CHAPTER VIII

8.0 CONCLUSIONS AND SUGGESTIONS

8.1 Conclusions

Minorities have a very significant place and role to play in socio-economic and educational development of any nation. Affording protection to the minorities has been the cornerstone of a modern secular State with plural composition. India, being no exception has made adequate provisions for safeguarding and empowerment of minority interest. In a multi-cultural, multi-religious and multi-lingual society like ours a guarantee in favour of minorities is intrinsically a part of social justice, liberty, equality and fraternity as embodied in the Preamble of the Constitution.

The Constitution of India recognizes Fundamental Rights of minorities to conserve their religion, language, script and culture and to establish and administer educational institution of their choice. Education is the most explosive subject and is of crucial importance to maintaining distinct cultural diversity and pluralism. It is intrinsically related educational empowerment of minorities by providing them an equal opportunity in the matters of education without eroding their distinct cultural specificities and furthering assimilation.

A critical appraisal of minority issue in Indian context shows that from the very beginning India, had all kinds of minorities- religious, linguistic, cultural and ethnic, but pluralism has been our way of life and there was no question of any kind of marginalization or discrimination on the basis of the cultural affiliation or on any other considerations at least before the advent of the British rule in India.

The problems of the minorities in India may be directly attributed to the free play of ‘Divide and Rule Policy’ of the British administration after the war of 1857. Step by step recognition of communal claims and communal interest became the part of policy of British administration in India. Reorganization of Indian army on tribal and sectarian basis, replacement of persian as language of administration, the partition of Bengal, the establishment of All India Muslim League as a check to growing influence of Indian National Congress were prime instruments adopted by the British to sharpen the differences between the different communities in India. The separate electorate on the basis of communal consideration brought by Morley-Minto Reforms of 1909, Montague - Chelmsford Reforms of 1919, the Government of India Act, 1935 brought the two largest religious communities in India at loggerheads, which cannot be bridged
even today. This unfortunate phase of history alienated Muslims from the main stream of India and distanced them from participating in the developmental process of education.

The Indian Nationalist leaders visualized the consequence of the most dangerous policy adopted by the British Administration in India and tried to address the legitimate concern and aspirations of minorities by incorporating detailed safeguards in the form of the Constitution of India Bill, 1895, Mrs Annie Besant’s commonwealth of India Bill, 1925, the Nehru Committee Report of 1928, as well as by the Lucknow Pact of 1917, the Karachi Resolution of 1945 to provide full religious tolerance and protection to language and cultures of all communities.

The framers of the Constitution were alive to the problems of minorities in India. They dealt with the problems in historical perspective thoroughly. The ‘Objective Resolution’ moved by Pandit Nehru in Constituent Assembly on 13th December, 1946 outlines the purpose of the future Constitution of India, by providing not only social, economic and political justice and equality of status and opportunity for the people of India, but also adequate safeguards provided for minorities, backward, tribal areas and depressed and other vulnerable sections of the society by giving them freedom of thought, expression, belief, faith and worship, and scope for protecting their cultural diversity.

The Constituent Assembly also urged that a satisfactory solution of the question of minorities has to be found to ensure health, vitality and strength of the free state of India. Otherwise, it will hamper cohesion and all India unity.

The question of safeguarding the interest of minority was an important and most baffling issue, almost throughout the period during which the Constituent Assembly met and it engaged the attention of the members of the Constituent Assembly till final adoption of the draft Constitution. In the first draft, Constitution published in 1948, the minority protection issue was visualized in the form of political safeguards for minority in the form of reserved seats in legislature, in government jobs, adequate representation in Cabinet and setting up appropriate administrative mechanism to safeguard the protection of the minority rights.

However, the right wing intellectuals had opposed the entire gamut of minority protection, by purposive interpretation to the concept of secularism, equality, justice, democracy as well as the need for all India unity and integrity. The partitions of the country also strengthen the position of the Congress against separate electorate and
proportionate representation in legislature and services. Moreover, the Congress did not have to counter Sikh Panther Party as well as the Muslim League.

As a consequence, the religious minorities were altogether excluded from the purview of political safeguard and it was confined only to the Scheduled Castes, Tribals and Anglo-Indian Community as temporary and transitional measures to ensure their social assimilation in the national mainstream. The Constituent Assembly also rejected the claims of the untouchables or the Scheduled Castes to be included in list of minorities and eligibility for special treatment on account of social and economic backwardness, as “mischievous extension” of the terms laid down by the Government of India Act, 1935. It was contended that any safeguard to the Scheduled Castes as religious minorities is illogical and will possibly prevent them from complete absorption in Hindu folds. Hence, the untouchables were considered culturally as part and parcel of Hinduism.

After removal of the political safeguards, the Constituent Assembly conferred to minorities’ right to conserve their distinct cultural identities in the form of language, script and culture and right to establish and administer educational institutions of their choice. The idea of giving rights to preserve their distinct cultural identities recognized pluralism which was ingrained in Indian value systems. The framers of the Constitution conceded these rights to minorities not for the purpose of creating fragmentation within the society, but to bring about a harmonious integration of different groups into a united political and national identity.

The framers of the Constitution thought that by guarantee the minorities’ right to establish and administer educational institutions of their choice starting from pre-primary to post-graduate levels including professional education is the most appropriate means to dispel their suspicion of the governing majority. This would also assuage minority fears that protection of their educational interest are not left at the mercy of the majorities at whose hands they may feel victimized and oppressed but to be protected as part of their Fundamental Rights. This will undoubtedly contribute towards the growth of cohesion and promote national integration.

The minorities are social realities which are dynamic rather than static. In culturally, religiously and linguistically diverse society, minorities and majorities frequently clash over a number of issues such as language rights, educational curriculum, setting up multi-cultural campus etc. and they generally perceive the education system favouring the values and ethos of the majority group and thus subversive of their own education systems. In the absence of any universally
acceptable definition of the term “minority”, the issues has becomes more complicated.

In view of the legal significance of the matter, numerous attempts have been made to ascertain as to who are the persons of inherence of minority rights by the academia as well as at international levels. J.A. Laponce defined, “minority” as a group whose race, language and religion is different from that of the majority group. Charles Wagley and Marvin Harris approached the minority characteristics in context of relatively powerless group compared to members of dominant group. The PCIJ refers minorities in the context of community as a “group of person living in a given territory or locality having a race, religion, language and traditions of their own, and united by the identity of race, religion, language and tradition in a sentiment of solidarity with a view to preserving their traditions, maintaining their own form of worship, securing the instruction and upbringing of their children in accordance with the spirit and traditions of their race and mutually assisting one another”. The special Rapporteur, Sub-Commission on prevention of Discrimination and Protection of Minorities described the minorities as those non-dominant groups in a population which possesses and wish to preserve ethnic, religious traditions, characteristics markedly different from the rest of the population. Francisco Capotorti, perceived minority as “a group which is numerically inferior to the rest of the population and in a non-dominant position. According to Prof. Deschenes, minority is “a group of citizen of a State, constituting a numerical minority and in non-dominant position in the State, endowed with ethnic, religious or linguistic characteristics which differ from those of the majority of the population, having sense of solidarity with one another, motivated, if only implicitly, by collective will to survive and whose aim is to achieve equality with majority in fact and law. A mere purusal of the various definition of minority does reveal that certain elements are common in groups claiming minority status such as, the existence of distinct, ethnic, religious or linguistic characteristics, non-dominance, numerically inferior status, nationals of the State, and a sense of solidarity directed towards preserving distinct, culture, traditions, religion or language, thus, recognizing cultural diversity and pluralisms.

Though, some of the above characteristic may be common in both majority and minority community but there is broad consensus in academia and at the national and international level that the persons belonging to minority group need special attention to save them from oppression and forceful assimilation at the cost of their distinct
cultural identity and special affirmative action is required to enable the minorities to assume their appropriate place within the wider societal framework.

The world community also acknowledged that there is a conceptual difficulty in ‘defining minority’ because it is a social reality. Still numerous provisions were incorporated for protection of the cultural and educational rights of the minority. There was ample reference to minority rights in Treaty of Westphalia, 1648, the Congress of Vienna of 1815 and the Treaty of Berlin of 1876. Under the League of Nations system, the treaty between the Great Powers and Poland incorporated numerous provisions to protect the Cultural and Educational Rights of the minorities particularly, under Articles 8 and 9 of the treaty, in spite of the fact that it was directed at achieving peace rather than protection of minority per se.

In the beginning, the United Nations system adopted the approach of strong human rights system based on strong prohibition on discrimination based on race, ethnicity, language or religion for all individual rather than minority rights protection per se. Article 26 of Universal Declaration of Human Rights recognized the right to Education for all to promote understanding, tolerance and friendship among all nations, racial or religious groups. However, the issue of minority rights protection found a definite expression under legally binding Article 27 of International Covenant on Civil and Political Rights, 1966 which mandate the signatories to the treaty that, in those States, in which ethnic, religious or linguistic minorities exist, persons belonging to such minority shall not be denied the right in community with other members of their group to enjoy their own culture, to profess and practice their own religion and to use their own language. The international covenant on Economic, Social and Cultural Rights of 1966, though does not refers to the minority, but it also recognized the general educational rights of all racial, ethnic or religious groups by Article 13 of the Covenant. The more definite provisions pertaining to the minorities right to Education was clearly recognized by the United Nations Declaration on the Rights of the Child, 1959 and the United Nations Convention on the Rights of Child (CRC), 1989. The United Nations Declaration on the Rights of person belonging to National or Ethnic, Religious and Linguistic Minorities, 1992. Without defining the term, ‘minority’ exclusively addressed the minority rights at the international levels. Further, the UNESCO Convention against Discrimination in Education clearly stipulated for inclusion of minority education rights as an essential part of an integrated approach to the right to education.
The European framework Convention for the protection of national minorities of 1994 is one of the most comprehensive treaties for the protection of the rights of the people belonging to national minorities. It lays special emphasis on protection of cultural identities as well as right to be taught or receive instructions in minority language.

Thus, the various international instruments and treaty provisions without establishing any definition of minorities acceptable to all nation states clearly recognize minority educational rights with harmonious blending of preserving their distinct cultural identities as well as obligate the States to direct their education policy to provide substantive equality to minority in the matter of their education.

The problem of the protection of the interests of minority figured prominently during the framing of the Constitution of India, but the makers of the Constitution were very reluctant to use the term “minority” very often in view of the partition of the country, and desired to have all India unity on the broad premises of secularism, equality fraternity and national unity, in spite of objections by some of the members of the Constituent Assembly that recognition of minority rights would perpetuate communal institutions. The framers of the Constitution decided to incorporate minority rights as justiciable rights in parts dealing with Fundamental Rights in the Constitution. After long and protected debate in the Constitution Assembly, the founding father of the Constitution confers rights on any section of citizen to conserve their distinct language, script and culture and exclusive rights to religious and linguistic minorities to establish and administer educational institutions of their choice.

Dr. B.R. Ambedkar during the Constituent Assembly Debates, though, explained, that the term “minority” for the purpose of Articles 29 and 30 is to be understood not only in technical sense, as we have been accustomed to use it for the purposes of certain political safeguards, but it is also used to cover minorities in the cultural and linguistic sense. But the Constituent Assembly left it to wisdom of the judiciary to decide as to what will be the test for determination of minority status to ultimately decide as to who are the persons of inherence of justiciable minority rights.

After, the Constitution came into force, the judiciary was confronted with the issue as to whether minority status of a group of person has to be determined in relation to the population of the whole of India or population of the State where the said group of persons is residing? In other words, what should be the reference point for the determination of linguistic or religious minorities? In re-Kerala Education Bill case, ‘though no final opinion was expressed by the Lordship of the Supreme Court on
this question, but Chief Justice S.R. Das observed that since, the Kerala Education Bill, “extends to the whole of the State of Kerala and consequently the minority must be determined in reference to the entire population of the State. In A.M. Patroni Case, the Kerala High Court observed that the word ‘minority’ is not defined in the Constitution and in absence of any special definition, we must hold that any community, religious or linguistic which is numerically less than 50% of the population of the State is entitled to the Fundamental Rights guaranteed by the Articles. However, in D.A.V. College, Jallandhar, attempt was being made to decide the minority status in relations to the population of the whole country. Thus, the legislative source based determination of minority status was being made by the Supreme Court starting from in re-Kerala Education Bill Case to D.A.V. College case in 1971 and it was consistently held that with respect to State law, the unit for determination of religious and linguistic minorities can only be State law.

In view of transfer of the subject of ‘Education’ from State list to Concurrent list in 1976, the issue of determination of minority status was again considered by the Supreme Court in T.M.A. Pai Foundation case where the Court expressed the view that, “the minority status of a group of person is to be determined on the basis of the population of the State or Union Territory concerned and not the whole of India.

The main reasoning for taking State as a unit is that language was being used as basics for reorganization of states of the Indian Union. The Court said that the religious minorities shall also be construed statewise because it is put at par with linguistic minority under Article 30 of the Constitution. This is also said to be affirmed by the subsequent constitutional amendments inserting Articles 350A and 350B. The new incorporated provisions indicate that the status of linguistic minorities has to be determined statewise.

Justice Ruma Pal had taken a divergent view on this count. According to her, ‘minority status’ need not be construed merely with reference to state boundaries. In an appropriate case, it may have reference to the whole of India, if it involved the consideration of central legislation.

As regards the claims of religious denomination as minority group, the judiciary has consistently adopted the approach that denomination of particular religion are not entitled to claim the protection of Article 30 of the Constitution because if every sect or section of a majority of religion would be recognized as minority then no group will remain a majority group.
In the context of Jains claims as minority group, in *Bal Patil* case the judiciary adopted the extreme position by asserting that numerical strength cannot be the sole criterion and socio-economic and educational factors have to be taken into consideration for determination of minority status. Such approach was never adopted in the history of the Supreme Court of India and it runs contrary to the law laid down since *in re-Kerala Education Bill* to *T.M.A. Pai Foundation* and thereafter. It is a matter of common knowledge that in the context of the doctrine Jain is separate religious group having distinct identity as well as religious persuasion but for the purpose of personal law Jains are treated as part of Hindu religion.

India, as is well known, is a multi-cultural, multi-religious and multi-linguistic society. Here the minorities are recognized on the basis of language and faith considering their numerical strength. Article 29(1) of the Constitution gives right to any section of the citizen to conserve their distinct language, script and culture, thereby recognizing the pluralistic view of the society. Pluralism deals with diversity allowing people to value different social goods as well as group rights.

Education is one of the most important tools for promoting minority characteristics and distinct identity. It is intrinsically related to right to preserve distinct features and the single most important agency for cultural reproduction, socialization identity formation and transmission.

The Judiciary has from the very beginning adopted the approach of zealously protecting the cultural diversity. Since *in re-Kerala Education Bill, 1957* till *P.A. Inamdar*, Supreme Court has adopted a consistent view regarding the right of any section of citizen, i.e. majorities as well as minorities to preserve their distinct language, script or culture, by means of educational institutions. Even for the purpose of protecting their distinct language, it is not necessary that such language should have a distinct script.

Further Article 29(2) is intended to ensure maximum educational opportunities to all sections of citizens of India especially the students of the minority community, to develop their individual talents and skills. By admitting a student of non-minority community into minority educational institutions, the object of conservation of distinct language script and culture is better served by propagating the same to non-minority students.
At the time of framing of the Constitution the members of the Constituent Assembly were too much occupied with the issue of protection of religious minority and hence, the issues of protection of cultural and linguistic minority did not receive the desired attention i.e. Constituent Assembly was urged to incorporate specific provisions for promotion and development of language, literature, culture with provisions of instruction in mother tongue as part of their right to protect their cultural and educational interest. However, the Constituent Assembly merely conceded the right of every section of citizen to conserve their distinct language, script and culture.

Article 30(1) of the Constitution confers dual rights on all minorities based on religion or language to establish educational institution of their choice. Education is the single most important instruments for social and economic transformation of India. Right to education is implicit in and flows from right to life under Article 21 of the Constitution. Articles 14, 15(4), 19(1) (g), 21A, 26, 41,45,46 alongwith Articles 28(2), 29 and 30 obligates the states to take positive measures for educational empowerment of all citizens in general and minority in particular. Article 350A further obligates the States to provide facilities for imparting instruction in the mother tongue of the children of linguistic minorities.

The minorities have been given special rights or additional protection to set up educational institutions of their choice to impart not only religious or linguistic instruction but also to general and secular education to enable their children to go out in the world fully equipped to preserve and strengthen the integrity and unity of the country and meet the requirement of their profession. In *T.M.A. Pai Foundation*, the Supreme Court of India did not categorically refute the question as to whether the establishment of educational institutions would fall under expression profession, trade or business but the Court was certainly of the view that it would fall under the expression, “occupation”.

The right to set up educational institution under Article 30, has been recognized as group right and it must be established for the benefits of the minority community and it must serve the interest of minority community or considerable section thereof. There must exist some real positive index to enable the institution to be identified as educational institution of the minorities.
Article 30(1-A) obligates the State to enact specific law, or to introduce specific amendment in the Land Acquisition Act, to provide appropriate amount in case of acquisition of property of minority educational institutions. Unfortunately till now no such law has been enacted either by the State or Central government for this purpose.

The Aligarh Muslim University, legal status is also bone of contention between the Muslim minority and the State. The State claims that it is Central University established by an Act of Parliament, on the other hand the Muslim Community considered it as Testimony of Central Symbol of the Muslim Survival in independent India. In Azeez Basha case the Supreme Court has taken stand that the expression establish and administer in Article 30 must be read conjunctively so the minority will have right to administer an educational institutions provided it has been established by it. Still the matter is sub-judice before the Supreme Court of India and Court is required to determine the legal status of the Aligarh Muslim University as minority institutions.

The fundamental freedom guaranteed to minorities under Article 30(1) is prima facie absolute in nature because it is not subject to reasonable restriction which operate in case of Article 19(1)(g) and Article 26(1)(a) of the Constitution. In Kerala Education Bill, 1957 case, the Supreme Court asserted that verbal absoluteness of Article 30(1) is a myth and the right like any other fundamental right is subject to regulation for promoting academic standard and right to administration cannot include right to maladministration.

However, in Sidhajbhai Sabhai, the Supreme Court adopted an extreme approach by holding that minority right to establish an educational institutions is absolute and it cannot be allowed to be whittled down in public or national interest. Further, only those regulations were permissible which are conductive to making minority institutions as an effective vehicle of education for minority.

Sidhajbhai Sabhai Test of excellence was reaffirmed by the Supreme Court in Rev. Mother Provincial and subsequently in Ahmedabad St. Xavier College and declared that regulation in general interest of the public had no relevance if it did not advance the excellence of a minority institution as vehicle of secular education.

Finally, in T.M.A. Pai Foundation the Supreme Court asserted that any regulation framed in national interest must necessarily apply to all educational institutions, whether run by majority or minority, such a limitation must necessarily be
read in Article 30. The right under Article 30(1) cannot be such as to override the national interest or to prevent the Government from forming regulation in that behalf.

However, the minority view, has pointed out that what Article 30 predicates is institutional autonomy on the educational institutions established and administered in exercise of the right conferred there under which cannot be interfered with by the State except to the extent of framing reasonable regulation in the interest of excellence of education and to prevent maladministration.

Admission of students to minority educational institutions is one of the significant areas where the conflict has arisen between interplay between Article 29(2) and Article 30(1). *In re Kerala Education Bill, 1957* the Supreme Court postulated “a sprinkling of outsider theory” by saying that by admitting a non-member into it, minority educational institution does not shed its character and cease to be minority institution. In *St. Stephen College*, the Court accepted the right of the College to show some concession to students of its own community, but asserted that in no case such intake is to exceed 50% of the annual admission and a minority institutions are required to make available at least 50% of the annual admission to members of community other than minority community. In *T.M.A. Pai Foundation*, the majority block opinion led by Chief Justice B.N. Kirpal by using the proviso,” preferential treatment of students of their own community in a reasonable measure” seems to uphold the right of the minority institution to give preferential rights to students of their own community in their own institutions. However, the extent of 50% formula laid down in *St. Stephens case* stands modified when the Court asserted that it would be subject to assessment of the actual requirement of the minorities and the course of education for which admission is being sought for and other relevant factors.

Medium of instruction is another area where the battle has been fought between the minority educational institutions and the State before the Supreme Court of India. The multifaceted development of human personality, diversified education and medium of instruction is most significant. The right of minorities to establish and administer educational institutions of their choice also carries with it right to impart instruction in its institution to is children in its own language. In *Gujarat University Case*, the Supreme Court categorically assorted that the University may prescribe a particular language as medium of instruction and examination but it cannot prescribe a particular language as an exclusive medium of instruction and coordination and determination of standard in instruction of higher education is vested with Union Government. Despite clear cut observation by the Supreme Court of India, the State
tried to experiment with minority right to determine medium of instruction in D.A.V. College Case. In that the Court again reiterated that the State must harmonize its power to prescribe the medium of instruction with right of the religious or linguistic minority to have the medium of instruction in the media of these minorities. In State of Karnataka v. Associated Management of English Medium Primary and Secondary School, the Court adopted more sympathetic approach to the concern of minority institutions by holding that the linguistic minorities under Article 30(1) of the Constitution has the right to choose the medium of instruction in which education will be imparted in the primary school which it has established. However, in Usha Mehta Case, the Supreme Court overlooked the approach of the Supreme Court since in re-Kerala Education Bill, 1957 by holding that the Articles 29 and 30 cannot be interpreted in such fashion so as to contain the negative right to exclude the learning of regional language.

Regarding the power of the minority educational institutions, to constitute the governing body or to change its membership, the Court has adopted consistent approach by holding that it is an integral part of right to establish and administer such institutions. The power can be best realized through managing bodies in which the founders or their nominees have faith and confidence. The choice to select a managing body is unfettered so the founders or their nominee can shape and mould the institutions according to their way of thinking and in accordance with their ideas of how the interest of the community in general and the institutions in particular will be best served.

In context of minority right to appoint teachers and principals, the Court was of the view that selection and appointment of teachers for an educational institution is one of the essential ingredients of right to manage the minority institutions. Of course, state may prescribe the necessary qualification for appointment of teachers but once the teachers possess the necessary qualification and selected by the minority educational Institution. The State will not have the power to veto such selection. The Court is unwilling to concede any other power to the state other than the power to prescribe the minimum qualification for the person to be appointed in such institutions.

Another area where the conflict has arisen between the minority institutions and the State were the question as to management power to take appropriate disciplinary action against recalcitrant in one hand and the social necessity to protect the members of staff against arbitrariness and victimization in the hands of manager of
minority institutions. In this respect, the endeavour of the Supreme Court of India has been to strike a balance between the Constitutional obligation to protect what has been secured to minorities under Article 30 and of giving some security to the staff as against the arbitrary action of the management of the minority institutions. Except in re-Kerala Education Bill, 1957 case, the Supreme Court consistently struck, down the regularly provisions requiring the approval of the State or the Vice-Chancellor against disciplinary action against the staff as it takes away the autonomy of the governing body of the minority educational institutions. However, in T.M.A. Pai Foundation case, the Supreme Court was of the view that for redressing the grievances of employees in case of punishment or termination from service there is need for appropriate tribunal for expeditious disposal of the issues between the management and their staff.

Another area where the conflict has arisen between the minority institutions and the state where the question of fees chargeable by unaided minority institutions from its students. In Unni Krishnan Case, the Supreme Court asserted that there is no fundamental right to free or subsidized education beyond fourteen years of age but ruled that private unaided recognized or affiliated educational institutions running professional courses are entitled to charge fee higher than the fee charged at the governmental institutions for similar course, but such a fee could not exceed the maximum limit fixed by the State. Then, the Court laid down detailed guidelines in respect of selection of students and fixation of fees to check commercialization of education and charging of capitation fees. However, in T.M.A. Pai Foundation the Supreme Court declared that Unnikrishnan Scheme and its direction issued to the Government / UGC / other concerned as unconstitutional. Thus, Unnikrishnan attempts to stem the rot of commercialization of education was negated by the Supreme Court by terming its detailed scheme as unreasonable and allows the unaided minority institutions to charge reasonable surplus but no capitation fees.

Reservation for minority in majority owned educational institutions and in minority educational institution is also one of the areas of confrontation between the state and minority. So far right of the minority community to get preferential treatment in educational institutions is concerned they can take benefit of affirmative action on the basis of their backward class status and as per Constitutinal order of 1950 and as amended in 1956 and 1990, only Sikh Scheduled Castes and Buddhists Scheduled Castes are entitled to reservation benefits along with Hindu Scheduled Castes. The person of other religious persuasion such as Christianity and Muslim are not entitled for such benefits.
So far reservation in Unaided Minority Educational Institutions is concerned, the Supreme Court in *P.A. Inamdar* Case clarified that State cannot enforce its reservation policy or appropriate any seats for students of the backward classes of citizen or for the Scheduled casts or Scheduled Tribes because enforcing reservation policy of the State constitute serious encroachment on the rights and autonomy of minority educational institutions under Articles 29 and 30 of the Constitution.

In context of recognition and affiliation to minority educational institutions the Court has taken consistent view that there is no fundamental rights of minority institutions to affiliation but for meaningful and real exercise of right under Article 29 and 30, the affiliation is must in the matter of general secular education. The Court further took the view that minorities will virtually lose their right to equip their children for ordinary or professional carrier if affiliation is being offered on terms amounting the surrender of the substance of right under Article 30 of the Constitution. To streamline the minority request for affiliation and recognition, the National Commission for Minority Educational Institution Act, 2004 was enacted by Parliament to grant affiliation to religious minority run educational institutions. Similarly, the minority educational institutions is not having fundamental right to receive aid / grants as a mother of right from the state but state is under constitutional obligation to observe equality of treatment while disbursing aid / grants to all educational institutions including minority educational institutions.

8.2 Suggestions

Today, minority educational institutions are pitted against several issues in their efforts to exercise their Fundamental Rights to establish and administer educational institutions of their choice. In spite of the efforts made by the successive benches of the Supreme Court in the nature and content of the right of minorities to set up educational institution, the law governing, the minority educational institutions suffer from uncertainties. In view of this most of the controversies have arisen between the minority right to establish and administer educational institutions of their choice and the insistence by the State to assert its right to regulate. For a balanced promotion of educational rights of minorities the following suggestions and recommendation need to be considered and followed:

1. **Minorities Need for Special Right and Protection**: There is broad consensus in academia and at the national and international level, that persons belonging
to minorities need special rights and protection to save them from forceful assimilation at the cost of their distinctive cultural identity, and sincere efforts are required on the part of the State to enable the minorities to assume rightful place within wider society, to help them to provide best possible education to their children to maximize their individual talents and potential.

(2) **Positive Response to World Wide Recognition of Minority Rights**: At the international level, without establishing any definition of minorities acceptable to all nation states, there is clear recognition by various international instruments of minority educational rights for harmonious blending and preserving their distinct cultural identities as well as obligation on the part of the State to redirect their education policy to provide substantive equality to minorities in the matter of their education.

(3) **Determination of Minority Status**: The legislative source based determination of minority status was made by the Supreme Court before the transfer of “Education” from State list to Concurrent list, thereafter, the Supreme Court adopted a very simplistic view in dealing with human problems by holding that religious and linguistic minority status is to be determined on the basis of the population of the State (less than 50% of total population of the State). But the conception of minority needs to be constructed in relation to, not the territorial jurisdiction but the prime purpose or object sought to be achieved by the Constitution. Such a perspective flows from the conjoint consideration of Articles 29 and 30, which together are grouped under the sub-heading of cultural and educational rights. Therefore, the conception of minority needs to be constructed, by keeping in mind the welfare of the minorities so that if any section of the citizens residing in the territory of India or any part thereof, having distinct language, script or culture, have right to conserve the same. We should always keep in mind as what is sought to be protected here is not only the interest of minorities as against the majorities, but the interest of cultural and educational group against legislative and executive action.

In the case of educational institutions established by the minority community to impart professional and secular education, the State as a unit may be taken into consideration, and there must be some real positive index associating the educational institutions with the minority community and in some way or the other it must serve the interest of minority community, primarily for claiming additional protection that flows from Article 30 of the Constitution.
(4) **The Scheduled Castes List to Include Religious Minorities:** Although Islam and Christianity stress equality and their religious doctrine do not recognize castes, but some Muslim and Christian groups do face caste like stratification, discrimination and disadvantages akin to Hindu Scheduled Castes and they too be included in list of Scheduled Castes like Sikh Scheduled Castes and Buddhist Scheduled Castes, on the basis of their occupation without hurting their religious sentiments for differential treatment to enable them to achieve educational opportunities for their children.

(5) **Review of Bal Patil case and Jains as Minority Community**

(a) In the context of doctrine, Jains are separate religious group having distinct identity, as well as religious pursuasion, but for the purpose of personal law, Jains are treated as part of the Hindu religion.

(b) In *Bal Patil case* the Supreme Court categorically denied the minority status to Jains, by saying that apart from numerical strength, the community socio-economic conditions should also be considered as criterion for according minority status. Such an extreme approach was never adopted in the history of the Supreme Court of India and it runs contrary to the law laid down by the Supreme Court since *in re-Kerala Education Bill Case*. If the group cannot gain minority status, the rights to which they may be eligible under Articles 29 and 30 of the Constitution would get defeated.

(c) Further, in *Bal Patil Case*, the Court attempted to project Hinduism as macro-majority, and at the same time disintegrated it into multiple minorities and ultimately diminished the very concept of majority and minority by asserting that “All are minorities amongst Hindus”.

In view of the above, the *Bal Patil* case requires review by a larger bench of the Supreme Court of India.

(6) **Minorities Right to Conserve Language, Script and Culture**

(a) The Constitution makers have clearly recognized multi-linguality of the nation and pluralistic society; advocates for maintenance of minority identity, and celebration of diversity of culture and tradition. For the flourishing of the minorities’ distinct language, script and culture, there is need for specific legislation and State level affiliating University, or separate department in every University to provide suitable opportunity to minority to preserve and develop their language, script and culture.
(b) The Eighth Scheduled of the Constitution needs to be amended to include more minority language in their purview so they will have the Linguistic Commission to take appropriate steps for saving the minority language from verge of extinction. Inclusion of minority language in Eighth Schedule inculcates a sense of confidence and respect for minority language, and ultimately promotes national integration and strong bonding in different communities.

(c) It is a well known fact that any language given the suitable opportunities has the potential to perform all those functions, which are associated with well known languages of the world. The three language formula suggested in Chief Ministers Conference to promote national integration and equalize the burden of learning language on children in Hindi and non-Hindi speaking areas must be implemented in all States immediately, to protect the minority languages along with knowledge commission recommendations to introduce English as compulsory subject from class I to harmonize the minority concern as well as the demand of professional and modern education, which is to make India a knowledge super hub in the world map.

(7)  **Minority Right to establish and administer educational institution**

(i) The Indian Constitution has accorded to the minorities, special rights or additional protection to set up educational institutions for twin purpose of conserving their distinct cultural identity, thereby recognizing pluralistic view of the society, and setting up educational institutions of their choice for imparting general and professional education from pre-primary to post-graduation levels, thereby according equality of opportunity between majority and minority.

(ii) In apparent conflict between minority rights to establish and administer educational institutions of their choice and State’s claim that minority right is not an absolute right but subject to reasonable restriction and regulatory power of the State, the Supreme Court of India is so far not able to categorically deflect the debate between minority claims to absoluteness vis-à-vis State power to impose reasonable restriction. In view of the above, minority education rights are to be seen primarily as educational rights of the minorities under Articles 29 and 30 in addition to general right to education available to them as citizens under Articles 19(1)(g), 21, 21A, 41, 45 and 46, then entire debate will automatically shift from absoluteness of their right to equality of opportunity and
greater focus will be given on development of educational infrastructure to realize the child’s best potential, development of their individual talents and skills. It will also enable to infuse required professionalism in administration of minority educational institutions.

(iii) Inspite of the specific mandate under Articles 21A, 45(original) and Article 51A(k) which obligates the State, parents and the guardians to provide educational opportunity to his child, the literacy level (of those who can read and write) in minorities both religious and linguistic is abysmally low particularly among Muslims women. In view of the above, universal and compulsory education upto matriculation level ensured. Failure to abide by that should invite disability and disincentive under welfare schemes. These measures will enable the State to become knowledge superpower and it will turn the wheel of Indian economy and desired social transformation.

(iv) Further, to achieve cent percent literacy, the budgetary allocation particularly for minorities needs to be increased substantially and educational revolution in line of agricultural and industrial revolution is needed for educational empowerment and to provide equal opportunities for economic and cultural growth and progress.

(v) The dismal literacy rate in Muslims minorities should be understood in its correct perspective of economic, political and psychological factors which are holding the ground from the colonial policy of divide and rule. To address this state of affairs, the rich and influential members of the Muslim community must-step in and create enabling conditions for setting up Muslim minority educational institutions and encourage girl child to go for study. Government occupied waqf properties should be restored to the community for developing educational facilities.

(vi) Educational empowerment of minorities is not merely a question of charity but a dire necessity. India cannot think of becoming a superpower in the field of knowledge by constantly neglecting the educational needs of about 18% of its population. Minorities need to be fully integrated in social, political and economic sphere to realize the constitutional imperatives of education. The State must facilitate the setting up of educational institutions in every possible manner. In the era of consumerism, mere setting up of educational institutions will not
ensure the intake of students. The students must have the right to choose. The educational institutions of their choice which will ensure imparting of qualitative professional education and right to refuse to take admission if it is lacking in desired standards.

(8) **Acquisition of Minority Educational Institutions Property:**

Article 30(1A) obligates the State to make specific law for acquisition for minority educational properties and to provide adequate compensation for such acquisition for general purpose. Unfortunately, no step has been taken by the State for this purpose. Hence, there is need to enact a separate law or to introduce appropriate amendments in the Land Acquisition Act to ensure adequate compensation in case of compulsory acquisition of minority educational institutions property for general purpose.

(9) **The Status of Aligarh Muslim University:**

The status of Aligarh Muslim University is still hanging in fire since independence and the matter is still sub-judice before the Supreme Court. Whether a particular institution is a minority institution or not is a question of fact. Some sort of pragmatism and expediency is needed or the part of the Supreme Court of India to clear the status of the Aligarh Muslim University, so that it provide a clear direction to minorities to effectively exercise their rights under Article 29 and 30 of the Constitution.

(10) **Admission in Minority Educational Institutions**

Right to admit students is an integral component and facet of right to administration of minority educational institutions. The right to administration under Articles 29 and 30 is not absolute, but subject to reasonable restrictions in the interest of education itself. To streamline the right to admit students and to avoid nepotism, favoritism and capitation fee, the following measures are required:

(i) All admissions in minority and non-minority educational institutions need to be based on common entrance tests to be conducted on all India basis, which will provide opportunity to deserving poor meritorious students, with right to choose an educational institutions of their choice on the bases of their performance in examination. For this purpose,
National Examination Board, in the pattern of similar Examination Agencies existing in developed countries may be constituted. It will not hamper the minority right to admit students but will provide a common pool to select minority students for preferential treatment and eliminate nepotism and favouritism in admission.

(ii) An aided minority educational institution in view of the specific injunction of Article 29(2), is required to admit students of non-minority community to a reasonable extent, depending upon type of the institution, the course, the population and educational needs of the minorities. The sprinkling of outsider theory of in re-Kerala Education Bill, 1957 was given definite shape in St’ Stephens by postulating preferential admission to students of their community in their own institution by stipulating 50% formula. But T.M.A. Pai again diluted the clarity by introducing subjective formulations, “reasonable extent” depending on educational needs of the minority”. The reasonable extent of non-minority student is to be clearly defined by either specific legislation on the part of the State or the judiciary must provide clarity by reviewing the T.M.A. Pai Foundation case.

(iii) The management quota seats in private unaided institutions be abolished because it is the root cause of corruption, nepotism and favouritism and admissions must be based purely on inter-se-merit amongst the students list prepared on the basis of common entrance test for all programmes including professional and non-professional.

(11) **Medium of Instruction**

The minority right to establish and administer educational institutions of their choice includes the right to choose and determine the language of instructions in their own institutions. For effective realisation of minority rights to determine the medium of instruction, the following needs to be done:

(i) The minority establishing educational institutions may be allowed to choose any language of their choice as medium of instructions as they thinks fit.
(ii) The State should resist from imposing of an exclusive or sole medium of instructions in the name of national integration particularly when there is clear judicial injunction not to do so. Any language, given the appropriate enabling conditions, has the potential to perform all such functions, that is, associated with well established and flourishing languages of the world.

(iii) The minority should not be compelled to study regional languages, howsoever, desirable, it may be for day to day affairs of the people of that State. When the minority community cannot be compelled to study their own mother tongue compulsorily, then how can they be compelled to study regional language. These matters need to be left to concerned minority to decide about the language of instructions for their institutions.

(12) Composition of Managing Bodies

The right to constitute managing bodies of the minority educational institutions is an integral component of right to administration. The managing committee of the minority educational institutions needs to be restructured on professional basis and eminent academicians of that particular minority to be associated with such institutions to provide clear cut educational direction and visibility to such institutions. To avoid nepotism and favouritism, the managing committee should not be allowed to be made hand-in-glove of the managers of the minority institutions and it should not become place for habitation and employment of the family members of the managers of such institutions.

(13) Appointment of Teachers

Educational institutions are temples of learning, and right to appoint teachers is of vital significance for minority educational institutions. The judiciary is unwilling to concede any power to the State except prescribing the minimum qualification for the persons to be appointed as teachers. For efficient functioning of the minority educational institutions with desired qualitative output; the best available persons of that minority community be provided opportunity to teach in such institutions. For this purpose, the State / University should be empowered to constitute selection committees comprising of eminent educationists of that minority community to select the best available
persons purely on merit rather than existing practice of appointing kith and kin of the managers of the minority educational institutions.

(14) **Disciplinary Action against the Staff**

The power to take appropriate disciplinary action against the staff and faculty should to be with the managers of the minority educational institutions. But at the same time to protect the staff against victimization regulations should be framed to safeguard the interest of the staff members. The state must ensure that staff and other faculty members to be properly paid for their work and other attending social legislation should apply uniformly to all institutions irrespective of their status.

(15) **Fixation of Fees**

In order to prevent the exploitation of students and commercialization of education, the following needs to be done:

(i) The Education should run on “no profit no loss basis” and efforts should be made by the State by enhanced budgetary support to provide affordable, technical, professional and scientific education to meritorious students of the lower middle class of the minority community who are poverty-stricken with large percentage of illiterates.

(ii) The Court’s permission to charge “reasonable surplus” by private / unaided minority educational institutions depending on the existing infrastructure and future expansion plan of such institutions is subjective and leaves an ample scope for unaided minority and private institutions to fix the fees, making it increasingly difficult for students to afford and pay such exorbitant fees.

(iii) A comprehensive central legislation is needed to regulate the fees charged by self-financing institutions and to restrict the ambit of the expression, “reasonable surplus” on future expansion plan.

(iv) The Unnikrishnan attempts to stem the rot of commercialization was denounced by the Supreme Court in *T.M.A. Pai Foundation* by terming its elaborate scheme as unreasonable has led to sharp increase in fee charged by the self-financing institutions. In view of this, *T.M.A. Pai*
Foundation needs to be reviewed by the Supreme Court to rectify the mistake, if any.

(16) Reservation for and in Minority Educational Institutions

(i) Under the existing Constitutional Scheme, the right of the minority community to get admission in majority managed educational institutions apart from merit, is dependent on “their other Backward Classes” Status and not minority per se under Article 15(4) of the Constitution, which they find difficult in view of voluminous OBCs list. Therefore, it is suggested that the Presidential order 1950 to be amended to include the persons professing Islam and Christianity, to enable them to take the benefits of the educational opportunities as available to the Hindu Scheduled Caste. Under Article 15(4) and other affirmative programmes of the State, in a secular and welfare State like ours, the affirmative action programmes cannot be confined only to person professing the majorities religion i.e. Hindu.

(ii) Inspite of clear cut national policy of affirmative action in favour of the Scheduled Caste and Scheduled Tribes to undo historic injustice practiced by few on many, and assertion by the champion of the social cause, that special protection accorded to minorities under Article 29 and 30 to bring equality between the majority and minority, it is suggested that in view of the educational backwardness of minorities in general and Muslims, Buddhists and Christians in particular, the responsibility of national integration should not be transferred to the minorities alone and they should be given a free hand to mould their institutions to remove educational backwardness of their communities through education. They should not be overburdened with responsibility to accommodate the students of the Scheduled Castes and Scheduled Tribes in their institutions.

(iii) So far as the applicability of the Right to Education Act, 2009 in minority educational institutions is concerned, the minority educational institutions should not be exempted from the provisions of the Right to Education Act, 2009 (RTE Act, 2009) and if admissions are carried out under the scheme of 25% reservation for the students of disadvantaged group cutting across religious and linguistic groups and communities, it would neither alter the demography of the schools, nor would it annihilate the minority institutions.

(iv) In T.M.A. Pai Foundation case, the Supreme Court was primarily concerned with professional educational institutions and not with
schools providing basic elementary schooling. So there was no rationale for the Supreme Court to apply the ratio of T.M.A. Pai Foundation in Parmati Education Society case and to provide exemption to primary and elementary minority run schools from the RTE Act, 2009, which is a positive piece of legislation concerned with the welfare of the students.

(v) Further, it is pointed out that the Supreme Court could have saved RTE Act, 2009, from grip of Article 30(1) by positively directing the minority educational institutions to admit 25% of the disadvantaged students of the minority community students itself. Hence, Pramati Educational Case requires reconsideration by the Supreme Court at the earliest.

(17) **Recognition, Affiliation and Grants in Aid**

There is no Fundamental Right of minority institutions to affiliation or recognition but the judiciary has consistently recognized that for real and meaningful exercise of right by the minorities to establish and administer educational institutions of their choice, the recognition and affiliation by the State or University or board is must. Therefore, it is suggested that the right to recognition and affiliation to be admitted as implicit right under Articles 29 and 30 provided, they maintain the requisite standards by the University or Board. Otherwise, the minority institutions would be robbed of their utilities as students of such institutions would not be eligible for University degree or eligible for government jobs.

(18) At present, the jurisdiction of NCMEI accords affiliation only to religious minority institutions and not to linguistic minority institutions. It is therefore, suggested, that the jurisdiction of NCMEI to be extended to linguistic minority institutions to address the concerns of linguistic minorities as well.

Lastly, it may be mentioned that the Constitution of India has really worked a wonder when it gave a way and vision to a very diverse population spread over in more than a score of states and half a dozen union territories to integrate and live all with respect and dignity without loosing their identities and culture. The Supreme Court of India has tried to take balancing measures in matters of conflict between varying interests. The matter has, however, not ended nor can it be resolved mathematically in one step. All the legislative bodies, courts and the executive with civil society have to keep working for a harmonic development of all the sections of the people of India. The minority rights should be used by them also to improve their potential for making
better contribution to the nation. It may not be out of place to mention here that the founders of the first two national law universities at Bangaluru and Bhopal in the country were from Aligarh Muslim University. The minority institutions should not encourage segregation of social groups. They must work to understand different cultures and teach to live together with varying cultural differences. This must be in the mind of policy makers also to ensure that they do not create any kind of apprehensions in the minds of minorities and, at the same time, minorities should show maximum concern for the development and integrity of the nation. This is in consonance with the constitutional ‘Fraternity’ to be achieved by the operation of fundamental rights, Directive Principles of State Policy and fundamental duties together and simultaneously.