CHAPTER TEN

PROTECTION OF MINORITIES AND SECULARISM

India is a multi-religious and multi-lingual State. Therefore, it comprises various minorities based on the religion, language, culture, race, caste etc. It becomes essential to protect the interests of these minorities. Therefore, the Constitutional Provision is made in the Articles 29 and 30 of the Indian Constitution. In this context, Gajendragadkar has remarked that 'the provisions of these two Articles indicate that while providing for common Secular Citizenship and guaranteeing common Fundamental Rights and imposing fundamental obligations on all citizens alike the Constitution makers were conscious of the fact that, religious or linguistic minorities needed protection in respect of their language, script and culture and they did not hesitate to make appropriate provisions that behalf'.

The Article 29 and 30 are unique in the sense that, there are no similar provisions in the Constitution of the U.S.A. It is observed that 'these provisions make our State more Secular than even the United States of America'.

The text of these two Articles reads as follows:

Article 29:

1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.

2) No citizen shall be denied admission into any Educational Institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language, or any of them.

Article 30 :-

1) All minorities, whether based on the religion or language, shall have the right to establish and administer Educational Institution of their choice.

(1A) In making any law providing for the compulsory acquisition of any property of an Educational Institution established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined by under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.

2) The State shall not in granting aid to Educational Institutions discriminate against any Educational Institution on the ground that it is under the management of a minority, whether based on religion or language.

The protection under Article 29 is dual. In the first place, it guarantees the right of a religious or linguistic minority to conserve its language, script or culture and, secondly it protects an individual citizen against the discrimination on the ground of his religion, race, caste or language.

The right of minorities to establish and administer the Educational Institution is guaranteed in the Article 30 of the Constitution. This right, though independently mentioned, is in fact a corollary to the right guaranteed in clause I of the Article 29. The Article covers both pre-constitution and post-constitution institutions. This has been held in connection with the Kerala Education Bill, 1957\(^4\). But the important point to note is that, the term 'Minority' is not defined in this Article or elsewhere in the Constitution. In this context, it is stated that the expression 'minority' in Article 30 refers to any community which is numerically less than fifty percent of the population of a particular

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State as whole. A community which is a minority in a specific area of the State though a majority in the State as a whole would not be treated as a minority for the purpose of this Article. A minority could not also be determined in relation to the entire population of the country. If it was a State Law, the minorities must be determined in relation to the population of the State.\(^5\)

In Jain Swetamber Terapanthi Vidyalaya and other V. The State of W.B.\(^6\), case. The court held that, Jain Swetamber Terapanthi Sect. constitute religious minorities in India particularly in the West Bengal and the institution established and run by such sect is entitled to benefits under Article 30.

Clause (1A) has been inserted in the Article 30 to safeguard the property belonging to an educational institution established and administered by a minority. According to this provision, full compensation has to be paid if the State seeks to acquire the property

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belonging to the Minority Educational Institution.

Clause (2) of the Article 30 is a prohibition against discrimination by the State. The State shall not, in granting aid to the Educational Institutions discriminate against any institution on the ground that, it is under the management of a minority, religious or linguistic.

Here, it must be pointed out that the right of the minorities to establish and administer their own Educational Institutions and to receive State aid is subject to regulation by the Educational authorities of the State to prevent maladministration and to ensure a proper standard of education. But these regulations cannot be such as to destroy the right of minorities to administer their institutions.

Similarly, it is to be noted in this context that the rights of the minorities have not been changed even after the 42nd 44th Constitutional Amendment of 1978, which repealed the Article 31, and as a result of this, all persons and the Educational Institutions of majority community have lost their Constitutional
right to compensation for acquisition of their property by the State. But the property belonging to the Educational Institutions established and administered by the minorities can not be acquired by the State without payment of such compensation as would safeguard their right to exist. This is guaranteed by clause(1A) in the Article 30 of the Constitution.

Thus, it is clear from the nature of these Constitutional Provisions that, the rights conferred on religious and linguistic minorities are fundamental rights and they are justiciable and can be enforced by the courts. This Constitutional protection of the rights of minorities clearly indicate the unique feature of Indian Constitution and its Secular character. Johari describes it as 'humanist Secularism'.

Despite this Constitutional protection given to the minorities, it is also necessary to see whether it creates vested interests in them because, it may lead

to strengthen communal forces which are certainly threat to both, the national interest and Secularism. The 'humanist Secularism' may turn into 'communalism' if the protection given to the minorities is used by them wrongly or for parochial purposes. It would also be misuse of the term 'Secularism', if it is interpreted to mean appeasement of minorities. In this case, it will encourage communalism in India.