgment has significance for the educational rights of minorities as the Court settled once and for all the issue of reservation of minorities in the institutions maintained by them. Thus, Court’s observation that minorities have a right under Article 30 (1) to prefer the candidates of their own community to maintain the minority character of their institution is a landmark in the history of educational rights of minorities. There are two dimensions of the right to preferential admission to minorities in the educational institutions administered by them. The first is that the minorities’ educational institutions have been given privilege or special right to reserve up to 50 percent admission for their own community. The second dimension is that the minority educational institutions have been obligated to admit 50 percent students from other communities to maintain national integration and secularism as the educational institutions are the melting pot. However, the Hon’ble Court has not sought the sprinkling of minorities in the institutions maintained by the State to reflect the inherent diversity of India.

The Minority Character of the Aligarh Muslim University

S. Azeez Basha and some other members of the Muslim community challenged the constitutionality of the Aligarh Muslim University (Amendment) Act, No.62 of 1951 and the Aligarh Muslim University (Amendment) Act, No.19 of 1965. The petitioners claimed that the Aligarh Muslim University was a minority institution and as such the legislations setting up new administrative bodies were ultra vires Article 30 (1).

The Supreme Court judgment in S. Azeez Basha v. Union of India is very important and quite controversial which raised many doubts
in the minds of minorities about the fate of institutions maintained by them. The judgment provoked a noted Constitutional expert to conclude that:

"this is the first case in which the Sup. Ct. has departed from the broad spirit in which it had decided cases on cultural and educational rights of minorities....".49

The Supreme Court in this case did not accept any contention of the petitioners and ruled inter alia:

1) The minorities will have the right to administer educational institutions of their choice provided they have established them but not otherwise. The right to administration is to be understood conjunctively with establishment and establishment means bringing into existence. The Aligarh Muslim University was not established by the Muslim minority but by the Government through the Aligarh Muslim University Act 1920 and whatever properties existed in the name of M.A.O. College established in 1877, the Muslim University Association and the Muslim University Foundation Committee were surrendered to government. As the university was not established by Muslim minority, it cannot claim protection under Article 30 (1). Hence, the constitutional validity of the 1951 and 1965 Amendments to the Aligarh Muslim University Act cannot be challenged.50

2) The expression "educational institutions" used in Article 30 (1) is of very wide import and includes a university as well.51 Thus a religious or linguistic minority has the right to establish and administer educational institution (including university) of its choice under Article 30 (1).

3) The Supreme Court took into consideration the history of establishment of M.A.O. College by Sir Syed Ahmad Khan and its subsequent culmination into Aligarh Muslim University in 1920 by an Act of Government of India. The Hon’ble Court seems to be in agreement that Sir Syed established the Muhammadan Anglo-Oriental College for “imparting liberal education to Muslims in literature and science while at the same time instruction was to be given in the Muslim religion and traditions.
also”. However, the same M.A.O. College, after becoming Aligarh Muslim University under an Act of Central government in 1920, ceased to be an educational institution established by the Muslims.52

The above-mentioned case is of great importance and deserves a perspicacious analysis. In fact, the Hon’ble Court while taking into account the history of establishment of Aligarh Muslim University seems to be dealing with the half-truth. Seervai comments:

“As regards the history of the foundation of the university, it is submitted that the whole relevant history is not to be found in the judgment. Nor is the effect of so much of the history as has been set out properly appreciated”.53

The Aligarh Muslim University is the most visible and concrete manifestation of the Aligarh Movement and therefore, the establishment of M.A.O. College at Aligarh in 1870s and its culmination into a University in 1920 should be seen in the light of Aligarh Movement.

The Aligarh Movement

Aligarh Movement was an all-comprehensive movement started by Sir Syed Ahmad Khan and his companions in the aftermath of the Revolt of 1857. The movement aimed at regeneration of Muslims through Western education that faced the wrath of British government in the Revolt. The Aligarh Movement was vehemently opposed by the conservative and orthodox section of the Muslim community. Sir Syed was branded as Kafir (infidel) and Fatwa (decrees) were issued against him. It was alleged that Sir Syed was trying to pollute the Muslim mind through English education and he was a British agent. It was also said in the decree that it was a sin “to support his college - may God damn
the founder. And if this college has been founded the supporters would be thrown out of the fold of Islam".\textsuperscript{54} Thus it was with great difficulty and great effort that Sir Syed could establish M.A.O. College and convince Muslims to acquire Western Education. To frustrate the attempts of negative propaganda against M.A.O. College and Aligarh Movement and to avoid confusion about his scheme of education he repeatedly said:

"Philosophy will be in our right hand and Natural Science in our left, and the crown of ‘There is no God but Allah and Mohammad is His Prophet’ will adorn our heads".\textsuperscript{55}

The Hon’ble Court however, did not deny in the judgment that the M.A.O. College was established for the educational advancement of Muslims. But it overlooks the fact that the founders of the College aimed at achieving the goal of university. On 8\textsuperscript{th} January 1877 when Lord Lytton, the Vice Roy and Governor General of India laid the foundation of the College, the College Fund Committee explained the objectives of the College as follows:

"The College of which Your Excellency is about to lay the foundation-stone differs in many important respects from all other educational institutions which this country has seen. There have before been schools and colleges founded and endowed by private individuals. There have been others built by sovereigns and supported by the revenues of the state. But this is the first time in the history of the Mohammadans of India, that a college owes its establishment not to the charity or love of learning of an individual nor to the splendid patronage of a monarch, but to the combined wishes and the united efforts of a whole community. It has its origin causes which the history of this country has never witnessed before. The College was to educate them, (the Muslims) so that they may be able to appreciate these blessings; to dispel those
illusory traditions of the past which have hindered our progress; to remove those prejudices which have hitherto exercised a baneful influence on our race; to reconcile oriental learning with western literature and science; to inspire in the dreamy minds of the people of the East the practical energy which belongs to those of the West; to make the Muslims of India worthy and useful subjects of the British Crown, to inspire in them that loyalty which springs, not from servile submission to a foreign rule, but from genuine appreciation of the blessings of good government—these are the objects which the founders of the college have prominently in view”.

It was further explained by the exponents of the movement that:

"From the seed which we sow today there may spring up a mighty tree, whose branches, like those of the banyan of the soil, shall in their turn, strike firm roots into the earth, and themselves send forth new and vigorous saplings; that this college may expand into a university (italics supplied), whose sons shall go forth throughout the length and breadth of the land to preach the gospel of free enquiry, of large-hearted toleration and of pure morality".

It is clear from the above passage that the founders wanted that the College should culminate into a university. After the establishment of the College, the founders continued their effort to convert the College into a university. The Hon’ble Court has recorded the events in detail as how the Muslim community collected Rupees three million and deposited the same with the government for getting the status of Aligarh Muslim University by the Act of 1920.

The long title of the 1920 Act as mentioned by the Court also points to the fact that the intention of the then government was to bring into existence a Muslim University. The title of the Act was “An Act to
establish and incorporate a teaching and residential Muslim University at Aligarh”.

The Preamble to the Act refers to dissolution of M.A.O. College Aligarh and the Muslim University Association and transfer of all properties and rights of the said societies and of the Muslim University Foundation Committee to the said University and such property was to be applied to the objects and purposes for which the University was incorporated.

The objects and purposes of the University are clear from the various sections of the Act of 1920 and the relevant history of the creation of two great universities namely Banaras Hindu University in 1915 and Aligarh Muslim University in 1920 as cited by Seervai. A perusal of the above mentioned facts clearly establishes that Aligarh Muslim University was established for the educational advancement of the Muslims. After narrating the relevant history of creation of the two universities (Banaras Hindu University and Aligarh Muslim University) Seervai concludes:

“It is submitted that the above history leads to one conclusion and one conclusion only, that the Hindu University was established by Hindus for Hindus, though it was open to non-Hindus to join the university. Similarly, the Muslim University was established by Muslims for Muslims though non-Muslims could be admitted”.

Criticizing the judgment, he further says:

“The fact that the non-Hindu and non-Muslims could be admitted does not derogate from this conclusion because, where grants are made from public funds, public policy requires that members of other communities should not be totally excluded. In fact, in the Kerala Opinion Das C.J. observed that an institute established and managed by a community did not lose its character as a minority
institution because a sprinkling of members of other communities were admitted to it”. 60

The Court observed that there was nothing in 1920 to prevent the Muslims to establish a university by themselves but they did not do so, instead they requested and persuaded the Government to establish a Muslim University. However, it may be submitted that the Muslim community did not request the Government to establish a university by itself but they persuaded the Government to convert the M.A.O. College (solely established by the Muslims), into a Muslim University. The Government agreed but on the condition of deposition of a handsome amount of 3 million rupees by the community. The Muslim community fulfilled the condition and then got established their desired university.

The Hon’ble Court also discussed in detail the question of recognition of degree by the government and suggested that the Muslim University had a choice to establish a university by its own. However, in such a case the community would not be in a position to insist for the recognition of the degrees and diplomas awarded by it. Then the Court jumps to the conclusion that the Government recognized the degrees because the University was established by the Government itself. In the words of the Court:

“If it would not be possible for the Muslim minority to establish a university of the kind whose degrees were bound to be recognized by government and therefore it must be held that the Aligarh Muslim University was brought into existence by the Central Legislature and the Government of India”. 61

However, it may be submitted in this regard that nothing prevents a community from asking and government from agreeing that the degrees of the University should be recognized by the Government. 62
Commenting on the judgment, Seervai observes:

"In the present case the Supreme Court has on narrow technical grounds, which are erroneous held that a minority community which has striven for, and obtained, the establishment of a Muslim University and endowed it with considerable property and money had not established that University and that provisions of the Act of 1920 vesting the supreme government of the University exclusively in Muslims did not vest the administration in Muslims. On the Supreme Court judgment there is nothing to prevent Parliament from converting the Muslim University into a university for foreign students or for backward classes. It is submitted that the decision is clearly wrong and productive of grave public mischief and should be overruled".63

The judgment of the Supreme Court in this case created uproar in India. The Muslim community was shocked by the judgment. The community started political agitations. The Government of India half-heartedly tried to minimize the ill effects of the judgment by passing the Aligarh Muslim University (Amendment) Act 1972, which could not meet the expectations of the agitated minority. Consequently, the Government brought Aligarh Muslim University (Amendment) Act, 1981, which seemingly restored the minority character of Aligarh Muslim University. Thus, section 2 (1) of the Act declares:

"University" means the educational institution of their choice established by the Muslims of India, which originated as the Mohammadan Anglo-Oriental College, Aligarh and which was subsequently incorporated as the Aligarh Muslim University.

Section 5 (2) (C) of the Act states that the Aligarh Muslim University has been established “to promote especially the educational and cultural advancement of the Muslims of India".
We find that the Government of India tried to rectify its own mistakes through the Act of 1981. The Act was indeed a turn-round by the Government of India as far as its stand in the *Azeez Basha* is concerned.

The constitutionality or the validity of the Act was not questioned until 2005 and the Muslim minority was under the impression that the basis of the conclusion arrived at by the Supreme Court in the *Azeez Basha* case having been substituted by the Amendment Act of 1981 looses all force and the law laid down by the Supreme Court in *Azeez Basha* no more holds good.

The subsequent development however, gave a new twist to the 1981 Act and the minority character of Aligarh Muslim University came under scanner. The Aligarh Muslim University on the recommendation of its competent bodies and in consultation with the Government of India, decided to reserve 50 percent of total seats available for the Post Graduate Medical Courses for Muslims only from the session 2005-2006. The decision of the University was challenged in the Allahabad High Court in *Dr. Naresh Agarwal v. Union of India* and others. The main contentions of the petitioners were:

(a) The Aligarh Muslim University which has been declared to be a non-minority institution by the Supreme Court in the case of *Azeez Basha* cannot provide any reservation in respect of Muslim students only. It was also argued that Section 2 (1) and section (5) (2) (C) of the Aligarh Muslim University (Amendment) Act 1981 have the effect of virtually overruling the judgment of the Hon’ble Supreme Court in the case of *Azeez Basha* which is legally not permissible.

(b) The Union of India had taken a firm stand before the Supreme Court in the case of *Azeez Basha* that Aligarh Muslim University has not been established by the Muslim minority but by a Legislative Act, the institution is not entitled to the protection of Article 30 of the Constitution of India. The Union Government cannot now turn around and assert in these writ proceedings that
the Aligarh Muslim University has been established by minority community.

(c) It is beyond the legislative power of the Parliament to overreach/reverse the decision of the Court of law.

(d) The reservation so made by the Aligarh Muslim University is in violation of Articles 29 (2) and 14 of the Constitution.

The Allahabad High Court relied heavily on the Supreme Court judgment in *Azeez Basha*, and observed to the shock of Muslim minority that Aligarh Muslim University is not a minority institution and the *Azeez Basha* judgment still holds good.

The Court also ruled that the main basis of the judgment of the Supreme Court in *Azeez Basha* were the Section 3, Section 4 read with section 6 of Legislative Act of 1920, which created the Aligarh Muslim University. The said sections have not been amended by the Act of 1981 and therefore, hold ground even today. This led the Court to conclude that:

"This Court has no hesitation to hold that the basis of the judgment of the Hon’ble Supreme Court in *Azeez Basha* has not been so fundamentally altered so as to come to a conclusion that if the amendments made under the 1981 Act has been there before the Hon’ble Supreme Court at the time of decision of *Azeez Basha* the judgment would have been otherwise".65

Interestingly, in this case also the Allahabad High Court by invoking Articles 29 (2) frustrated the attempt of reservation of the Muslim students in the University and declared:

"Reservation of Muslims as has been applied by the Aligarh Muslim University for Muslim students only is totally unconstitutional and in teeth of Article 29 (2) of the Constitution".66

It is interesting to note that the Supreme Court in the *St. Stephen’s College case* had taken into account the structure of the building, the
prayer, the religious instructions etc but the Supreme Court in Azeez Basha and Allahabad High Court in Dr. Naresh Agarwal case (Supra) ignored the more prominent and visible Muslim character of Aligarh Muslim University in its buildings, its history, its monogram, its degrees and certificates, its Constitution and its life. One hopes that the wrong done by the judiciary will be rectified by it subsequently.

The Aligarh Muslim University may retain minority character through political or legislative means also. The Supreme Court in Azeez Basha has itself maintained that:

"Each University has problems of its own and it seems to us that it is for the legislature to decide what kind of Constitution should be conferred on a particular university established by it".

Thus the Parliament of India (if it desires) can pass a new Act or make necessary changes in the present Act and restore the minority character of Aligarh Muslim University in more unequivocal terms.

The Aligarh Muslim University has gone in appeal in the Supreme Court against the judgment of the Allahabad High Court. The appeal has been admitted and the case is pending before the Apex Court. Thus, we find that wrong stand taken by the Government of India in Azeez Basha case was a falsification of the facts keeping in view the history of creation of Aligarh Muslim University. This stand of the Government adversely affected the minority character of the Aligarh Muslim University. Also, the shadow of doubt created by the Supreme Court in the Azeez Basha still continues and the status of Aligarh Muslim University as a minority institution is still hanging.

As the hearing in the case is pending in the Supreme Court, there are legal experts and jurists who believe that the minority character of the Aligarh Muslim University will be restored by the Court. There are others who believe that the solution to the problem of minority
character of Aligarh Muslim University is political. Thus if the decision goes against the will of Muslim minority the community will definitely seek a political solution. Under such circumstances, it may be suggested that to remove any doubt about the minority character of AMU, the Parliament has to make a change into entry 63, list 1, Schedule VII of the Constitution of India wherein Aligarh Muslim University and Banaras Hindu University along with Delhi University have been mentioned as ‘institutions of national importance’, is to be replaced as Aligarh Muslim University a ‘Muslim minority institution’ of national importance.

The Supreme Court Judgment in T. M.A. Pai Foundation and others v. State of Karnataka is another significant case dealing with the various facets of establishment and administration of educational institutions in general and with minority educational institutions in particular. The 11-Judge Special Bench of the Supreme Court framed 11 questions for its consideration. These 11 Questions as formulated by the Court were as follows:

Q.1. What is the meaning and content of the expression “minorities” in Article 30 of the Constitution?
Q.2. What is meant by the expression “religion” in Article 30 (1)? Whether, followers of a sect or denomination of a particular religion can claim minority status even though followers of that religion are in majority in that state.
Q.3 (a) What are the criteria 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 it is administered by a person(s) belonging to a religious or linguistic minority?
Q.3 (b) To what extent can professional education be treated as a matter coming under minorities rights under Article 30?
Q.4. Whether the admission of students to minority educational institution, aided or unaided, can be regulated by the State
Government or by the university to which the institution is affiliated?

Q.5 (a) Whether the minority’s right to establish and administer educational institutions of their choice will include the procedure and method of admission and selection of students?

Q.5 (b) Whether the minority institution’s right to 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?

Q.5 (c) Whether the statutory provisions which regulate the facets of administration like control over educational agencies and governing bodies, conditions of affiliation to other recognition/ withdrawal thereof, and appointment of staff, employees, teachers and principals including their service conditions and regulation of fees, etc. would interfere with the right of administration of minorities?

Q.6 (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?

Q.6 (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-a-vis such institution?

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

Q.8 Whether the ratio laid down by this Court in the St. Stephen case is correct? If not, what order?

Q.9 Whether the decision of this Court in Unni Krishnan J.P.v. State of A.P. and the Scheme framed there under require reconsideration/ modification and if yes, what?

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?

Q.11. What is the meaning of the expressions “Education” and “Educational Institution” in various provisions of the Constitution? Is the right to establish and administer educational institutions guaranteed under the Constitution?
The significance of the above-mentioned questions for minorities’ educational institutions is not very difficult to understand. However, to the disappointment of many concerned citizens and bodies, the Hon’ble Court left many of these questions to be answered by a Regular Bench, which is not expected so soon under present conditions. Nevertheless, this is a judgment, which has far-reaching implications for minorities’ educational institutions.

While dealing with the meaning of the expression “minorities” in Article 30, the Court reiterated its consistently held position that the religion and linguistic minorities have to be considered on the basis of state and the population therein as the reorganization of states has been on linguistic lines. The inclusion of education in Concurrent List by the Forty-Second Amendment to the Constitution does not change this position with regard to the determination of a religious or linguistic minority for the purpose of Article 30.

Explaining the extent of regulation by the State, the Court held that admission of students to unaided minority educational institutions (UMEI), where the scope for merit based selection was practically nil, could not be regulated by the State Government or University, except for providing the qualifications and minimum conditions or eligibility in the interest of academic standards. However this right was subject to the condition that admission to such institution was on a transparent basis and merit was adequately taken care of. Thus, the Court contemplates unfettered rights for unaided minority institutions.

The Court dealt with the extent of State control over aided minority institutions and observed:

“A minority institution does not cease to be so, the moment grant-in-aid is received by the institution”.
It is desirable to point out that the Hon’ble Court seems to be deviating from its consistently held view regarding state control and regulation over minority institutions. The Court empowered the concerned state governments to determine the percentage of non-minority students to be admitted in aided minority institutions and it may vary according to the types of institutions, the courses of education etc. This proposition may lead to infringement of rights of minorities to administer their educational institutions as the state government may fix an unreasonably high percentage of non-minority students or a very low (negligible) percentage of them to appease the minorities. In either of the cases, this is dangerous for minorities. A fundamental right provided by the Constitution under Article 30 has been made subservient to the sweet will of state government by this proposition of the Hon’ble Court. A senior journalist and social activist reacted to this as:

“The final judgment has to be viewed in the context of the government’s position, as the governments in states and the Centre now seem vested with powers they did not possess”.

While dealing with the scope of Article 30, the Court ruled that the right under the said Article is not absolute as to be above the law and any regulation framed in the national interest must necessarily apply to all educational institutions, whether run by the majority or the minority. However, the government regulations cannot destroy the minority character of the institution or make the right to administer a mere illusion.

The Supreme Court partly overruled the *St. Stephens College case* and held that:

“The basic ratio laid down by this Court in the *St. Stephens College case* is correct, as indicated in the 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”.74

The observation of the Hon’ble Court regarding fixing of quota or reservation of minorities in admission to institution established and administered by them assumes importance as the NDA Government led by the BJP wanted that the Court’s ruling in St. Stephens College case should be overruled. However, the BJP-led government could not get the desired ruling from the Supreme Court at least in the matter of reservation of minorities in the educational institutions established and administered by them but receiving aid from the State. Nevertheless, it cannot be denied that the minorities were apprehensive as the government at the centre was led by a party, which is known for its anti-minority stand.75 The Supreme Court again stood tall as the upholder of the rights of minorities and vanguard of secularism, as it frustrated the attempt of the Sangh Parivar led by the BJP to destroy the autonomy of the minority institutions upheld and clearly expressed in the St. Stephens College case.

The Government had argued that right to establish and administer educational institutions is available to all citizens irrespective of caste, creed or religion. Perhaps the Government wanted to bring minority and majority at par as far as the establishment and management of affairs of educational institutions are concerned. However, here again the Bench’s ruling went against the aspiration and desire of the Government. Answering the question No.10 (Supra) the Hon’ble Court observed:

“The right to establish and administer educational institutions is guaranteed under the Constitution to all citizens under Articles 19 (1) (g) and 26 and to minorities specifically under Article 30. All citizens have a right to establish and administer educational
institutions under Articles 19 (1) (g) and 26, but this right is subject to the provisions of Articles 19 (6) and 26 (a). However, minority institutions will have a right to admit students belonging to the minority group, in the manner as discussed in the judgment.76

The judgment in this way is quite significant, as it has dealt with many important questions. It has reasserted its consistently held position of earlier verdicts and made some new observations tantamount to redefining many constitutional rights of minorities. The weakness of the judgment is that, the 11-judge Bench could not answer many important questions and deliberately left them for a Regular Bench. Thus, a rare opportunity to address many long-awaited issues and grievances of minority educational institutions was lost. Keeping in view the piling up of cases in the Supreme Court, it can be assumed that there is a long way to go for minorities to get a final judgment from the Apex Court, settling some of the very contentious old issues and some new created by the judgment.

Besides Supra discussed select cases in detail, there are many other judgments dealing with the cultural and educational rights of minorities.

The Supreme Court of India in State of Bombay v. Bombay Education Society and Others dismissed the order of Bombay State directing that no school may admit to English medium classes any one except Anglo-Indian Students and others of non-Asiatic descent. The Court ruled that being a linguistic minority the Anglo Indians have right to establish and administer educational institutions of their choice under Article 30 (1). Hence, regulation resting the selection of students and medium of instruction would be violative of Article 29 (1) and Article 30 (1). This also includes the right to choose students and determine the medium of instructions. The Court also observed that Article 29 (2) of
the Constitution prohibits denial of admission on grounds of religion and language and was wide enough to include all citizens. Interestingly the Court declared that the Anglo-Indian Schools, receiving aid have a duty under Article 337 to admit non-Anglo-Indian students.

In Fr. W. Proost v. State of Bihar the Supreme Court held that St. Xaviers College, Ranchi is a minority institution established by a Catholic minority community based on religion and therefore, it must enjoy the protection of Article 30 (1). The Court also observed that the Pre-Constitution establishment of an institution does not disqualify it from claiming the protection under Article 30 (1). Dealing with the issue of relation between Article 30 (1) and 29 (1) the Court observed that the width of Article 30 (1) cannot be cut down by introducing in it considerations on which Article 29 (1) is based. The protection of Article 30 (1) can be legitimately claimed by a minority institution not only when it is engaged exclusively in the conservation of the minority language, script or culture but also when it is imparting general education.

The Supreme Court in S.K. Patro v. State of Bihar held that rights under Article 29 can be claimed only by Indian citizens whereas Article 30 does not refer to citizenship as a qualification for members of the minorities. Therefore, the fact that contributions or funds have been obtained from outside India for establishing and developing an institution is no ground for depriving its protection under Article 30.

The Supreme Court in Sidhrabaj v. State of Gujarat provided relief to minority institutions controlled by the United Church of Northern India against the order of the Government of Bombay directing the concerned institution to reserve 80 percent of the seats in the Training College run by it for Government nominees. The Government of Bombay threatened that if the order was not
followed, grants and recognition to the institution would be withdrawn. The Court held that the order of the Government of Bombay led to infringement of the rights vested in the Society to administer the Training College.

Such an order, according to the Court was a clear violation of Article 30 (1) as it was not a reasonable regulation. The Court observed that unlike the rights contained in Article 19, which were subject to reasonable restrictions, Article 30 was in absolute terms, which allows only reasonable restrictions and that too in the interest of education, discipline and institution as a whole. It is also important to note that the Court rejected the test of “national or public interest”, for imposing restrictions on minority educational institutions and held that regulation can be allowed in the true interest of efficiency of instruction, discipline, health, sanitation, morality, public order.

The Apex Court in *D.A.V. College Trust v. State of Punjab* provided relief to Arya Samajis (Hindus) living in Punjab wherein the Sikhs form the majority. The Court declared that provisions of Punjabi University’s Circular declaring Punjabi to be the sole medium of instruction and examination was beyond the preview of the University Act and in violation of Articles 29 (1) and 30 (1). In this case also, the Court took state as a unit to determine minority and observed that the Arya Samajis living in Punjab are religious and linguistic minority (having their own language and distinct script). They have a right to establish and administer educational institutions of their choice under Article 30 (1) and right to conserve their language and culture under Article 29 (1).
Conclusion

A perusal of the foregoing analysis of decisions of the Supreme Court of India pertaining to rights of minorities leads us to the following conclusions:

1. It has assumed the status of a settled law that the minorities for the purposes of Articles 29 and 30 shall be determined on the basis of their numerical strength in the states of the Indian Union. That is, a community can be declared a minority in particular states but not for the whole of India. The judiciary in India has taken a commonsensical and arithmetical basis for the determination of linguistic and religious minority. This approach of the Court does not satisfy the requirements of contemporary international minority jurisprudence under which besides numerical inferiority, the factors like non-dominant status of a group and its desire to preserve its distinct identity are taken into account.

2. The Supreme Court in general has been sympathetic and generous in dealing with the cases of minorities' educational institutions but the apparent conflict between Articles 29 (2) and 30 (1) has more often than not puzzled the Court. Consequently, some decisions of the Court have gone against the interest of minorities' educational institutions. Nevertheless, the Supreme Court has quite successfully tried to strike a balance between the two conflicting Articles of the Constitution.

3. The Apex Court has consistently upheld the right of minorities to establish and administer the educational institutions of their choice. It has saved these institutions from undue and uncalled for intervention of the State. However, the Court has quite categorically maintained that right to administer does not mean
right to mal-administer. Thus for the better administration and high standard of education, the minimum but reasonable restrictions or regulation by the State has been allowed. It cannot be denied that many educational institutions administered by minorities have flourished under the regulation and patronage of the State.

4. Although the Constitution is silent on the issue of preferential admission of minority candidates to the state-aided educational institutions, the Supreme Court has provided this right by broadening the scope and ambit of Article 30 (1). Thus in the St. Stephens College case (Supra), the Court allowed up to 50 per cent reservation for the Christian community (founder of the College). The decision has been held as a generosity of the Court favouring minority institution. On the other hand, it has been criticized as forcing uncalled for ceiling of 50 percent on minorities' institutions. The Supreme Court in T.M.A. Pai case (Supra) has liberated the institutions of minorities from the ceiling of 50 percent by partly overruling the St. Stephen's College decision. But, the judgment has rung an alarming bell in the minds of minorities as they fear that by holding that state governments will decide the percentage of admission of non-minority students in aided minority institutions, the Court has opened a door for undue interference of the state in their constitutionally guaranteed right.

5. The Supreme Court has consistently upheld that there must be a sprinkling of other communities in the educational institutions maintained by minorities. This is must, according to Court for promoting secularism and doing away with religious bigotry. No one can deny that a minority institution with 100% students
of its own community cannot promote the most cherished ideals expressed in the Preamble to the Constitution and in Fundamental Duties. Thus to maintain unity with diversity and live in mutual peace the communities must interact and as the educational institutions are the melting pot, the sprinkling of other communities must be encouraged. However, one fails to understand that why the same sprinkling of minorities has not been sought by the Court in the institutions and agencies maintained by the state.

6. The judiciary has also provided exception to minority institution as far as the reservation of seats for the Scheduled Castes, Scheduled Tribes and Other Backward Classes is concerned. The Courts have ruled that promotion of education of Scheduled Castes and Scheduled Tribes may be a very noble and laudable cause, but as this will not promote the purposes of minority, its freedom of choice cannot be limited by any such consideration of public good or national interest.82

7. The judiciary has provided protection to minority educational institutions established even before the independence of India or pre-Constitution institutions. It has categorically maintained that the fact that a particular minority institution was established prior to the promulgation of the Constitution of India does not disqualify it from seeking and getting protection under Article 30 (1) of the Constitution. Moreover, the Supreme Court has shown judicial liberalism in the case of minorities by declaring that the fact that financial contributions have been obtained from outside India for establishing and developing an institution is no ground for denying it protection under Article 30.83 However, it seems desirable to mention here that the Foreign Contributions
Regulation Act promulgated by Government of India, has made it very difficult for minorities, especially for the Muslims and Christians to get foreign contributions for running or establishing educational institutions of their choice. Thus despite, there being a very encouraging interpretation of Article 30 (1) by the Hon’ble Supreme Court, we find that minorities find it difficult to obtain foreign funds, thanks to vicious propaganda against them.84

8. The Supreme Court judgment in Azeez Basha case (Supra) is in marked deviation from its consistent approach in dealing with the rights of minorities to administer their educational institutions. The basis of denial of Minority Character of Aligarh Muslim University is erroneous. The Court’s contention that Aligarh Muslim University was not established by the Muslims of India but by the central legislature under the Aligarh Muslim University Act 1920 is a wrongly assumed illogical position. The decision has created apprehension and confusion that what would be the status of a minority-run college if it approaches for converting the college into a university and also seeks aid from the State. As a matter of fact, denying the minority or more specifically Muslim Character of Aligarh Muslim University is denying its historical character.

9. The right conferred by Article 30 (1) has been subjected to the limitation imposed by Article 29 (2). Thus, the minority institutions receiving grant-in-aid cannot deny admission into such institutions to any citizens on ground only of religion, caste etc. However, reserving seats for minority students to a reasonable extent to preserve the minority character of the institution will not be only on ground of religion, caste etc.
10. Thus on the basis of several judicial pronouncements, it can be inferred that the Judiciary in India has been the upholder of the rights granted to minorities by the Constitution. It has consistently maintained its image of the guardian of the Constitution and custodian of the rights and freedoms provided to minorities. The Supreme Court (especially) has saved minority institutions from the undue interference of the executive and legislature. In many of the cases, it has widened the scope and ambit of cultural and educational rights of minorities.

Besides, special rights of minorities, the Supreme Court has been instrumental in ensuring that other important rights available to all like right to life, right to freedom of religion etc are given due importance in cases of minorities. The Apex Court quite effectively intervened in the affairs of Gujarat after the communal slaughter of Muslims in 2002. It issued instructions and directives to ensure the preservation of rights of minorities in Gujarat. It is under the direction of Supreme Court, that many closed cases of Gujarat riots 2002 have been reopened and the perpetrators of violence are being brought to book.

However, on many occasions the minorities feel that the judiciary especially the lower courts and few High Courts have not lived up to the expectations of disgruntled minorities. Thus mishandling of Babri Masjid - Ramjanam Bhoomi issue by the lower court and subsequently by the upper judiciary has lowered its image. Denying benefit of reservation to Dalit Christians and Dalit Muslims is another issue which has adversely affected the image of judiciary. Besides, the silence of judiciary on the issue of denying access to legal remedy in accordance with principle of natural justice, to the accused of terrorist activities, the Supreme Court's assertion that Hindutva is a way of life, its rejection of the plea of a Muslim student to grow a beard in the Convent School and irresponsible remark of learned judge that secularism cannot be overstretched are few instances having negative impact on the image of judiciary in relation to protection of the rights of minorities.
NOTES


2. The Constitution of India consists of 395 Articles 22 parts and 12 schedules. Besides, the Constitution is not very rigid and therefore, it is constantly evolving as amendments are being made into it to adapt to the circumstances.

3. In 1971, The UN Sub Commission appointed Francesco Capotorti to initiate a Study of the Implementation of the Principles set out in Article 27 of the International Covenant on Civil and Political Rights. Capotorti's Study Report offered the following definition of minority which is considered as one of the most accepted and inclusive definitions of minority:

   "A group numerically inferior to the rest of the population of a state in a non-dominant position, whose members being nationals of the state possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language". [See Study on the Rights of Persons belonging to Ethnic, Religious and Linguistic Minorities, United Nations, New York, 1991, UN Sale No. E. 91 XIV 2.]

4. Similar views have been expressed by Iqbal A. Ansari and many others. See for detail: Iqbal A. Ansari, Readings on Minorities: Perspectives Documents, Vol.1, (Introduction.)

5. The Constitution uses the term 'minority/minorities' only in four Articles - 29(1), 30, 350-A, and 350-B.

6. AIR 1958 SC 956, also referred as Kerala opinion.


8. Ibid., p.62.

9. Ibid.

10. Ibid., p.63.


12. Ibid.


19. Under this provision the Union Government (Welfare Ministry) issued a notification in 1993 listing the Muslims, Christians, Sikhs, Buddhists and Zoroastrians as the ‘Minorities’.


23. In the landmark opinion in *Kerala Education Bill*, S.R. Das C.J., observed that Article 30(1) was subject to Article 29 (2). The Supreme Court of India has consistently upheld that Article 29 (2) is applicable to all educational institutions established and maintained by and receiving aid from the State. Thus, educational institutions established and maintained by minorities but receiving aid from the State have been directed to admit a reasonable percentage of non-minority students. By doing so the Apex Court has tried to strike a delicate balance between the citizen’s right of non-discrimination under Article 29 (2) and minorities’ right of establishing and administering educational institutions of their choice provided under Article 30 (1). See cases: *Kerala Education Bill, Ahmedabad St. Xaviers college Society v. State of Gujarat, State of Bombay v. Bombay Education Society, D.A.V. College v. State of Punjab, Gujarat University v. Shri Krishna,, T.M.A. Pai Foundation v. State of Karnataka*.


34. AIR 1992, SC 1630.
35. Judgments on Minority Rights, op. cit., p.792.
36. Ibid., p. 812.
37. Ibid., p. 817.
38. Ibid.
39. Ibid., p.819.
40. Ibid., p. 820.
41. Ibid., p. 833.
42. Ibid.
43. Ibid., p. 834.
44. Ibid., p. 835.
46. After coming into force of the Constitution of India, some changes in the Aligarh Muslim University Act of 1920 were necessitated. Thus Aligarh Muslim University (Amendment) Act was promulgated by the Parliament of India in 1951 and necessary changes were made. See for detail Aligarh Muslim University (Amendment) Act, 1951.
47. In 1965, Aligarh Muslim University witnessed unprecedented violence and turmoil on the Campus which forced Government of India to bring in an ordinance to deal with the situation. Subsequently, the Parliament of India brought Aligarh Muslim University (Amendment) Act 1965 under which substantial changes were made in the prevailing Act of 1951.
50. S. Azeez Basha v. Union of India, Judgments on Minority Rights, op. cit., p. 159.
51. Ibid., p. 160.
52. Ibid., p. 150.
55. Ibid., p. 49.
56. Ibid., p. 59.
57. Ibid., p. 60.
59. Ibid., p. 1322.
60. Ibid.
61. As in Judgment on Minority Rights, op. cit., p. 165.
63. Ibid., p. 1324.
64. All 2005, L.J. 3452.
65. Ibid., p. 32. (Reserved Judgment)
66. Ibid., p. 47.
68. The Supreme Court left Questions 2, 3 (a), 6 (a), 6 (b) and 7 to be answered by a Regular Bench.
69. Ibid., p.363.
70. Ibid., p.371.
71. Ibid., pp. 366-367.
74. Ibid., pp. 367-368.
75. The Bharatiya Janata Party in its Election Manifesto 1998 declares India as ‘one country, one people, and one nation”. This has serious implications not only for the multi-religious, multi-linguistic and multi-ethnic character of Indian society but also for the cultural and religious rights that the Constitution has granted to the minorities. See Neera Chandhoke, Beyond Secularism - The Rights of Religious Minorities, Oxford University Press, 1999, p.2.
85. In 1950 a Presidential Order was issued (continuing even today) which denies the Dalit Converts to Islam and Christianity the special privileges and reservations that they are entitled to receive as people
belonging to Scheduled Caste and Other Backward Castes. Interestingly if these Dalits convert to Sikhism or Buddhism, they will continue enjoying the privileges, they were enjoying as Hindu Dalit.

86. Muslim youths picked up by the police as the suspects of terrorist activities were not allowed in many cases, to hire a lawyer to prove their innocence. Many District Bar Associations passed resolutions declaring that the alleged terrorists will not be allowed to have lawyers. In many cases when some public spirited lawyers, tried to offer their services and went for pleading the innocence of the accused youths, they were physically assaulted by the lawyers in the premises of the Court. However, when the Hindu youths including an army Major and some religious preachers were arrested by the police with similar charges and produced in the Court, no such resolution was passed by any Bar Association. It is desirable to mention here that according to Indian Constitution and well-accepted universal principle of natural justice an accused is to be presumed innocent unless proved otherwise. In the cases of Muslim youths, this principle of natural justice has been grossly violated and the judiciary including the Supreme Court never took cognizance of the matter despite appreciable judicial activism shown by it in cases of gross violation of human rights.


88. The Hindu (New Delhi), March 31, 2009.