CHAPTER I

1.0 EDUCATIONAL RIGHTS OF THE MINORITIES UNDER THE INDIAN CONSTITUTION

1.1 Introduction

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 instrument for cultural reproduction, socialization, identity formation, and transmission.

As per the religious Census data of 2011, released by the Registrar General and Census Commissioner, the total population in the country in 2011 was 121.09 crore. Hindu population is 96.63 crore (79.8 percent); Muslim 17.22 crore (14.2 percent); Christian 2.78 crore (2.3 percent); Sikh 2.08 crore (1.7 percent); Buddhist 0.84 crore (0.7 percent); Jain 0.45 crore (0.4 percent), other religions and persuasions (ORP) 0.79 crore (0.7 percent) and religion not stated 0.29 crore (0.2 percent)\(^1\). The literacy rate of various religious groups reflects diversity in the same fashion as their religious beliefs and practices. The literacy rate of Hindu population is 64.5%, Muslim 60%, Christian 80.3%, Sikh 70.4%, Buddhist 73%, Jains 95%, and other minorities group is having literacy rate of 50%\(^2\).

The educational attainment of various religious minority groups clearly demonstrates that a vast part of the multitude is illiterate and lives below the poverty line. The single most powerful tool for the upliftment and progress of such diverse communities is education. The State, with its limited resources and slow-moving machinery, is unable to fully develop the genius of the Indian people. Very often the impersonal education that is imparted by the State, devoid of adequate material content that will make the students self-reliant only succeeds in producing potential pen-pushers, as a result of which sufficient jobs are not available. It is in this scenario where there is a lack of quality education and adequate number of Schools and

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\(^2\) Ibid.
Colleges that private educational institutions have been established by educationists, philanthropists and religious and linguistic minorities.

In the backdrop of this reality attempt is being made to analyse the approach of the Supreme Court of India in constructing nature and scope of additional protection and rights accorded to minorities under Articles 29 and 30 of the Constitution. Attempts is being made to examine whether rights conferred by this Article is Minority rights to Education or it can be constructed as Educational rights of Minorities?

Loknath Mishra, speaking in the Constituent Assembly Debate clearly articulated the cultural diversity of India by observing as follows:

“Just as there is the ocean to which all the rivers go, to the cultural, to the spiritual ocean that is India, that has been our heritage, all our rivers of culture, language and script, hopes and aspiration must go and form a mighty ocean ever full.”

The countries in South Asia have a common civilization heritage. Four of the world’s nine great religions, Hinduism, Buddhism, Jainism and Sikhism have originated and evolved here. Two others, Islam and Christianity, arrived in the continent mere decades after their founding in west Asia and established deep roots. Seventh and eighth, Judaism and Zoroastrianism came here through believers, escaping persecution in Palestine and Persia. Only ninth religion that is Confucianism stayed away. But the monks travelled frequently from China to India to exchange ideas and theology. Such plural system is bound to have conflicts. However from this confusion and sometimes violence a syncretised society emerged, bound by a common heritage.

History has shown that there can be no stable equilibrium in any country so long as an attempt is made to crush a minority, or to force it to conform to the ways of the majority. G. B. Pant, during the Constituent Assembly debates, emphasized that “unless the minorities are fully satisfied, we cannot make progress, we cannot even maintain any peace in undisturbed manner.” Dr. Rajendra Prasad, the first President of India in his book “India Divided” wrote, “the present seemingly irreconcilable differences between the Hindus and Muslims are in no small measure the result of the

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delicate application of the policy of ‘Divide and Rule’. The system has realized it very early that affording protection to the minorities would remain the cornerstone of modern secular State with plural composition. India, being no exception, has made adequate provisions for the safeguard of minority interests.

In a multicultural society like ours, a guarantee in favour of minorities is intrinsically a part of social justice, liberty and equality. Cultural and educational rights of minorities have been accorded fundamental and justiciable status in the form of Articles 29 and 30 of the Indian Constitution. Minorities’ right, to establish and administer autonomous educational institutions without interference from the State is indeed a guarantee unprecedented in other world Constitutions. This right of the minorities has been a subject matter of intellectual concern and debate, the right wing intellectuals have assailed the Article as fostering fissiparous tendencies and the Courts have been criticized for taking a bit too liberal attitude towards the minorities’ autonomous institution. But we all know that good political understanding is largely a matter of getting history right, for we do need to know where we have come from, in order to understand the present. Accordingly, we can understand contemporary Indian politics only in the light of our freedom movement, which was to set the course for contemporary Indian constitutionalism. After all, the main pillars of a Constitutional democracy, i.e. secularism, social justice and fundamental and minority rights were forged in, and through sustained political mobilization.

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6 Rajendra Prasad, India Divided, (Hindi Kitab, Bombay ed. 1947) p.87.
7 N.S.Kapur, “Minority Education Rights” (Seminar 322, 1986) p.26
8 “Article 29 read Protection of interest of Minorities
   (1) Any Section of Citizen residing in the territory of India or any part thereof having distinct language, script and culture of its own shall have the right to conserve the same.
   (2) No citizen shall be denied admission into an educational institution maintained by the State or receiving aid out of State funds on the ground only of religion, race, cast, language or any of them.”
“Article 30: Rights of Minorities to establish and administer educational Institution
   (1) All Minorities whether based on religion or language shall have the right to establish and administer educational institution of their choice.
   1(A) In making any law providing for compulsory acquisition of any property of an educational institutions and administered by a Minority, referred to in Clause (1) the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property in such as would not restrict or abrogate the right guaranteed under that clause.
   (2) The State shall not in granting aid to educational institution, discriminate against any educational institution on the ground that it is under the management of minority, whether based on religion or language.”
9 Neera Chandhoke; “Why Minority Rights” (The Hindu 27th July 2002).
Special protection of minorities derives legitimacy from the internationally recognized vulnerability of identity-based groups caused by their non-dominance in terms of number and power, which makes it difficult for them to achieve equality in the common national domain, while preserving their distinct identity. The idea of their guaranteed special rights is as old as the idea of nation state. It got fully reflected in the charter of the League of Nations and the treaties on minorities signed under it. Under the multilateral treaties in the United Nations system, these rights have found more comprehensive and definitive expression in the now-binding Article 27 of the International Covenant on Civil and Political Rights (ICCPR) of 1966, and subsequently in the United Nations Declaration of Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992) along with the Official explanations by the United Nations Human Rights Committee in 1994 and by Asbjorn Eide in 2001 which put an obligation on the States parties (India included) to not only give minorities cultural freedom, but to create conditions favourable for the preservation and development of their identity. One important principle of the jurisprudence of minorities was propounded by the Permanent Court of International Justice in the *Albania School case* in 1935, under which differential treatment of minorities for their effective enjoyment of substantive equality with the majority had not only been permitted, but considered necessary. Happily, this principle has been incorporated in Indian jurisprudence, which found vigorous expression in *St Xavier's College* case judgment, and got reiterated in *St Stephen's* judgment as well as *P A Inamdar* judgement.

The question of relative degree of autonomy, and permitted area and extent of regulation of minority educational institutions, has been one important issue to be resolved by the judiciary during the past six and half decades. In recent times, the issue got wrongly conceived in terms of absoluteness of right under Article 30, or its being subject to regulations, generating in the process avoidable acrimony and jealousy.

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12 Advisory Opinion of April 6, 1935 on *Minority School in Albania* (PCIJ series A/B no-64 ) p.19.
13 (1975) 1 SCR p.173.
14 AIR 1992 SC 1630.
However, commendable the intentions of the learned judges, in declaring in the *Sidhajbhai case*\(^\text{18}\) that minority rights, unlike other Fundamental Rights are absolute, not subject to reasonable restrictions. The rhetoric of its purple passages has sent a psychologically wrong message of Article 30's transcendence, which is to be treated above national interest. In times when the national ethos was more liberal, people could take it in their stride, but not in times when both majoritarian nationalism and assertions of smaller group identities are in the ascendance. Such a phrasing has helped sections of the majority perceive the special (absolute) rights under Article 30 as a source of privileging the minorities even above the nation.

1.2 Statement of the problem

The problem of minorities has bedevilled Indian politics for a long time. It was in fact the one single factor, above all others, that held up the transition of the country towards freedom and independence. The historical background of the problems of minorities can be attributed to ‘Divide and Rule Policy’ of the British Administrations\(^\text{19}\). Step by step recognition of communal claims and communal interests became part of the basic policy of the British Government in India. The Partition of Bengal, the constitution of All India Muslim League and Separate Electorate on Communal representation in *Morley-Minto Reforms of 1909, Montague-Chelmsford Reforms of 1919, Government of India Act 1935*, and the *Cabinet Mission Scheme of 1946*, brought the Hindu and Muslim at logger heads.

The Indian National Congress held the view that the only solution of the problem of Minorities was to incorporate in the Constitution a detailed list of Fundamental Rights to all citizens irrespective of their affiliation to any particular religion. With this objective the *Constitution of India Bill 1895*\(^\text{20}\), Mrs. *Besant’s Commonwealth of India Bill 1925*,\(^\text{21}\) and the *Nehru Committee Report of 1928*,\(^\text{22}\) laid great emphasis on the safeguard for Minorities, which included right to the freedom of conscience and free profession and practice of religion, elementary education for members of minorities etc., but it repudiated separate electorate. The Karachi resolutions of 1931, and the *Sapru Committee Report of 1945*, recommended a number

\(^{18}\) (1963) 3 SCR 837.
\(^ {21}\) Chakravarthy and Bhattacharya, *Congress in Evolution* (The Book Company Ltd, Calcutta, ed. 1940)
\(^ {22}\) Motilal Nehru Committee was constituted by Congress Madras Resolution, 1927 after the British had appointed Simon Commission.
of Fundamental Rights to be incorporated including full religious tolerance and protection to language and culture of all communities.

On the question of Minorities, the Congress had to secure the consensus of the minorities while still satisfying the majority. The Congress had to balance national unity with the protection of Minority Interest. The Objective resolution\(^\text{23}\) moved by Pt. Jawaharlal Nehru on December 13, 1946 specifically mentioned that (b) “….. adequate safeguards shall be provided for minorities, tribal, depressed and other backward classes”. In terms of the Cabinet Mission Statement, an Advisory Committee of Fundamental Rights and Minorities was constituted by the Constituent Assembly. Subsequently it constituted a Sub-Committee on Fundamental Rights and Sub-Committee on Minorities. During the Constituent Assembly Debates a number of draft proposals were submitted to delineate the true nature, content and contour of rights of the minorities. For example, one of the drafts that were submitted by Shri K. M. Munshi contained six questions, purportedly demanding a comparatively restricted ambit of minority rights\(^\text{24}\). After a long and protracted debate the Constituent Assembly conceded only one Fundamental Right to the minorities i.e. the right to establish and administer educational Institutions of their choice.

Though the problem of minorities figured prominently in the Constituent Assembly debates, the framers of the Constitution not only did not make any effort to define the expression ‘minority’ but were also reluctant in using the expression often. The expression ‘minority’ occurs only at four places in the Constitutions. One in the marginal note of Article 29 of the constitution, second in the marginal note to Article 30 of the Constitution, another in Clause (1) of Article 30, and lastly, in Clause (2) of Article 30 of the Constitution.

Naturally the question arises as to what is the meaning and content of the expression ‘Minorities’ in Article 30 of the Constitution of India? What is meant by expression ‘Religion’ in Article 30(1)? Can the followers of a sect or denomination of particular religion claims protection under Article 30 (1) on the basis that they

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\(^{24}\) The following questions are relevant for our purposes

1. ……
2. ……..
3. ……..
4. What should be the religious educational and cultural safeguards of minorities?
5. What machinery should be set up to ensure that the safeguards are effective?
6. How is it proposed that safeguards should be eliminated, in what times and under what circumstances?
constitute a minority in the State, even though the followers of that religion are in majority in the State?

The Constituent Assembly has not defined the meaning of the expression ‘minorities’ and judiciary has also failed to give clear cut definitions of the term ‘minorities’. Though the term ‘minorities’ is being defined in Encyclopaedia Britannica and In Year book on Human Rights, but it is not clearly reflecting who are subject of inherence of rights enumerated by Article 30 of the Constitution? The Encyclopaedia Britannica lays stress on the expression ‘feeling’ but the doubt arises that, if a minority group has no feeling that it is minority group, would it cease to be a minority group? The expression ‘feeling’ makes the definition a subjective definition. The definition contained in the Year book on Human Rights the main point is that those groups have been declared as minority group who wants to preserve their separate identities. In criticism to this definition it can be submitted that there can be two types of minority groups one who is anxious to maintain its separate identity and is hostile to assimilation with dominant group. The second type of Minority group can be that intends to dissolve its identity in the dominant group, but due to social or economic forces they are prevented from doing so by the majority group.

In the absence of clear answer to the question, as to who are subject of inherence of rights under Article 30(1) of the Constitution, the debate gets intensified over the issue as to whether the minority status is to be determined in relation to the population of whole of India or population of the State where the said group of person is residing?

During the Constituent Assembly debates Shri K. M. Munshi, one of the members of the Constituent Assembly, pleaded for recognition of minorities as national minority but Dr. B. R. Ambedkar, while intervening in the debates argued for recognition of religious and linguistic minority, on the basis of the population of the State or Union Territory. Further, Article 350-A and 350-B of the Constitution of

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25 ‘Group held together by ties of common descent, language or religious faith and feeling themselves different in these respects from the majority of inhabitants of a given political entity’.
26 In the Book on Human Rights, the United Nations Commission on Prevention of Discrimination and Protection of Minorities defined minority thus “the term minority includes only those non-dominant groups in a population which possess and wish to preserve stable, ethnic, religious or linguistic traditions or characteristics markedly different from those of the rest of the population.”
29 “Article 350A-provides for Facilities for Instruction in Mother Tongue at Primary Stages. It shall be the endeavour of every State and of every local authority within the State to provide adequate facilities for instructions in mother tongue at the primary stage of education of children belonging to linguistic minority
India emphasized that the Linguistic Minority, has to be determined as State-wide linguistic minority group. In re Kerala Education Bill 1957\textsuperscript{31}, the State Government wanted that minority status should be determined in relation to the particular region in which the educational institutes in question is or intended to be situated. Though no final opinion on this question was expressed but it was observed that as the Kerala Education Bill\textsuperscript{32} extends it the whole of the State of Kerala and consequently the minority status must be determined by reference to entire population of the State. However, the DAV college Jalandhar v. State of Punjab\textsuperscript{33}, there was an attempt to decide the minority status in relation to the population of the whole country.

Earlier, the Education was State subject under Entry 11 of List II of the Seventh Schedule of the Constitution. But the Constitution (42\textsuperscript{nd} Amendment) Act, 1976 included education in the Concurrent list under Entry 25. Naturally, the question arises as to whether this would in any way change the position with regard to determination of religious or linguistic minorities for the purpose of Article 30 of the Constitution.

In T.M.A Pai Foundation v. State of Karnataka and others\textsuperscript{34} the Supreme Court while relying on ratio of the Kerala Education Bill 1957, held that the minority status of a group of persons is to be determined on the basis of the population of the State or Union Territory concerned and not the whole of India.

Justice Ruma Pal has a taken divergent view on this count. In her opinion, the question whether a group is a minority or not, must be determined in relation to the source and the territorial applications of the particular legislation against which the protection is sought.\textsuperscript{35} For her exposition Ruma Pal J. draws support from the express provision of Article 29(1), within itself an indication of the ‘Unit’ as far as minorities are concerned when it says that any section of the citizen residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.
In the light of this express language, she cogently argues 'Merely because person having a distinct language script or culture are residing within the political and geographical limit of State within which they may be in majority, would not take them out of the phrase, section of the citizen, residing in territory of India.'

Again, the question arises as to when the population composition of a particular State is such that none of the linguistic or religious group is consists of 50% of the total population of the State, (because the operation of social and economic factors, the people keep on moving from State to State), then there would be no majority and hence the question of protecting minority and preserving the distinct language, script and culture would not arise?

It is submitted that the conception of minority needs to be construed in relation to, not the territorial jurisdiction but the prime purpose or object that is sought to be protected. These perspectives flow from conjoint considerations of Articles 29 and 30, of the Constitution, which together are grouped under Sub-heading of "Cultural and Educational Rights*. It is further submitted that we should always keep in mind as what is sought to be protected here are not only the interest of the minorities as against majority but the interest of cultural and linguistic groups against the Government action.

There is also certain ambiguity regarding the rights of the minorities to set up educational institution of their choice and legitimate power of the State to regulate the administration of minority educational institutions. In order to gain legitimacy, the first foothold to be secured by the founder of Minority educational institution is to seek State recognition or affiliation with the University or other body, which is sanctioned by the State to accredit such courses. Simultaneously or soon thereafter some of the institutes also seek grants in aid from the government for strengthening up their setup. In such an interactive situation however, when the State or the affiliating University seeks to impose conditions for ensuring the maintenances of desired standards there is invariably a counterblast and resistance that is beyond imagination.

Imposition of regulatory measure is often construed as an unwarranted interference with the minorities’ Fundamental Right to run educational institution of their choice under Article 30 (1) of the Constitutions. This gives rise to a conflict, necessitating the interventions of the Court. In deciphering the ambit of this right it is revealed that different branches of the Supreme Court have interpreted the sweep of this right differently.
The approach of the Indian Supreme Court has been to interpret the minority right guaranteed by Article 30 (1) of the Constitution in near absolute terms. The Court had consistently overlooked or neglected the opinion of S.R. Das, C.J in *re Kerala Education Bill 1957* right from *Sidhajbhai* down to *T.M.A Pai Foundation*. But the absolute freedom theory of minority rights enunciated by Hidayatullah C.J, in 1970 in *State of Kerala v. Rev. Mother Provincial* suffered a jolt at the hands of Justice Krishna Iyer and Gupta in *Gandhi Faiz e-Am*. However, in the cases like *Frank Anthony*, *Christian Medical College Hospital* and *All Bihar Christian school* the Supreme Court has come very close to the plea made by Das C.J. in *re Kerala Education Bill, 1957* in respect to certain dimension of administrative power on the question of the power of the State or the University to oversee the disciplinary control of the management of minority institutions over their employees.

In *re Kerala Education Bill 1957*, Das C.J. asserted that “the verbal absoluteness of Article 30 (1) is a myth and the right like any other Fundamental Right is subject to regulation not only for promoting academic standard of secular education imparted in minority institutions but also for preventing maladministration in minority institutions.”

But in *Rev. Sidhajbhai Sabhai case* the Supreme Court asserted that “Article 30 (1) couched in absolute terms, was indeed to be a real right, which could not be allowed to be whittled down in public or national interest. Only those regulations were permissible which were conducive to making a minority institution an effective vehicle of education for the minority. If a regulation which destroyed the power of administration was held justiciable in public or national interest, the right to administer will be but a ‘teasing illusion’ and ‘promise of unreality’.”

Attending these aspects of right in *Ahmedabad St. Xaviers College Society case*, the Supreme Court declared that the question whether the regulation was in

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36 AIR 1958 SC 956.
42 *Christian Medical College Hospital Employee Union v. Christian Medical College Vellore Association* 1987 4 SCC 691.
44 AIR 1958 SC 956.
45 Ibid.
46 Supra note 37.
general interest of the public has no relevance if it did not advance the excellence of minority institutions as a vehicle of secular education. In *T M A Pai Foundation case*, the Chief Justice B N Kirpal said that “in case of unaided minority educational institutions, the regulatory measure should be minimal and the conditions of recognitions as well as the conditions of affiliations to an University or Board have to be complied with, but in matter of day to day management like appointment of staff, teaching and non-teaching and administrative control over them the management should have freedom and there should not be any external controlling agency.”

Thus, the position that emerges from the foregoing discussion that the Sidhajbhai test of excellence of minority institutions, followed in *St. Xavier’s* and *T.M.A Pai Foundation*, created an unnecessary dichotomy between the minority interest and the interest of the entire society. The difficulty is how to demarcate the good of the minority from the good of the society as a whole? It is true that the guarantee of the freedom to minority institutions under Article 30 (1) does not permit minority institutions to act contrary to law of the land, law of contract, industrial law, norms of natural justice and fair employment and general law for welfare of the society. But how could it be said that regulation of minority right in public interest would not in ultimate analysis benefit the minority also and who are after all a part of the whole society?

The other questions which persistently arose in connection with Article 30(1) has been, whether the students of majority community have right to be admitted in educational institution established by the minority community? And whether the admission of students from other communities to educational institutions established and administered by minority community would affect the minority character and hence the right of the administration? What is the real import and effect of Article 29(2) over Article 30(1)? Up to what extent the State can regulate the minority’s right of admissions and selection of students?

The Supreme Court seems to be in favour of freeing minority educational institutions from Government control except to maintain academic standards through prescribing qualifications for teachers and minimum eligibility for students. The Court is emphatic in declaring that admission of students to unaided minority educational institutions cannot be regulated at all by a State or University if the procedure is

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48 (2002) 8 SCC 481.
51 (2002) 8 SCC 481.
transparent and merit-based. The right to admit students is part of the right of administering educational institutions.

An aided minority educational institution, however, would be required to admit a reasonable extent of non-minority students, so that the rights under Article 30(1) are substantially maintained, while the citizen rights under Article 29 (2) are not infringed. What would be a reasonable extent would vary depending upon the types of institutions in which admission is sought, the educational needs of the minorities and similar factors. However this (percentage of non-minority students) is for the State Government concerned to determine and notify. In the case of aided professional institutions it can also be stipulated that passing of the common entrance test held by the State agency, is necessary to seek admission, unless specifically exempted otherwise.\(^52\)

There is a certain amount of ambiguity in the law laid down in regard to the application of Article 29 (2) against aided minority educational institutions. On the one hand, the Court does not want to water down the guarantees given by the Constitution to minorities; and on the other hand, it is reluctant to give up the non-discrimination doctrine of Article 29 (2), whenever public funds are utilized to support educational institutions.

The minority right to establish and administer educational institutions was so far governed by the law laid down in the famous St. Stephen's College case (1992),\(^53\), the principle of which the court found it difficult to set aside. This judgment allowed full freedom to minority institutions, provided 50 percent seats were given to non-minority students. Now the Supreme Court prescribed that keeping a rigid percentage is not desirable in law, or in practice. The non-minority component should be reasonable, having regard to the type of minorities.\(^54\). Again, there is scope for States to limit the exercise of minority rights which, judged by past experience, can be a constant source of irritation and conflict.

There is also a question of fees chargeable by the minority educational institutions from its students. The Supreme Court, while recognizing the charitable nature and service goals of education, allows the authorities full freedom to collect fees and charges they find appropriate in unaided educational institutions, the only caveat being that they should not appear to be charging capitation fee for

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52 (2002) 8 SCC 481.
54 Supra note 52.
profiteering. Realizing that education is increasingly being run as a business, and that the cost of running it is escalating, the Court conceded the need to have surplus income generated to meet the cost of expansion and augmentation of facilities. In the Court's view this surplus will not be deemed "profiteering". Given the pragmatic difficulty in distinguishing between profiteering and capitation, and between generating a reasonable surplus to augment facilities, it is possible that the Court's ruling will only encourage the professional colleges to charge whatever fees students are willing to pay.

Further the questions arising regarding the State reservation policy in minority education institution as to whether the impact of *T M A Pai Foundation* and *Inamdar Case*, strike at very root of legislative power of the State in enacting a law for cause of socially and educationally backward classes and minorities.

The Supreme Court emphatically stated that "Neither the policy of reservation can be enforced by the State, nor any Quota, or Percentage of admission can be carved out to be appropriated by the State in a Minority or Non-Minority unaided Educational Institutions."  

This ruling has created a Constitutional crises as it strikes at the very root of the case of social justice, which necessitated the Constitution's (1st Amendment) Act 1951. The First Amendment thus set forth in unmistakable term the State's Commitment to the promotion of the educational and economic interest of Schedule Castes and the Schedule Tribes and other weaker section, a Directive Principle of State Policy enshrined in Article 46. The Supreme Court's judgment in *P. A. Inamdar and Others v. State of Maharashtra and Others*, threatens to undo the very basis of the Constitution First Amendment. The seven members Bench, comprising Chief Justice R. C. Lahoti, held unanimously that enforcing the reservations policy of the State on seats in unaided minority educational institutions constitutes a serious encroachment on the right and autonomy of these institutes. The bench does not seem to have examined the implications of this ruling in enforcing Article 15(4).

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55 *P. A. Inamdar and Others v State of Maharashtra and Other* AIR 2005 SC 2326.
56 (2002) 8 SCC 481.
57 AIR 2005 SC 2336.
59 AIR 2005 SC 2336.
1.3 Hypothesis

By keeping in mind the complexities of the problem related to rights of the minorities to establish and administer an educational institution of their choice the hypothesis to be tested in the present thesis would be:

1. Incorporation of Articles 29 and 30, guaranteeing minority rights under the Constitution of India, was to make possible progress of all sections of the people of the country with their diverse identities.

2. The absence of express criterion for determining the minority status of any group of people, has created difficulties in implementing the constitutional mandate, and remains a vexed question to be settled even now with the extent of privilege and protection assured.

3. Judicial trends in upholding the freedom of the minorities in establishing and administering educational institutions of choice by them, are so far fluid and varied requiring a clear expression.

4. Recognition of minority education rights needs to be real, with interventions only for maintaining quality.

1.4 Research Questions

A quorum of 11 Judges sat to hear and decide the content of the minority right to establish and administer educational institution of their choice under Articles 29 and 30 of the Constitution in *T M A Pai Foundations* 60. It was expected that the authoritative pronouncement by a bench of such strength on the issues arising before it would draw a final curtain on these controversies, but the principles laid down by the majority in *T M A Pai Foundation* are so broadly formulated, that they are capable of being interpreted differently by different Courts/State Authorities/Minority educational institutions, and the decision apparently raises more question than it has answered.

Until *T M A Pai Foundation*, there were four often quoted leading cases holding the field of education. They were *Unnikrishnan v. State of Andhra Pradesh*61, *St.
Stephen’s College v. University of Delhi\textsuperscript{62}, Ahmedabad St. Xaviers College Society v. State of Gujarat\textsuperscript{63} and In re Kerala Education Bill 1957\textsuperscript{64}. All these cases amongst other came up for consideration of the Supreme Court in T M A Pai Foundation.

Subsequently a Constitution Bench of 5 Judges sat to interpret the 11 Judges decision in Pai Foundations in Islamic Academic of Education and Anrs. v. State of Karnataka\textsuperscript{65} followed by a Constitution Bench of 7 Judges in P.A. Inamdar and others v. State of Maharashtra\textsuperscript{66} to further clarify the issue arising out of Pai Foundations and Islamic Academic. In the backdrop of these developments the proposed thesis will try to analyze the following issues:

1. What were the concerns, aspirations and guiding idea behind the enactment of Articles 29 and 30 of the Constitution?

2. What is the meaning and content of the expression “minority” in Article 30 of the Constitution of India?

3. What is meant by the expression ‘religion’ in Article 30 (1)? Can a follower of a sect, or denomination of a particular religion claim protection under article 30 (1) on the basis that they constitute a minority in a State even though the follower of that religion are in majority in the State?

4. What are the indices for treating an educational institution as a minority educational institution? Would an institute be regarded as minority educational institute, because it was established by the person belonging to religious or linguistic minority, or its being administered by the person belonging to religious or linguistic minority?

5. To what extent can professional education is treated as matter coming under minority right of Article 30(1)?

6. Whether the minority right to establish and administer educational institutions of their choice will include the procedures and methods of elections and selection of students?

\textsuperscript{64} AIR 1958 SC 956.
\textsuperscript{65} (2003) 6 SCC 697.
\textsuperscript{66} P. A. Inamdar and Others v State of Maharashtra and Other AIR 2005 SC 2326.
7. Whether the Minority institutions right of admission of students and to lay down procedures and method of admission, if any, would be affected in any way by the receipt of State aid?

8. Whether the Minority Education Institutions have right to devise their own fee structure, by keeping in mind the practical difficulty in distinguishing between profiteering capitation and generating reasonable surplus (reasonability of fee structure)?

9. Whether the Supreme Court judgment deals a blow to the policy of positive discrimination, which enjoys the section of the Constitution by virtue of its very First Amendments?

10. Whether and up-to what extent, the secular activity of minority educational institutions such as recruiting, teaching and non-teaching staff, their salary conditions of service may be regulated by the State or its instrumentalities?

1.5 Research Methodology

The present work will analyze the contents and contours of the educational rights of the minorities under Articles 29 and 30 of the Constitution. It will incorporate the critical evaluation and analysis of the Supreme Court and High Court decisions on various aspects of regulatory power of the State/University and the right of minorities to establish and administer educational institutions of their choice. The method of the study would basically be doctrinal in nature. The relevant provisions of the Constitution, literature, cases and recommendations of various committees shall be thoroughly surveyed. The source material for the present inquiry would also include important Constitutional decisions in India and abroad, besides valuable work of distinguished writers, jurists, and judges would be consulted, which would duly be cited in the footnotes. The study would not be designed to be merely a digest of the cases decided by the Supreme Court, but would be based on selected and important trend setting cases which have a relevance to the subject matter of study and then to study their effect on the common man in India.

1.6 Organization of the Thesis

The thesis is organized as follows:
A. **Chapter-1: Introduction** - In this chapter the rationale for according special status to minority right to established educational institutions as well concern of Constitution maker to preserve their distinct identity is being examined. It also comprises of Statement of problems, hypothesis, research question, research methodology as well as organisation of thesis.

B. **Chapter-2: Constitutional History of Minorities Rights** - In this chapter the constitutional evolution of minority problem has been examined in the backdrop of the constitutional developments before independence with reference to various resolution and report submitted by the Committees such as the Motilal Nehru Committees Report of 1928, and the Sapru Committees Report of 1945. The thesis has critically evaluated the various proposal and suggestions given by the members of the Constituent Assembly along with its modifications. It has also analyzed the framing of Articles 29 and 30 of the Constitution, in the light of the modification of Article 23 of the Draft Constitution.

C. **Chapter-3: Meaning and concept of Minority** - In this chapter the meaning of the term Minorities has been sought to be analyzed by keeping in mind that minorities are social realities which are dynamic rather than static. The brief analysis of International concerns for protection of Minorities and synthesis of educational rights of Minorities is under Indian Constitution is being examined. The thesis will analyze the Constituent assembly debate over the issue of technical versus non-technical Minorities as well as various types of Minorities. For the purpose of the study it has been examined as to whether the backward classes/Schedule Castes may be classified as the minority? Further the emphasis has been on linguistic and religious minority separately. It has also been examined whether the minority status is to be determined on the basis of population of the State or the nation as a whole? In the last parts of this Chapter brief analysis of ‘Are Jains minority in India’ is being examined.

D. **Chapter-4: Minority Rights to conserve Language and Culture** - In this chapter, Nature and scope of Article 29(1) and Article 30(1) has been examined. The chapter has made an attempt to analyze the Relationship between Article 29(1) and Article 30(1) and relationship between Article
29(1) and Article 29(2). Further the emphasis has been on the effect of Article 29(2) on Article 30(1). It has also examined the relationship between Article 15(4) and Article 19(1)(g) on the one hand, and its inter-relations with Article 29 (2) on the other. Language issues in the context of Constituent Assembly debates, was subjected to critical appraisal.

E. Chapter-5: Minorities Right to Establish and Administer Educational Institution - In this chapter, the significance of education as the most powerful tool for removing large scale illiteracy in our country has been examined along with the observation of Francis Bacon who said 'knowledge is power' and Winston Churchill remarks that "The Empire of the future shall be the empire of the mind," in the context of India Vision 2020 documents and State inability/lack of resources to provide quality education. Further nature and scope of Minorities’ right to run educational institutions under Article 30(1) has been critically evaluated. The thesis has also emphasized on the ingredient of Article 30(1) such as 'All Minorities whether based on religion or language', '..... shall have right .....'; 'the meaning of the term to establish and Administer' and 'An Educational Institutions of their choice'. Aligarh Muslim University claim to minority institution is subject extensive analysis along with General observations.

F. Chapter-6: Right to Administer versus the Regulatory Power of the State - In this chapter, the thesis has critically evaluated the assertion as 'Verbal Absoluteness of Article 30(1) is a myth.' the chapter has also analyzed and critically evaluated the 'Various facets of Administration such as 'Admission of Students', 'Medium of Instruction', 'Composition of Managing Bodies', 'Disciplinary action against the staff', and issues relating to fixation of 'Fees', Reservation for and in minority educational institutions etc.

G. Chapter-7: Recognition, Affiliation & Grant in Aid - In this chapter, an attempt has been made to examine as to whether the minority Institutions have Fundamental Right of recognition and affiliation? Further, an attempt has been made to examine the reasonableness of terms and condition of Affiliation and 'Grants in Aid'.
H. **Chapter-8: Conclusion and Suggestions** - The last chapter of the thesis has made an attempt to summarize the main conclusions of the work and to present some well meaning suggestions so as to strategize and harmonize the rights of the minorities to establish and administer the educational institutions of their choice and the legitimate power of the State to regulate.

This thesis is, in view of the above, expected to stimulate right approach in understanding the educational problems of minorities. The subsequent chapters are an endeavour towards that.