CHAPTER VII

7.0 RECOGNITION, AFFILIATION AND GRANT-IN-AID

7.1 Introduction

Constitution of India not only protects minorities but provides positive rights as well. Article 30 of the Indian Constitution has been designed not only to prevent disability of the minorities but also creates positive right for them. The issue which arises in the context of recognition or affiliation is as to whether the religious or linguistic minorities who have right to establish and administer educational institution of their choice have the Fundamental Right to affiliation or recognition of their course of study? And, whether the State has correlative duty to accord recognition or affiliation to such programme leading to University or professional degree?

This chapter has been designed to analyse the synthesis of minority rights to Recognition and Affiliation of educational institution of their choice and entitlement of Grant-in-Aid, if any, under Article 30 of the Constitution. For the purpose of convenience the chapter has been divided into the following subheads:

8. Meaning and Object of Recognition and Affiliation.
9. Recognition and Affiliation is sine qua non for valid Degree.
10. Affiliation as an Instrument for ensuring Educational Standard.
11. Grant of Affiliation subject to Reasonable Regulation.
12. Role of the National Commission for the Minority Educational Institution.

7.2 Meaning and Object of Recognition

Recognition of an educational institution by the Government, or affiliation of such educational institution by the University or the Board comprises of two parts. “First part relating to syllabi, curricula, course of instruction, the qualification of teachers, library, laboratories, conditions regarding health and hygiene of students,

\[\text{Ahmedabad St. Xavier College Society v. State of Gujarat (1974) 1 SCC 717 at 784 (as per Justice Khanna).}\]

\[\text{Ibid. at 744 – 45.}\]
which has a direct nexus with the establishment of educational institutions” and; Second part relates “to administration of educational institution, and it is concerned with terms and conditions regarding the management of educational institutions.”

When a minority institution applies to a University or Board for affiliation it express its choice to participate in the system of general secular education and course of instruction prescribed by the University or affiliating Board.\textsuperscript{1045} Thus affiliation or recognition is a facility which the State or University grants, to an educational institution for enabling the students studying in such institutions to sit for an examination conducted by the University, Board or the State in the subject prescribed to obtain degree or certificate. On the other hand, the students of unrecognized educational institution cannot obtain recognized certificate or degree and are not eligible for higher education. They may even be debarred from job opportunities, if their degree / certificate are not recognized.

A University or Board, when it regulates the course of instruction, by prescribed syllabi, its object is to coordinate and harmonize the standard of education.\textsuperscript{1046} An affiliated educational institution is required to follow the statutory measures regulating educational standard and efficiency such as the prescribed course of study, course of instruction, educational qualification for the person to be appointed as teachers, minimum educational qualification for admission by the students, or the requirement to appear and pass common entrance test to be conducted by the State or such institution or board etc. These regulatory measures prescribed for affiliation or recognition of an educational institution aim at uniformity, efficiency and excellence in education institutions and those who resort to it.

The right to recognition or affiliation is not expressly provided by Article 30(1) of the Constitution. In absence of explicit provisions, there are three alternatives for constructing the language of Article 30(1) of the Constitution which are as follows:\textsuperscript{1047}

(1) “The right to affiliation or recognition is necessarily implied under Article 30(1) of the Constitution. Hence, it is Fundamental Right.”

(2) “The right to affiliation is neither expressly nor impliedly granted by Article 30(1). Hence, it is not a Fundamental Right. On the

\textsuperscript{1045} Id.
\textsuperscript{1046} Ibid. at 745 (Para 17).
contrary, affiliation is a statutory concept and may be obtained on the fulfilment of the prescribed conditions.”

(3) “Although, it is not a Fundamental Right, affiliation cannot be denied to a minority institution merely because it refuses to give up, totally or partially its right guaranteed by Article 30(1) as a precondition of such grants.”

In the absence of explicit provisions of recognition / affiliation, it is pertinent to ascertain as to how the judiciary has constructed the minority claims to affiliation / recognition of its course of study as Fundamental Right.

7.3 Recognition and Affiliation is *sine qua non* for valid Degree

*In re Kerala Education Bill, 1957,* 1048 it was contended by the Minority Educational Institutions that the right to establish and administer educational institution also includes the right to recognition. They specifically contended that, clause (7), (10) and (20) of the Kerala Education Bill, 1049 specifically erode their right to administration as compliance of which was made a precondition for recognition. “Clause (7) provided for appointment of managers of aided school, clause (10) prescribe the qualification for person to be appointed as teachers and clause (20) prescribe that no fee to be charged from pupils of primary school”. The Chief Justice S.R. Das, speaking on behalf of the Court held that:

“The conservation of the distinct language, script or culture is not the only objects of choice of the minority’s communities. They also desire that scholars of their educational institutions should go out in the world well and sufficiently equipped with the qualification necessary for a useful career in life. But according to the education code now in operation, to which it is permissible to refer for ascertaining the effect of the impugned provisions on existing state of affairs, the scholars of unrecognized schools are not permitted to avail themselves of the opportunities for higher education in the University and are not eligible for entering the public services. Without recognition, therefore, the educational institutions established or to be established by the minority community cannot fulfil the real objects of their choice and the rights under Article 30(1) cannot be effectively exercised. The right to establish educational institution of their choice must therefore mean the right to establish real

1048 AIR 1958 SC 956.
1049 *Ibid* at 965.
institution which will effectively serve the need of their community and scholars who resort to their educational institutions.”  

The learned Chief Justice further pointed out, “There is no doubt no such things as Fundamental Right to recognition by the State, but to deny recognition to educational institution except on terms tantamount to surrender of their Constitutional right of administration of the educational institution of their choice, is in truth and in effect to deprive them on their right under Article 30(1).”  

The Supreme Court struck down clause (20) of Kerala Education Bill 1957, read with Clause 3(5) by holding that, the imposition of such restriction against the collection of fees from any pupil in the primary classes as a condition for recognition will in effect make it impossible for an educational institution established by minority community being carried on. The State of Kerala tried to justify clause (20) of the Bill by referring to Article 45, which obligates the States to provide free and compulsory education for all children until they complete the age of 14 years, within the period of 10 years from the commencement of the Constitution.  

While rejecting the State justification, the Court further held that: “there can be no 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 reasons. Article 45, no doubt, requires the State to provide free and compulsory education for all children, but there is nothing to prevent the State from discharging that solemn obligation through Government and aided school and Article 45 does not require that obligation to be discharged at the expense of the minority community. So long as the Constitution stands as it is and not altered, it is duty of the Court to uphold the Fundamental Rights, and thereby honour our sacred obligation to the minority community, who are of our own.”  

Justice Venkatarama Aiyer, in his dissenting opinion held that “Article 30(1) of the Constitution, neither expressly nor by implication, confers a right on the minorities to claim State recognition. The recognition of such right would not violate Article 45 of the Constitution, but would also be contrary to the secular character of the State.” He further argued that, Clause (20) does not prohibit the establishment or

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1050 Id. at 984.
1051 Id. at 984 (para 32).
1052 Id. at 1024.
1053 Id. at 1025.
1054 Id.
administration of institution by minorities, so long they do not seek aid on recognition from the State, it only provides that in private school no fee shall be payable by students in the primary classes. It is only when they make a demand from the State for aid or recognition, that the provision of the Bill will become applicable to them.\textsuperscript{1055}

He further asserted that, “the object of Article 30(1) was to equip the minorities with a shield whereby they could defend themselves against attack by majorities. It was not the object of Article 30(1) to arm the minorities with a sword whereby they could compel the majorities to grant concession.\textsuperscript{1056}

In Rev. Sidhrajibhai Sabhai \textit{v. State of Gujarat} \textsuperscript{1057}, where the Government of Bombay directed the recognized minority training college to reserve 80\% of total seats for school board teacher, to be nominated by the Government. The management of training college were also warned that disobedience of the order may lead to severe disciplinary action, including withholding of annual grants and withdrawal of recognition.

It was held by the Lordship of the Supreme Court that, the direction given regarding reservation of seats and threat to withhold grant-in-aid and recognition of the college, infringe the Fundamental Rights guaranteed by Article 30(1) of the Constitution.\textsuperscript{1058}

Justice Shah, speaking on the behalf of the bench of six Judges, pointed out that “…….the Government also holds examination for granting certificate to successful candidates as trained primary teachers and scholars receiving training in recognized institution alone are entitled to appear for examination. Manifestly, in the absence of recognition by the Government, training in the college will have little practical utility. The college is non-profit making institution, and depends primarily upon donation and Government grant for meeting the expenses. Without such grant, it would be extremely difficult if not impossible for the institution to function.”\textsuperscript{1059}

What is said by the Court with regard to aid or recognition applies equally to affiliation of a college to the University. But for such affiliation the student would not

\textsuperscript{1055} Id. at 1027
\textsuperscript{1056} Id.
\textsuperscript{1057} (1963) 3 SCR 837.
\textsuperscript{1058} Ibid. at 845.
\textsuperscript{1059} Ibid. at 840 (Para 6).
be able to obtain a professional or University degree which is recognized as a license to several professions and future employment in public service.  

7.4 Affiliation as an Instrument for ensuring Educational Standard

In *Ahmedabad St. Xavier’s College Society v. State of Gujarat* Chief Justice, A. N. Ray (on behalf of himself and Palekar, J.), explained the object of affiliation as follows: “Affiliation is regulating the educational character and contents of the minority institution. These regulations are not only reasonable in the interest of general secular education but also conducive to the improvement in the stature and strength of the minority institutions. All institutions of general secular education whether established by the minorities or non-minorities must impart to the student education not only for their intellectual attainment but also for pursuit of careers.”

He further pointed out that, “Affiliation of minority institution is intended to ensure growth and excellence of their children and other students in the academic field. Affiliation mainly pertains to the academic and educational character of the institution. Therefore, the measure which will regulate the course of study, the qualification and appointment of teachers, the conditions of employment of teachers, the health and hygiene of students, facilities for libraries and laboratories, are all comprised in matter germane to affiliation of minority institutions. These regulatory measures for affiliation is for uniformity, efficiency and excellence in educational course and do not violate any fundamental right of the minority institutions under Article 30.”

In *Ahmedabad St. Xavier College Society v. State of Gujarat*, one of the issue before the Lordship of the Supreme Court was, whether religious or linguistic minorities having the right to establish and administer educational institution of their choice, have Fundamental Right of affiliation?

The petitioner’s contention was that, “the right to establish educational institution of their choice, will be without any meaning if affiliation is denied. On the other hand, the respondent poses a question before the Court as to whether educational institutions established and administered by minorities for imparting general secular education have Fundamental Right to be affiliated to a statutory

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1061 (1974) 1SCC 714 at 745 (Para 18).
1062 *Ibid* at 748.
University on terms of management different from these applicable to other affiliated college”?

Chief Justice Ray (on behalf of himself and Palekar J.) speaking on behalf of the Court laid down the following proposition:-

1. “The consistent view of this Court has been that there is no Fundamental Right of minority institution to affiliation.

2. An explanation has put upon that statement of law. It is that affiliation must be a real and meaningful exercise for minority institutions in the matter of imparting general secular education.

3. Any law which provides for affiliation, on terms which will involve abridgment of the right of linguistic and religious minorities to establish and administer educational institution of their choice will offend Article 30(1).

4. The educational institution set up by minorities will be robbed of their utilities if boys and girls cannot be trained in such institution for University degree. Minorities will virtually lose their right to equip their children for ordinary careers. If affiliation be on terms, which would make them surrender and lose their rights to establish and administer educational institutions of their choice.

5. The primary purpose of affiliation is that the students reading in the minority institution will have qualification in the shape of degrees necessary for useful carrier in life. The establishment of a minority institution, is not only ineffective but also unreal unless such institution is affiliated to University for the purpose of conferment of degree on students.”

Justice Khanna, in his separate but consenting opinion, while discussing the minority right to affiliation laid down the following proposition:-

1. “If a requisition is made for affiliation or recognition of an educational institution, then it would be permissible for the authority to prescribe and insist that regulation formulated by it should be complied with

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1063 Ibid at 744 (Para 13).
1064 Ibid at 744.
before it would grant affiliation or recognition to an educational institution.

(2) To deny the power of making regulations to the authority concerned would result in robbing the concept of affiliation or recognition of its real essence. No institutions can claim affiliation or recognition until it conforms to certain standard.

(3) The balance has to be struck, between the authority right to prescribe regulations for ensuring the standard of excellence of the institution and that of preserving the right of the minorities to establish and administer educational institution.”

(4) The Court also cautioned the State by saying that, “refusal to recognize or affiliate minority institutions, unless they (the minorities) surrender the right to administer those institutions would have the effect of rendering the right guaranteed by Article 30(1) to be wholly an illusion and indeed a ‘teasing illusion’.

(5) Hence, it is not permissible to exact from minorities, in lieu of the recognition or affiliation of their institution, a price which would entail the abridgment or extinguishment of the right under Article 30(1”).

Justice Jaganmohan Reddy (on behalf of himself and Alagiriswamy J.) also opined that “for meaningful exercise of right under Article 30(1) would and must necessarily involve recognition of the secular education imparted by the minority institutions without which the right will be a mere husk.”

At this stage, the view expressed by Justice Beg, in his separate and concerning opinion is very interesting. His Lordship which dealing with the “issue of affiliation or recognition” addressed the very interesting question raised on behalf of the State that, “Where a minority institution, of its own free will opted for affiliation, under the terms of statute, deemed to have chosen to give up, as a price for the benefits resulting from affiliation, any amendment can be made in future in the Act regulating terms and conditions of such affiliation.”

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1065 *Ibid* at 784 (Para 94).
1066 *Ibid* at 787 (Para 98).
1067 *Ibid* at 761.
1068 *Ibid* at 820.
Rejecting this argument, Beg, J. emphasized that, “No one can be deemed to assent to future legislative Acts and even if assented, it would not operate as a bar on the minority to enforce its Fundamental Right.”\textsuperscript{1069}

In this context, the Lordship of the Supreme Court observed as follows:

“When the minority institution exercised its choice by applying for application under the provision of the Act, there were no amendments before it. On the other hand, it may be contended that, where a statutory right is availed of by any party, it must be deemed to have chosen it’s subject to the condition that the Legislature may change its terms at any time. But, can it be deemed to have opted to submit to any and every future amendments? Perhaps, it will be carrying the doctrine of imputed knowledge and consent too far to say that a minority institution opting for a statutory right must be deemed to have signed a blank cheque to assent to any and every conceivable amendment of any kind whatsoever in future as the price to be paid by it for its choice. No one could be deemed to assent to what is not before him at all. Moreover, can a minority, even by its assent, be barred from the exercise of a Fundamental Right? It may be that bar may be only a conditional one so that it could be removed by the institution concerned whenever it is prepared to pay the price of its removal by giving up certain advantage which is not parts of its Fundamental Right. Such a conditional bar may be construed only as permissible regulatory restriction.”\textsuperscript{1070}

Justice Mathew also held that, “the Fundamental Right is for future generation. By a voluntary act of affiliation of an educational institution established and administered by a religious minority the past member of the community cannot surrender the right of the future members of that community. The future members of the community do not derive the right under Article 30(1), by succession or inheritance.”\textsuperscript{1071}

However, Justice Dwivedi, in his dissenting opinion in \textit{Ahmedabad St. Xavier College} \textsuperscript{1072} held that, “Evidently, there is no express grant of the right to affiliation in Article 30(1) of the Constitution, nor is it necessarily implied in Article 30(1). If the framers of the Constitution had intended to elevate the right of affiliation to the

\textsuperscript{1069} \textit{Ibid.}
\textsuperscript{1070} \textit{Ibid} at 821.
\textsuperscript{1071} \textit{Ibid} at 807 (Para 162)
\textsuperscript{1072} (1974) 1SCC717 at 837.
status of a Fundamental Right, they could have easily expressed their intention in clear words in Article 30.1073

Justice Dwivedi, advanced the following arguments to support his proposition that the right to application is neither express nor implied under Article 30(1):

(1) “As our State is secular in character, affiliation of an institution imparting religious instruction or teaching theology of a particular religious minority may not conform to secular character of the State.”

(2) As Article 30(1) does not grant the right of affiliation to such an institution, it cannot confer that right on an institution imparting secular education. The content of the right under Article 30(1) must be same for both kinds of institutions.

(3) History also shows that in Europe as well as in pre-independent India, many educational institutions have existed with vigour and excellence, without State recognition or affiliation. The mere incident of recruitment to the State service being made on the basis of recognized degree or diplomas should not be sufficient reason to read the right of affiliation in Article 30(1).

(4) Further, the State may at any time abandon this facile and mechanical suitability test, and may make selection by competitive examination open to all, whether possessing or not possessing a recognized degree or diploma.”1074

It is submitted that in none of the subsequent majorities or unanimous decisions of the Supreme Court, the minority opinion of Justice Venkatarama Aiyer, in re-Kerala Education Bill, 19571075 or Justice Dwivedi view in Ahmedabad St. Xavier College Society case 1076 was approved by the Lordship of the Supreme Court. However, it is interesting to note here that Justice Dwivedi partly dissenting from the principle advocated by Justice Venkatarama Iyer in re Kerala Education Bill, 1957, conceded that, “in case of an affiliating University, affiliation cannot be denied to a minority institution on the sole ground that it is managed by a minority whether based on religion or language on an arbitrary or irrational basis. Such a

1073 Ibid at 838 – 839.
1074 Ibid at 838 (Para 244 - 245).
1075 AIR 1958 SC956.
denial would be violation of Article 14 and 15(1) and will be struck down by the Courts.  

7.5 Grant of Affiliation subject to Reasonable Regulation

In *D.A.V. College, Bathinda v. State of Punjab*¹⁰⁷⁸, Jaganmohan Reddy J. speaking on behalf of the Court held as follows:

(1) “The right of the minorities to establish and administer educational institution of their choice would include the right to have a choice of the medium of instruction also.”

(2) But if the University compulsorily affiliate such college and prescribes the medium of instruction and examination to be in language which is not their mother tongue or require examination to be taken in a script which is not their own, then it interferes with the Fundamental Rights.

(3) It is true that no linguistic minority can claim that the University shall conduct its examination in the language or script which the minority have a right to adopt but in such a case, it must not force these institutions to compulsorily affiliate themselves and impose on them a medium of instruction and script not their own.”¹⁰⁷⁹

In *All Saint High School v. Government of Andhra Pradesh*¹⁰⁸⁰, Kailasam, J. speaking on behalf of the Court held that “the minority institutions have no Fundamental Right to demand recognition or affiliation by the University but as recognition and affiliation is necessary for the effective exercise of Fundamental Right of minorities to establish and administer their institution, they are entitled to recognition and affiliation, if reasonable conditions that are imposed by the Government or University, relevant for the purpose of granting recognition or affiliation, are complied with. Therefore before granting recognition or affiliation it is necessary that the concerned government or the University is satisfied that the institution keeps up with the required minimum standard.”¹⁰⁸¹

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¹⁰⁷⁸ (1971) 2 SCC 261.
¹⁰⁷⁹ *Ibid* at 265 – 266.
¹⁰⁸¹ *Ibid* at 525 (Para 99).
In *Managing Board of the Milli Talimi Mission Bihar and others v State of Bihar*\(^{1082}\) the Lordship of the Supreme Court held that “running a minority institution is also a Fundamental Right and as important as other rights conferred on the citizen of the country. Therefore, if the State declines to grant recognition or a University refuses to grant affiliation, to a minority educational institution without just and sufficient grounds, the direct consequence would be to destroy the very existence of the Institution itself.

Justice S. Murtaza Fazal Ali, (on behalf of himself and Sabyasachi Mukherjee and A. Varadarajan, JJ.) were of the opinion that affiliation cannot be refused to a minority institution “on purely illusory grounds” and in the instant case held that, “the State has refused to grant affiliation on purely illusory grounds which do not exist and failed to consider the recommendation of the Education Commissioner which was made after full inspection for ‘grant of affiliation’. There cannot be “mechanical rejection” without proper application of mind, of an application for recognition and affiliation made by a minority educational institution.”\(^{1083}\)

Thus, the refusal to grant recognition or affiliation by the statutory authority without just and sufficient grounds amounts to violation of the right guaranteed under Article 30(1) of the Constitution. In *Socio Literati Advancement Society Bangalore v. State of Karnataka*,\(^{1084}\) the main issue before the High Court was, can a State deny recognition to a minority institution on the ground that the State already has more such institution than required and therefore, the policy of the Government is not to permit the starting of any such institution? Can any such policy be regarded as consistent with Article 30(1)?

The Karnataka High Court held that the denial of recognition is not valid without specifically deciding the question whether or not the State can have such a policy, the Court concluded that State had no such firm policy as a matter of fact as it has given permission to another similar institution which applied later than the institute in question.\(^{1085}\)

In *Deccan Model Education Society v. State of Karnataka*\(^{1086}\), the Court held that a minority institution need not take prior permission of the government to be

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\(^{1083}\) Ibid.

\(^{1084}\) AIR 1979 Knt. 217.

\(^{1085}\) Ibid at 221.

\(^{1086}\) AIR 1983 Knt. 207.
started. Recognition must be given to a minority institution, if all the conditions have been satisfied. Recognition cannot be denied on the ground that because of the existence of one school in the locality, there is no need for another school. Such a factor is irrelevant so far as a minority institution is concerned.

In *Digambar Jain Society v. Delhi Administration*\(^{1087}\), it was held by the Delhi High Court that recognition if once granted can be withdrawn after due notice.

In *T.M.A. Pai Foundation v. State of Karnataka*\(^{1088}\), Kirpal C.J. speaking on behalf of the majority, clearly held that affiliation or recognition has to be available to every institution that fulfils the conditions for grant of such affiliation or recognition. He further said, “There can be no doubt that in seeking affiliation or recognition, the Board or the University or the affiliating or recognising authority can lay down conditions consistent with the requirements to ensure the excellence of education. In case of the government aided institutions, the Government will have greater say in the administration, including admission and fixing of fees, but in case of private unaided institution, maximum autonomy in the day to day administration has to be with the private unaided institution.”\(^{1089}\)

Thus, the right of the minorities to establish and administer education institution ‘of their choice’, is subject to the regulatory power of the State for maintaining and facilitating the excellence in education. In *P.A. Inamdar v. State of Maharashtra*\(^{1090}\), Chief Justice R.C. Lahoti, in the clarificatory judgment of *T.M.A. Pai Foundation* speaking on behalf of the Constitution Bench of Seven Judges clarified Para 55 of *Pai Foundation* as follows: “Affiliation or recognition by the State or the Board or the University competent to do so, cannot be denied solely on the ground that the Institution is a minority educational institution. However, the urge or need for affiliation or recognition, bring in the concept of regulation by way of laying down conditions consistent with the requirements of ensuring merit, excellence of education and preventing maladministration. For example, provisions can be made indicating the quality of teacher, by prescribing the minimum qualification that they must possess and the course of studies and curricula. The existence of infrastructure sufficient for its growth can be stipulated as a prerequisite to the grant of recognition or affiliation.

\(^{1087}\) AIR 1980 NOC. 48 Delhi.
\(^{1088}\) (2202) 8 SCC 481.
\(^{1089}\) *Ibid* at 544 – 545.
\(^{1090}\) (2005) 6 SCC 537.
However, there cannot be interference in the day to day administration. The essential ingredients of the management, including admission of students, recruiting of staff and the quantum of fee to be charged cannot be regulated.”

He further remarked: “Apart from the generalized position of law that the right to administer does not include the right to maladminister, an additional source of power to regulate by enacting conditions accompanying, affiliation or recognition exists. A balance has to be struck between the two objectives: (1) the ensuring standard of excellence of the institution, and (II) that of preserving the right of minority to establish and administer its educational institution.

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

2. The test that regulation would be conducive to making the institution an effective vehicle of education for the minority community or other persons who resort to it, and
3. There is no inroad into the protection conferred by Article 30(1) of the Constitution, that is, by framing the regulation, the essential character of the institution being a minority educational institution, is not taken away.”

7.6 Role of the National Commission for the Minority Educational Institutions

Within the framework of the Constitutional rights of the minority under Article 30(1) of the Constitution, the Parliament enacted, the National Commission for the Minority Educational Institution Act, 2004 (NCMEI Act), to determine all dispute relating to minority status of the educational institution as well as to facilitate the affiliation and recognition of the minority educational institutions. Section 3 of the NCMEI Act, 2004 provides for setting up the National Commission for Minority Educational Institutions, the highest statutory body, which presides over all matters

1091 Ibid at 60 (Para 121).
1092 Id. at 600 (Para 122).
1093 Section 3 of NCMEI Act, 2004 read as follows: (1) “the Central Government shall, by notification in official Gazette, constitute a body to be known as the National Commission for Minority Educational Institution to exercise the powers conferred on, and to perform the functions assigned to, it under the Act.

(2) The Commission shall consist of a Chairperson and three members to be nominated by the Central Government.”
and dispute relating to minority status of educational institution in India. It is envisioned as a custodian of the educational rights of minorities provided in the Constitution.

The original mandate of the NCMEI, was to simply protect the rights of the minority educational institution to seek affiliation to university, look into any related dispute and examine specific complaints regarding the violation of Article 30 of the Constitution. In 2006, the National Commission for Minority Education Institutions was granted power to protect the right of minority to establish their educational institutions, by applying to a competent authority for no objection certificate for establishing a Minority Educational Institutions under Section 10(1) of the NCMEI Act. In their turn the competent authority is under statutory obligation to expeditiously grant or reject the application, on perusal of documents and after giving hearing to the applicant, relating to affiliation of the minority educational institutions. Further, if the competent authority under the Act, fails to grant no objection certificate or the rejection of the application for affiliation was not communicated to the applicant within 90 days from the receipt of the application under section 10(1) then, it shall be deemed that competent authority has granted no objection certificate for establishing the minority educational institution.

After the grant of no objection certificate, the minority community shall be entitled to proceed with the establishment of a minority educational institution.

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1094 NCMEI Act, Statement and Reasons.
1095 Section 10(1) of NCMEI Act, 2004 reads as follows: “Right to establish a Minority Educational Institution: (i) subject to the provisions contained in any other law for the time being in force, any person, who desire to establish a minority educational institution may apply to the competent authority for a grant of no objection certificate for the said purpose.
1096 Section 10(2) of NCMEI Act, 2004 provides as follows: The competent authority shall –
(a) On Perusal of documents, affidavits or other evidence if any; and
(b) After giving an opportunity of being heard to the applicant, decide every application filed under sub-section (1) as expeditiously as possible and grant or reject the application, as the case may be:
Provided that where an application is rejected, the authority shall communicate the same to the applicant.
1097 Section 10(3) of NCMEI Act, 2004 provides; where within a period of ninety days from the receipt of the application under subsection (1) for the grant of no objection certificate-
(a) The competent authority does not grant such certificate or
(b) “Where an application has been rejected and the same has not been communicated to the person who has applied for the grant of such certificate, it shall be deemed that competent authority has granted certificate to the applicant.”
1098 Section 10(4) provides: “The applicant shall, on the grant of a no objection certificate or where the competent authority has deemed to have granted the no objection certificate be entitled to commence and
NCMEI, being a statutory body, is not required to consult the respective State government for deciding the case of affiliation of the minority educational institutions. On issuance of no objection certificate, a minority educational institution may seek affiliation to any University of its choice, provided such affiliation is permissible with the Act under which such University is established. If any dispute arises between a minority educational institution and University relating to its affiliation, then such matters shall be referred to NCMEI for adjudication and Commission’s decision in such matters shall be final.

The NCMEI functions as a quasi judicial authority, which can adjudicate on all disputes relating to recognition, affiliation and minority status of educational institutions established by minorities. It is the appellate authority for certain grievances specified in NCMEI Act, 2004, relating to grant of no objection certificate to establish an institution and grant of minority status to educational institution.

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1099 Section 10A of NCMEI Act, 2004 read as: “Right of a Minority Educational Institution to seek affiliation (1) A minority educational institution may seek affiliation to any university of its choice subject to such affiliation being permissible within the Act under which the said university is established.

(2) “Any person who is authorized in this behalf by the Minority Educational Institution may file an application for affiliation under sub-section (1) to a University in the manner prescribed by the Statute, Ordinance, Rules or Regulation of the University.

Provided that, such authorized, person shall have right to know the status of such application after the expiry of sixty days from the date of filing of such application.”

1100 Section 12 of NCMEI Act 2004 read as follows: “Power of Commission: -

(1) If any dispute arises between a minority educational institution and a university relating to its affiliation to such university, the decision of the commission shall be final.”

1101 Section 12A of NCMEI Act, 2004 read as: Appeal against order of the competent authority: (1) Any person aggrieved by the order of refusal to grant no objection certificate under sub-section (2) of section 10 by the competent authority for establishing a Minority Educational Institution, may prefer an appeal against such order of the Commission.

(2) An appeal under Sub-Section (1) shall be filed within 30 days from the date of the order referred to in sub-section (1) communicated to the applicant.

Provided the commission may entertain an appeal after the expiry of the said period of 30 days, if it is satisfied that there was sufficient cause for not filing it within that period.

(3) An appeal to the commission shall be made in such form as may be prescribed and shall be accompanied by a copy of the order against which the appeal has been filed.

(4) The Commission, after hearing the parties, shall pass an order as soon as may be practicable, and give such direction as may be necessary or expedient to give effect to its order or to prevent abuse of its process or to secure the ends of justice.

1102 Section 12B of NCMEI Act, 2004 provides that “Power of Commission to decide the minority status of an educational institution (1) without prejudice to the provision contained in the National Commission for Minorities Act 1992, where an authority established by the Central Government or any State Government,
The NCMEI is also empowered to cancel the minority status granted to an educational institution by any other authority.\footnote{1103} The application for cancellation can only be moved upon the proof of certain conditions such as, if the aims and object of the institution no longer reflect its minority character, or if the institution fails to admit the prescribed percentage of students from the minority community. Moreover, the NCMEI is empowered to investigate matters of violation of educational rights\footnote{1104} and call for information on such matters from the Central or State Government.\footnote{1105}

\footnote{1103} Section 12C of NCMEI Act, 2004 read s: Power to cancel the commission may after giving a reasonable opportunity of being heard to a minority educational institution to which minority status has been granted by an authority or commission, as the case may be, cancel such status under the following circumstances namely-

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

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

\footnote{1104} Section 12D Power of the Commission to investigate matters relating to deprivation of educational rights of minorities. (1) The Commission shall have the power to investigate into the complaints relating to deprivation of the educational rights of the minorities.

(2) The Commission may for the purpose of conducting any investigation pertaining to a complaint under this Act, utilize the service of any officer of the Central Government or any State Government with the concurrence of the Central Government, as he case may be.

(3) For the purpose of investigation under sub-section (1), the officer whose service are utilized may, subject to the direction and control of the Commission –

(a) Summon and enforce the attendance of any person and examine how

(b) require the discovery and production of any document, and

(c) Requisition any public record or copy thereof from any office.

(4) The officer whose service are utilized under sub-section (2) shall investigate into any matter entrusted to it by the Commission and submit a report thereon to it within such period as may be specified by the Commission in this behalf.

(5) The Commission shall satisfy itself about the correctness of the facts stated and the conclusion, if any, arrived at in the report submitted to it under sub-section (4) and for this purpose the Commission may make such further inquiry as it may think fit.

\footnote{1105} Power of the Commission to call for information, etc. (1) The Commission, while enquiring into the complaint of violation or deprivation of educational rights of minorities shall call for information or report
The NCMEI Act, 2004 defines ‘minority’ under section 2(f) means minority is a community notified as such by the Central Government. Section 2(c) of the National Commission of Minority Act 1992; also defines ‘minority’ means a community notified as such by the Central Government. The Central Government notified only religious minorities as minorities for the purpose of the NCMEI, Act 2004. It means, NCMEI has no jurisdiction to direct and protect or affiliate, the educational institutions established by the linguistic minorities for the purpose of conservation of their language, script or culture. In the absence of jurisdiction of NCMEI to regulate or coordinate the grant of affiliation, the National Commission for Linguistic Minorities, as apex authority look after and safeguard the rights of linguistic minorities. It was constituted in accordance with Article 350B of the Constitution. Moreover, the National Commission for Linguistic Minorities does not have statutory power and can only make recommendation to the government based on its finding on the status of protection of linguistic minority rights. It is pertinent to note here that for the purpose of Article 30, religious and linguistic minorities are placed at par with each other.

from the Central Government or any State Government or any other authority or organization subordinate thereto, within such time as may be specified by it.

Provided that:

(a) If the information or report is not received within the time stipulated by the Commission, it may proceed to enquire into the complaint;

(b) If, on receipt of information or report, the commission is satisfied either that no further inquiry is required, or that the required action has been initiated or taken by the concerned Government or authority, it may not proceed with the complaint and inform the complaint accordingly.

(2) Where the inquiry establishes violation or deprivation of the educational rights of the minorities by a public servant. The Commission may recommend to the concerned Government or authority, the initiation of disciplinary proceedings or other action against the concerned person or persons as may be deemed fit.

(3) The Commission shall send a copy of the inquiring report, together with its recommendation to the concerned Government or authority and the concerned Govt. authority shall, within a period of one month, or such further time as the Commission may allow, forward its comments on the report, including the action taken or proposed to be taken thereon to the Commission.

(4) The Commission (NMC) shall publish its inquiry report and the action taken or proposed to be taken by the concerned Government or authority on the recommendation of the commission.

1106 Article 350B of the Constitution of India read as follows: (1) there shall be a special officer for linguistic minorities to be appointed by the President.

(2) It shall be duty of the special officer to investigate all matters relating to the safeguards provided for linguistic minorities under the Constitution and report to the President upon those matters at such intervals as the President may direct and the President shall cause all such report to be laid before each house of Parliament and sent to Government of the State concerned.
It is submitted that in absence of jurisdiction of National Commission for the Minority Educational Institution and National Commission for Linguistic Minorities the concern of linguistic minorities regarding the conservation of their distinct language, script and culture through establishment of educational institutions is not realized and the minorities are not able to realise their education rights under Article 30 in a coherent and efficient manner.

Thus, from the aforesaid discussion, it is submitted there is no Fundamental Right of minority institution to affiliation or recognition. But the judiciary has consistently recognized that for a real and meaningful exercise of right by the minorities to establish and administer education institution of their choice the recognition and affiliation by a State or University or board is must. In the absence of it, the minority educational institution would be robbed of their utility as the students of their institution would not be eligible for University degree or to compete for government jobs.

However, the educational institutions established by the minorities cannot demand from the State to recognize their institution, if they fails to follow the statutory measure consistent with the requirement of ensuring merit, excellence of education and preventing maladministration. Similarly, if the minority educational institution fails to observe reasonable regulatory measures relating to educational standard and efficiency, the prescribed course of study and instruction, the provisions relating to the qualification of teachers or educational qualification, for the entry of students into educational institutions etc. in case of affiliation and recognition of educational institution established by the minority, the regulating measures prescribed by the State must ensure that the product coming out of such institution should not be of sub-standard which is neither in interest of nation nor the society at large. Care must also be taken to ensure the there is no profiteering or capitation fee charged or poor students of minority are exploited in the hands of rich minority educational institution. The minorities should also bear in mind that mere opening of educational institution would not be sufficient to ensure intake of students and in era of privatization and globalization, the students have the ultimate right to refuse to take admission if the educational content is sub-standard.

The State must ensure that there should not be any discrimination against the minority educational institution and State should not offer affiliation on such terms which would result in abridgment or surrender of their Fundamental Right. It is appreciable that National Commission for the Minority Educational Institution (NCMEI)
has been accorded jurisdiction regarding the affiliation of minority educational institution even without consulting the respective State Governments. But it is submitted that their jurisdiction is confined to mere religious minority educational institutions and not to educational institutions to be established by linguistic minorities. Therefore, it is suggested that NCMEI Act, 2004, be suitably amended to extend its jurisdiction over the linguistic minority institutions. The reasons being that both religious and linguistic minority are placed at par with each other under Article 30 of the Constitution.

7.7 Grants - In - Aid

Article 21A imposes duty on the State to provide free and compulsory education to all children of the age of six to fourteen years.\(^{1107}\) In Unni Krishnan, J.P. v. State of A.P. \(^{1108}\) the Supreme Court had clearly recognized the Fundamental Right of every child for free and compulsory education up to the age of 14 years as provided in the Article 45(original) of the Constitution.\(^{1109}\) Article 30 of the Constitution grants rights to all minorities whether based on religion or language to establish educational institutions of their choice.

Even after 68 years of independence, the State with its limited resources and inadequate number of schools and colleges, has failed to completely develop the genius of the people. In this scenario, a fairly large number of educational institutions are being established, by educationists and philanthropists to share the burden of the State to provide educational opportunity to vast multitude of our people\(^{1110}\) who are ignorant and illiterate. The endeavour of the private educational institutions to share the responsibility and burden of the State and their difficulty was clearly recognized by the Supreme Court in St. Stephen’s College v. University of Delhi \(^{1111}\) Justice J. Shetty speaking on behalf of the Court remarked as follows: “The educational institutes are not business houses they do not generate wealth they cannot survive without public funds or private aid. There is also restrains on collection of fees, the minorities cannot be saddled with the burden of maintaining educational institutions

\(^{1107}\) Article 21A inserted by the Constitution (86\(^{th}\) Amendment) Act, 2002 read as follows: “The State shall provide free and compulsory education to all children of the age of six to fourteen years in such a manner as the State may by law, “determine”.

\(^{1108}\) (1993) 1 SCC 645.

\(^{1109}\) “Article 45: Provision for early childhood care and education to children below the age of six years: The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years.”


\(^{1111}\) (1992) 1 SCC 558 at 609 (Para 89).
without grant-in-aid. They do not have economic advantage over others. It is not possible to have educational institution without State aid. The minorities cannot, therefore, be asked to maintain institution on their own.”

In this backdrop, the question arises as to whether these private unaided educational institutions sharing the responsibility are entitled to State support in the form of aid / grants under the constitutional scheme? In the matter of right to get grant-in-aid from the State for educational institution, the Constitution itself has divided the educational institutions into two classes:-

(1) “These educational institution, which are by the Constitution itself expressly made eligible for receiving grants; and

(2) The educational institutions, which are not entitled to any grant by virtue of any express provision of the Constitution but are, assured that they will not be discriminated in matter of grant / aid, if any, provided by the State.”

7.7.1 Anglo-Indian Institution Established Prior to 1948

The Educational Institutions established prior to 1948 by Anglo-Indian Community is covered by the 1st category of such educational institutions. Article 366(2) of the Constitution, defines an ‘Anglo-Indian’ and Article 337 conferred on them positive right to get grant, for a period of 10 years from the commencement of the Constitution. Article 337, protected such financial grants with the Anglo-Indian

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1112 Ibid at 609 – 610.
1113 1959 SCR 995 at 978.
1114 “Article 366(2) provides; An ‘Anglo-Indian’ means a person whose father or whose other male progenitors in the male line is or was of European descent, but who is domiciled within the territory of India and is or was born within such territory of parents habitually resident therein and not established there for temporary purpose only.”
1115 Article 337, “Special provisions with respect to Educational Grant for the Benefit of Anglo-Indian Community: -During the first three financial years after the commencement of this Constitution the same grant if any, shall be made by the Union and by each State for the benefit of the Anglo-Indian Community in respect of education as were made in the financial year ending on the 31st day of March, 1948. During every succeeding period of three years he grants may be less by 10% than those for the immediate proceeding period of three years.

Provided that at the end of 10 years from the commencement of this Constitution such grants to the extent to which they are special concession to the Anglo-Indian Community shall cease.

Provided further, that an educational institution shall be entitled to receive any grant under this Article unless at least forty percent of the annual admission there in are made available to members of communities other than Anglo-Indian Community.”
Educational Institutions were getting in the financial year ending on 31st day of March, 1948. These provisions were incorporated because of the special circumstances of the Anglo-Indian Community after partition and to dispel any fears for their future well being.

These grants were initially protected for three years; thereafter, during each succeeding year, it had to be reduced by 10% than those for the immediately preceding period of three years. Further, under Second proviso to Article 337, the Anglo-Indian Community was required to make available at least 40% of total admission to students of other communities. Similarly, Article 29(2) of the Constitution provided inter alia that no citizen shall be denied admission into any educational institution receiving aid out of State funds on the grounds only of religion, race, caste, language, or any of them. These are the only two limitations to the right of the Anglo-Indian Educational Institution to receive grants. The State does not have any power to impose any other preconditions for disbursement of such grants.

In State of Bombay v. Bombay Education Society, the State of Bombay issued an order directing that no primary or secondary school shall admit to a class, where English is used as medium of instruction any student other than the student belonging to a section of citizen the language of which is English namely, Anglo-Indian and citizen of Non-Asiatic descent.

As a consequence, the Barnes High School, an Anglo-Indian School was prevented from admitted students whose mother tongue was not English. One of the issues before the Lordship of the Supreme Court was, as to whether the said order in any way affected the right to Barnes High School to admit non-Anglo Indian students and students of Asiatic descent.

It was held by the Lordship of the Supreme Court that, “the Constitution had imposed upon Anglo-Indian institutions, as a conditions of receiving special grants, the duty that at least 40% of the annual admission therein must be made available to the members of other communities.

The Court further said, “if the order was applied to Barnes High School, it amounted to preventing the school from performing its constitutional obligations, and

1116 1959 SCR 955 at 978 (Para 26).
1117 Ibid.
1118 AIR 1954 SC 561.
1119 Ibid at 564.
1120 Ibid at 570.
thus exposed it to the risk of losing the special grants. This order amounted to imposition of condition, other than Article 337 itself. Imposition of such an additional burden is not permissible under the Constitution.”

The scope of Article 337 was again considered by the Supreme Court in *re Kerala Education Bill, 1957*. The counsel of the minority’s institutions contended before the Court that Clause 8(3) and Clause (9) to (13), beside other clause of the Kerala Education Bill, 1957 curtailing their constitutional right to manage their own institutions as a price for grant to which they were constitutionally entitled under Article 337 of the Constitution.

“The State of Kerala did not seriously dispute the entitlement of Anglo-Indian Community to receive grant under Article 337, without being any fresh string being attached to such grant, but suggested that the grant received by the Anglo-Indian educational institution under Article 337 is not strictly speaking ‘aid’ within the meaning of that word as used in the Bill.”

It was held by the Supreme Court that, “although the word ‘grant’ is used in Article 337, and the word ‘aid’ is used in Article 29(2) and Article 30(2), but there can be no question that, the word ‘aid’ in these two articles will cover the ‘grant’ under Article 337. Therefore, the amount received by the Anglo-Indian Institutions as grants under Article 337, must be construed as ‘aid’ within the meaning of the said Bill and these Anglo-Indian educational institutions in receipt of this grant payable under Article 337, must accordingly be regarded as ‘aided school’ within the meaning of Clause 2(1) and (6) of 1957 Bill.

After clarifying the technical objection, the Court said, that the imposition of stringent terms as fresh or additional conditions precedent to this grant to the Anglo-Indian education institutions infringe their rights not only under Article 337 but also under Article 30(1) and hence to that extent void.

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1122 AIR 1958 SC 956.
1123 Clause 3(5) of the Kerala Education Bill, 1957 required aided school to furnish every year list of properties.
Clause 8(3) required aided school to make over all fees to the Government.
Clause (9) made it obligatory for the Government to pay salary to teachers etc.
Clause (10) require the Government to prescribe qualification for teachers.
Clause (13) prescribe the procedure for selection of teachers by the Public Service Commission for aided school.
Clause (12) prescribed the conditions of service for teachers in such school.
1124 AIR 1958 SC 956 at 979.
1125 *Ibid* at 979.
Das, C.J. speaking on behalf of the Court, however, observed that: “The real point is that no educational institution can in modern times, affords to subsist and efficiently function without some State aid and therefore, to continue, their institutions they will have to seek aid and will virtually have to surrender their constitutional right of administration of educational institutions of their choice.”

7.7.2 Post 1948 Minorities Educational Institutions receiving / seeking Grants

The minorities educational institutions including Anglo-Indian institutions established after 1948, have no Constitutional right, fundamental or otherwise to receive any grant from the State as a matter of right. Articles 28(3), 29(2) and 30(2) postulate educational institution receiving aid out of State funds. The basic rationale for State aid to educational institution was laid down by Chief Justice Das, in Kerala Education Bill, 1957 Case as follows:

“In modern times, the demand and necessities of modern educational institutions to run require considerable expense which cannot be met fully by fees collected from the scholars and private endowments which are not adequate and therefore, no educational institutions can be maintained in a state of efficiency and usefulness without the substantial aid from the State.”

Article 30(2) basis that the State, while granting aid to educational institution from discriminating against any educational institution on the ground that it is under the management of a linguistic or religious minorities. Under this Article, the minority educational institution cannot claim state aid as a matter of right but even minority educational institution are entitled to get financial assistance much the same way as the educational institutions run by

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1126 Ibid.
1127 Clause (3) of Article 28 of the Constitution provides:-

“(3) No person attending any educational institution recognized by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted to such institutions or in promises attached thereto unless such person, if such person is minor, his guardian has given consent thereto.”

Clause (2) of Article 29 provides: (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.”

Clause (2) of Article 30 provides: (2) “The State shall not, in granting aid in educational institutions discriminate against any educational institutions on the ground that it is under the management of a minority based on religion or language.”

1128 AIR 1958SC956.
1129 Ibid at 980.
the majority community. The State is bound to maintain equality of treatment in granting aid to educational institutions. Hence, the minority educational institutions are not to be treated differently, while giving financial assistance.\textsuperscript{1130}

In Rev. Sidhrajbhai Sabhai v. State of Gujarat\textsuperscript{1131} (1963) 3 SCR 837, Justice Shah, speaking on behalf of the Court held that:

“Clause (2) of Article 30 is only a phase of the non-discrimination clause of the Constitution, and does not derogate from the provision made in Clause (1) of Article 30. The clause is moulded in terms negative. The State is thereby enjoined not to discriminate in granting aid to educational institution on the ground that the management of the institution is in the hands of a minority, religious or linguistic but the form is not susceptible of the inference that the State is competent otherwise to discriminate so as to impose restriction upon the substance of the right to establish and administer educational institution by minorities, religious or linguistic.”

Thus, the State is competent to sanction or may not sanction any aid to educational institution but while sanctioning grant the State is under Constitutional obligation to:

(a) “Not to discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language; and

(b) The State cannot, while sanctioning grant, impose restriction upon the substance of the right guaranteed by Clause (1) of Article 30 of the Constitution.”\textsuperscript{1132}

In re Kerala Education Bill, 1957\textsuperscript{1133} one of the issues before the Supreme Court was whether the State could constitutionally impose restriction while granting aid to educational institutions?

It was argued on behalf of the minority educational institution that, while granting aid the State could not impose any conditions. One the other hand the State


\textsuperscript{1131} (1963) 3 SCR 837.

\textsuperscript{1132} \textit{Ibid} at 841.

contended that any conditions could be imposed for the State grants, and the minority educational institution were free to forgo grants and exercise their rights under Article 30(1), without any restriction.

It was further contended by the minority educational institutions that under Article 41 and 46 of the Constitution, it is the duty of the State to aid educational institutions and to promote the educational interest of the minorities and weaker sections of the people. Granting of aid is the normal function of the State.\textsuperscript{1134}

C.J. Das, speaking on behalf of the Court held that: “The right to administer cannot obviously include, right to maladminister. The minority, surely cannot ask for aid or recognition on educational institution run by them in unhealthy surroundings, without any competent teachers, possessing any semblance of qualification and which does not maintain even a fair standard of teaching, or which teaches a matters subversive of the welfare of scholars. It stands to the reasons, then, that the constitutional right to administer educational institution of their choice does not necessarily militate against the claim of the State to insist that in order to grant aid the State may prescribe reasonable regulation to ensure the excellence of the institution to be aided.”\textsuperscript{1135}

In, \textit{All Saint High School v. The Government Of Andhra Pradesh},\textsuperscript{1136} P.S. Kailasam, J. the Constitution does not confer any right on the institution to get any aid, however, forbids the state in granting aid to educational institution from discriminating an educational institution or the ground that it is under the management of the minority whether based on religion or language.

The Court further observed, “It is open to the State to prescribe relevant conditions and insist on their being fulfilled before any institution becomes entitled to aid. No institution, which fails to conform to the requirement thus validity prescribed would be entitled to any aid.”\textsuperscript{1137}

In \textit{St. Stephens College v. University of Delhi},\textsuperscript{1138} Jagannath Shetty, J. speaking on behalf of the Court, held that “It is quite true that there is no entitlement to State grant for minority educational institution. There was only stop gap arrangement for Anglo-Indian Community under Article 337 of the Constitution. There is no similar

\textsuperscript{1134} \textit{AIR}1958SC956.
\textsuperscript{1135} \textit{Ibid.} at 981.
\textsuperscript{1136} \textit{Id.} at 982.
\textsuperscript{1137} (1980) 2 SCC 478.
\textsuperscript{1138} \textit{Ibid.}
provision for other minorities to get grant from the State. But under Article 30(2) the State is under an obligation, to maintain equality of treatment in granting aid to educational institutions. Minority institutions are not to be differentiated differently while giving financial assistance. They are entitled to get the financial assistance much the same way as the institutions of the majority’s communities.”

The Court further remarked that “The receipt of State aid does not impair the right of the minorities under Article 30(1). The State can validly lay down reasonable conditions for obtaining grant-in-aid and for its proper utilization. However, the State has no power to compel the minority educational institution to give up substance of their right under Article 30(1).”

In *T.M.A. Pai Foundation & others v. State of Karnataka & others* B.N. Kirpal, C.J. speaking on behalf of the majority, in response to Q.4 formulated for answer by the Court i.e. whether the admission of student to minority educational institution, whether aided or unaided, can be regulated by the State Government or by the University to which institution is affiliated held that:

“A minority institution does not cease to be so, the moment grant-in-aid is received by the institution. An aided minority educational institution, therefore, would be entitled to have the right of admission of students belonging to the minority group, and at the same time would be required to admit a reasonable extent of non-minority students, so that the right under Article 30(1) are not substantially impaired and further, the citizen right under Article 29(2) are not infringed.” The Lordship of the Supreme Court further pointed that while giving aid to professional institutions, it would be permissible for the authority giving aid to prescribe by rules or regulation, the conditions on the basis of which admission will be granted to different aided colleges by virtue of merit coupled with reservation policy of the State qua non-minority students.

From the aforesaid discussion the following proposition emerges:

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1139 (1992) 1 SCC 558.
1140 Ibid at 609 (Para 87).
1141 Ibid.
1142 (2002) 8 SCC 481.
1143 Ibid at 588.
(1) As a temporary measure, the Anglo-Indian community managed educational institutions were entitled to receive grants, as per self contained code envisaged under Article 337 of the Constitution.

(2) The minority educational institution does not have Fundamental Right to receive aid, as a matter of right from the State. However, the State is under constitutional imperative to maintain equality of treatment while disbursing aid / grant to all educational institutions, including the minority educational institutions.

(3) In order to maintain excellence in education and usefulness as per necessities of modern educational institutions the expenses of the institutions pertaining to physical and academic infrastructure cannot be met only from the fees collected from the scholars. These educational institutions are also sharing the burden of the State in educating and empowering the citizenry. Therefore substantial budgetary support is to be provided to institute of excellence.

(4) The budgetary allocation and procedure of disbursement of financial assistance by the Maulana Azad Foundation, set up for granting aid to minority educational institutions to be augmented for educational development of the minorities. The equality is to be observed in even distribution of grants / aid by the State.

7.8 Concluding Observation

Under Articles 29 and 30 of the Constitution the Minority Educational institution does not have explicit Fundamental Right to affiliation or recognition. But the judiciary has consistently maintained that for a real and meaningful exercise of the right by the minorities to establish and administer education institution of their choice the recognition and affiliation by a State or University or board is *sine qua non*. In the absence of it, the minority educational institution would be robbed of their utility as the students of their institution would not be eligible for University degree or to compete for government jobs.

However, the educational institution established by the minorities cannot demand from the State to recognize their institution, if they fail to observe reasonable regulatory measures relating to educational standard and efficiency, the prescribed course of study and instruction. At the same time in case of affiliation and recognition of educational institution established by the minority, the regulating measures
prescribed by the State must ensure that product coming out of such institution should not be of sub-standard which is neither in interest of nation nor the society at large. Care must also be taken to ensure that there is no profiteering or capitation fee charged or poor students of minority are exploited in hands of the rich minority educational institution.

The State must ensure that there should not be any discrimination against the minority educational institution and State should not offer affiliation on such terms which would result in abridgment or surrender of their Fundamental Right. There was long a standing demand from the Minority educational institution, that appropriate authority to be established for granting recognition and affiliation to educational institution established by them. It is appreciable that National Commission for the Minority Educational Institution (NCMEI), has been accorded jurisdiction regarding the affiliation of minority educational institutions even without consulting the respective State Government. But their jurisdiction is confined to mere religious minority educational institutions and not to educational institutions established by linguistic minorities. Therefore, it is suggested that NCMEI Act, 2004, be suitably amended to extend its jurisdiction over the linguistic minority institutions. The reasons being, that both religious and linguistic minorities are placed at par with each other under Article 30 of the Constitution.

The minority educational institution does not have Fundamental Right to receive aid, as a matter of right from the State. However, the State is under constitutional imperative to maintain equality of treatment while disbursing aid / grant to all educational institutions including the minority educational institutions.

In order to maintain excellence in education and usefulness as per necessities of modern educational institutions the expenses of the institutions pertaining to physical and academic infrastructure cannot be met only from the fees collected from the scholars. These educational institutions, are also sharing the burden of the State, in educating and empowering the citizenry. Therefore, substantial budgetary support, be provided to institute of excellence.