CHAPTER IV

4.0 MINORITY RIGHTS TO CONSERVE LANGUAGE AND CULTURE

4.1 Introduction

India’s more than one billion plus population comprises a unique mosaic of more than 400 odd languages and 3,000 odd dialects spread over to its 28 States and 7 Union Territories, making it very unique and distinct linguistic, cultural and ethnic landscape on the world map.\textsuperscript{359}

The dialects and language of India are broadly drawn from four linguistic families such as Indo - Aryan (76%), Dravidian (21.6%), Austro - Asiatic (1.2%), Tibeto - Burman (1%).\textsuperscript{360} One of the distinctive features of this linguistic diversity is that the composition of each linguistic group comprises of multiple group identity based on caste, class, religion or region which is mere divisive and exclusionary than the linguistic identity.\textsuperscript{361} That means the membership in linguistic group’s cuts across different caste, religion or region on even social class. In such a pluralistic society, which advocates for maintenance of minority identity and celebration of diversity of culture and tradition is bound to have conflict and collisions which may act as clog in wheel of national progress and development and may encourage fissiparous and separatist tendency striking at the very root of India’s celebrated Unity in Diversity.

The main focus of the present chapter is to explore and find out as to what extent the minority rights to conserve their distinct language script and culture is protected by the Constitution of India under Article 29 of the Constitution. Whether, the minority have rights to set up educational institution for the purpose of conserving their distinct language, script and culture? Whether, right to set up educational institutions shall include right to provide general and secular instructions in such institutions? What are correlations between Article 29(1) and right of non-discrimination to citizens under Article 29(2)? Finally, the emphasis will be on Constituent Assembly Debate on the language and cultural issues. The sub themes of this chapter have been arranged and analysed as per the following-


\textsuperscript{360} Ibid at 64.

\textsuperscript{361} E. Annamalai “Reflection on Language Policy for Multilingualism, Language Policy”,(EPW Vol. II 2008 ) p.64
2. Objects and Purposes of Article 29(1).
3. Nature and Scope of Article 29(1) and its relation with Article 30(1).
4. Relationship between Article 29(1) and Article 29(2).
5. Distinction between Article 15(1) and Article 29(2).
6. Minority Language issues during Constituent Assembly Debate.
7. Concluding observation.

4.2 Constitutional Habitat of Right to Conserve, Language, Script and Culture

Article 29 of the Constitution reads thus:

Article 29: Protection of the interest of the minorities—“(1) Any section of the citizen, residing in the territory of India or any part thereof having distinct language, script or culture of its own 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 the ground only of religion, race, caste, language or any of them.”

Articles 29 and 30 of the Constitution incorporated in Part III of the Constitution are grouped together under the sub-heads “Cultural and Educational Rights”. The text and marginal note of both the articles show that their purpose is to confer Fundamental Rights on certain section of the community which constitute minority community.\(^\text{362}\) Article 29(1) gives protection to, “every section of citizens” having distinct, language, script or culture, to conserve the same.\(^\text{363}\) To have the right to conserve its distinct language, script or culture of one’s own is to have the right to preserve one’s group identity. If such section desires to preserve their own language and culture, the state would not stand in their way. Perhaps, residents of the state having different script, languages or cultures may also object to illegal migration from a neighbouring country resulting in adverse impact on the language, script or culture of that state.\(^\text{364}\)

A minority community can effectively conserve its language, script or culture by and through educational institution and therefore, the right to establish and maintain educational institution of its choice is necessary concomitant to the right to

\(^{364}\) Sarbananda Sonowal v. Union of India (2005) 5 SCC 665, 719
conserve its distinct language, script or culture and that is what Article 30(1) confers on all minorities.\textsuperscript{365}

\section*{4.3 Objects and purposes of Article 29(1)}

Education is one of the most important tools for promoting minority characteristics and distinct identity, which applies not only to overreaching culture but also to its component parts, language and religion.\textsuperscript{366} Education is, thus, intrinsically related to the right to identity, implying the right to preserve distinct features and the single most important agency for cultural reproduction, socialization and identity formation and transmission.\textsuperscript{367}

Article 29(1) of the Constitution gives rights to, “any section of the citizen to conserve their distinct language, script and culture, thereby recognizing the pluralist view of the society. Pluralism deals with diversity, allowing people to value different social goods as well as with group rights.\textsuperscript{368}

The pluralist approach of any diversity and unity of India was rightly recognized by Pandit Jawahar Lal Nehru, in his most inspiring book, \textit{“The Discovery of India”} as follows:

\begin{quote}
“It was fascinating to find how the Bengalis, the Canarese, the Malayalis, the Sindhis, the Punjabis, the Pathans, the Kashmiris, the Rajput, and the great Central block comprising of Hindustani speaking people had retained their particular characteristics for hundreds of years with more or less the same virtues and failings and yet they had been throughout these ages distinctively Indian, with the same national heritage and the same set of morals and qualities. Ancient India, like ancient China was a world in itself, their culture and civilization gave shape to all things. Foreign influences poured in and often influenced that culture, but they were absorbed. Disruptive tendency gave rise immediately to an attempt to find a synthesis. It was some kind of a dream of unity that occupied the mind of India, and of the Indians, since the dawn of the civilization.And that unity was not conceived as something imposed from outside.It was something deeper; within its fold, the widest tolerance of beliefs
\end{quote}

\textsuperscript{367} Ibid.
\textsuperscript{368} Holly Cullen, “Education Rights or Minority Rights” (\textit{7 International Journal of Law and Family 1993}) p.156.
and customs was practised and every variety was acknowledged and even encouraged.\textsuperscript{369}

The same liberal, genuine and catholic approach was adopted by the Constitution makers in the matter of the preservation of the right of the minority and their cultural diversity.

In \textit{Ahmadabad St. Xavier College Society v. State of Gujarat}\textsuperscript{370}, Justice Khanna observed, “The minorities are as much children of the soil as the majority and the approach has been to ensure that nothing should be done as might deprive the minority of a sense of belonging, of a feeling of security, of a consciousness of equality and of awareness that the conservation of their religion, culture and language and script as also the protection of their educational institution as fundamental rights enshrined in the Constitution. The safeguarding of the interest of the minorities amongst section of the population is as important as the protection of the interest amongst individuals of person who are below the age of the majority or otherwise suffering from some kind of infirmity. The idea of giving some special rights to the minorities is not to have a kind of a privileged for pampered section of the population but to give to the minorities a sense of security and a feeling of confidence. The specific provision for the protection of the interest of minority is in fact, an index of the level of civilization and catholicity of a nation as to how far their minorities feel secure and are not subject to any discrimination or suppression.”

These observations clearly reflect as to why the minority rights are to be so zealously protected in every society especially in India. He also knew that it was the feeling amongst the minorities about the security and non-discrimination that mattered.\textsuperscript{371}

Chief Justice, S.R. Das, also provided the rationale as to why the rights of minority in respect of their culture and traditions should be protected \textit{in re Kerala Education Bill, 1957} \textsuperscript{372} by observing that:

“There can be no manner of doubt that our Constitution has guaranteed certain cherished rights of the minorities concerning their language, culture and religion. These concessions must have been made to them for good and valid

\textsuperscript{369} F.S. Nariman, “Minorities at the Cross roads, Comment on Judicial Pronouncement” \textit{(EPW} Vol. XLIX No. 46, 2014)p.40.
\textsuperscript{370} (1974) 1SCC 717 at 781.
\textsuperscript{371} F.S. Nariman, “Minorities at the Cross roads, Comment on Judicial Pronouncement” \textit{(EPW} Vol. XLIX No. 46, 2014)p. 43.
\textsuperscript{372} AIR 1958 SC 956.
reasons. Article 45, no doubt, require the State to provide for free and compulsory education for all children but here is nothing to prevent the state from discharging that solemn obligation through Government and Government aided school and Article 45 does not require that the obligation to be discharged at the expense of the minority community. 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 our sacred obligation to the minority community who are of our own.”

The cultural diversity was further recognized by S.R. Das, C.J. while observing that:

“The genius of India has been able to find unity in diversity by assimilating the best of all creeds and cultures. Our Constitution accordingly recognizes our sacred obligation to the minorities”.

4.4 Nature and Scope of Article 29(1) and its relation with Article 30(1)

In order to claim the benefits of Article 29(1), the individual or group whether majority or minority must prove the following essential ingredients:

(i) A section of the Citizen.

(ii) Residing in the territory of India or any part thereof

(iii) Having a distinct language, script or culture; and

(iv) That the distinct language, script or culture, as the case may be, is of the section claiming the right (“distinct language, script or culture of its own”).

All the ingredients must be simultaneously proved to claim the protection of Article 29 of the Constitution. Further, the right has been guaranteed to “any section of the citizen” as distinguished from an individual. The section of citizen claiming protection of Article 29 must not only prove that it is having distinct language, script or culture but also of its own.

If we analyse the provisions of Article 29(1) and Article 30(1), it is apparent that Article 29(1) neither control the scope of Article 30(1) nor is controlled by that Article. The scope of two is different in the following respects.

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374 Ibid.
Firstly, Article 29(1) though titled as, “Protection of interest of Minorities confers the right mentioned in clause (1) thereof to, “any section of citizen” of India, which clearly includes both majorities as well as minorities. Similarly, Article 30(1) is not confined to those minorities which have distinct language, script or culture but extends to all religious and linguistic minorities.\(^{375}\)

Secondly - Article 30(1) gives only the right to establish and administer educational institution of minority choice while Article 29(1) gives a very general right to conserve the language, script or culture.\(^{376}\)

Thirdly - The right under Article 29(1) may be exercised without establishing an educational institution and the right under Article 30(1) need not be exercised for conserving language, script or culture.\(^{377}\)

Fourthly - Article 29(1) is relevant only so far as the right of the minorities to establish educational institution for the purpose of preserving their distinct linguistic or cultural identities is concerned while Article 30(1) goes further and includes the right of the linguistic or religious minority even to establish general secular educational institution.\(^{378}\)

Fifthly - Reading Article 29(1) and Article 30(1) together it becomes obvious that while under the former, the majority have the right to establish and administer educational institution for the purpose or in a manner of preserving its distinct language, script or culture it cannot claim the right to establish and administer such institution for the purpose of imparting general secular education. The minorities on the other hand, can claim the protection of both of Article 29(1) and of Article 30(1).\(^{379}\)

It is thus obvious that Article 29(1) and Article 30(1) create two separate rights though it is possible that in a given case the two rights might meet. The right as mentioned in Article 29(1) is available to both the majority and minorities. But the right under Article 30(1) is available only to minorities based on language or religion and no other section of the citizen of India has such a right.\(^{380}\)

\(^{375}\) Ibid.
\(^{376}\) Ibid.
\(^{377}\) Ibid.
\(^{378}\) Ibid.
In *Rev. Father W. Proost v. State of Bihar*\(^{381}\), one of the issue before the Supreme Court was whether the protection guaranteed under Article 30(1) is a corollary to the right guaranteed under Article 29(1). It was contended by the State that protection to minorities in Article 29(1) was only to conserve a distinct language, script or culture of its own and therefore, the educational institutions which imparted general education did not qualify for protection of Article 30.

Rejecting the contention on behalf of the State, *Hidayatullah*, C.J rightly pointed out that\(^{382}\)

“The width of Article 30 could not be cut down by introducing any consideration on which Article 29(1) is based. Article 29(1) is a general protection given to section of citizen to conserve their language, script or culture. Article 30 is special right to minority to establish educational institutions of their choice. The two Articles create two separate rights though it is possible that rights might meet in a given case.”

The aforesaid observation of *Hidayatullah* C.J, were cited with approval by A.N. Ray, C.J. in *Ahmedabad St. Xavier College Society v. State of Gujarat*.\(^{383}\) One of the question before their Lordship was, whether Article 30(1) and Article 29(1) of the Constitution are mutually exclusive?

His Lordship (on behalf of himself and Palekar, J) while distinguishing the nature and scope of Article 29(1) and Article 30(1) observed that:

“It will be wrong to read Article 30(1) as restricting rights of the minorities to establish and administer educational institution of their choice only to cases where such institutions are concerned with language, script or culture of the minorities. The reasons are these. First, Article 29 confers fundamental right on any section of the citizens which will include the majority section whereas Article 30(1) confers the right on all minorities. Second, Article 29(1) is concerned with language, script or culture, whereas Article 30(1) deals with minorities of the nation based on religion or language. Third, Article 29(1) is concerned with right to conserve language, script or culture, whereas Article 30(1) deals with right to establish and administer educational institutions of the minorities of their choice. Fourth, the conservation of language, script or culture under Article 29(1) may be by means wholly unconnected with

\(^{381}\) (1969) 2 SCR 73 at 78.
\(^{382}\) *Ibid*.
\(^{383}\) (1974) 1 SCC 717.
educational institutions and similarly establishment and administration of educational institutions by a minority under Article 30(1) may be unconnected with any motive to conserve language, script or culture. A minority may administer an institution for religious education which is wholly unconnected with any question of conserving a language, script or culture.  

His Lordship further pointed out that:

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

Further, to claim protection of Article 29(1), it is neither necessary to prove that any section of citizen, under this article is separate religious denomination for the purpose of Article 26 (1) (a) of the Constitution nor it is necessary to establish that it is religious or linguistic minority as per mandate of Article 30(1) of the Constitution.

Attending this aspect of the right of ‘any section of citizen’ under Article 29(1) was subject to judicial scrutiny in D.A.V. College Bathinda v. State of Punjab. In this case it was conceded by the State of Punjab that the Hindus of Punjab are religious minority in the State, but the claim of Arya Samaj to be linguistic minority was contested.

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384 Ibid at 742.
386 Article 26 of the Constitution read as: Freedom to manage religious affairs subject to public order, morality and health, every religious denomination or any section thereof shall have the right
(a) to establish and maintain institutions for religious and charitable purposes;
(b) to manage its own affairs in matters of religion;
(c) to own and acquire movable and immovable property; and
(d) to administer such property in accordance with law.
387 (1971) 25 CC 269.
388 Ibid. at 275 (Para 10).
It was held by the Lordship of the Supreme Court that, “A linguistic minority for the purpose of Article 30(1) is one which must at least have separate spoken language. It is not necessary that the language should also have a distinct script for those who speak it to be a linguistic minority. There are in this country, some language which may have no script of their own, but nonetheless this section of the people who speak that language will be linguistic minority entitled to protection of section 30(1).”  

P. Jaganmohan Reddy J. speaking on behalf of the Court further pointed out,  

“The Arya Samajis having a distinct script, of their own, namely Devanagari. They is, therefore, entitled to invoke the right guaranteed under Article 29(1) because they are a section of the citizen having a distinct script and under Article 30(1) because of their being a religious minority.”  

In *Jagdev Singh Sidhanti v. Pratap Singh Daulta* 391, it was held by the Supreme Court that the,  

“Right to conserve language, script or culture guaranteed by Article 29(1) of the Constitution includes the right not only to preserve them through educational institutions but also to agitate for their protection.”  

J.C. Shah, J. further remarked, “Political agitation for conservation of the language of a section of the citizens cannot, therefore, be regarded as corrupt practice within the meaning of Section 123(3) of the Representation of the People Act, 1951….Unlike, Article 19(1), Article 29(1) is not subject to any reasonable restriction.”  

In *Dipendra Nath v. State of Bihar* 393, Ramaswami, C.J. speaking on behalf of the Court observed that, “the crucial phrase in Article 30(1) is, “of their choice”, that the ambit of the freedom of choice conferred by the Article is therefore as wide as the choice of the particular community may make it and that it is open to a religious minority to establish educational institutions for the purpose of conserving its religion, language or culture and also for the purpose of giving a thorough good secular education to their children as the article applies to both these classes of institutions”.

389 (1971) 2SCC 269 at 275.  
390 *Ibid* at 277.  
391 AIR 1965 SC 183.  
392 *Ibid* at 188.  
393 AIR 1962 Pat. 101.
In *re Kerala Education Bill, 1957*\(^{394}\) Chief Justice Das, while elaborating the scope of Article 29(1) and Article 30(1) amalgamated the rights of the minorities to establish educational institutions for the purpose of conserving their distinct language, script and culture as well as the right to impart general secular education laid down the followings\(^{395}\):

“(i) The Article 30(1) gives certain rights not only to religious minorities but also to linguistic minorities to set up educational institution of their choice.

(ii) It does not say that minorities based on religion should establish educational institutions for teaching religion only or the linguistic minorities should have the right to establish educational institution for teaching language only.

(iii) What the article says and means is that the religious and linguistic minorities should have right to establish educational institutions of their choice. There is no limitation placed on the subject to be taught in such educational institutions.

(iv) The minorities will ordinarily desire that their children should be brought up properly and efficiently and be eligible for higher university education and go out in the world fully equipped with such intellectual attainment as will make them fit for entering the public services. Hence, educational institutions of their choice will necessarily include institutions imparting general secular education also.

(v) Further, this article leaves it to minorities to establish educational institutions that will serve both the purposes i.e. the purpose of conserving their religion, language or culture and also the purpose of giving a thorough, good general education to their children.”

Elaborating further the rights of any section of the citizen including the minority to conserve their language, script and culture by and through the means of educational institutions of their choice, Das, C.J. further remarked as follows\(^{396}\):

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\(^{394}\) AIR 1958 SC 956.

\(^{395}\) *Ibid* at 977(Para 23).

\(^{396}\) *Id.* at 984.
(i) “Article 29(1) gives protection to any section of citizen residing in the territory of India, having distinct language, script or culture of its own the right to conserve the same.

(ii) The distinct language, script or culture of a minority community can best be served by and through educational institutions, for it is by education that their culture can be inculcated into the impressionable minds of the children of their community. It is through educational institutions that the language and script of the minority community can be preserved, improved and strengthened.

(iii) For this purpose, the minorities may consider it essential that the education of their children should be in accordance with the teaching of their religion and such education cannot be obtained in ordinary schools designed for all members of the public but can only be secured in schools conducted under the influence and guidelines of people well versed in the tenets of their religion and in traditions of their culture.

(iv) Further, the minorities evidently desire that education should be imparted to the children of their community in an atmosphere congenial to the growth of their culture. Our Constitution makers in their own wisdom recognized the validity of their claims and to allay their fears conferred on them fundamental rights for the above purpose.

(v) However, the Court also cautioned by saying that conservation of the distinct language, script and culture is not the only object of choice of the minority community. They also desire that scholars of their educational institutions should go out in the world well and sufficiently equipped with qualifications necessary for a useful career in life.”

The Court after pointing out that Article 29 and 30 are grouped together under the heading “Cultural and Educational Rights” said that the articles intended to confer certain fundamental rights on certain sections of the community which constitute minority communities, further recognized the rights of the minority to establish educational institutions for this purpose while observing that:

“A minority community can effectively conserve its language, script or culture by and through educational institutions and therefore, the right to establish and maintain educational institutions of their choice is necessary concomitant to the right to conserve its distinctive language, script or culture
and that is what is conferred on all minorities by Article 30(1) of the Constitutions.”

Thus, the Supreme Court categorically recognized not only the rights of the minorities to conserve, strengthen and improve their distinct language, script and culture through educational institutions of their choice as well as by means of education, the Court went further, to recognize the rights of the minority to supervise and ensure that teaching in such institution is to be conducted under the guidance of the people who are well versed of their traditions and culture and in atmosphere which is congenial to the growth of their culture.

In *D.A.V. College, Jallandhar v. State of Punjab*, the interplay of Article 29(1) and Article 30(1) as well as the various dimensions of their rights was subject to extensive interpretation by the Constitution bench of the Supreme Court.

The petitioner D.A.V. College and Trust Society, managing and administering D.A.V. College, challenged the compulsory affiliation of the college to Guru Nanak University constituted under Guru Nanak University Act (21 of 1969) as violative of their fundamental rights under Articles 29(1) and 30(1) of the Constitution. The petitioner also challenged in particular Sections 4, 4(2), 4(3) and 5 of the Act as being violative of Articles 14, 19(1) (c) and (f), 26, 29(1) and 30(1) of the Constitution of India. They also claimed to be religious or linguistic minority within the meaning of Article 30(1) of the Constitution.

It was argued that the main purpose and object of the University was to propagate Sikh religion and promote Punjabi language in Gurumukhi script that since the petitioner institutions belong to a minority based on religious and language in that they being adherent of Arya Samaj Sect And denomination their compulsory affiliation to the University violates Article 29(1) and 30(1) of the Constitution.

Section 4 of the Guru Nanak University Act, 1969 read as:

(1) To make provision for study and research on the life and teaching of Guru Nanak and their cultural and religious impact in the context of Indian and world civilizations.

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397 (1959) SCR 995 at 1043.
398 (1971) 2 SCC 269.
399 *Ibid* at 271.
400 *Id.* at 272.
(2) To promote studies to provide for research in Punjabi language and literature and to undertake measures for the development of Punjabi, language, literature and culture.\(^{401}\)

During the arguments before the Court, it was conceded by the state of Punjab that the Hindus of Punjab are a religious minority in the State though they may not be so in relation to the entire Country, but the claim of Arya Samaj to be linguistic minority was however contested.

The Constitution bench of the Supreme Court speaking through Jaganmohan Reddy, J. held that “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 language should also have a distinct script for those who speak it to be a linguistic minority. There are in this country some languages which have no script of their own that nonetheless that section of the people who speak that language will be linguistic minority entitled to protection of Article 30(1) of the Constitution.\(^{402}\)

Regarding the claim of Arya Samaji the Court said, Arya Samajis are religious minorities and are entitled to invoke the right guaranteed under Article 30(1). They also have a distinct script of their own, namely, Devanagari, therefore, they are entitled to invoke the right guaranteed under Article 29(1), because they are a section of citizen having a distinct script.\(^{403}\)

In the context of the main objection of the petitioner relating to clause (2) and (3) of Section 4 of 1969 Act which provide for study and research of the life and teaching of Guru Nanak and Punjabi language and literature do not offend against Article 29(1) and 30(1) of the Constitution. From the language of clause (2) and (3) of section 4 of 1969 Act it is clear that nowhere there is a mandate for compelling college affiliated to it either to study the religious teaching of Guru Nanak or to adopt the culture of Sikh.\(^{404}\)

The Court further remarked as follows:

“If the University makes a provision for an academic study and research of the life and teaching of any saint it cannot on any reasonable view be considered to require college affiliated to the University to compulsorily study his life and teaching or to do research in them. The impugned provisions would

\(^{401}\) Id. at 278.
\(^{402}\) Id. at 275.
\(^{403}\) Id. at 270.
\(^{404}\) Id.
merely indicate that the University can institute a course of study or provide research facilities for any student of the University, whether he belongs to the majority or the minority community to engage himself in such study or research but be it remembered that this study and research on the life and teaching of the Guru Nanak must be study in relation to their culture and religious impact in the context of Indian and world civilizations which is mostly an academic and philosophical study.\footnote{Id. at 279.}

The Court also rejected the claim on the grounds of violation of equality clause under Article 14 and said, “State of Punjab is created as a unilingual state with Punjabi as its language and if provision is made for the study of Punjabi language that does not furnish a ground for discrimination, nor can the provision for the study of life and teaching of Guru Nanak can be said to afford any cause for complaint on the grounds of violation of Article 14 of the Constitution.\footnote{Id. 270.}

While deliberating the interplay of Article 29(1) and Article 30(1) of the Constitution the Court observed as follows:

“Article 29(1) is wider than Article 30(1), in the sense that ‘any section of the citizen’ including the minorities, can invoke the rights guaranteed under Article 29(1), the rights guaranteed under Article 30(1) are only available to minorities based on religion or language. It is not necessary for Article 30(1) that the minorities should be both a religious minorities as well as a linguistic minority. It is sufficient if it is one or the other or both. A reading of these two Articles together suggest that religious or linguistic minority has a right to establish and administer educational institutions of its choice for effectively conserving its distinctive language, script or culture. However, exercise of these rights is subject to the regulatory power of the state for maintaining and facilitating the excellence of its standard. This right is further subject to clause (2) of Article 29 which provides that no citizen shall be denied admission into any educational institutions which is maintained by the State or receive aid out of state funds on ground only of religion, race, caste, language or any of them.”\footnote{Id. at 273.}
In Ahmedabad St. Xavier College v. State of Gujarat, Justice Khanna in his separate and concurrent opinion, on the question of whether clause (1) of Article 30 is subject to provision of clause (1) of Article 29(1) held that clause (1) of Article 29 and clause (1) of Article 30 deals with distinct matters and it is not permissible to circumscribe or restrict the right conferred by clause (1) of Article 30 by reading in it any limitation imported from clause (1) of Article 29. Article 29(1) confers a right on any section of citizen having a distinct language, script or culture of its own to conserve the same. It is not necessary that the section of the citizen should constitute a minority.

Secondly, the rights conferred by Article 29(1) is for the conservation of language, script or culture, while Article 30(1) is for the establishment and administration of educational institutions of the choice of the minorities, Had it been the intention of the Constitution makers that the educational institution which can be established and administered by minorities should be only for conservation of their language, script or culture, they would not have failed to use words to that effect in Article 30(1). In absence of those words, it cannot be subscribed that educational institution in Article 30(1) are only those which are intended to conserve language, script or culture of the minority.

Thirdly, clause (1) of Article 30 also contains the words “of their choice” . These words qualify educational institutions give vast discretion to minorities in selecting types of institutions. In case an educational institution is established by a minority to conserve its distinct language, script or culture, ‘the right to establish and administer such institution such institution would fall under Article 29(1) as well as Article 30(1).”

The minorities can, however, choose to establish an educational institution which is purely of a general secular character and is not designed to conserve their distinct language, script or culture. The right to establish and administer such an institution is guaranteed by Article 30(1) and the fact that such an institution is guaranteed by Article 30(1) and the fact that such an institution does not conserve the distinct language, script or culture of a minority would not take it out of the ambit of Article 30(1).

Justice Mathew, in his concurring and separate opinion laid down the distinction between Article 29(1) and 30(1) of the Constitution as follows:

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408 (1974) 1 SCC 717.
409 Ibid. at 785 – 786.
(1) Article 29(1) confers on any section of citizen residents in the territory of India the right to conserve its language, script or culture. It does not speak of any minority, religious or otherwise.

(2) Article 29(1) confers the right not only upon the minority as understood in the technical sense but also upon a section of the citizen resident in territory of India which may not be minority in its technical sense, the beneficiary of the right under Article 30 is a minority, either religious or linguistic.

(3) Article 29(1) confers right in respect of three subjects i.e. language, script or culture, Article 30(1) deals only with the right to establish and administer educational institutions.

(4) Article 29 does not deal with education as such; Article 30 deals only with the establishment and administration of educational institutions. It might be that in a given case, the two articles might overlap. When a linguistic minority establishes an educational institution to conserve its language, the linguistic minority can invoke the protection of both the Articles.

(5) Further, when Article 30(1) says that a linguistic minority can establish and administer educational institutions of its choice, it means that it can establish and administer any educational institution. If a linguistic minority can establish only an educational institution to conserve its language, then the expression of their choice in Article 30(1) is practically robbed of its meaning.

(6) Thus, Article 29(1) cannot limit the width of Article 30(1). There are religious minorities in this country which have no distinct language, script or culture as envisaged in Article 29(1). For these religious minorities, Article 29(1) guarantees no right. Yet Article 30(1) gives them the right to establish and administer educational institutions of their choice. So, the educational institutions which they are entitled to establish and administer cannot be those to conserve their language, script or culture.\(^{410}\)

\(^{410}\) *Id.* at 797.
In *T.M.A. Pai Foundation v. State of Karnataka*411 Chief Justice B.N. Kirpal, speaking on ‘behalf of the majority reaffirmed the line of reasoning adopted by the Lordship of the Supreme Court in context of relationship between Articles 29(1) and 30(1) of the Constitution and remarked as follows:

“Articles 29 and 30 are a group of articles relating to cultural and educational rights. Article 29(1) gives the right to any section of the citizens residing in India or any part thereof, and having a distinct language, script or culture of its own to conserve the same. Article 29(1) does not refer to any religion, even though the marginal note of the article mentioned the “Protection of interest of Minorities”. Article 29(1) essentially refers to sections of citizens who have distinct language, script or culture even though their religion may not be the same. The common thread that runs through Article 29(1) is language, script or culture and not religion. For example if in any part of the Country, there is a section of society that has a distinct language they are entitled to conserve the same, even though the persons having that language may profess a different religion. Article 29(1) gives the right to all section of citizens whether they are in a minority or majority religion, to conserve their language, script or culture. In the exercise of this right to conserve the language, script or culture, that section of society can set up educational institutions. The right to establish and maintain educational institutions of its choice is necessary concomitant to the rights conferred by Article 30.412

To sum up, therefore, so far as the majority are concerned they have the right to establish educational institution only as a scanner of the exercise of their right to conserve their distinct language, script or culture. They have no right under Article 29(1) to establish general secular educational institution. So far as minorities are concerned they have not only the right under Article 29(1) if they fulfil the conditions specified therein, but also they have under Article 30(1) a privileged right to establish educational institution of their choice. The right under Article 30(1) is hence, not merely for the purpose of conserving the linguistic or religious identity of the minority concerned. It also includes the right to establish and administer general secular educational institution, though the requirement that they must be linguistic or religious minority must be fulfilled as a precondition for claiming this right.

Besides it Article 29(1) is couched in a mere general term than Article 30(1). Article 29(1) speaks of right to conserve, “language, script or culture”. The narrower

411 (2002) 8SCC 481.
412 Ibid. Pp. 555-556 (Para 89 and 90).
and more specific term ‘right to establish and administer educational institution’ occurring in Article 30(1) is only an aspects of the term, “right to conserve” occurring in Article 29(1). Similarly, the word ‘culture’ occurring in Article 29(1) includes ‘religion’ for the letter is clearly an aspect of the former.

4.5 Relationship between Article 29(1) and Article 29(2)

If Article 29(1) guarantees the right specified therein as much to the majority as to the minorities then the corollary is that clause (2) of Article 29 is restriction as much against the majority as against minority educational institution established for purpose specified therein. It is thus that even a minority educational institution, if it satisfies the test only of Article 29(1) is subject to Article 29(2).

So far as educational institution, whether of the kind specified in Article 29(1) or otherwise, maintained by the State concerned, the mere existence of limitation on the powers of the legislature and the executives by the existence of a Fundamental right part in the Constitution ensures that there are no discrimination on the grounds of religion, race, caste, language or any of them. Denial of admission on any of the grounds specified in Article 29(2) will violate one or other fundamental rights of the citizen.

But so far as educational institution established in exercise of right under Article 29(1) are concerned, the religion race, language or caste based discrimination or prohibition apply only if they are receiving aid out of State funds. It means, where such an educational institutions established by any section of the citizen of India is not maintained by the State or is receiving aids out of State funds, clause (2) of Article 29 does not apply.

In other words, the right of admission into an educational institution established by any section of citizen of India, whether a majority or minority can be denied to a citizen if:

1. The institution is neither maintained by the State nor is receiving aid out of the state funds.

2. Even on the grounds only if religion, race, language or caste provided the candidates not possessing requisite qualification or where the candidate is expelled from an institution for an act of indiscipline.

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The use of the word, ‘only’ in Article 29(2) is also quite significant. The idea is to ensure that religion, race, language or caste alone should not be the reason or basis for excluding a person from an educational opportunity, when the State is maintaining the institution or when the educational institution is receiving aids out of the state funds.

The emphasis of Article 29(2) is to ensure maximum educational opportunity to all section of citizen of India especially the students of the minority’s community to develop their individual talents and skills, since it is they who are most likely to be at the receiving ends. But apart from that Article 29(2) is as much a right against a majority educational institution, even, if the ground or basis of its establishment is one mentioned to Article 29(1).

Thus, a majority section of the Citizens of India who have established an educational institution for the purpose of conserving their distinct language, script or culture cannot deny admission to the other citizen because they are of particular religion, language, race or caste if the institution is maintained by the State or is receiving aids of out of state funds. Mutatis mutandis applies equally to educational institution established by a minority section of the citizen of India.

In *re-Kerala Education Bill, 1957*, S.R. Das C.J., speaking on behalf of the Court said:-

> “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 institutions 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 the minority may be better served by propagating the same amongst non-member of the particular minority community. In our opinion, it is not possible to read this condition into Article 30(1) of the Constitution.”

In *State of Bombay v. Bombay Education Society*, the State Government had with a view to promote official language of India, Hindi, issued a circular by which it was forbidden to, “all the primary or secondary school, where English is used as

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414 Nageshwar Rao v. Principal Medical College AIR1962 AP. 212.
415 Ramesh v. Principal B.B. Intercollege, AIR 1953, All. 90.
416 AIR 1958 SC 956.
417 Ibid at 977 (Para 22).
418 AIR 1954 SC 561.
medium of instruction to admit to any class any student, other than a student belonging to a section of citizen, the language of which is English, namely Anglo-Indian and citizens of Non-Asiatic descent.

The effect of this order was that the students would be denied admission to English medium school, simply because his mother tongue did not happen to be English.

It was argue for the State, however, that restriction of Article 29(2) was not attracted since it was not a case, where admission was denied only on the grounds of language, race or castes but was also inspired by the objectives of promoting Hindi, “which is ultimately to be our national language.”

Rejecting this line of arguments, S.R. Das, C.J. speaking for the Court replied that it, “Overlook the distinction between the object and motive underlying the impugned order and the mode and manner adopted therein for achieving that objects.”

In other words, “object is not ground”. It is thus to be seen that what Article 29(2) is concerned with the ground of denial of admission and not object of it. Indeed the Court went to the extent of adopting the language of Lord Thankerton, stated that the laudable object of the impugned order does not obviate the prohibition of Article 29(2) because the effect of the order involves infringement of this fundamental right and that effect is brought about by denying admission only on the ground of language.

In the instant case, State tried to avoid the applicability of Article 29(2) by putting innovative arguments despite specific mandate of Article 29(2) by arguing that, “Article 29(2) does not confer any fundamental right on all citizen generally but guarantees the rights of citizen of the minority group by providing that they must not be denied admission to educational institution maintained by the state or receiving aid out of state funds on the ground of religion, race, caste, language or any of them by referring the marginal note of Article 29, “Protection of the interest of Minorities”.

The Court rejected this arguments by saying that it is ‘devoid of merit’ and pose a question before itself as “now suppose the state maintains an educational institution to help conserving the distinct language, script or culture of a section of

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419 AIR 1954 SC 561.

420 Ibid.

421 Id. at 565.
citizen or makes grants in aid of an educational institution established by a minority
community based on religion or language to conserve their distinct language, script or
culture, who can claim the protection of Article 29(2) in the matter of admission into
such institution?  

After posing the above question, Das, C.J. observed as:

“Surely the citizen of the very section whose language, script or culture,
is sought to be conserved by the institution or the citizens who belong to the
very minority group which has established and is administering the institution,
do not need any protection against themselves and therefore Article 29(2) is
not designed for the protection of this section or this minority. Nor do we see
any reason to limit Article 29(2) to the citizen belonging to the minority group
only.”

The Court further remarked, “The language of Article 29(2) is wide and
unqualified and may cover all citizen, whether they belong to the majority or minority
group. To limit this right only for citizen belonging to the minority group will be to
provide a double protection for such citizens belonging to the minority group and to
hold that the citizen of the majority group have no special educational rights to get
admitted in educational institutions for the maintenance of which they contributes by
taxes.”

In State of Madras v. Champakam Dorairajan, what was challenged was a
communal government order which reserved seats in medical college, community wise.
Out of the total seats 28% was reserved for Backward Class, 22% for most backward
class, 18% for SCs and STs. Out of total seats 68% was reserved for various communities
and only 32% was available for candidates of general category. Since only two seats
were allotted to Brahmins, the respondent petitioner could not get admission into
medical college even though academic merit wise she could have secured admission.
She, therefore, challenged the governmental order as violative of Article 29(2) and
also Article 15(1). The State tried to justified communal reservation on the basis of
Article 46 of the Constitution.

422 Ibid at 565.
423 Id. at 566.
424 Id. at 566.
425 AIR 1951 SC 226.
426 Article 46 of the Directive Principle of State Policies provides: “Promotion of educational and economic
interests of Scheduled Castes, Scheduled Tribes and other weaker sections The State shall promote with
special care the educational and economic interests of the weaker sections of the people, and, in particular,
The Supreme Court upheld the contention of the respondent petitioner and held that “the classification in the communal governmental order proceeds on the basis of religion, race, and castes. In our view the classification made in the order constitutes clear violation of the fundamental rights guaranteed to the citizen under this Article. Directive Principle of State Policies can not prevail over Fundamental Rights.

The implication of this judgement was that reservation of seats for SCs and STs could not be made in educational institution. This judgement inspired a Constitutional Amendment to provide for reservation of seats in educational institution for the schedule castes and schedule tribes and other backward communities. The result was been the enactment of new clause (4) to Article 15427, which until then did not exist.

4.6 Distinction between Article 15(1) and Article 29(2)

Article 15 prohibits discrimination against citizen on the grounds of religion, race, caste, sex or place of birth or any one of them: But both the Article 15(1) and Article 29(2) are different on the following accounts:-

Firstly: Article 15(1) protects all citizens against the State whereas; the protection of Article 29(2) extends to the state or anybody who denies the rights covered by it.

Secondly: Article 15(1) protects all citizens against discrimination, generally but Article 29(2) is a protection against a particular species of wrong, namely, denial of admission into educational institutions maintained by the state or aided by the state.

Finally: The specific ground on which discrimination is prohibited are not the same in the two Articles ‘place of birth’ and ‘sex’ do not appear in Article 29(2), while ‘language’ is not mentioned in Article 15.

4.7 Minorities Language Issue during the Constituent Assembly Debate

At the time of framing, the Constitution of India, the members of the Constituent Assembly were so much occupied, with the issue of deciding the nature of

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427 Article 15(4) read as: “Nothing in this Article (i.e. Article 15) or in Clause (2) of Article 29 shall prevent the State from making any special provisions for the advancement of any socially and educationally backward classes of citizen or for the schedule castes and schedule tribes.”
safeguard for the religious minorities and on the issue as to whether the Schedule Castes and Scheduled Tribes, constituting $1/6^{th}$ of the population of India will be considered minorities or as part of Hindu religion, that the question of cultural and linguistic minorities under Articles 29 and 30 received little attention.

On the premises of the India going to be secular state it was being argued that no community rights, in the sense of either religion or caste, to be recognized and secular state must focus on celebration of individual identity. The religious minorities could simply be allowed to have freedom of religion and right to establish and administer educational institutions of their choice.

However, some of the members of the Constituent Assembly were too considerate to the rights of the minorities in particular that they pleaded for incorporation of sufficient safeguards for the conservation and development of the language and culture.

For instance: Prof. K. J. Shah, as representation of Bihar in Constituent Assembly, proposed the following amendment in Clause (1) of Article 23 of the draft constitution:

“Any section of the citizen residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve and develop the same.”

He argued that culture of mankind is not merely a static phenomenon but it is progressive and developing facts and it is wider and deeper than the script or language. He further argued that culture is the vast ocean, including all the entirety of the heritage of the past of any community in the material as well as spiritual domain.

Speaking on the language issue he argued in recent years, the languages of various section of the Country have developed to become the vehicle for imparting of any state of instruction, right up to the University standard. It need to be further studied, promoted, developed and expanded so as to became a suitable means of expression, intercourse and instruction or education to a much wider scale than is the case today.

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429 Ibid at 896
Unfortunately, his plea for the addition of the word, “develop” was not accepted.

Shri Damodar Swarup Seth of the United Province suggested the following amendment to sub-clause (9) of clause (3) of Article 23:

“Linguistic minorities shall have the right to establish, manage and control educational institution for the promotion of the study and knowledge of their language and literature as well as for imparting general education to their children at the primary and pre-primary stage through the medium of their own language.”\textsuperscript{430}

During the debate he argued that the secular state minorities based on community or religion should not be recognized. Recognition of minorities based on religion or community is the very negation of secularism. He pleaded strongly “for minorities based on language suggesting that the linguistic minorities should have the right to establish and administer educational institutions for the promotion of their language and literature as well as for imparting education to their children and the primary and pre-primary stages through the medium of their own language.”\textsuperscript{431} However, he was of the view that higher studies are to be conducted in national language of the state.

Z.H. Lari of United Province proposed the following amendment to clause (3) of Article 23:

“(4) Any section of the citizen residing in the territory of India or any part thereof having a distinct language and script shall be entitled to have primary education imparted to its children through the medium of the language and script.”\textsuperscript{432}

He pleaded that adequate arrangements should be made for imparting public instruction in primary school to the children of members of minorities through the medium of their own language and in such script as is vogue among them.\textsuperscript{433}

During a debate he specifically quoted, the Government of India Gazette notification of August 14, 1948, which says:

\textsuperscript{431} Ibid; Rama Kant Agnihotri, “ Constituent Assembly Debate on Language” (EPW, February 21, 2015, Vol. L. No. 8)p.53.
\textsuperscript{433} Supra note 432 at 53.
“The principle that a child should be instructed in the early stages of its education through the medium of the mother tongue has been accepted by the Government. All educationists agree that any departure from the principle is bound to be harmful to the child and therefore to the interest of society.”  

He was particularly concerned about the neglect or absence of provisions for undue language teaching in the primary school in united province. He argued that imposition of one language may lead to discontentment and bitterness. Therefore, the primary and secondary stage instructions to be provided through the mother tongue.  

Another member of the Constituent Assembly Shri Jaipal Singh of Bihar province, raised the issue of tribal language and requested that Mundri, Gondi and Oraon to be included in the Schedule VII A (now schedule VIII) because it will encourage the cause of unearthing ancient history.  

In spite of the enlighten suggestion of by the members of the Constituent Assembly the Constitution under Article 29 merely accorded the right to every section of the citizen of India, to conserve their language, script and culture. The linguistic concern of the citizen is being addressed in Part XVII dealing with “official language” read with schedule VIII of the Constitution of India.  

Thus, the CAD clearly reflects that Constituent assembly consciously neglected the multilingualism of the nations. Even in the Eighth Schedule of the Constitution only 22 languages have been accorded the status of official language which has completely pushed the language of the minorities as well as tribal at the wall. The consequence is India is having national flag and national anthem but not the national language. Hindi is our official language. It is well known that any language given the suitable opportunity, has the potential to perform all those functions, which is associated with well-established languages such as English, French, Greek, Sanskrit, Urdu or Tamil. It seems that the members of the Constituent Assembly had no awareness of the rights of the linguistic minorities. Even in Country like South Africa is having as many as 11 languages as official language. “If the makers of the Constitution had recognized the multilingual character of the polity, equality of all languages therein and had made  

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434 Ibid.  
435 Ibid.  
special provisions for the recognition and growth of the languages of the linguistic minorities the domain of education may have had a different kind of structure.\footnote{Supra note 423 at 49.}

The concern of ‘linguistic minority’ may further be marginalized if National Knowledge Commission (NKC) Report of 2006 led by Sam Pitroda, is implemented which envisages introduction of English right from class I along with another language, generally, the regional or sub-regional mother tongue.\footnote{S. Srinivasa Rao, “India’s Language Debate and Education of Linguistic Minorities” (EPW 2008)p.63}

4.8 Concluding Observation

India is very unique and distinct linguistic, cultural and ethnic landscape in the world map. One of the distinctive features of this linguistic diversity is that the composition of each linguistic group comprises of multiple group identity based on caste, class, religion or region. Education is one of the most important tools for promoting minority characteristics and distinct identity and the single most important agency for cultural reproduction, socialization and identity formation and transmission.

The Supreme Court of India has categorically recognized not only the rights of the minorities to conserve, strengthen and improve their distinct language, script and culture through educational institutions of their choice as well as by means of education, the Court went further, to recognize the rights of the minority to supervise and ensure that teaching in such institution is to be conducted under the guidance of the people who are well versed of their traditions and culture and in atmosphere which is congenial to the growth of their culture.

However, the majority have the right to establish educational institution only as a scanner of the exercise of their right to conserve their distinct language, script or culture. They have no right under Article 29(1) to establish general secular educational institution. So far as minorities are concerned they have not only the right under Article 29(1) if they fulfil the conditions specified therein, but also they have under Article 30(1) a privileged right to establish educational institution of their choice. The right under Article 30(1) is hence, not merely for the purpose of conserving the linguistic or religious identity of the minority concerned. It also includes the right to establish and administer general secular educational institution, though the requirement that they must be linguistic or religious minority must be fulfilled as a precondition for claiming this right.
The Constituents Assembly Debate clearly reflects that the framers of the Constitution consciously neglected the multilingualism of the nations. Even in the Eight Schedule of the Constitution only 22 languages have been accorded the status of official language which has completely pushed the language of the minorities as well as tribal at the wall. If the makers of the Constitution had recognized the multilingual character of the polity, equality of all languages therein and had made special provisions for the recognition and growth of the languages of the linguistic minorities the domain of education may have had a different kind of structure.