SUPREME COURT OF INDIA

JUDGMENT

(31st OCTOBER, 2002)

In the matter of

T.M.A. PAI FOUNDATION & ORS.

VERSUS

STATE OF KARNATAKA

GOVERNMENT OF INDIA
MINISTRY OF HUMAN RESOURCE DEVELOPMENT
DEPARTMENT OF SECONDARY & HIGHER EDUCATION
LANGUAGE BUREAU

Supreme Court of India Judgment
(31st October, 2002)
In the matter of
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State of Karnataka
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CONSTITUTIONAL GUARANTEES FOR THE MINORITIES PROVIDED IN ADDITION TO ARTICLES RELATING TO FUNDAMENTAL RIGHTS IN PART III OF THE CONSTITUTION

(i) Article 29. Protection of interests of minorities.

29(1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.

29(2) No citizen shall be dinied admission into any educational institution maintained by the State or receiving aid out of State f unds on grounds nly of religion, race, caste, language or any of them.

(ii) Article 30. Right of Minorities to establish and administer educational institutions.

30(1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

30(1A) In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under the clause.

30(2) The State shall not, in granting aid to educational institutions, discriminate against any educational institution of the ground that it is under the management of minority, whether based on religion of language.

(iii) Article 350A. Facilities for instruction in mother-tongue at primary stage.

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IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. 317 OF 1995

T.M.A. Pai Foundation & Ors. .. .. Petitioners

Versus

State of Karnataka & Ors. .. .. Respondents

WITH

Writ Petition (Civil) Nos. 252 of 1979, 54-57, 2228 of 1981, 2460. 2582, 2583-84, 3362, 3517, 3602,3603,3634,3635,3636,8398,8391, 5621, 5035, 3701, 3702, 3703, 3704, 3715, 3728, 4648, 4649, 2479, 2480, 2547, and 3475 of 1982, 7610, 4810, 9839 and 9683-84 of 1983, 12622-24 of 1984, 119 and 133 of 1987, 620 of 1989, 133 of 1992, 746, 327, 350, 613, 597, 536, 626, 444, 417, 523, 474, 485, 484, 555, 525, 469, 392, 629, 399, 627, 685, 706, 726, 598, 482 and 571 of 1993, 295, 764 and D. No. 1741 of 1994, 331, 446 and 447 of 1995, 364 and 435 of 1996, 456, 454, 447 and 485 of 1997, 356, 357 and 328 of 1998, 199, 294, 279, 35, 181, 373, 487 and 23 of 1999, 561 of 2000, 6 and 132 of 2002. Civil Appeal Nos. 1236-1241 and 2392 of 1977, 687 of 1976, 3179, 3180, 3181, 3182, 1521-56, 3042-91 of 1979, 2929-31, 1464 of 1980, 2271 and 2443-46 of 1981, 4020, 290 and 10766 of 1983, 5042 and 5043 of 1989, 6147 and 5381 of 1990, 71. 72 and 73 of 1991, 1890-91 . 2414 and 2625 of 1992, 4695-4746, 4754-4866 of 1993, 5543-5544 of 1994, 8098, 8100 and 11321 of 1995, 4654-4658 of 1997, 608, 3543 and 3584-3585 of 1998. 5053-5054 of 2000, 5647, 5648-5649, 5650, 5651, 5652, 5653-5654, 5655, 5656 of 2001 and 2334 of 2002, S.L.P. © Nos. 9950 and 9951 of 1979, 11526 and 863 of 1980, 12408 of 1985, 8844 of 1986, 12320 of 1987, 14437, 18061-62 of 1993, 904-05 and 11620 of 1994, 23421 of 1995, 4372 of 1996, 10360 and 10664 of 1997. 1216, 9779-9786, 6472-6474 and 9793 of 1998. 5101. 4480 and 4486 of 2002 . T.C.(Civil) No. 26 of 1990 and T.P. (Civil) Nos. 1013-14 of 1993.

JUDGMENT

KIRPAL, C.J.I.

1. India is a land of diversity – of different castes, peoples, communities, languages, religions and culture. Although these people enjoy complete political freedom, a vast part of the multitude is illiterate and lives below 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.

2. It is in this scenario where there is a lack of quality education and adequate number of schools and colleges that private educational institutions have been established by educationists philanthropists and religious and linguistic minorities. Their grievance is that the unnecessary and unproductive load on their back in the form of governmental control, by way of rules and regulations, has thwarted the progress of quality education. It is their contention that the government must get off their back, and that they should be allowed to provide quality education uninterrupted by unnecessary rules and regulations, laid down by the bureaucracy for its own self-importance. The private educational institutions, both aided and unaided, established by minorities and non-minorities, in their desire to break free of the unnecessary shackles put on their functioning as modern educational institutions and seeking to impart quality education for the benefit of the community for whom they were established, and others have filed the present writ petitions and appeals asserting their right to establish and administer educational institutions of their choice unhampered by rules and regulations that unnecessarily impinge upon their autonomy.

3. The hearing of these cases has had a chequered history. Writ Petition No.350 of 1993 filed by the Islamic Academy of Education and connected petitions were placed before a Bench of 5 judges. As the Bench was ***prima*** facie of the opinion that Article 30 did not clothe a minority educational institution with the power to adopt its own method of selection and the correctness of the decision of this Court in ***St. Stephen's College vs. University of Delhi*** [(1992) 1 SCC 558] was doubted, it was directed that the questions that arose should be authoritatively answered by a larger Bench. These cases were then placed before a Bench of 7 judges. The questions framed were recast and on 6th February, 1997, the Court directed that the matter be placed before a Bench of at least 11 Judges, as it was felt that in view of the Forty-Second Amendment to the Constitution, whereby "education" had been included in Entry 25 of List III of the Seventh Schedule, the question of who would be regarded as a "minority" was required to be considered because the earlier case laws related to the pre-amendment era, when education was only in the State List. When the cases came up for hearing before an eleven Judge Bench, during the course of hearing on 19th March, 1997, the following order was passed :-

"Since a doubt has arisen during the course of our arguments as to whether this Bench would feel itself bound by the ratio propounded in – In Re Kerala Education Bill, 1957 (1959 SCR 955) and the Ahmedabad St. Xaviers College Society vs. State of Gujarat, 1975(1) SCR 173, it is clarified that this sized Bench would not feel itself inhibited by the views expressed in those cases since the present endeavour is to discern the true scope and interpretation of Article 30(1) of the Constitution, which being the dominant question would require examination in its pristine purity. The factum is recorded."

4. When the hearing of these cases commenced, some questions out of the eleven referred for consideration were reframed. We propose to give answers to these questions after examining the rival contentions on the issues arising therein.

5. On behalf of all these institutions, the learned counsels have submitted that the Constitution provides a fundamental right to establish and administer educational institutions. With regard to non-minorities, the right was stated to be contained in Article 19(1)(g) and/or Article 26, while in the case of linguistic and religious minorities, the submission was that this right was enshrined and protected by Article 30. It was further their case that private educational institutions should have full autonomy in their administration. While it is necessary for an educational institution to secure recognition or affiliation, and for which purpose rules and regulations or conditions could be prescribed pertaining to the requirement of the quality of education to be provided, e.g., qualifications of teachers, curriculum to be taught and the minimum facilities which should be available for the students, it was submitted that the state should not have a right to interfere or lay down conditions with regard to the administration of those institutions. In particular, objection was taken to the nominations by the state on the governing bodies of the private institutions, as well as to provisions with regard to the manner of admitting students, the fixing of the fee structure and recruitment of teachers through state channels.

6. The counsels for these educational institutions, as well as the Solicitor General of India, appearing on behalf of the Union of India, urged that the decision of this Court in ***Unni Krishnan, J.P. and others*** vs. ***State of Andhra Pradesh and Others*** [(1993) 1 SCC 645] case required reconsideration. It was submitted that the scheme that had been framed in ***Unni Krishnan's*** case had imposed unreasonable restrictions on the administration of the private educational institutions, and that especially in the case of minority institutions, the right guaranteed to them under Article 30(1) stood infringed. It was also urged that the object that was sought to be achieved by the scheme was, in fact, not achieved.

7. On behalf of the private minority institutions, it was submitted that on the correct interpretation of the various provisions of the Constitution, and Articles 29 and 30 in particular, the minority institutions have a right to establish and administer educational institutions of their choice. The use of the phrase "of their choice" in Article 30(1) clearly postulated that the religious and linguistic minorities could establish and administer any type of educational institution, whether it was a school, a degree college or a professional college; it was argued that such an educational institution is invariably established primarily for the benefit of the religious and linguistic minority,

and it should be open to such institutions to admit students of their choice. While Article 30(2) was meant to ensure that these minority institutions would not be denied aid on the ground that they were managed by minority institutions would not be denied aid on the ground that they were managed by minority institutions, it was submitted that no condition which curtailed or took away the minority character of the institution while granting aid could be imposed. In particular, it was submitted that Article 29(2) could not be applied or so interpreted as to completely obliterate the right of the minority institution to grant admission to the students of its own religion or language. It was also submitted that while secular laws relating to health, town planning, etc., would be applicable, no other rules and regulations could be framed that would in any way curtail or interfere with the administration of the minority educational institution. It was emphasized by the learned counsel that the right to administer an educational institution included the right to constitute a governing body, appoint teachers and admit students. It was further submitted that these were the essential ingredients of the administration of an educational institution, and no fetter could be put on the exercise of the right to administer. It was conceded that for the purpose of seeking recognition, qualifications of teachers could be stipulated, as also the qualifications of the students who could be admitted; at the same time, it was argued that the manner and mode of appointment of teachers and selection of students had to be within the exclusive domain of the educational institution.

8. On behalf of the private non-minority unaided educational institutions, it was contended that since secularism and equality were part of the basic structure of the Constitution, the provisions of the Constitution should be interpreted so that the rights of the private non-minority unaided institutions were the same as that of the minority institutions. It was submitted that while reasonable restrictions could be imposed under Article 19(6), such private institutions should have the same freedom of administration of an unaided institution as was sought by the minority unaided institutions.

9. The learned Solicitor General did not dispute the contention that the right to establish an institution had been conferred on the non-minorities by Articles 19 and 26, and on the religious and linguistic minorities by Article 30. He agreed with the submission of the counsels for the appellants that the ***Unni Krishnan*** decision required reconsideration, and that the private unaided educational institutions were entitled to greater autonomy. He, however, contended that Article 29(2) was applicable to minority institutions, and the claim of the minority institutions that they could preferably admit students of their own religion or language to the exclusion of the other communities was impermissible. In other words, he submitted that Article 29(2) made it obligatory even on the minority institutions not to deny admission of the ground of religion, race, caste, language or any of them.

10. Several States have totally disagreed with the arguments advanced by the learned Solicitor General with regard to the applicablity of Article 29(2) and 30(1). The States of Madhya Pradesh, Chattisgarh and Rajasthan have submitted that the words "their choice" in Article 30(1) enabled the minority institutions to admit members of the minority community, and that the inability of the minority institutions to admit others as a result of the exercise of "their choice" would not amount to a denial as contemplated under Article 29(2). The State of Andhra Pradesh has not expressly referred to the inter-play between Article 29(2) and Article 30(1), but has stated that "*as the*

minority educational institutions are intended to benefit the minorities, a restriction that at least 50 per cent of the students admitted should come from the particular minority, which has established the institution, should be stipulated as a working rule", and that an institution which fulfilled the following conditions should be regarded as minority educational institutions :

> 1.All the office bearers, members of the executive committee of the society must necessarily belong to the concerned religious/linguistic minority without exception.
>
> 2.The institution should admit only the concerned minority candidates to the extent of sanctioned intake permitted to be filed by the respective managements.

and that the Court *"ought to permit the State to regulate the intake in minority educational institutions with due regard to the need of the community in the area which the institution is intended to serve. In no case should such intake exceed 50% of the total admissions every year."*

11. The State of Kerala has submitted, again without express reference to Article 29(2), *"that the constitutional right of the minorities should be extended to professional education also, but while limiting the right of the minorities to admit students belonging to their community to 50% of the total intake of each minority institution."*

12. The State of Karnataka has submitted that "aid is not a matter of right but thereof does not in any way dilute the minority character of the institution. Aid can be distributed on non-discriminatory conditions but in so far as minority institutions are concerned, their core rights will have to be protected.

13. On the other hand, the States of Tamil Nadu, Punjab, Maharastra, West Bengal, Bihar and Uttar Pradesh have submitted that Article 30(1) is subject to Article 29(2), arguing that a minority institution availing of state aid loses the right to admit members of its community on the basis of the need of the community.

14. The Attorney General, pursuant to the request made by the court, made submissions on the constitutional issues in a fair and objective manner. We record our appreciation for the assistance rendered by him and the other learned counsel.

15. We may observe here that the counsels were informed that it was not necessary for this Bench to decide four of the questions framed, relating to the issue of who could be regarded as religious minorities; not arguments were addressed in respect thereto.

16. From the arguments aforesaid, five main issues arise for consideration in these cases, which would encompass all the eleven questions framed that are required to be answered.

17. We will first consider the arguments of the learned counsels under these heads before dealing with the questions now remaining to be answered.

1. IS THERE A FUNDAMENTAL RIGHT TO SET UP EDUCATIONAL INSTITUTIONS AND IF SO, UNDER WHICH PROVISION?

18. With regard to the establishment of educational institutions, three Articles of the Constitution come into play. Article 19(1)(g) gives the right to all the citizens to practice any profession or to carry on any occupation, trade or business; this right is subject to restrictions that may be placed under Article 19(6). Article 26 gives the right to every religious denomination to establish and maintain an institution for religious purposes, which would include an educational institution. Article 19(1)(g) and Article 26, therefore, confer rights on all citizens and religious denominations to establish and maintain educational institutions. There was no serious dispute that the majority community as well as linguistic and religious minorities would have a right under Articles 19(1)(g) and 26 to establish educational institutions. In addition, Article 30(1), in no uncertain terms, gives the right to the religious and linguistic minorities to establish and administer educational institutions of their choice.

19. We will first consider the right to establish and administer an educational institution under Article 19(1)(g) of the Constitution, and deal with the right to establish educational institutions under Article 26 and 30 in the next part of the judgment while considering the rights of the minorities.

20. Article 19(1)(g) employs four expressions, viz., profession, occupation, trade and business. Their fields may overlap, but each of them does have a content of its own. Education is *per se* regarded as an activity that is charitable in nature [*See* ***The State of Bombay vs. R.M.D. Chamarbaugwala,*** (1957) SCR 874: AIR (1957) SC 699]. Education has so far not been regarded as a trade or business where profit is the motive. Even if there is any doubt about whether education is a profession or not, it does appear that education will fall within the meaning of the expression "occupation". Article 19(1)(g) uses the four expressions so as to cover all activities of a citizen in respect of which income or profit is generated, and which can consequently be regulated under Article 19(6). In *Webster's Third New International Dictionary* at page 1650, "occupation" is, *inter alia,* defined as "an activity in which one engages" or "a craft, trade profession or other means of earning a living".

21. In *Corpus Juris Secundum,* Volume LXVII, the word "occupation" is defined as under :-

> "The word "occupation" also is employed as referring to that which occupies time and attention; a calling; or a trade; and it is only as employed in this sense that the word is discussed in the following paragraphs.
>
> There is nothing ambiguous about the word "occupation" as it is used in the sense of employing one's time. It is a relative term, in common use with a well-understood meaning, and very broad in its scope and significance. It is described as a generic and very comprehensive term, which includes every species of the genus, and compasses the incidental, as well as the main, requirements of one's vacation, calling, or business. The word "occupation" is variously defined as meaning the principal business of one's life; the principal or usual business in

which a man engages; that which principally takes up one's time, thought, and energies; that which occupies or engages the time and attention; that particular business, profession, trade, or calling which engages the time and efforts of an individual; the employment in which one engages, or the vacation of one's life; the state of being occupied or employed in any way; that activity in which a person, natural or artificial, is engaged with the element of a degree of permanency attached."

22. A Five Judge Bench in ***Sodan Singh and Others vs. New Delhi Municipal Committee and Others*** **[(1989) 4 SCC 155]** at page 174, para 28, observed as follows :

> ".....The word occupation has a wide meaning such as any regular work, profession, job, principal activity, employment, business or a calling in which an individual is engaged.....The object of using four analogous and overlapping words in Article 19(1)(g) is to make the guaranteed right as comprehensive as possible to include all the avenues and modes through which a man may earn his livelihood. In a nutshell the guarantee takes into its fold any activity carried on by a citizen of India to earn his living.....".

23. In ***Unni Krishnan's*** case, at page 687, para 63, while referring to education, it was observed as follows :-

> ".....It may perhaps fall under the category of occupation provided no recognition is sought from the State or affiliation from the University is asked on the basis that it is a fundamental right....."

24. While the conclusion that "occupation" comprehends the establishment of educational institution is correct, the proviso in the aforesaid observation to the effect that this is so provided no recognition is sought from the state or affiliation from the concerned university is, with the utmost respect, erroneous. The fundamental right to establish an educational institution cannot be confused with the right to ask for recognition or affiliation. The exercise of a fundamental right may be controlled in a variety of ways. For example, the right to carry on a business does not entail the right to carry on a business at a particular place. The right to carry on a business may be subject to licensing laws so that a denial of the license prevents a person from carrying on that particular business. The question of whether there is a fundamental right or not cannot be dependent upon whether it can be made the subject matter of controls.

25. The establishment and running of an educational institution where a large number of persons are employed as teachers or administrative staff, and an activity is carried on that results in the imparting of knowledge to the students, must necessarily be regarded as an occupation, even if there is no element of profit generation. It is difficult to comprehend that education, *per se,* will not fall under any of the four expressions in Article 19(1)(g). "Occupation" would be an activity of a person undertaken as a means of livelihood or a mission in life. The above quoted observations in ***Sodan Singh's*** case correctly interpret the expression "occupation" in Article 19(1)(g).

26. The right to establish and maintain educational institutions may also be sourced to Article 26(a), which grants, in positive terms, the right to every religious denomination or any section thereof to establish and maintain institutions for religious and charitable purposes, subject to public order, morality and health. Education is a recognized head of charity. Therefore, religious denominations or sections thereof, which do not fall within the special categories carved out in Article 29(1) and 30(1), have the right to establish and maintain religious and educational institutions. This would allow members belonging to any religious denomination, including the majority religious community, to set up an educational institution. Given this, the phrase "private educational institution" as used in this judgment would include not only those educational institutions set up by secular persons or bodies, but also educational institutions set up by religious denominations; the word "private" is used in contradistinction to government institutions.

2. DOES UNNI KRISHNAN'S CASE REQUIRE RECONSIDERATION?

27. In the case of ***Mohini Jain (Miss) vs. State of Karnataka and Others*** [(1992) 3 SCC 666], the challenge was to a notification of June 1989, which provided for a fee structure, whereby for government seats, the tuition fee was Rs.2,000 per annum, and for students from Karnataka, the fee was Rs.25,000 per annum, while the fee for Indian students from outside Karnataka, under the payment category, was Rs.60,000 per annum. It had been contended that charging such a discriminatory and high fee violated constitutional guarantees and rights. This attack was sustained, and it was held that there was a fundamental right to education in every citizen, and that the state was duty bound to provide the education, and that the private institutions that discharge the state's duties were equally bound not to charge a higher fee than the government institutions. The Court then held that any prescription of fee in excess of what was payable in government colleges was a capitation fee and would, therefore, be illegal. The correctness of this decision was challenged in ***Unni Krishnan's*** case, where it was contended that if ***Mohini Jain's*** ratio applied, the educational institutions would have to be closed down, as they would be wholly unviable without appropriate funds, by way of tuition fees, from their students.

28. We will now examine the decision in ***Unni Krishnan's*** case. In this case, this Court considered the conditions and regulations, if any, which the state could impose in the running of private unaided/aided recognized or affiliated educational institutions conducting professional courses such as medicine, engineering, etc. The extent to which the fee could be charged by such an institution, and the manner in which admissions could be granted was also considered. This Court held that private unaided recognized/affiliated educational institutions running professional courses were entitled to charge a fee higher than that charged by government institutions for similar courses, but that such a fee could not exceed the maximum limit fixed by the state. It held that commercialization of education was not permissible, and "*was opposed to public policy and Indian tradition and therefore charging capitation fee was illegal.*" With regard to private aided recognized/affiliated educational institutions, the Court upheld the power of the government to frame rules and regulations in matters of admission and fees, as well as in matters such as recruitment and conditions of service of teachers and staff. Though a question was raised as to whether the setting up of an educational institution could be regarded as a business, profession or vocation under Article 19(1)(g), this

question was not answered. Jeevan Reddy. J., however, at page 751, para 197, observed as follows :-

> ".....While we do not wish to express any opinion on the question whether the right to establish an educational institution can be said to be carrying on any "occupation" within the meaning of Article 19(1)(g), perhaps, it is – we are certainly of the opinion that such activity can neither be a trade or business nor can it be a profession within the meaning of Article 19(1)(g). Trade or business normally connotes an activity carried on with a profit motive. Education has never been commerce in this country....."

29. Reliance was placed on a decision of this Court in ***Bangalore Water Supply and Sewerage Board vs. A.Rajappa and Others*** [(1978) 2 SCC 213], wherein it had been held that educational institutions would come within the expression "industry" in the Industrial Disputes Act, and that, therefore, education would come under Article 19(1)(g). But the applicability of this decision was distinguished by Jeevan Reddy.J., observing that *"we do not think the said observation (that education as industry) in a different context has any application here"*. While holding, on an interpretation of Articles 21, 41, 45 and 46, that a citizen who had not completed the age of 14 years had a right to free education, it was held that such a right was not available to citizens who were beyond the age of 14 years. It was further held that private educational institutions merely supplemented the effort of the state in educating the people. No private educational institution could survive or subsist without recognition and/or affiliation granted by bodies that were the authorities of the state. In such a situation, the Court held that it was obligatory upon the authority granting recognition/affiliation to insist upon such conditions as were appropriate to ensure not only an education of requisite standard, but also fairness and equal treatment in matters of admission of students. The Court then formulated a scheme and directed every authority granting recognition/affiliation to impose that scheme upon institutions seeking recognition/affiliation, even if they were unaided institutions. The scheme that was framed, *inter alia,* postulated (a) that a professional college should be established and/or administered only by a Society registered under the Societies Registration Act, 1860, or the corresponding Act of a State, or by a Public Trust registered under the Trusts Act, or under the Wakfs Act, and that no individual, firm, company or other body of individuals would be permitted to establish and/or administer a professional college (b) that 50% of the seats in every professional college should be filled by the nominees of the Government or University, selected on the basis of merit determined by a common entrance examination, which will be referred to as "free seats"; the remaining 50% seats ("payment seats") should be filled by those candidates who pay the fee prescribed therefore, and the allotment of students against payment seats should be done on the basis of *inter se* merit determined on the same basis as in the case of free seats (c) that there should be no quota reserved for the management or for any family, caste or community, which may have established such a college (d) that it should be open to the professional college to provide for reservation of seats for constitutionally permissible classes with the approval of the affiliating university (e) that the fee chargeable in each professional college should be subject to such a ceiling as may be prescribed by the appropriate authority or by a competent court (f) that every state government should constitute a committee to fix the ceiling

on the fees chargeable by a professional college or class of professional colleges as the case may be. This committee should, after hearing the professional colleges, fix the fee once every three years or at such longer intervals, as it may think appropriate (g) that it would be appropriate for the University Grants Commission to frame regulations under its Act regulating the fees that the affiliated colleges operating on a no grant-in-aid basis were entitled to charge. The AICTE, the Indian Medical Council and the Central Government were also given similar advice. The manner in which the seats were to be filled on the basis of the common entrance test was also indicated.

30. The counsel for the minority institutions, as well as the Solicitor General, have contended that the scheme framed by this Court in ***Unni Krishnan's*** case was not warranted. It was represented to us that the cost incurred on educating a student in an unaided professional college was more than the total fee, which is realized on the basis of the formula fixed in the scheme. This had resulted in revenue shortfalls. This Court, by interim orders subsequent to the decision in ***Unni Krishnan's*** case, had permitted, within the payment seats. Some percentage of seats to be allotted to Non-Resident Indians, against payment of a higher amount as determined by the authorities. Even thereafter, sufficient funds were not available for the development of those educational institutions. Another infirmity which was pointed out was that experience has shown that most of the "free seats" were generally occupied by students from affluent families, while students from less affluent families were required to pay much more to secure admission to "payment seats". This was for the reason that students from affluent families had had better school education and the benefit of professional coaching facilities and were, therefore, able to secure higher merit positions in the common entrance test and thereby secured the free seats. The education of these more affluent students was in a way being cross-subsidized by the financially poorer students who, because of their lower position in the merit list, could secure only "payment seats". It was also submitted by the counsel for the minority institutions that ***Unni Krishnan's*** case was not applicable to the minority institutions, but that notwithstanding this, the scheme so evolved had been made applicable to them as well.

31. Counsel for the institutions, as well as the Solicitor General, submitted that the decision in Unni Krishnan's case, in sofar as it had framed the scheme relating to the grant of admission and the fixing of the fee, was unreasonable and invalid. However, its conclusion that children below the age of 14 had a fundamental right to free education did not call for any interference.

32. It has been submitted by the learned counsel for the parties that the implementation of the scheme by the States, which have amended their rules and regulations, has shown a number of anomalies. As already noticed, 50% of the seats are to be given on the basis of merit determined after the conduct of a common entrance test, the rate of fee being minimal. The "payment seats" which represent the balance number, therefore, cross-subsidize the "free seats". The experience of the educational institutions has been that students who come from private schools, and who belong to more affluent families, are able to secure higher positions in the merit list of the common entrance test, and are thus able to seek admission to the "free seats". Paradoxically, it is the students who come from less affluent families, who are normally able to secure, on the basis of the merit list prepared after the common entrance test, only "payment seats".

33. It was contended by petitioners counsel that the implementation of the Unni Krishnan scheme has a fact (1) helped the privileged from richer urban families, even after they ceased to be comparatively meritorious, and (2) resulted in economic losses for the educational institutions concerned, and made them financially unviable. Data in support of this contention was placed on record in an effort to persuade this Court to hold that the scheme had failed to achieve its object.

34. Material has also been placed on the record in an effort to show that the total fee realized from the fee fixed for "free seats" and the "payment seats" is actually less than the amount of expense that is incurred on each student admitted to the professional college. It is because there was a revenue shortfall that this Court had permitted an NRI quota to be carved out of the 50% payment seats for which charging higher fee was permitted. Directions were given to UGC, AICTE, Medical Council of India and Central and State governments to regulate or fix a ceiling on fees, and to enforce the same by imposing conditions of affiliation/permission to establish and run the institutions.

35. It appears to us that the scheme framed by this Court and thereafter followed by the governments was one that cannot be called a reasonable restriction under Article 19(6) of the Constitution. Normally, the reason for establishing an educational institution is to impart education. The institution thus needs qualified and experienced teachers and proper facilities and equipment, all of which require capital investment. The teachers are required to be paid properly. As pointed out above, the restrictions imposed by the scheme, in ***Unni Krishnan's*** case, made it difficult, if not impossible, for the educational institutions to run efficiently. Thus, such restrictions cannot be said to be reasonable restrictions.

36. The private unaided educational institutions impart education, and that cannot be the reason to take away their choice in matters, *inter alia*, of selection of students and fixation of fees. Affiliation and recognition has to be available to every institution that fulfills the conditions for grant of such affiliation and recognition. The private institutions are right in submitting that it is not open to the Court to insist that statutory authorities should impose the terms of the scheme as a condition for grant of affiliation or recognition; this completely destroys the institutional autonomy and the very objective of establishment of the institution.

37. The ***Unni Krishnan*** judgment has created certain problems, and raised thorny issues. In its anxiety to check the commercialization of education, a scheme of "free" and "payment" seats was evolved on the assumption that the economic capacity of the first 50% of admitted students would be greater than the remaining 50%, whereas the converse has proved to be the reality. In this scheme, the "payment seat" student would not only pay for his own seat, but also finance the cost of a "free seat" classmate. **When one considers the Constitution Bench's earlier statement that higher education is not a fundamental right, it seems unreasonable to compel a citizen to pay for the education of another, more so in the unrealistic world of competitive examinations which assess the merit for the purpose of admission solely on the basis of the marks obtained, where the urban student always have an edge over the rural students. In practice, it has been the case of the marginally less merited rural or poor student bearing the burden of a rich and well-exposed urban student.**

38. The scheme in ***Unni Krishnan's*** case has the effect of nationalizing education in respect of important features, viz., the right of a private unaided institution to give admission and to fix the fee. By framing this scheme, which has led to the State Governments legislating in conformity with the scheme, the private institutions are indistinguishable from the government institutions; curtailing all the essential features of the right of administration of a private unaided educational institution can neither be called fair or reasonable. Even in the decision in ***Unni Krishnan's*** case, it has been observed by ***Jeevan Reddy, J.,*** at page 749, para 194, as follows:-

> "The hard reality that emerges is that private educational institutions are a necessity in the present day context. It is not possible to do without them because the Governments are in no position to meet the demand - particularly in the sector of medical and technical education which call for substantial outlays. While education is one of the most important functions of the Indian State it has not monopoly therein. Private educational institutions - including minority educational institutions - too have a role to play."

39. That private educational institutions are a necessity becomes evident from the fact that the number of government-maintained professional colleges has more or less remained stationary, while more private institutions have been established. For example, in the state of Karnataka there are 19 medical colleges out of which there are only 4 government-maintained medical colleges. Similarly, out of 14 Dental Colleges in Karnataka, only one has been established by the government, while in the same state, out of 51 Engineering Colleges, only 12 have been established by the government. The aforesaid figures clearly indicate the important role played by private unaided educational institutions, both minority and non-minority, which cater to the needs of students seeking professional education.

40. Any system of student selection would be unreasonable if it deprives the private unaided institution of the right of rational selection, which it devised for itself, subject to the minimum qualification that may be prescribed and to some system of computing the equivalence between different kinds of qualifications, like a common entrance test. Such a system of selection can involve both written and oral tests for selection, based on principle of fairness.

41. Surrendering the total process of selection to the state is unreasonable, as was sought to be done in the Unni Krishnan scheme. Apart from the decision in ***St. Stephen's College vs. University of Delhi*** [(1992) 1 SCC 558], which recognized and upheld the right of a minority aided institution to have a rational admission procedure of its own, earlier Constitution Bench decisions of this Court have, in effect, upheld such a right of an institution devising a rational manner of selecting and admitting students.

42. In ***R. Chitralekha & Anr. vs. State of Mysore & Ors.*** [(1964) 6 SCR 368], while considering the validity of a viva-voce test for admission to a government medical college, it was observed at page 380 that colleges run by the government, having regard to financial commitments and other relevant considerations, would only admit a specific number of students. It had devised a method for screening the applicants for admission. While upholding the orders so issued, it was observed that "*once it is conceded, and it is not disputed before us, that the State Government*

can run medical and engineering colleges, it cannot be denied the power to admit such qualified students as pass the reasonable tests laid down by it. ***This is a power which every private owner of a College will have, and the Government which runs its own Colleges cannot be denied that power"***. (emphasis added).

43. Again, in ***Minor P. Rajendran vs. State of Madras & Ors.*** [(1968) 2 SCR 786], it was observed at page 795 that "*so far as admission is concerned, it has to be made by those who are in control of the Colleges, and in this case the Government, because the medical colleges are Government Colleges affiliated to the University. In these circumstances, the Government was entitled to frame rules for admission to medical colleges controlled by it subject to the rules of the university as to eligibility and qualifications.*" The aforesaid observations clearly underscore the right of the colleges to frame rules for admission and to admit students. The only requirement or control is that the rules for admission must be subject to the rules of the university as to eligibility and qualifications. The Court did not say that the university could provide the manner in which the students were to be selected.

44. In ***Kumari Chitra Ghosh and Another vs. Union of India and Others*** [(1969) 2 SCC 228], dealing with a government run medical college at pages 232-33, para 9, it was observed as follows:

> "It is the Central Government which bears the financial burden of running the medical college. It is for it to lay down the criteria for eligibility....."

45. In view of the discussion hereinabove, we hold that the decision in ***Unni Krishnan's*** case, insofar as it framed the scheme relating to the grant of admission and the fixing of the fee, was not correct, and to that extent, the said decision and the consequent directions given to UGC, AICTE, Medical Council of India, Central and State governments, etc., are overruled.

3. IN CASE OF PRIVATE INSTITUTIONS, CAN THERE BE GOVERNMENT REGULATIONS AND, IF SO, TO WHAT EXTENT?

46. We will now examine the nature and extent of the regulations that can be framed by the State. University or any affiliating body, while granting recognition or affiliation to a private educational institution.

47. Private educational institutions, both aided and unaided, are established and administered by religious and linguistic minorities, as well as by non-minorities. Such private educational institutions provide education at three levels, viz., school, college and professional level. It is appropriate to first deal with the case of private unaided institutions and private aided institutions that are not administered by linguistic or religious minorities. Regulations that can be framed relating to minority institutions will be considered while examining the merit and effect of Article 30 of the Constitution.

Private Unaided Non-Minority Educational Institutions

48. Private education is one of the most dynamic and fastest growing segments of post-secondary education at the turn of the twenty-first century. A combination of unprecedented demand for access to higher education and the inability or unwillingness of government to provide

the necessary support has brought private higher education to the forefront. Private institutions, with a long history in many countries, are expanding in scope and number, and are becoming increasingly important in parts of the world that relied almost entirely on the public sector.

49. Not only has demand overwhelmed the ability of the governments to provide education, there has also been a significant change in the way that higher education is perceived. The idea of an academic degree as a "private good" that benefits the individual rathar than a "public good" for society is now widely accepted. The logic of today's economics and an ideology of privatization have contributed to the resurgence of private higher education, and the establishing of private institutions where none or very few existed before.

50. The right to establish and administer broadly comprises of the following rights:-

(a) to admit students;
(b) to set up a reasonable fee structure;
(c) to constitute a governing body;
(d) to appoint staff (teaching and non-teaching); and
(e) to take action if there is dereliction of duty on the part of any employees

51. A University Education Commission was appointed on 4th November, 1948, having Dr. S. Radhakrishanan as its Chairman and nine other renowned educationists as its members. The terms of reference, *inter alia,* included matters relating to means and objects of university education and research in India and maintenance of higher standards of teaching and examination in universities and colleges under their control. In the report submitted by this Commission, in paras 29 and 31, it referred to autonomy in education which reads as follows :-

> "*University Autonomy.* - Freedom of individual development is the basis of democracy. Exclusive control of education by the State has been an important factor in facilitating the maintenance of totalitarian tyrannies. In such States institutions of higher learning controlled and managed by governmental agencies act like mercenaries, promote the political purposes of the State, make them acceptable to an increasing number of their populations and supply them with the weapons they need. We must resist, in the interests of our own democracy, the trend towards the governmental domination of the educational process.
>
> Higher education is, undoubtedly, an obligation of the State but State aid is not to be confused with State control over academic policies and practices. Intellectual progress demands the maintenance of the spirit of free inquiry. The pursuit and practice of truth regardless of consequences has been the ambition of universities. Their prayer is that of the dying Goethe : "More light" or that of Ajax in the mist "Light, through I perish in the light
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> The respect in which the universities of Great Britain are held is due to the freedom from government interferences which they enjoy constitutionally and actually. Our universities should be released from the control of politics.
> ***"Liberal Education.*** - All education is expected to be liberal. It should free us from the shackles of ignorance, prejudice and unfounded belief. If we are incapable of achieving the good life, it is due to faults in our inward being, to the darkness in us. The process of education is the slow conquering of this darkness. To lead us from darkness to light, to free us from every kind of domination except that of reason, is the aim of education."

52. There cannot be a better exposition than what has been observed by these renowned educationists with regard to autonomy in education. The aforesaid passage clearly shows that the governmental domination of the educational process must be resisted. Another pithy observation of the Commission was that state aid was not to be confused with state control over academic policies and practices. The observations referred to hereinabove clearly contemplate educational institutions soaring to great heights in pursuit of intellectual excellence and being free from unnecessary governmental controls.

53. With regard to the core components of the rights under Articles 19 and 26(a), it must be held that while the state has the right to prescribe qualifications necessary for admission, private unaided colleges have the right to admit students of their choice, subject to an objective and rational procedure of selection and the compliance of conditions, if any, requiring admission of a small percentage of students belonging to weaker sections of the society by granting them freeships or scholarships, if not granted by the Government. Furthermore, in setting up a reasonable fee structure, the element of profiteering is not as yet accepted in Indian conditions. The fee structure must take into consideration the need to generate funds to be utilized for the betterment and growth of the educational institution, the betterment of education in that institution and to provide facilities necessary for the benefit of the students. In any event, a private institution will have the right to constitute its own governing body, for which qualifications may be prescribed by the state or the concerned university. It will, however, be objectionable if the state retains the power to nominate specific individuals on governing bodies. Nomination by the state, which could be on a political basis, will be an inhibiting factor for private enterprise to embark upon the occupation of establishing and administering educational institutions. For the same reasons, nomination of teachers either directly by the department or through a service commission will be an unreasonable inroad and an unreasonable restriction on the autonomy of the private unaided educational institution.

54. The right to establish an educational institution can be regulated; but such regulatory measures must, in general, be to ensure the maintenance of proper academic standards, atmosphere and infrastructure (including qualified staff) and the prevention of mal-administration by those in charge of management. The fixing of a rigid fee structure, dictating the formation and composition of a governing body, compulsory nomination of teachers and staff for appointment or nominating students for admissions would be unacceptable restrictions.

55. The Constitution recognizes the right of the individual or religious denomination, or a religious or linguistic minority to establish an educational institution. If aid or financial assistance is not sought, then such institution will be a private unaided institution. Although, in ***Unni Krishnan's*** case, the Court emphasized the important role played by private unaided institutions and the need for private funding, in the scheme that was framed, restrictions were placed on some of the important ingredients relating to the functioning of an educational institution. There can be no doubt that in seeking affiliation or recognition, the Board or the university of the affiliating or recognizing authority can lay down conditions consistent with the requirement to ensure the excellence of education. It can, for instance, indicate the quality of the teachers by prescribing the minimum qualifications that they must possess, and the courses of study and curricula. It can, for the same reasons, also stupulate the existence of infrastructure sufficient for its growth, as a pre-requisite. But the essence of a private educational institution is the autonomy that the institution must have in its management and administration. There, necessarily, has to be a difference in the administration of private unaided institutions and the government-aided institutions. Whereas in the latter case, the Government will have greater say in the administration, including admissions and fixing of fees, in the case of private unaided institutions, maximum autonomy in the day-to-day administration has to be with the private unaided institutions. Bureaucratic or governmental interference in the administration of such an institution will undermine its independence. While an educational institution is not a business, in order to examine the degree of independence that can be given to a recognized educational institution, like any private entity that does not seek aid or assistance from the Government, and that exists by virtue of the funds generated by it, including its loans or borrowings, it is important to note that the essential ingredients of the management of the private institution include the recruiting students and staff and the quantum of fee that is to be charged.

56. An educational institution is established for the purpose of imparting education of the type made available by the institution. Different courses of study are usually taught by teachers who have to be recruited as per qualifications that may be prescribed. It is no secret that better working conditions will attract better teachers. More amenities will ensure that better students seek admission to that institution. One cannot lose sight of the fact that providing good amenities to the students in the form of competent teaching faculty and other infrastructure costs money. It has, therefore, to be left to the institution, if it chooses not to seek any aid from the government, to determine the scale of fee that it can charge from the students. One also cannot lose sight of the fact that we live in a competitive world today, where professional education is in demand. We have been given to understand that a large number of professional and other institutions have been started by private parties who do not seek any governmental aid. In a sense, a prospective student has various options open to him/her where, therefore, normally economic forces have a role to play. The decision of the fee to be charged must necessarily be left to the private educational institution that does not seek or is not dependent upon any funds from the government.

57. We however, wish to emphasize one point, and that is that inasmuch as the occupation of education is, in a sense, regarded as charitable, the government can provide regulations that will ensure excellence in education, while forbidding the charging of capitation fee and profiteering by the institution. Since the object of setting up an educational institution is by definition "charitable",

it is clear that an educational institution cannot charge such a fee as is not required for the purpose of fulfilling the object. To put it differently, in the establishment of an educational institution, the object should not be to make a profit, inasmuch as education is essentially charitable in nature. There can, however, be a reasonable revenue surplus, which may be generated by the educational institution for the purpose of development of education and expansion of the institution.

58. For admission into any professional institution, merit must play an important role. While it may not be normally possible to judge the merit of the applicant who seeks admission into a school, while seeking admission to a professional institution and to become a competent professional, it is necessary that meritorious candidates are not unfairly treated or put at a disadvantage by preferences shown to less meritorious but more influential applicants. Excellence in professional education would require that greater emphasis be laid on the merit of a student seeking admission. Appropriate regulations for this purpose may be made keeping in view the other observations made in this judgment in the context of admissions to unaided institutions.

59. Merit is usually determined, for admission to professional and higher education colleges, by either the marks that the student obtains at the qualifying examination or school leaving certificate stage followed by the interview, or by a common entrance test conducted by the institution, or in the case of professional colleges, by government agencies.

60. Education is taught at different levels from primary to professional. It is, therefore, obvious that government regulations for all levels or types of educational institutions cannot be identical; so also, the extent of control or regulation could be greater vis-a-vis aided institutions.

61. In the case of unaided private schools, maximum autonomy has to be with the management with regard to administration, including the right of appointment, disciplinary powers, admission of students and the fees to be charged. At the school level, it is not possible to grant admissions on the basis of merit. It is no secret that the examination results at all levels of unaided private schools, notwithstanding the stringent regulations of the governmental authorities, are far superior to the results of the government-maintained schools. There is no compulsion on students to attent private schools. The rush for admission is occasioned by the standards maintained in such schools, and recognition of the fact that state-run schools do not provide the same standards of education. The State says that it has no funds to establish institutions at the same level of excellence as private schools. But by curtailing the income of such private schools, it disables those schools from affording the best facilities because of a lack of funds. If this lowering of standards from excellence to a level of mediocrity is to be avoided, the state has to provide the difference which, therefore, brings us back in a vicious circle to the original problem, viz., the lack of state funds. The solution would appear to lie in the States not using their scanty resources to prop up institutions that are able to otherwise maintain themselves out of the fees charged, but in improving the facilities and infrastructure of state-run schools and in subsidizing the fees payable by the students there. It is in the interest of the general public that more good quality schools are established; autonomy and non-regulation of the school administration in the right of appointment, admission of the students and the fee to be charged will ensure that more such institutions are established. The fear that if a private school is allowed to charge fees commensurate with the fees affordable, the degrees would

be "purchasable" is an unfounded one since the standards of education can be and are controllable through the regulations relating to recognition, affiliation and common final examinations.

62. There is a need for private enterprise in non-professional college education as well. At present, insufficient number of undergraduate colleges are being and have been established, one of the inhibiting factors being that there is a lack of autonomy due to government regulations. It will not be wrong to presume that the numbers of professional colleges are growing at a faster rate than the number of undergraduate and non-professional colleges. While it is desirable that there should be a sufficient number of professional colleges, it should also be possible for private unaided undergraduate colleges that are non-technical in nature to have maximum autonomy similar to a school.

63. It was submitted that for maintaining the excellence of education, it was important that the teaching faculty and the members of the staff of any educational institution performed their duties in the manner in which it is required to be done, according to the rules or instructions. There have been cases of misconduct having been committed by the teachers and other members of the staff. The grievance of the institution is that whenever disciplinary action is sought to be taken in relation to such misconduct, the rules that are normally framed by the government or the university are clearly loaded against the Management. It was submitted that in some cases, the rules require the prior permission of the governmental authorities before the initiation of the disciplinary proceeding, while in other cases, subsequent permission is required before the imposition of penalties in case of proven misconduct. While emphasizing the need for an independent authority to adjudicate upon the grievance of the employee or the Management in the event of some punishment being imposed, it was submitted that there should be no role for the government or the university to play in relation to the imposition of any penalty on the employee.

64. An educational institution is established only for the purpose of imparting education to the students. In such an institution, it is necessary for all to maintain discipline and abide by the rules and regulations that have been lawfully framed. The teachers are like foster-parents who are required to look after, cultivate and guide the students in their pursuit of education. The teachers and the institution exist for the students and not *vice versa*. Once this principle is kept in mind, it must follow that it becomes imperative for the teaching and other staff of an educational institution to perform their duties properly, and for the benefit of the students. Where allegations of misconduct are made, it is imperative that a disciplinary enquiry is conducted, and that a decision is taken. In the case of a private institution, the relationship between the Management and the employees is contractual in nature. A teacher, if the contract so provides, can be proceeded against, and appropriate disciplinary action can be taken if the misconduct of the teacher is proved. Considering the nature of the duties and keeping the principle of natural justice in mind for the purposes of establishing misconduct and taking action thereon, it is imperative that a fair domestic enquiry is conducted. It is only on the basis of the result of the disciplinary enquiry that the management will be entitled to take appropriate action. We see no reason why the Management of a private unaided educational institution should seek the consent or approval of any governmental authority before taking any such action. In the ordinary relationship of master and servant governed by the

terms of a contract of employment, anyone who is guilty of breach of the terms can be proceeded against and appropriate relief can be sought. Normally, the aggrieved party would approach a court of law and seek redress. In the case of educational institutions, however, we are of the opinion that requiring a teacher or a member of the staff to go to a civil court for the purpose of seeking redress is not in the interest of general education. Disputes between the management and the staff of educational institutions must be decided speedily, and without the excessive incurring of costs. It would, therefore, be appropriate that an educational Tribunal be set up in each district in a State to enable the aggrieved teacher to file an appeal, unless there already exists such an educational tribunal in a State - the object being that the teacher should not suffer through the substantial costs that arise because of the location of the tribunal; if the tribunals are limited in number, they can hold circuit/camp sittings in different districts to achieve this objective. Till a specialized tribunal is set up, the right of filing the appeal would lie before the District Judge or Additional District Judge as notified by the government. It will not be necessary for the institution to get prior permission or *ex post facto* approval of a governmental authority while taking disciplinary action against a teacher or any other employee. The State government shall determine, in consultation with the High Court, the judicial forum in which an aggrieved teacher can file an appeal against the decision of the Management concerning disciplinary action or termination of service.

65. The reputation of an educational institution is established by the quality of its faculty and students, and the educational and other facilities that the college has to offer. The private educational institutions have a personality of their own, and in order to maintain their atmosphere and traditions, it is but necessary that they must have the right to choose and select the students who can be admitted to their courses of studies. It is for this reason that in the ***St. Stephen's College*** case, this court upheld the scheme whereby a cut-off percentage was fixed for admission, after which the students were interviewed and thereafter selected. While an educational institution cannot grant admission on its whims and fancies, and must follow some identifiable or reasonable methodology of admitting the students, any scheme, rule or regulation that does not give the institution the right to reject candidates who might otherwise be qualified according to, say, their performance in an entrance test, would be an unreasonable restriction under Article 19(6), though appropriate guidelines/modalities can be prescribed for holding the entrance test in a fair manner. Even when students are required to be selected on the basis of merit, the ultimate decision to grant admission to the students who have otherwise qualified for the grant of admission must be left with the educational institution concerned. However, when the institution rejects such students, such rejection must not be whimsical or for extraneous reasons.

66. In the case of private unaided educational institutions, the authority granting recognition or affiliation can certainly lay down conditions for the grant of recognition or affiliation, these conditions must pertain broadly to academic and educational matters and welfare of students and teachers - but how the private unaided institutions are to run is a matter of administration to be taken care of by the Management of those institutions.

Private Unaided Professional Colleges

67. We now come to the regulations that can be framed relating to private unaided professional institutions.

68. It would be unfair to apply the same rules and regulations regulating admission to both aided and unaided professional institutions. It must be borne in mind that unaided professional institutions are entitled to autonomy in their administration while, at the same time, they do not forgo or discard the principle of merit. It would, therefore, be permissible for the university or the government, at the time of granting recognition, to require a private unaided institution to provide for merit-based selection while, at the same time, giving the Management sufficient discretion in admitting students. This can be done through various methods. For instance, a certain percentage of the seats can be reserved for admission by the Management out of those students who have passed the common entrance test held by itself or by the State/University and have applied to the college concerned for admission, while the rest of the seats may be filled up on the basis of counselling by the state agency. This will incidentally take care of poorer and backward sections of the society. The prescription of percentage for this purpose has to be done by the government according to the local needs and different percentages can be fixed for minority unaided and non-minority unaided and professional colleges. The same principles may be applied to other non-professional but unaided educational institutions viz., graduation and post graduation non-professional colleges or institutes.

69. In such professional unaided institutions, the Management will have the right to select teachers as per the qualifications and eligibility conditions laid down by the State/University subject to adoption of a rational procedure of selection. A rational fee structure should be adopted by the Management, which would not be entitled to charge a capitation fee. Appropriate machinery can be devised by the state or university to ensure that no capitation fee is charged and that there is no profiteering, though a reasonable surplus for the furtherance of education is permissible. Conditions granting recognition or affiliation can broadly cover academic and educational matters including the welfare of students and teachers.

70. It is well established all over the world that those who seek professional education must pay for it. The number of seats available in government and government-aided colleges is very small, compared to the number of persons seeking admission to the medical and engineering colleges. All those eligible and deserving candidates who could not be accomodated in government colleges would stand deprived of professional education. This void in the field of medical and technical education has been filled by institutions that are established in different places with the aid of donations and the active part taken by public-minded individuals. The object of establishing an institution has thus been to provide technical or professional education to the deserving candidates, and is not necessarily a commercial venture. In order that this intention is meaningful, the institution must be recognized. At the school level, the recognition or affiliation has to be sought from the educational authority or the body that conducts the school-leaving examination. It is only on the basis of that examination that a school-leaving certificate is granted, which enables a student to seek admission in further courses of study after school. A college or a professional educational

institution has to get recognition from the concerned university, which normally requires certain conditions to be fulfilled before recognition. It has been held that conditions of affiliation or recognition, which pertain to the academic and educational character of the institution and ensure uniformity, efficiency and excellence in educational courses are valid, and that they do not violate even the provisions of Article 30 of the Constitution; but conditions that are laid down for granting recognition should not be such as may lead to governmental control of administration of the private educational institutions.

Private Aided Professional Institutions (non-minority)

71. While giving aid to professional institutions, it would be permissible for the authority giving aid to prescribe by rules or regulations, the conditions on the basis of which admission will be granted to different aided colleges by virtue of merit, coupled with the reservation policy of the state. The merit may be determined either through a common entrance test conducted by individual institutions - the method to be followed is for the university or the government to decide. The authority may also devise other means to ensure that admission is granted to an aided professional institution on the basis of merit. In the case of such institutions, it will be permissible for the government or the university to provide that consideration should be shown to the weaker sections of the society.

72. Once aid is granted to a private professional educational institution, the government or the state agency, as a condition of the grant of aid, can put fetters on the freedom in the matter of administration and management of the institution. The state, which gives aid to an educational institution, can impose such conditions as are necessary for the proper maintenance of the high standards of education as the financial burden is shared by the state. The state would also be under an obligation to protect the interest of the teaching and non-teaching staff. In many states, there are various statutory provisions to regulate the functioning of such educational institutions where the States give, as a grant or aid, a substantial proportion of the revenue expenditure including salary, pay and allowances of teaching and non-teaching staff. It would be its responsibility to ensure that the teachers working in those institutions are governed by proper service conditions. The state, in the case of such aided institutions, has ample power to regulate the method of selection and appointment of teachers after prescribing requisite qualifications for the same. Ever since ***In Re The Kerala Education Bill, 1957*** [(1959) SCR 995], this Court has upheld, in the case of aided institutions, those regulations that served the interests of students and teachers. Checks on the administration may be necessary in order to ensure that the administration is efficient and sound and will serve the academic needs of the institutions. In other words, rules and regulations that promote good administration and prevent mal-administration can be formulated so as to promote the efficiency of teachers, discipline and fairness in administration and to preserve harmony among affiliated institutions. At the same time it has to be ensured that even an aided institution does not become a government-owned and controlled institution. Normally, the aid that is granted is relatable to the pay and allowances of the teaching staff. In addition, the Management of the private aided institutions has to incur revenue and capital expenses. Such aided institutions cannot obtain that extent of autonomy in relation to management and administration as would be available to a private

unaided institution, but at the same time, it cannot also be treated as an educationalinsitution departmentally run by government or as a wholly owned and controlled governmentinsituion and interfere with Constitution of the governing bodies or thrusting the staff without reference to Management.

Other Aided Institutions

73. There are a large number of educational institutions, like schools and non-professional colleges, which cannot operate without the support of aid from the state. Although these nstitutions may have been established by philanthropists or other public-spirited persons, it becomes necessary, in order to provide inexpensive education to the students, to seek aid from the state. In such cases, as those of the professional aided institutions referred to hereinabove, the Government would be entitled to make regulations relating to the terms and conditions of empbynert of the teaching and non-teaching staff whenever the aid for the posts is given by the Sateaswell as admission procedures. Such rules and regulations can also provide for the reasons and he nanner in which a teacher or any other member of the staff can be removed. In other words, theautonomy of a private aided institution would be less than that of an unaided institution.

4. IN ORDER TO DETERMINE THE EXISTENCE OF A RELIGIOUS OR LINGUISTIC MINORITY IN RELATION TO ARTICLE 30, WHAT IS TO BE THE UNIT – THE STATE OR THE COUNTRY AS A WHOLE?

74. We now consider the question of the unit for the purpose of determining the definition of "minority" within the meaning of Article 30(1).

75. Article 30(1) deals with religious minorities and linguistic minorities. The opening words of Article 30(1) make it clear that religious and linguistic minorities have been put at par insofar as that Article is concerned. Therefore, whatever the unit - whether a state or the whole of India - for determining a linguistic minority, it would be the same in relation to a religious minority. India is divided into different linguistic states. The states have been carved out on the basis of the language of the majority of persons of that region. For example, Andhra Pradesh was established on the basis of the language of that region, viz., Telegu. "Linguistic minority" can, therefore logicaly only be in relation to a particular State. If the determination of "linguistic minority" for thepurpose of Article 30 is to be in relation to the whole of India, then within the State of Andhra PradeshTelegu speakers will have to be regarded as a "linguistic minority". This will clearly be contrary to the concept of linguistic states.

76. If, therefore, the state has to be regarded as the unit for determining "linguistic minority" vis-a-vis Article 30, then with "religious minority" being on the same footing, it is hestate in relation to which the majority or minority status will have to be determined.

77. In the ***Kerala Education Bill*** case, the question as to whether the minority community was to be determined on the basis of the entire population of India, or on the basis of thepopulation of the State forming a part of the Union was posed at page 1047. It had been contended by the State of Kerala that for claiming the status of minority, the persons must numerically be a minority in the particular region in which the educational institution was situated, and that thelocality or

ward or town where the institution was to be situated had to be taken as the unit to determine the minority community. No final opinion on this question was expressed, but it was observed at page 1050 that as the Kerala Education Bill *"extends to the whole of the State of Kerala and consequently the minority must be determined by reference to the entire population of that State."*

78. In two cases pertaining to the DAV College, this Court had to consider whether the Hindus were a religious minority in the State of Punjab. In ***D.A.V. College vs. State of Punjab & Ors.*** [1971 (Supp.) SCR 688], the question posed was as to what constituted a religious or linguistic minority, and how it was to be determined. After examining the opinion of this Court in the ***Kerala EducatonBil*** case, the Court held that the Arya Samajis who were Hundus, were a religious minority in the State of Punjab, even though they may not have been so in relation to the entire country. In another case, ***D.A.V. Vollege Bhatinda vs. State of Punjab & Ors.*** [1971 (Supp.) SCR 677], the observations in the first ***D.A.V. College*** case were explained, and at page 681, it was stated that *"what constitutes a linguistic or religious minority must be judged in relation to the State inasmuch as the impugned Act was a State Act and not in relation to the whole of India."* The Supreme Court rejected the contention that since Hindus were a majority in India, they could not be a religious minority in the state of Punjab, as it took the state as the unit to determine whether the Hindus were a minority community.

79. There can, therefore, be little doubt that this Court has consistently held that, with regard to a state law, the unit to determine a religious or linguistic minority can only be the state.

80. The Forty-Second Amendment to the Constitution included education in the Concurrent List under Entry 25. Would this in any way change the position with regard to the determination of a "religious' or 'linguistic minority" for the purposes of Article 30?

81. As a result of the insertion of Entry 25 into List III, Parliament can now legislate in relation to education, which was only a state subject previously. The jurisdiction of the Parliament is to make laws for the whole or a part of India. It is well recognized that geographical classification is not violative of Article 14. It would, therefore, be possible that, with respect to a particular State or group of States, Parliament may legislate in relation to education. However, Article 30 gives the right to a linguisic or religious minority of a State to establish and administer educational institutions of their choice. The minority for the purpose of Article 30 cannot have different meanings depending upon who is legislating. Language being the basis for the establishment of different states for the purposes of Article 30, a "linguistic minority" will have to be established. The position with regard to the religious minority is similar, since both religious and linguistic minorities have been put at par in Article 30.

5. TO WHAT EXTENT CAN THE RIGHTS OF AIDED PRIVATE MINORITY INSTITUTIONS TO ADMINISTER BE REGULATED?

82. Article 25 gives to all persons the freedom of conscience and the right to freely profess, practice and propagate religion. This right, however, is not absolute. The opening words of Article 25(1) make this right subject to public order, morality and health, and also to the other provisions

of Part III of the Constitution. This would mean that the right given to a person under 25(1) can be curtailed or regulated if the exercise of that right would violate other provisions of Part III of the Constitution, or if the exercise thereof is not in consonance with public order, morality and health. The general law made by the government contains provisions relating to public order, morality and health; these would have to be complied with, and cannot be violated by any person in exercise of his freedom of conscience or his freedom to profess, practice and propagate religion. For example, a person cannot propagate his religion in such a manner as to denigrate another religion or bring about dissatisfaction amongst people.

83. Article 25(2) gives specific power to the state to make any law regulating or restricting any economic, financial, political or other secular activity, which may be associated with religious practice as provided by sub-clause (a) of Article 25(2). This is a further curtailment of the right to profess, practice and propagate religion conferred on the persons under Article 25(1). Article 25(2)(a) covers only a limited area associated with religious practice, in respect of which a law can be made. A careful reading of Article 25(2)(a) indicates that it does not prevent the State from making any law in relation to the religious practice as such. The limited jurisdiction granted by Article 25(2) relates to the making of a law in relation to economic, financial, political or other secular activities associated with the religious practice.

84. The freedom to manage religious affairs is provided by Article 26. This Article gives the right to every religious denomination, or any section thereof, to exercise the rights that it stipulates. However, this right has to be exercised in a manner that is in conformity with public order, morality and health. Clause (a) of Article 26 gives a religious denomination the right to establish and maintain institutions for religious and charitable purposes. There is no dispute that the establishment of an educational instiuttion comes within the meaning of the expression "charitable purpose". Therefore, while Article 25(1) grants the freedom of conscience and the right to profess, practice and propagate religion, Article 26 can be said to be complementary to it, and provides for every religious denomination, or any section thereof, to exercise the rights mentioned therein. This is because Article 26 does not deal with the right of an individual, but is confined to a religious denomination. Article 26 refers to a denomination of any religion, whether it is a majority or a minority religion, just as Article 25 refers to all persons, whether they belong to the majority or a minority religion. Article 26 gives the right to majority religious denominations, as well as to minority religious denominations, to exercise the rights contained therein.

85. Secularism being one of the important basic features of our Constitution, Article 27 provides that no person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated for the payment of expenses for the promotion and maintenance of any particular religion or religious denomination. The manner in which the Article has been framed does not prohibit the state from enacting a law to incur expenses for the promotion or maintenance of any particular religion or religious denomination, but specifies that by that law, no person can be compelled to pay any tax, the proceeds of which are to be so utilized. In other words, if there is a tax for the promotion or maintenance of any particular religion or religious denomination, no person can be compelled to pay any such tax.

86. Article 28(1) prohibits any educational institution, which is wholly maintained out of state funds, to provide for religious instruction. Moral education dissociated from any denominational doctrine is not prohibited; but, as the state is intended to be secular, an educational institution wholly maintained out of state funds cannot impart or provide for any religious instruction.

87. The exception to Article 28(1) is contained in Article 28(2). Article 28(2) deals with cases where, by an endownment or trust, an institution is established, and the terms of the endownment or the trust require the imparting of religious instruction, and where that institution is administered by the state. In such a case, the prohibition contained in Article 28(1) does not apply. If the administration of such an institution is voluntarily given to the government, or the government, for a good reason and in accordance with law, assumes or takes over the management of that institution, say on account of mal-administration, then the government, on assuming the administration of the institution, would be obliged to continue with the imparting of religious instruction as provided by the endowment or the trust.

88. While Article 28(1) and Article 28(2) relate to institutions that are wholly maintained out of state funds, Article 28(3) deals with an educational institution that is recognized by the state or receives aid out of state funds. Article 28(3) gives the person attending any educational institution the rigtht not to take part in any religious instruction, which may be imparted by an institution recognized by the state, or receiving aid from the state. Such a person also has the right not to attend any religious worship that may be conducted in such an institution, or in any premises attached thereto, unless such a person, or if he/she is a minor, his/her guardian, has given his/her consent. The reading of Article 28(3) clearly shows that no person attending an educational institution can be required to take part in any religious instruction or any religious worship, unless the person or his/her guardian has given his/her consent thereto, in a case where the educational institution has been recognized by the state or receives aid out of its funds. We have seen that Article 26(a) gives the religious denomination the right to establish an educational institution, the religious denomination being either of the majority community or minority community. In any institution, whether established by the majority or a minority religion, if religious instruction is imparted, no student can be compelled to taked part in the said religious instruction or in any religious worship. An individual has the absolute right not to be compelled to take part in any religious instruction or worship. Article 28(3) thereby recognizes the right of an individual to practice or profess his own religion. In other words, in matters relating to religious instruction or worship, there can be no compulsion where the educational institution is either recognized by the state or receives aid from the state.

89. Articles 29 and 30 are a group of articles relating to cultural and educational rights. Article 29(1) gives the right to any section of the citizens residing in India or any part thereof, and having a distinct language, script or culture of its own, to conserve the same. Article 29(1) does not refer to any religion, even though the marginal note of the Article mentions the interests of minorities. Article 29(1) essentially refers to sections of citizens who have a distinct language, script or culture, even though their religion may not be the same. The common thread that runs through Article 29(1) is language, script or culture, and not religion. For example, if in any part of the country, there is a section of society that has a distinct language, they are entitled to conserve the same,

even though the persons having that language may profess different religions. Article 29(1) gives the right to all sections of citizens, whether they are in a minority or the majority religions, to conserve their language, script or culture.

90. In the exercise of this right to conserve the language, script or culture, that section of the society can set up educational institutions. The right to establish and maintain educational institutions of its choice is a necessary concomitant to the right conferred by Article 30. The right under Article 30 is not absolute. Article 29(2) provides that, where any educational institution is maintained by the state or receives aid out of state funds, no citizen shall be denied admission on the grounds only of religion, race, caste, language or any of them. The uses of the expression "any educational institution" in Article 29(2) would refer to any educational institution established by anyone, but which is maintained by the state or rececives aid out of state funds. In other words, on a plan reading, state-maintained or aided educational institutions, whether established by the Government or the majority or a minority community cannot deny admission to a citizen on the grounds only of religion, race, caste or language.

91. The right of the minorities to establish and administer educational institutions is provided for by Article 30(1). To some extent, Article 26(1)(a) and Article 30(1) overlap, insofar as they relate to the establishment of educational institutions; but whereas Article 26 gives the right both to the majority as well as minority communities to establish and maintain institutions for charitable purposes, which would, *inter alia,* include educational institutions. Article 30(1) refers to the right of minorities to establish and maintain educational institutions of their choice. Another difference between Article 26 and Article 30 is that whereas Article 26 refers only to religious denominations, Article 30 contains the right of religious as well as linguistic minorities to establish and administer educational institutions of their choice.

92. Article 30(1) bestows on the minorities, whether based on religion or language, the right to establish and administer educational institution of their choice. Unlike Articles 25 and 26, Article 30(1) does not specifically state that the right under Article 30(1) is subject to public order, morality and health or to other provisions of Part III. This sub-Article also does not specifically mention that the right to establish and administer a minority educational institution would be subject to any rules or regulations.

93. Can Article 30(1) be so read as to mean that it contains an absolute right of the minorities, whether based on religion or language, to establish and administer educational institutions in any manner they desire, and without being obliged to comply with the provisions of any law? Does Article 30(1) give the religious or linguistic minorities a right to establish an educational institution that propagates religious or racial bigotry or ill will amongst the people? Can the right under Article 30(1) be so exercised that it is opposed to public morality or health? In the exercise of its right, would the minority while establishing educational institutions not be bound by town planning rules and regulations? Can they construct and maintain buildings in any manner they desire without complying with the provisions of the building by-laws or health regulations?

94. In order to interpret Article 30 and its interplay, if any, with Article 29, our attention was drawn to the Constituent Assembly Debates. While referring to them, the learned Solicitor General

submitted that the provisions of Article 29(2) were intended to be applicable to minority institutions seeking protection of Article 30. He argued that if any educational institution sought aid, it could not deny admission only on the ground of religion, race, caste or language and, consequently, giving a preference to the minority over more meritorious non-minority students was impermissible. It is now necessary to refer to some of the decisions of this Court insofar as they interpret Articles 29 and 30, and to examine whether any creases therein need ironing out.

95. In ***The State of Madras vs. Srimathi Champakam Dorairajan*** [(1951) SCR 525], the State had issued an order, which provided that admission to students to engineering and medical colleges in the State should be decided by the Selection Committee, strictly on the basis of the number of seats fixed for different communities. While considering the validity of this order, this Court interpreted Article 29(2) and held that if admission was refused only on the grounds of religion, race, caste, language or any of them, then there was a clear breach of the fundamental right under Article 29(2). The said order was construed as being violative of Article 29(2), because students who did not fall in the particular categories were to be denied admission. In this connection it was observed as follows:-

> ".....so far as those seats are concerned, the petitioners are denied admission into any of them, not on any ground other than the sole ground of their being Brahmins and not being members of the community for whom those reservations were made....."

96. This government order was held to be violative of the Constitution and constitutive of a clear breach of Article 29(2). Article 30 did not come up for consideration in that case.

97. In ***The State of Bombay vs. Bombay Education Society and Others*** [(1955) 1 SCR 568], the State had issued a circular, the operative portion of which directed that no primary or secondary school could, from the date of that circular admit to a class where English was used as a medium of instruction, any pupil other than pupils belonging to a section of citizens, the language of whom was English, viz., Anglo-Indians and citizens of non-Asiatic descent. The validity of the circular was challenged while admission was refused, *inter alia,* to a member of the Gujarati Hindu Community. A number of writ petitions were filed and the High Court allowed them. In an application filed by the State of Bombay, this Court had to consider whether the said circular was *ultra vires* Article 29(2). In deciding this question, the Court analyzed the provisions of Articles 29(2) and 30, and repelled the contention that Article 29(2) guaranteed the right only to the citizens of the minority group. It was observed, in this connection, at page 579, as follows:

> ".....The language of Article 29(2) is wide and unqualified and may well cover all citizens whether they belong to the majority or minority group. Article 15 protects all citizens against the State whereas the protection of Article 29(2) extends against the State or anybody who denies the right conferred by it. Further Article 15 protects all citizens against discrimination generally but Article 29(2) is a protection against a particular species of wrong namely denial of admission into educational institutions of the specified kind. In the next place Article 15 is quite general and wide in its terms and applies to all citizens,

whether they belong to the majority or minority groups, and gives protection to all the citizens against discrimination by the State on certain specific grounds. Article 29(2) confers a special right on citizens for admission into educational institutions maintained or aided by the State. To limit this right only to citizens belonging to minority groups will be to provide a double protection for such citizens and to hold that the citizens of the majority group have no special educational rights in the nature of a right to be admitted into an educational institution for the maintenance of which they make contributions by way of taxes. We see no cogent reason for such discrimination. The heading under which Articles 29 and 30 are grouped together - namely "Cultural and Educational Rights" - is quite general and does not in terms contemplate such differentiation. If the fact that the institution is maintained or aided out of State funds is the basis of this guaranteed right then all citizens, irrespective of whether they belong to the majority or minority groups; are alike entitled to the protection of the fundamental right....."

98. It is clear from the aforesaid discussion that this Court came to the conclusion that in the case of minority educational institutions to which protection was available under Article 30, the provisions of Article 29(2) were indeed applicable. But, it may be seen that the question in the present form i.e., whether in the matter of admissions into aided minority educational institutions, minority students could be preferred to a reasonable extent, keeping in view the special protection given under Article 30(1), did not arise for consideration in that case.

99. In the ***Kerala Education Bill*** case, this Court again had the occasion to consider the interplay of Articles 29 and 30 of the Constitution. This case was a reference under Article 143(1) of the Constitution made by the President of India to obtain the opinion of this Court on certain questions relating to the constitutional validity of some of the provisions of the Kerala Education Bill, 1957, which had been passed by the Kerala Legislative Assembly, but had been reserved by the Governor for the consideration of the President. Clause 3(5) of the Bill, made the recognition of new schools subject to the other provisions of the Bill and the rules framed by the Government under Clause (36); Clause (15) authorized the Government to acquire any category of schools; clause 8(3) made it obligatory on all aided schools to hand over the fees to the Government; clauses 9 to 13 made provisions for the regulation and management of the schools, payment of salaries to teachers and the terms and conditions of their appointment, and clause (33) forbade the granting of temporary injunctions and interim orders in restraint of proceedings under the Act.

100. With reference to Article 29(2), the Court observed at page 1055, while dealing with an argument based on Article 337 that "*likewise Article 29(2) provides, inter alia, that no citizen shall be denied admission into any educational institution receiving aid out of State funds on grounds only of religion, race, caste, language or any of them*". Referring to Part III of the Constitution and to Articles 19 and 25 to 28 in particular, the Court said:-

".....Under Article 25 all persons are equally entitled, subject to public order, morality and health and to the other provisions of Part III, to freedom of

conscience and the right freely to profess, practice and propagate religion. Article 26 confers the fundamental right to every religious denomination or any section thereof, subject to public order, morality and health, to establish and maintain institutions for religious and charitable purposes, to manage its own affairs in matters of religion, to acquire property and to administer such property in accordance with law. The ideal being to constitute India into a secular State, no religious instruction is, under Article 28(1), to be provided in any educational institution wholly maintained out of State funds and under clause (3) of the same Article no person attending any educational institution recognized by the State or receiving aid out of State funds is to be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto. Article 29(1) confers on any section of the citizens having a distinct language, script or culture of its own to have the right of conserving the same. Clause (2) of that Article provides that no citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them."

101. Dealing with Articles 29 and 30 at page 1046, it was observed as follows:-

"Articles 29 and 30 are set out in Part III of our Constitution which guarantees our fundamental rights. They are grouped together under the sub-head "Cultural and Educational Rights". The text and the marginal notes of both the Articles show that their purpose is to confer those fundamental rights on certain sections of the community which constitute minority communities. Under clause (1) of Article 29 any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own has the right to conserve the same. It is obvious that a minority community can effectively conserve its language, script or culture by and through educational institutions and, therefore, the right to establish and maintain educational institutions of its choice is a necessary concomitant to the right to conserve its distinctive language, script or culture and that is what is conferred on all minorities by Article 30(1) which has hereinbefore been quoted in full. This right, however, is subject to clause 2 or Article 29 which provides that no citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them."

102. It had been, *inter alia,* contended on behalf of the state that if a single member of any other community is admitted in a school established for a particular minority community, then the educational institution would cease to be an educational institution established by that particular minority community. It was contended that because of Article 29(2), when an educational institution

established by a minority community gets aid, it would be precluded from denying admission to members of other communities because of Article 29(2), and that as a consequence thereof, it would cease to be an educational institution of the choice of the minority community that established it. Repelling this argument, it was observed at pages 1051-52, as follows:-

> ".....This argument does not appear to us to be warranted by the language of the Article itself. There is no such limitation in Article 30(1) and to accept this limitation will necessarily involve the addition of the words, "for their own community" in the Article which is ordinarily not permissible according to well established rules of interpretation. Nor is it reasonable to assume that the purpose of Article 29(2) was to deprive minority educational institutions of the aid they receive from the state. To say that an institution which receives aid on account of its being minority educational institution must not refuse to admit any member of any other community only on the grounds therein mentioned and then to say that as soon as such institution admits such an outsider it will cease to be a minority institution is tantamount to saying that minority institutions will not, as minority institutions, be entitled to any aid. The real import of Article 29(2) and Article 30(1) seems to us to be that they clearly contemplate a minority institution with a sprinkling of outsiders admitted into it. By admitting a non-member into it the minority institution does not shed its character and cease to be a minority institution. Indeed the object of conservation of the distinct language, script and culture of a minority may be better served by propagating the same amongst non-members of the particular minority community. In our opinion, it is not possible to read this condition into Article 30(1) of the Constitution."

103. It will be seen that the use of the expression "sprinkling of outsiders" in that case clearly implied the applicability of Article 29(2) to Article 30(1); the Court held that when a minority educational institution received aid, outsiders would have to be admitted. This part of the state's contention was accepted, but what was rejected was the contention that by taking outsiders, a minority institution would cease to be an educational institution of the choice of the minority community that established it. The Court concluded at page 1062, as follows:-

> ".....We have already observed that Article 30(1) gives two rights to the minorities, (1) to establish and (2) to administer, educational institutions of their choice. The right to administer cannot obviously include the right to maladminister. The minority cannot surely ask for aid or recognition for an educational institution run by them in unhealthy surroundings, without any competent teachers, possessing any semblance of qualification, and which does not maintain even a fair standard of teaching or which teaches matters subversive of the welfare of the scholars. It stands to reason, then, that the constitutional right to administer an educational institution of their choice does not necessarily militate against the claim of the State to insist that in order to grant aid the State

may prescribe reasonable regulations to ensure the excellence of the institutions to be aided....."

104. While noting that Article 30 referred not only to religious minorities but also to linguistic minorities, it was held that the Article gave those minorities the right to establish educational institutions of their choice, and that no limitation could be placed on the subjects to be taught at such educational institutions and that general secular education is also comprehended within the scope of Article 30(1). It is to be noted that the argument addressed and answered in that case was whether a minority aided institution loses its character as such by admitting non-minority students in terms of Article 29(2). It was observed that the admission of 'Sprinkling of outsiders' will not deprive the institution of its minority status. The opinion expressed therein does not really go counter to the ultimate view taken by us in regard to the inter-play of Articles 30(1) and 29(2).

105. In ***Rev. Sidhajbhai Sabhai and Others vs. State of Bombay and Another*** [(1963) 3 SCR 837], this Court had to consider the validity of an order issued by the Government of Bombay whereby from the academic year 1955-56, 80% of the seats in the training colleges for teachers in non-government training colleges were to be reserved for the teachers nominated by the Government. The petitioners, who belonged to the minority community, were, *inter alia,* running a training college for teachers, as also primary schools. The said primary schools and college were conducted for the benefit of the religious denomination of the United Church of Northern India and Indian Christians generally, though admission was not denied to students belonging to other communities. The petitioners challenged the government order requiring 80% of the seats to be filled by nominees of the government, *inter alia,* on the ground that the petitioners were members of a religious denomination and that they constituted a religious minority, and that the educational institutions had been established primarily for the benefit of the Christian community. It was the case of the petitioners that the decision of the Government violated their fundamental rights guaranteed by Articles 30(1), 26(a), (b), (c) and (d), and 19(1)(f) and (g). While interpreting Article 30, it was observed by this Court at pages 849-850 as under:-

> ".....All minorities, linguistic or religious have by Article 30(1) an absolute right to establish and administer educational institutions of their choice; and any law or executive direction which seeks to infringe the substance of that right under Article 30(1) would to that extent be void. This, however, is not to say that it is not open to the State to impose regulations upon the exercise of this right. The fundamental freedom is to establish and to administer educational institutions: it is a right to establish and administer what are in truth educational institutions, institutions which cater to the educational needs of the citizens, or sections thereof. Regulation made in the true interests of efficiency of instruction, discipline, health, sanitation, morality, public order and the like may undoubtedly be imposed. Such regulations are not restrictions on the substance of the right which is guarantees: they secure the proper functioning of the institution, in matters educational."

106. While coming to the conclusion that the right of the private training colleges to admit students of their choice was severely restricted, this Court reffered to the opinion in the ***Kerala Education Bill*** case, but distinguished it by observing that the Court did not, in that case, lay down any test of reasonableness of the regulation. No general principle on which the reasonableness of a regulation may be tested was sought to be laid down in the ***Kerala Education Bill*** case and, therefore, it was held in ***Sidhajbhai Sabhai's*** case that the opinion in that case was not an authority for the proposition that all regulative measures, which were not destructive or annihilative of the character of the institution established by the minority, provided the regulations were in the national or public interest, were valid. In this connection it was further held at page 856, as follows:-

> "The right established by Article 30(1) is a fundamental right declared in terms absolute. Unlike the fundamental freedoms guaranteed by Article 19, it is not subject to reasonable restrictions. It is intended to be a real right for the protection of the minorities in the matter of setting up of educational institutions of their own choice. The right is intended to be effective and is not to be whittled down by so-called regulative measures conceived in the interest not of the minority educational institution, but of the public or the nation as a whole. If every order which while maintaining the formal character of a minority institution destroys the power of administration is held justifiable because it is in the public or national interest, though not in its interest as an educational institution, the right guaranteed by Article 30(1) will be but a "teasing illusion", a promise of unreality. Regulations which may lawfully be imposed either by legislative or executive action as a condition of receiving grant or of recognition must be directed to making the institution while retaining its character as a minority institution effective as an educational institution. Such regulation must satisfy a dual test - the test of reasonableness, and the test that it is regulative of the educational character of the institution and is conducive to making the institution an effective vehicle of education for the minority community or other persons who resort to it."

107. The aforesaid decision does indicate that the right under Article 30(1) is not so absolute as to prevent the government from making any regulation whatsoever. As alreasy noted hereinabove, in ***Sidhajbhai Sabhai's case,*** it was laid down that regulations made in the true interests of efficiency of instruction, discipline, health, sanitation, morality and public order could be imposed. If this is so, it is difficult to appreciate how the government can be prevented from framing regula tions that are in the national interest, as it seems to be indicated in the passage quoted hereinabove. Any regulation framed in the national interest must necessarily apply to all educational institutions, whether run by the majority or the minority. Such a limitation must necessarily be read into Article 30. The right under Article 30(1) cannot be such as to override the national interest or to prevent the government from framing regulations in that behalf. It is, of course, true that government regulations cannot destroy the minority character of the institution or make the right to establish and administer a mere illusion; but the right under Article 30 is not so absolute as to be above the

law. It will further be seen that in ***Sidhajbhai Sabhai's*** case, no reference was made to Article 29(2) of the Constitution. This decision, therefore, cannot be an authority for the proposition canvassed before us.

108. Our attention was invited to the decision in ***Rev. Father W. Proost and Ors. vs. The State of Bihar & Ors.*** [(1969) 2 SCR 73], but the said case has no application here. In that case, it was contended, on behalf of the State of Bihar, that, as the protection to the minority under Article 29(1) was only a right to conserve a distinct language, script or culture of its own, the college did not qualify for the protection of Article 30(1) because it was not founded to conserve them and that consequently, it was open to all sections of the people. The question, therefore, was whether the college could claim the protection of Section 48-B of the Bihar Universities Act read with Article 30(1) of the Constitution, only if it proved that the educational institution was furthering the rights mentioned in Article 29(1). Section 48-B of the Bihar Universities Act exempted a minority educational institution based on religion or language from the operation of some of the other provisions of that Act. This Court, while construing Article 30, held that its width could not be cut down by introducing in it considerations on which Article 29(1) was based. Articles 29(1) and 30(1) were held to create two seperate rights, though it was possible that they might meet in a given case. While dealing with the contention of the state that the college would not be entitled to the protection under Article 30(1) because it was open to all sections of the people, the Court referred to the observations in the ***Kerala Education Bill*** case, wherein it had been observed that the real import of Article 29(2) and Article 30(1) was that they contemplated a minority institution with a sprinkling of outsiders admitted into it. The Court otherwise had no occasion to deal with the applicability of Article 29(2) to Article 30(1).

109. In ***State of Kerala, Etc. vs. Very Rev. Mother Provincial, Etc.*** [(1971) 1 SCR 734], the challenge was to various provisions of the Kerala University Act, 1969, whose provisions affected private colleges, particularly those founded by minority communities in the State of Kerala. The said provisions, *inter alia,* sought to provide for the manner in which private colleges were to be administered through the constitution of the governing body or managing councils in the manner provided by the Act. Dealing with Article 30, it was observed at pages 739-40 as follows:-

> "Article 30(1) has been construed before by this Court. Without referring to those cases it is sufficient to say that the clause contemplates two rights which are seperated in point of time. The first right is the initial right to establish institutions of the minority's choice. Establishment here means the bringing into being of an institution and it must be by a minority community. It matters not if a single philanthropic individual with his own means, founds the institution or the community at large contributes the funds. The position in law is the same and the intention in either case must be to found an institution for the benefit of a minority community by a member of that community. It is equally irrelevant that in addition to the minority community others from other minority communities or even from the majority community can take advantage of these institutions.

Such other communities bring in income and they do not have to be turned away to enjoy the protection.

The next part of the right relates to the administration of such institutions. Administration means 'management of the affairs' of the institution. This management must be free of control so that the founders or their nominees can mould the institution as they think fit, and in accordance with their ideas of how the interests of the community in general and the institution in particular will be best served. No part of this management can be taken away and vested in another body without an encroachment upon the guaranteed right."

The Court, however, pointed out that an exception to the right under Article 30 was the power with the state to regulate education, educational standards and allied matters. It was held that the minority institutions could not be allowed to fall below the standards of excellence expected of educational institutions, or under the guise of the exclusive right of management, allowed to decline to follow the general pattern. The Court stated that while the management must be left to the minority, they may be compelled to keep in step with others.

110. The interplay of Article 29 and Article 30 came up of consideration again before this Court in the ***D.A.V. College*** case [1971 (Supp.) SCR 688]. Some of the provisions of the Guru Nanak University Act established after the reorganization of the State of Punjab in 1969 provided for the manner in which the governing body was to be constituted; the body was to include a representative of the University and a member of the College. These and some other provisions were challenged on the ground that they were violative of Article 30. In this connection at page 695, it was observed as follows:-

"It will be observed that Article 29(1) is wider than Article 30(1), in that, while any Section of the citizens including the minorities, can invoke the rights guaranteed under Article 29(1), the rights guaranteed under Article 30(1) are only available to the minorities based on religion or language. It is not necessary for Article 30(1) that the minority should be both a religious minority as well as a linguistic minority. It is sufficient if it is one or the other or both. A reading of these two Articles together would lead us to conclude that a religious or linguistic minority has a right to establish and administer educational institutions of its choice for effectively conserving its distinctive language, script or culture, which right however is subject to the regulatory power of the State for maintaining and facilitating the excellence of its standards. This right is further subject to clause (2) of Article 29 which provides that no citizen shall be denied admission into any educational institution which is maintained by the State or receives aid out of State funds, on grounds only of religion, race, caste, language or any of them. While this is so these two articles are not inter-linked nor does it permit of their being always read together."

Though it was observed that Article 30(1) is subject to 29(2), the question whether the preference to minority students is altogether excluded, was not considered.

111. One of the questions that arose in this case was as to whether the petitioner was a minority institution. In this case, it was also observed that the Hindus of Punjab were a religious minority in the State of Punjab and that, therefore, they were entitled to the protection of Article 30(1). Three of the provisions, which were sought to be challenged as being violative of Article 30, were Clauses 2(1), 17 and 18 of the statutes framed by the University under Section 19 of the University Act. Clause 2(1)(a) provided that, for seeking affiliation, the college was to have a governing body of not more than 20 persons approved by the Senate and including, amongst others, two representatives of the University and a member of the College. Clause 17 required the approval of the Vice-Chancellor for the staff initially appointed by the College. The said provision also provided that all subsequent changes in the staff were to be reported to the Vice-Chancellor for his/her approval. Clause 18 provided that non-government colleges were to comply with the requirements laid down in the ordiances governing the service and conduct of teachers in non-government colleges, as may be framed by the University. After referring to ***Kerala Education Bill, Sidhajbai Sabhai and Rev. Father W. Proost,*** this Court held that there was no justification for the provisions contained in Clause 2(1)(a) and Clause 17 of the statutes as they interfered with the rights of management of the minority educational institutions. P. Jaganmohan Reddy, J., observed that *"these provisions cannot, therefore, be made as conditions of affiliation, the non-compliance of which would involve dis-affiliation and consequently they will have to be struck down as offending Article 30(1)."*

112. Clause 18, however, was held not to suffer from the same vice as Clause 17 because the provision, insofar as it was applicable to the minority institutions, empowered the University to prescribe by-regulations governing the service and conduct of teachers, and that this was in the larger interest of the institutions, and in order to ensure their efficiency and excellence. In this connection, it was observed at page 709, that:-

> "Uniformity in the conditions of service and conduct of teachers in all non-Government Colleges would make for harmony and avoid frustration. Of course while the power to make ordiances in respect of the matters referred to is unexceptional the nature of the infringement of the right, if any, under Article 30(1) will depend on the actual purpose and import of the ordinance when made and the manner in which it is likely to affect the administration of the educational institution, about which it is not possible now to predicate."

113. In ***The Ahmedabad St. Xaviers College Society & Anr. Etc. Vs. State of Gujrat & Anr.*** [(1975) 1 SCR 173], this Court had to consider aa constitutional validity of certain provisions of the Gujarat University Act, 1949, insofar as they were made to apply to the minority Christian institution. The impugned provisions, *inter alia,* provided that the University may determine that all instructions, teaching and training in courses of studies, in respect of which the University was competent to hold examinations, would be conducted by the University and would be imparted by the teachers of the University. Another provision provided that new colleges that may seek affiliation, were to be the constituent colleges of the University. The Court considered the scope and ambit of the rights of the minorities, whether based on religion or language, to establish and administer

educational institutions of their choice under Article 30(1) of the Constitution. In dealing with this aspect, Ray, C.J., at page 192, while considering Articles 25 and 30, observed as follows:-

> "Every section of the public, the majority as well as minority has rights in respect of religion as contemplated in Articles 25 and 26 and rights in respect of language, script, culture as contemplated in Article 29. The whole object of conferring the right on minorities under Article 30 is to ensure that there will be equality between the majority and minority. If the minorities do not have such special protection they will be denied equality."

114. Elaborating on the meaning and intent of Article 30, the learned Chief Justice further observed as follows:-

> "The real reason embodied in Article 30(1) of the Constitution is the conscience of the nation that the minorities, religious as well as linguistic, are not prohibited from establishing and administering educational institutions of their choice for the purpose of giving their children the best general education to make them complete men and women of the country. The minorities are given this protection under Article 30 in order to preserve and strengthen the integrity and unity of the country. The sphere of general secular education is intended to develop the commonness of boys and girls of our country. This is in the true sprit of liberty, equality and fraternity through the medium of education. If religious or linguistic minorities are not given protection under Article 30 to establish and administer educational institutions of their choice, they will feel isolated and separate. General secular education will open doors of perception and act as the natural light of mind for our countrymen to live in the whole."

115. The Court then considered whether the religious and linguistic minorities, who have the right to establish and administer educational institutions of their choice, had a fundamental right to affiliation. Recognizing that the affiliation to a University consisted of two parts, the first part relating to syllabi, curricula, courses of instruction, the qualifications of teachers, library, laboratories, conditions regarding health and hygiene of students (aspects relating to establishment of educational institutions), and the second part consisting of terms and conditions regarding the management of institutions, it was held that with regard to affiliation, a minority institution must follow the statutory measures regulating educational standards and efficiency, prescribed courses of study, courses of instruction, the principles regarding the qualification of teachers, educational qualifications for entry of students into educational institutions, etc.

116. While considering the right of the religious and linguistic minorities to administer their educational institutions, it was observed by Ray, C.J., at page 194, as follows:-

> ".....The right to administer is said to consist of four principal matters. First is the right to choose its managing or governing body. It is said that the founders of the minority institution have faith and confidence in their own committee or body consisting of persons selected by them. Second is the right to choose its

teachers. It is said that minority institutions want teachers to have compatibility with the ideals, aims and aspirations of the institution. Third is the right not to be compelled to refuse admission to students. In other words, the minority institutions want to have the right to admit students of their choice subject to reasonable regulations about academic qualifications. Fourth is the right to use its properties and assets for the benefit of its own institution."

117. While considering this right to administer, it was held that the same was not an absolute right and that the right was not free from regulation. While referring to the observations of Das, C.J., in the ***Kerala Education Bill*** case, it was reiterated in the ***St.Xaviers College*** case that the right to administer was not a right to mal-administer. Elaborating the minority's right to administer at page 196, it was observed as follows:-

".....The minority institutions have the right to administer institutions. This right implies the obligation and duty of the minority institutions to render the very best to the students. In the right of administration, checks and balances in the shape of regulatory measures are required to ensure the appointment of good teachers and their conditions of service. The right to administer is to be tempered with regulatory measures to facilitate smooth administration. The best administration will reveal no trace or colour of minority. A minority institution should shine in exemplary eclecticism in the administration of the institution. The best compliment that can be paid to a minority institution is that it does not rest on or proclaim its minority character."

118. Ray, C.J., concluded by observing at page 200, as follows:-

"The ultimate goal of a minority institution too imparting general secular education is advancement of learning. This Court has consistently held that it is not only permissable but also desirable to regulate everything in educational and academic matters for achieving excellence and uniformity in standards of education.

In the field of administration it is not reasonable to claim that minority institutions will have complete autonomy. Checks on the administration may be necessary in order to ensure that the administration is efficient and sound and will serve the academic needs of the institution. The right of a minority to administer its educational institution involves, as part of it, a correlative duty of good administration."

119. In a concurrent judgment, while noting that "*clause (2) of Article 29 forbids the denial of admission to citizens into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of then*", Khanna, J. then examined Article 30, and observed at page 222, as follows:-

"Clause (1) of Article 30 gives right to all minorities, whether based on religion or language, to establish and administer educational institutions of their choice. Analyzing that clause it would follow that the right which has been conferred by the clause is on two types of minorities. Those minorities may be based either

on religion or on language. The right conferred upon the said minorities is to establish and administer educational institutions of their choice. The word "establish" indicates the right to bring into existence, while the right to administer an institution means the right to effectively manage and conduct the affairs of the institution. Administration colleges management of the affairs of the institution. The management must be free of control so that the founders or their nominees can mould the institution as they think fit and in accordance with their ideas of how the interest of the community in general and the institution in particular will be best served. The words "of their choice" qualify the educational institutions and show that the educational institutions established and administered by the minorities need not be of some particular class; the minorities have the right and freedom to establish and administer such educational institutions as they choose. Clause (2) of Article 30 prevents the State from making discrimination in the matter of grant of aid to any educational institution on the ground that the institution is under the management of a minority whether based on religion or language."

120. Explaining the rationale behind Article 30, it was observed at page 224, as follows:-

"The idea of giving some special rights to the minorities is not to have a kind of a privileged or pampered section of the population but to give to the minorities a sense of security and a feeling of confidence. The great leaders of India since time immemorial had preached the doctrine of tolerance and catholicity of outlook. Those noble ideas were enshrined in the Constitution. Special rights for minorities were designed not to create inequality. Their real effect was to bring about equality by ensuring the preservation of the minority institutions and by guaranteeing to the minorities autonomy in the matter of the administration of these institutions. The differential treatment for the minorities by giving them special rights is intended to bring about an equilibrium, so that the ideal of equality may not be reduced to a mere abstract idea but should become a living reality and result in true, genuine equality, an equality not merely in theory but also in fact."

121. While advocating that provisions of the Constitution should be construed according to the liberal, generous and sympathetic approach, and after considering the principles which could be discerned by him from the earlier decisions of this Court, Khanna, J., observed at page 234, as follows:-

".....The minorities are as much children of the soil as the majority and the approach has been to ensure that nothing should be done as might deprive the minorities of a sense of belonging, of a feeling of security, of a consciousness of equality and of the awareness that the conservation of their religion, culture, language and script as also the protection of their educational institutions is a fundamental right enshrined in the Constitution. The same generous, liberal

and sympathetic approach should weigh with the courts in construing Articles 29 and 30 as marked the deliberations of the Constitution - makers in drafting those articles and making them part of the fundamental rights. The safeguarding of the interest of the minorities amongst sections of population is as important as the protection of the interest amongst individuals of persons who are below the age of majority or are otherwise suffering from some kind of infirmity. The Constitution and the laws made by civilized nations, therefore, generally contain provisions for the protection of those interests. It can, indeed, be said to be an index of the level of civilization and catholicity of a nation as to how far their minorities feel secure and are not subject to any discrimination or suppression."

122. The learned judge then observed that the right of the minorities to administer educational institutions did not prevent the making of reasonable regulations in respect of these institutions. Recognizing that the right to administer educational institutions could not include the right to mal-administer, it was held that regulations could be lawfully imposed, for the receiving of grants and recognition, while permitting the institution to retain its character as a minority institution. The regulation "*must satisfy a dual test - the test of reasonableness, and the test that it is regulative of the educational character of the institution and is conductive to making the institution an effective vehicle of education for the minority community or other persons who resort to it.*" It was permissable for the authorities to prescribe regulations, which must be complied with, before a minority institution could seek or retain affiliation and recognition. But it was also stated that the regulations made by the authority should not impinge upon the minority character of the institution. Therefore, a balance has to be kept between the two objectives - that of ensuring the standard of excellence of the institution, and that of preserving the right of the minorities to establish and administer their educational institutions. Regulations that embraced and reconciled the two objectives could be considered to be reasonable. This, in our view, is the correct approach to the problem.

123. After referring to the earlier cases in relation to the appointment of teachers, it was noted by Khanna, J., that the conclusion which followed was that a law which interfered with a minority's choice of qualified teachers, or its disciplinary control over teachers and other members of the staff of the institution, was void, as it was violative of Article 30(1). While it was permissible for the state and its educational authorities to prescribe the qualifications of teachers, it was held that once the teachers possessing the requisite qualifications were selected by the minorities for their educational institutions, the state would have no right to veto the selection of those teachers. The selection and appointment of teachers for an educational institution was regarded as one of the essential ingredients under Article 30(1). The Court's attention was drawn to the fact that in the ***Kerala Education Bill*** case, this Court had opined that Clauses (11) and (12) made it obligatory for all aided schools to select teachers from a panel selected from each district by the Public Service Commission and that no teacher of an aided school could be dismissed, removed or reduced in rank without the previous sanction of the authorized officer. At page 245, Khanna, K., observed that in cases subsequent to the opinion in the ***Kerala Education Bill*** case, this Court had held similar provisions

as Clause (11) and Clause (12) to be violative of Article 30(1) of the minority institution. He then observed as follows:-

> ".....The opinion expressed by this Court in *Re Kerala Education Bill* (supra) was of an advisory character and though great weight should be attached to it because of its persuasive value, the said opinion cannot overide the opinion subsequently expressed by this Court in contested cases. It is the law declared by this Court in the subsequent contested cases which would have a binding effect. The words "as at present advised" as well as the preceding sentence indicate that the view expressed by this Court in *Re Kerala Education Bill* in this respect was hesitant and tentative and not a final view in the matter....."

124. In ***Lilly Kurian vs. Sr. Lewina and Ors.*** [(1979) 1 SCR 820], this Court struck down the power of the Vice-Chancellor to veto the decision of the management to impose a penalty on a teacher. It was held that the power of the Vice-Chancellor, while hearing an appeal against the imposition of the penalty, was uncanalized and unguided. In ***Christian Medical College Hospital Employees' Union & Anr. vs. Christian Medical College Vellore Association & Ors.*** [(1988) 1 SCR 546], this Court upheld the application of industrial law to minority colleges, and it was held that providing a remedy against unfaid dismissals would not infringe Article 30. In ***Gandhi Faizeam College Shahajhanpur vs. University of Agra and Another*** [(1975) 3 SCR 810], a law which sought to regulate the working of minority institutions by providing that a broad-based management committee could be re-constituted by including therein the Principal and the senior-most teacher, was valid and not violative of the right under Article 30(1) of the Constitution. In ***All Saints High School, Hyderabad Etc. Etc., vs. Government of A.P. & Ors. Etc.*** [(1980) 2 SCR 924], a regulation providing that no teacher would be dismissed, removed or reduced in rank, or terminated otherwise except with the prior approval of the competent authority, was held to be invalid, as it sought to confer an unqualified power upon the competent authority. In ***Frank Anthony Public School Employees Association vs. Union of India & Ors.*** [(1987) 1 SCR 238], the regulation providing for prior approval for dismissal was held to be invalid, while the provision for an appeal against the order of dismissal by an employee to a Tribunal was upheld. The regulation requiring prior approval before suspending an employee was held to be valid, but the provision which exempted unaided minority schools from the regulation that equated the pay and other benefits of employees of recognized schools with those in schools run by the authority, was held to be invalid and violative of the equality clause. It was held by this Court that the regulations regarding pay and allowances for teachers and staff would not violate Article 30.

125. In the ***St. Stephen's College*** case, the right of minorities to administer educational institutions and the applicability of Article 29(2) to an institution to which Article 30(1) was applicable came up for consideration. St. Stephen's College claimed to be a minority institution, which was affiliated to Delhi University; the College had its own provisions with regard to the admission of students. This provision postulated that applications would be invited by the college by a particular date. The applications were processed and a cut-off percentage for each subject was determined by the Head of the respective Departments and a list of potentially suitable candidates was prepared on

the basis of 1:4 and 1:5 ratios for Arts and Science students respectively, and they were then called for an interview (i,e., for every available seat in the Arts Department, four candidates were called for interviews; similarly, for every available seat in the Science Department, five candidates were called for interviews). In respect of Christian students, a relaxation of upto 10% was given in determining the cut-off point. Thereafter, the interviews were conducted and admission was granted. The Delhi University, however, had issued a circular, which provided that admission should be granted to the various courses purely on the basis of merit, i,e., the percentage of marks secured by the students in the qualifying examination. The said circular did not postulate any interview. Thereafter, the admission policy of St. Stephen's College was challenged by a petition under Article 32. It was contended by the petitioners that the College was bound to follow the University policy, rules and regulations regarding admission, and further argued that it was not a minority institution, and in the alternative, it was not entitled to discriminate against students on the ground of religion, as the college was receiving grant-in-aid from the government, and that such discrimination was violative of Article 29(2). The College had also filed a writ petition in the Supreme Court taking the stand that it was a religious minority institution, and that the circular of the University regarding admission violated its fundamental right under Article 30. This Court held that St. Stephen's College was a minority institution. With regard to the second question as to whether the college was bound by the University circulars regarding admission, this Court, by a majority of 4-1, upheld the admission procedure used by the College, even though it was different from the one laid down by the University. In this context, the contention of the College was that it had been following its own admission programme for more than a hundred years and that it had built a tradition of excellence in a number of distinctive activities. The College challenged the University circular on the ground that it was not regulatory in natur, and that it violated its right under Article 30. Its submission was that if students were admitted purely on the basis of marks obtained by them in the qualifying examination, it would not be possible for any Christian student to gain admission. The college had also found that unless a concession was afforded, the Christian students could not be brought within the zone of consideration as they generally lacked merit when compared to the other applicants. This Court referred to the earlier decisions, and with regard to Article 30(1), observed at page 596, paragraph 54, as follows:-

> "The minorities whether based on religion or language have the right to establish and administer educational institutions of their choice. The administration of educational institutions of their choice under Article 30(1) means 'management of the affairs of the institution'. This management must be free from control so that the founder of their nominees can mould the institution as they think fit, and in accordance with their ideas of how the interests of the community in general and the institution in particular will be best served. But the standards of education are not a part of the management as such. The standard concerns the body politic and is governed by considerations of the advancement of the country and its people. Such regulations do not bear directly upon management although they may indirectly affect it. The State, therefore has the right to regulate the standard of education and allied matters. Minority institutions cannot be permitted to fall below the standards of excellence expected of educational

institutions. They cannot decline to follow the general pattern of education under the guise of exclusive right of management. While the management must be left to them, they may be compelled to keep in step with others....."

126. It was further noticed that the right under Article 30(1) had to be read subject to the power of the state to regulate education, educational standards and allied matters. In this connection, at pages 598-99, paragraph 59, it was observed as follows:-

"The need for a detailed study on this aspect is indeed not necessary. The right to minorities whether religious or linguistic, to administer educational institutions and the power of the State to regulate academic matters and management is now fairly well settled. The right to administer does not include the right to maladminister. The State being the controlling authority has right and duty to regulate all academic matters. Regulations which will serve the interests of students and teachers, and to preserve the uniformity in standards of education among the affiliated institutions could be made. The minority institutions cannot claim immunity against such general pattern an d standard or against general laws such as laws relating to law and order, health, hygiene, labor relations, social welfare, legislations, contracts, torts, etc. which are applicable to all communities. So long as the basic right of minorities to manage educational institution is not taken away, the State is competent to make regulatory legislation. Regulations, however, shall not have the effect of depriving the right of minorities to educate their children in their own institution. That is a privilege which is implied in the right conferred by Article 30(1)."

127. Dealing with the question of the selection of students, it was accepted that the right to select students for admission was a part of administration, and that this power could be regulated, but it was held that the regulation must be reasonable and should be conducive to the welfare of the minority institution or for the betterment of those who resort to it. Bearing this principle in mind, this Court took note of the fact that if the College was to admit students as per the circular issued by the University, it would have to deny admissions to the students belonging to the Christian community because of prevailing situation that even after the concession, only a small number of minority applicants would gain admission. It was the case of the College that the selection was made on the basis of the candidate's academic record, and his/her performance at the interview keeping in mind his/her all round competence, his/her capacity to benefit from attendance at the College, as well as his her potential to contribute to the life of the College. While observing that the oral interview as a supplementary test and not as the exclusive test for assessing the suitability of the candidates for college admission had been recognized by this Court, this Court observed that the admission programme of the college "*based on the test of promise and accomplishment of candidates seems to be better than the blind method of selection based on the marks secured in the qualifying examinations.*" The Court accordingly held that St. Stephen's College was not bound by the impugned circulars of the University. This Court then dealt with the question as to whether a preference in favour of, or a reservation of seats for candidated belonging to, its own community by the minority institutions would be invalid under Article 29(2) of the Constitution.

After referring to the Constituent Assembly Debates and the proceedings of the Draft Committee that led to the incorporation of Articles 29 and 30, this Court proceeded to examine the question of the true import and effect of Articles 29(2) and 30(1) of the Constitution. On behalf of the institutions, it was argued that a preference given to minority candidates in their own educational institutions, on the ground that those candidates belonged to that minority community, was not violative of Article 29(2), and that in the exercise of Article 30(1), the minorities were entitled to establish and administer educational institutions for the exclusive advantage of their own community's candidates. This contention was not accepted by this Court on two grounds. Firstly, it was held that institutional preference to minority candidates based on religion was apparently an institutional discrimination on the forbidden ground of religion - the Court stated that *"if an educational institution says yes to one candidate but says no to other candidate on the ground of religion, it amounts to discrimination on the ground of religion. The mandate of Article 29(2) is that there shall not be any such discrimination."* It further held that, as pointed out in the ***Kerala Education Bill*** case, the minorities could not establish educational institutions for the benefit of their own community alone. For if such was the aim, Article 30(1) would have been differently worded and it would have contained the words *"for their own community"*. In this regard, it would be useful to bear in mind that the Court at page 607, paragraph 81, noticed that:-

> "Even in practice, such claims are likely to be met with considerable hostility. It may not be conducive to have a relatively homogeneous society. It may lead to religious bigotry which is the bane of mankind. In the nation building with secular character sectarian school or colleges, segregated faculties or universities for imparting general secular education are undesirable and they may undermine secular democracy. They would be inconsistent with the central concept of secularism and equality embedded in the Constitution. Every educational institution irrespective of community to which it belongs is a 'melting pot' in our national life. The students and teachers are the critical ingredients. It is there they develop respect for, and tolerance of, the cultures and beliefs of others. It is essential therefore, that there should be proper mix of students of different communities in all educational institutions."

128. The Court then dealt with the contention on behalf of the University that the minority institutions receiving government aid were bound by the mandate of Article 29(2), and that they could not prefer candidates from their own community. The Court reffered to the decision in the case of ***Champakam Dorairajan*** (supra), but observed as follows:

> ".....the fact that Article 29(2) applied to minorities as well as non-minorities did not mean that it was intended to nullify the special right guaranteed to minorities in Article 30(1). Article 29(2) deals with non-discrimination and is available only to individuals. General equality by non-discrimination is not the only need of minorities. Minority rights under majority rule implies more than non-discrimination; indeed, it begins with non-discrimination. Protection of interests and institutions and the advancement of opportunity are just as

important. Differential treatment that distinguishes them from the majority is a must to preserve their basic characteristics."

129. Dealing with the submission that in a secular democracy the government could not be utilized to promote the interest of any particular community, and that the minority institution was not entitled to state aid as of right, this Court, at page 609, paragraph 87, held as follows:-

"It is quite true that there is no entitlement to State grant for minority educational institutions. There was only a stop-gap arrangement under Article 337 for the Anglo-Indian community to receive State grants. There is no similar provision for other minorities to get grant from the State. But under Article 30(2), the State is under an obligation to maintain equality of treatment in granting aid to educational institutions. Minority institutions are not to be treated differently while giving financial assistance. They are entitled to get the financial assistance much the same way as the institutions of the majority communities."

130. It was further held that the state could lay down reasonable conditions for obtaining grant-in-aid and for its proper utilization, but that the state had no power to compel minority institutions to give up their rights under Article 30(1). After referring to the ***Kerala Education Bill*** case and ***Sidhajbhai Sabhai's case, the Court observed at page 609, paragraph 88, as follows:-***

".....In the latter case this court observed at SCR pages 856-57 that the regulation which may lawfully be imposed as a condition of receiving grant must be directed in making the institution an effective minority educational institution. The regulation cannot change the character of the minority institution. Such regulations must satisfy a dual test; the test of reasonableness, and the test that it is regulative of the educational character of the institution. It must be conducive to making the institution and effective vehicle of education for the minority community or other persons who resort to it. It is thus evident that the rights under Article 30(1) remain unaffected even after securing financial assistance from the government."

131. After referring to the following observations in ***D.A.V. College*** case,

".....The right of a religious or linguistic minority to establish and administer educational institutions of its choice under Article 30(1) is subject to the regulatory power of the State for maintaining and functioning the excellence of its standards. This right is further subject to Article 29(2), which provides that no citizen shall be denied admission into any educational institution which is maintained by the State or receives aid out of State funds, on grounds only of religion, race, caste, language or any of them....."

the learned Judges remarked at page 610 (para 91) that in the said case, the Court was not deciding the question that had arisen before them.

132. According to the learned Judges, the question of the interplay of Article 29(2) with Article 30(1) had arisen in that case (***St. Stephen's*** case) for the first time, and had not been considered

by the Court earlier; they observed that "*we are on virgin soil, not on trodden ground.*" Dealing with the interplay of these two Articles, it was observed, at page 612, paragraph 96, as follows:-

> "The collective minority right is required to be made functional and is not to be reduced to useless lumber. A meaningful right must be shaped, moulded and created under Article 30(1), while at the same time affirming the right of individuals under Article 29(2). There is need to strike a balance between the two competing rights. It is necessary to mediate between Article 29(2) and Article 30(1), between letter and spirit of these articles, between traditions of the past and the convenience of the present, between society's need for stability and its need for change."

133. The two competing rights are the right of the citizen not to be denied admission granted under Article 29(2), and right of the religious or linguistic minority to administer and establish an institution of its choice granted under Article 30(1). While treating Article 29(2) as a facet of equality, the Court gave a contextual interpretation to Articles 29(2) and 30(1) while rejecting the extreme contentions on both sides, i.e., on behalf of the institutions that Article 29(2) did not prevent a minority institution to preferably admit only members belonging to the minority community, and the contention on behalf of the State that Article 29(2) prohibited any preference in favour of a minority community for whose benefit the institution was established. The Court concluded, at pages 613-14, para 102, as follows:-

> "In the light of all these principles and factors, and in view of the importance which the Constitution attaches to protective measures to minorities under Article 30(1), the minority aided educational institutions are entitled to prefer their community candidates to maintain the minority character of the institutions subject of course to conformity with the University standard. The State may regulate the intake in this category with due regard to the need of the community in the area which the institution is intended to serve. But in no case such intake shall exceed 50 per cent of the annual admission. The minority institutions shall make available at least 50 per cent of the annual admission to members of communities other than the minority community. The admission of other community candidates shall be done purely on the basis of merit."

134. If we keep these basic features, as highlighted in ***St.Stephen's*** case, in view, then the real purposes underlying Articles 29(2) and 30 can be better appreciated.

135. We agree with the contention of the learned Solicitor General that the Constitution in Part III does not contain or give any absolute right. All rights conferred in Part III of the Constitution are subject to at least other provisions of the said Part. It is difficult to comprehend that the framers of the Constitution would have given such an absolute right to the religious or linguistic minorities, which would enable them to establish and administer educational institutions in a manner so as to be in conflict with the other Parts of the Constitution. We find it difficult to accept that in the establishment and administration of educational institutions by the religious and linguistic minorities, no law of the land, even the Constitution, is to apply to them.

136. Decisions of this Court have held that the right to administer does not include the right to mal-administer. It has also been held that the right to administer is not absolute, but must be subject to reasonable regulations for the benefit of the institutions as the vehicle of education, consistent with national interest. General laws of the land applicable to all persons have been held to be applicable to the minority institutions also - for example, laws relating to taxation, sanitation, social welfare, economic regulation, public order and morality.

137. It follows from the aforesaid decisions that even though the words of Article 30(1) are unqualified, this Court has held that at least certain other laws of the land pertaining to health, morality and standards of education apply. The right under Article 30(1) has, therefore, not been held to be absolute or above other provisions of the law, and we reiterate the same. By the same analogy, there is no reason why regulations or conditions concerning, generally, the welfare of students and teachers should not be made applicable in order to provide a proper academic atmosphere, as such provisions do not in any way interfere with the right of administration or management under Article 30(1).

138. As we look at it, Article 30(1) is a sort of guarantee or assurance to the linguistic and religious minority institutions of their right to establish and administer educational institutions of their choice. Secularism and equality being two of the basic features of the Constitution, Article 30(1) ensures protection to the linguistic and religious minorities, thereby preserving the secularism of the country. Furthermore, the principles of equality must necessarily apply to the enjoyment of such rights. No law can be framed that will discriminate against such minorities with regard to the establishment and administration of educational institutions vis-a-vis other educational institutions. Any law or rule or regulation that would put the educational institutions run by the minorities at a disadvantage when compared to the institutions run by the others will have to be struck down. At the same time, there also cannot be any reverse discrimination. It was observed in ***St. Xaviers College*** case, at page 192, that "*the whole object of conferring the right on minorities under Article 30 is to ensure that there will be equality between the majority and the minority. If the minorities do not have such special protection, they will be dented equality.*" In other words, the essence of Article 30(1) is to ensure equal treatment between the majority and the minority institutions. No one type or category of institution should be disfavoured or, for that matter, receive more favourable treatment than another. Laws of land, including rules and regulations, must apply equally to the majority institutions as well as to the minority institutions. The minority institutions must be allowed to do what the non-minority institutions are permitted to do.

139. Like any other private unaided institutions, similar unaided educational institutions administered by linguistic or religious minorities are assured maximum autonomy in relation thereto; e.g., method of recruitment of teachers, charging of fees and admission of students. They will have to comply with the conditions of recognition, which cannot be such as to whittle down the right under Article 30.

140. We have now to address the question of whether Article 30 gives a right to ask for a grant or aid from the state, and secondly, if it does get aid, to examine to what extent its autonomy in

administration, specifically in the matter of admission to the educational institution established by the community, can be curtailed or regulated.

141. The grant of aid is not a constitutional imperative. Article 337 only gives the right to assistance by way of grant to the Anglo-Indian community for a specified period of time. If no aid is granted to anyone, Article 30(1) would not justify a demand for aid, and it cannot be said that the absence of aid makes the right under Article 30(1) illusory. The founding fathers have not incorporated the right to grants in Article 30, whereas they have done so under Article 337; what, then, is the meaning, scope and effect of Article 30(2)? Article 30(2) only means what it states, viz., that a minority institution shall not be discriminated against when aid to educational institutions is granted. In other words the state cannot, when it chooses to grant aid to educational institutions, deny aid to a religious or linguistic minority institution only on the ground that the management of that institutionis with the minority. We would, however, like to clarify that if an abject surrender of the right to management is made a condition of aid, the denial of aid would be violative of Article 30(2). However, conditions of aid that do not involve a surrender of the substantial right of management would not be inconsistent with constitutional guarantees, even if they indirectly impinge upon some facet of administration. If, however, aid were denied on the ground that the educational institution is under the management of a minority, then such a denial would be completely invalid.

142. The implication of Article 30(2) is also that it recognizes that the minority nature of the institution should continue, notwithstanding the grant of aid. In other words, when a grant is given to all institutions for imparting secular education, a minority institution is also entitled to receive it, subject to the fulfillment of the requisite criteria, and the state gives the grant knowing that a linguistic or minority educational institution will also receive the same. Of course, the state cannot be compelled to grant aid, but the receipt of aid cannot be a reason for altering the nature or character of the recipient educational institution.

143. This means that the right under Article 30(1) implies that any grant that is given by the state to the minority institution cannot have such conditions attached to it, which will in any way dilute or abridge the rights of the minority institution to establish and administer that institution. The conditions that can normally be permitted to be imposed, on the educational institutions receiving the grant, must be related to the proper utilization of the grant and fulfillment of the objectives of the grant. Any such similir conditions so laid, such as a proper audit with regard to the utilization of the funds and the manner in which the funds are to be utilized, will be applicable and would not dilute the minority status of the educational institutions. Such conditions would be valid if they are also imposed on other educational institutions receiving the grant.

144. It cannot be argued that no conditions can be imposed while giving aid to a minority institution. Whether it is an institution run by the majority or the minority, all conditions that have relevance to the proper utilization of the grant-in-aid by an educational institution can be imposed. All that Article 30(2) states is that on the ground that an institution is under the management of a minority, whether based on religion or language, grant of aid to that educational institution cannot be discriminated against, if other educational institutions are entitled to receive aid. The conditions for grant or non-grant of aid to educational institutions have to be uniformly applied, whether it is a

majority-run institution or a minority-run institution. As in the case of a majority-run institution, the moment a minority institution obtains a grant of aid, Article 28 of the Constitution comes into play. When an educational institution is maintained out of State funds, no religious instruction can be provided therein. Article 28(1) does not state that it applies only to educational institutions that are not established or maintained by religious or linguistic minorities. Furthermore, upon the receipt of aid, the provisions of Article 28(3) would apply to all educational institutions whether run by the minorities or the non-minorities. Article 28(3) is the right of a person studying in a state recognized institution or in an educational institution receiving aid from state funds, not to take part in any religious instruction, if imparted by such institution, without his/her consent (or his/her guardian's consent if such a person is a minor). Just as Article 28(1) and (3) become applicable the moment any educational institution takes aid, likewise, Article 29(2) would also be attracted and become applicable to an educational institution maintained by the state or receiving aid out of state funds. It was strenuously contended that the right to give admission is one of the essential ingredients of the right to administer conferred on the religious or linguistic minority, and that this right should not be curtailed in any manner. It is difficult to accept this contention. If Article 28(1) and (3) apply to a minority institution that receives aid out of state funds, there is nothing in the language of Article 30 that would make the provisions of Article 29(2) inapplicable. Like Article 28(1) and Article 28(3), Article 29(2) refers to "*any educational institution maintained by the State or receiving aid out of State funds*". A minority institution would fall within the ambit of Article 29(2) in the same manner in which Article 28(1) and Article 28(3) would be applicable to an aided minority institution. It is true that one of the rights to administer an educational institution is to grant admission to the students. As long as an educational institution, whether belonging to the minority or the majority community, does not receive aid, it would, in our opinion, be its right and discretion to grant admission to such students as it chooses or selects subject to what has been clarified before. Out of the various rights that the minority institution has in the administration of the institution. Article 29(2) curtails the right to grant admission to a certain extent. By virtue of Article 29(2), no citizen can be denied admission by an aided minority institution on the grounds only of religion, race, caste, language or any of them. It is no doubt true that Article 29(2) does curtail one of the powers of the minority institution, but on receiving aid, some of the rights that an unaided minority institution has, are also curtailed by Article 28(1) and 28(3). A minority educational institution has a right to impart religious instruction - this right is taken away by Article 28(1), if that minority institution is maintained wholly out of state funds. Similarly on receiving aid out of state funds or on being recognized by the state, the absolute right of a minority institution requiring a student to attend religious instruction is curtailed by Article 28(3). If the curtailment of the right to administer a minority institution on receiving aid or being wholly maintained out of state funds as provided by Article 28 is valid, there is no reason why Article 29(2) should not be held to be applicable. There is nothing in the language of Article 28(1) and (3), Article 29(2) and Article 30 to suggest that, on receiving aid, Article 28(1) and (3) will apply, but Article 29(2) will not. Therefore, the contention that the institutions covered by Article 30 are outside the injunction of Article 29(2) cannot be accepted.

145. What is the true scope and effect of Article 29(2)? Article 29(2) is capable of two interpretations - one interpretation, which is put forth by the Solicitor General and the other counsel for the different States, is that a minority institution receiving aid cannot deny admission to any citizen on the grounds of religion, race, caste, language or any of them. In other words, the minority institution, once it takes any aid, cannot make any reservation for its own community or show a preference at the time of admission, i.e., if the educational institution was a private unaided minority institution, it is free to admit all students of its own community, but once aid is received, Article 29(2) makes it obligatory on the institution not to deny admission to a citizen just because he does not belong to the minority community that has established the institution.

146. The other interpretation that is put forth is that Article 29(2) is a protection against discrimination on the ground of religion, race, caste or language, and does not in any way come into play where the minority institution prefers students of its choice. To put it differently, denying admission, even though seats are available, on the ground of the applicant's religion, race, caste or language, is prohibited, but preferring students of minority groups does not violate Article 29(2).

147. It is relevant to note that though Article 29 carries the head note "Protection of interests of minorities" it does not use the expression "minorities" in its text. The original proposal of the Advisory Committee in the Constituent Assembly recommended the following:-

> "(1) Minorities in every unit shall be protected in respect of their language, script and culture and no laws or regulations may be enacted that may operate oppressively or prejudicially in this respect." [B. Siva Rao, "Select Documents" (1957) Vol.2 page 281]
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> But after the clause was considered by the Drafting Committee on 1st November, 1947, it emerged with substitute of 'section of citizens'. [B. Siva Rao, Select Documents (1957) Vol.3, pages 525-26. Clause 23, Draft Constitution]. It was explained that the intention had always been to use 'minority' in a wide sense, so as to include (for example) Maharashtrians who settled in Bengal. (7 C.A.D. pages 922-23)"

148. Both Articles 29 and 30 form a part of the fundamental rights Chapter in Part III of the Constitution. Article 30 is confined to minorities, be it religious or linguistic, and unlike Article 29(1), the right available under the said Article cannot be availed by any section of citizens. The main distinction between Article 29(1) and Article 30(1) is that in the former, the right is confined to conservation of language, script or culture. As was observed in the ***Father W. Proost*** case, the right given by Article 29(1) is fortified by Article 30(1), insofar as minorities are concerned. In the ***St. Xaviers College*** case, it was held that the right to establish an educational institution is not confined to conservation of language, script or culture. When constitutional provisions are interpreted, it has to be borne in mind that the interpretation should be such as to further the object of their incorporation. They cannot be read in isolation and have to be read harmoniously to provide meaning and purpose. They cannot be interpreted in a manner that renders another provision redundant. If necessary, a purposive and harmonious interpretation should be given.

149. Although the right to administer includes within it a right to grant admission to students of their choice under Article 30(1), when such a minority institution is granted the facility of receiving grant-in-aid, Article 29(2) would apply, and necessarily, therefore, one of the rights of administration of the minorities would be eroded to some extent. Article 30(2) is an injunction against the state not to discriminate against the minority educational institution and prevent it from receiving aid on the ground that the institution is under the management of a minority. While, therefore, a minority educational institution receiving grant-in-aid would not be completely outside the discipline of Article 29(2) of the Constitution, by no stretch of imagination can the rights guaranteed under Article 30(1) be annihilated. It is in this context that some interplay between Article 29(2) and Article 30(1) is required. As observed quite aptly in ***St.Stephen's*** case "*the fact that Article 29(2) applies to minorities as well as non-minorities does not mean that it was intended to nullify the special right guaranteed to minorities in Article 30(1).*" The word "only" used in Article 29(2) is of considerable significance and has been used for some avowed purpose. Denying admission to non-minorities for the purpose of accommodating minority students to a reasonable extent will not be only on grounds of religion etc., but is primarily meant to preserve the minority character of the institution and to effectuate the guarantee under Article 30(1). The best possible way is to hold that as long as the minority educational institution permits admission of citizens belonging to the non-minority class to a reasonable extent based upon merit, it will not be an infraction of Article 29(2), even though the institution admits students of the minority group of its own choice for whom the institution was meant. What would be a reasonable extent would depend upon variable factors, and it may not be advisable to fix any specific percentage. The situation would vary according to the type of the institution and the nature of education that is being imparted in the institution. Usually, at the school level, although it may be possible to fill up all the seats with students of the minority group, at the higher level, either in colleges or in technical institutions, it may not be possible to fill up all the seats with the students of the minority group. However, even if it is possible to fill up all the seats with students of the minority group, the moment the institution is granted aid, the institution will have to admit students of the non-minority group to a reasonable extent, whereby the character of the institution is not annihilated, and at the same time, the rights of the citizen engrafted under Article 29(2) are not subverted. It is for this reason that a variable percentage of admission of minority students depending on the type of institution and education is desirable, and indeed, necessary, to promote the constitutional guarantees enshrined in both Article 29(2) and Article 30.

150. At this stage, it will be appropriate to refer to the following observations of B.P. Jeevan Reddy, J., in ***Indra Sawhney vs. Union of India and Others*** [1992 Supp. (3) SCC 215] at page 657, paragraph 683, as follows:-

> "Before we proceed to deal with the question, we may be permitted to make a few observations: The questions arising herein are not only of great moment and consequence, they are also extremely delicate and sensitive. They represent complex problems of Indian society, wrapped and presented to us as constitutional and legal questions. On some of these questions, the decisions of this Court have not been uniform. They speak with more than one voice. Several opposing points of view have been pressed upon us with equal force

and passion and quite often with great emotion. We recognize that these viewpoints are held genuinely by the respective exponents. Each of them feels his own point of view is the only right one. We cannot, however, agree with all of them. We have to find - and we have tried our best to find - answers which according to us are the right ones constitutionally and legally. Though, we are sitting in a larger Bench, we have kept in mind the relevance and significance of the principle of *stare decisis*. We are conscious of the fact that in law certainty, consistency and continuity are highly desirable features. Where a decision has stood the test of time and has never been doubted, we have respected - unless, of course, there are compelling and strong reasons to depart from it. Where, however, such uniformity is not found, we have tried to answer the question on principle keeping in mind the scheme and goal of our Constitution and the material placed before us."

151. The right of the aided minority institution to preferably admit students of its community, when Article 29(2) was applicable, has been clarified by this Court over a decade ago in the ***St.Stephen's Collee*** case. While upholding the procedure for admitting students, this Court also held that aided minority educational institutions were entitled to preferably admit their community candidates so as to maintain the minority character of the institution, and that the state may regulate the intake in this category with due regard to the area that the institution was intended to serve, but that this intake should not be more than 50% in any case. Thus, ***St. Stephen's*** endeavoured to strike a balance between the two Articles. Though we accept the ratio of ***St. Stephen's,*** which has held the field for over a decade, we have compelling reservations in accepting the rigid percentage stipulated therein. As Article 29 and Article 30 apply not only to institutions of higher education but also to schools, a ceiling of 50% would not be proper. It will be more appropriate that, depending upon the level of the institution, whether it be a primary or secondary or high school or a college, professional or otherwise, and on the population and educational needs of the area in which the institution is to be located, the state properly balances the interests of all by providing for such a percentage of students of the minority community to be admitted, so as to adequately serve the interest of the community for which the institution was established.

152. At the same time, the admissions to aided institutions, whether awarded to minority or non-minority students, cannot be at the absolute sweet will and pleasure of the management of minority educational institutions. As the regulations to promote academic excellence and standards do not encroach upon the guaranteed rights under Article 30, the aided minority educational institutions can be required to observe *inter se* merit amongst the eligible minority applicants and passage of common entrance test by the candidates, where there is one, with regard to admissions in professional and non-professional colleges. If there is no such test, a rational method of assessing comparative merit has to be evolved. As regards the non-minority segment, admission may be on the basis of the common entrance test and counselling by the state agency. In the courses for which such a test and counselling by a state agency. In the courses for which such a test and counselling are not in vogue, admission can be on the basis of relevant criteria for the determination

of merit. It would be open to the state authorities to insist on allocating a certain percentage of seats to those belonging to weaker sections of society, from amongst the non-minority seats.

153. We would, however, like to clarify one important aspect at this stage. The aided linguistic minority educational institution is given the right to admit students belonging to the linguistic minority to a reasonable extent only to ensure that its imnority character is preserved and that the objective of establishing the institution is not defeated. If so, such an institution is under an obligation to admit the bulk of the students fitting into the description of the minority community. Therefore, the students of that group residing in the state in which the institution is located have to be necessarily admitted in a large measure because they constitute the linguistic minority group as far as that state is concerned. In other words, the predominance of linguistic students hailing from the state in which the minority educational institution is established should be present. The management bodies of such institutions cannot resort to the device of admitting the linguistic students of the adjoining state in which they are in a majority, under the facade of the protection given under Article 30(1). If not, the very objective of conferring the preferential right of admission by harmoniously constructing Articles 30(1) and 29(2), which we have done above, may be distorted.

154. We are rightly proud of being the largest democracy in the world. The essential ingredient of democracy is the will and the right of the people to elect their representatives from amongst whom a government is formed.

155. It will be wrong to persume that the government or the legislature will act against the Constitution or contrary to the public or national interest at all times. Viewing every action of the government with skepticism, and with the belief that it must be invalid unless proved otherwise, goes against the democratic form of government. It is no doubt true that the Court has the power and the function to see that no one including the government acts contrary to the law, but the cardinal principle of our jurisprudence is that it is for the person who alleges that the law has been violated to prove it to be so. In such an event, the action of the government or the authority may have to be carefully examined, but it is improper to proceed on the assumption that, merely because an allegation is made, the action impugned or taken must be bad in law. Such being the position, when the government frames rules and regulations or lays down norms, especially with regard to education, one must assume that unless shown otherwise, the action taken is in accordance with law. Therefore, it will not be in order to so interpret a Constitution, and Articles 29 and 30 in particular, on the presumption that the state will normally not act in the interest of the general public or in the interests of concerned sections of the society.

CONCLUSION

Eqality and Secularism

156. Our country is often depicted as a person in the form of ***"Bharat Mata - Mother India".*** The people of India are regarded as her children with their welfare being in her heart. Like any loving mother, the welfare of the family is of paramount importance for her.

157. For a healthy family, it is important that each member is strong and healthy. But then, all members do not have the same constitution, whether physical and/or mental. For harmonious and

healthy growth, it is but natural for the parents, and the mother in particular, to give more attention and food to the weaker child so as to help him/her become stronger. Giving extra food and attention and ensuring private tuition to help in his/her studies will, in a sense, amount to giving the weaker child preferential treatment. Just as lending physical support to the aged and the infirm, or providing a special diet, cannot be regarded as unfair or unjust, similarly, conferring certain rights on a special class, for good reasons, cannot be considered inequitable. All the people of India are not alike, and that is why preferential treatment to a special section of the society is not frowned upon. Article 30 is a special right conferred on the religious and linguistic minorities because of their numerical handicap and to instill in them a sense of security and confidence, even though the minorities cannot be *per se* regarded as weaker sections of underprivileged segments of the society.

158. The one billion population of India consists of six main ethnic groups and fifty-two major tribes; six major religions and 6,400 castes and sub-castes; eithteen major languages and 1,600 minor languages and dialects. The essence of secularism in India can best be depicted if a relief map of India is made in mosaic, where the aforesaid one billion people are the small pieces of marble that go into the making of a map. Each person, whatever his/her language, caste, religion has his/her individual identity, which has to be preserved, so that when pieced together it goes to form a depiction with the different geographical features of India. These small pieces of marble, in the form of human beings, which may individually be dissimilar to each other, when placed together in a systematic manner, produce the beautiful map of India. Each piece, like a citizen of India, plays an important part in making of the whole. The variations of the colours as well as different shades of the same colour in a map is the result of these small pieces of different shades and colours of marble, but even when one small piece of marble is removed, the whole map of India would be scarred, and the beauty would be lost.

159. Each of the people of India has an important place in the formation of the nation. Each piece has to retain its own colour. By itself, it may be an insignificant stone, but when placed in a proper manner, goes into the making of a full picture of India in all its different colours and hues.

160. A citizen of India stands in a similar position. The Constitution recognizes the differences among the people of India, but it gives equal importance to each of them, their differences notwithstanding, for only then can there be a unified secular nation. Recognizing the need for the preservation and retention of different pieces that go into the making of a whole nation, the Constitution, while maintaining, *inter alia,* the basic principle of equality, contains adequate provisions that ensure the preservation of these different pieces.

161. The essence of secularism in India is the recognition and preservation of the different types of people, with diverse languages and different beliefs, and placing them together so as to form a whole and united India. Articles 29 and 30 do not more than seek to preserve the differences that exist, and at the same time, unite the people to form one strong nation.

ANSWERS TO ELEVEN QUESTIONS:

Q.1. What is the meaning and content of the expression "minorities" in Article 30 of the Constitution of India?

A. Linguistic and religious minorities are covered by the expression "minority" under Article 30 of the Constitution. Since reorganization of the States in India has been on linguistic lines, therefore, for the purpose of determining the minority, the unit will be the State and not the whole of India. Thus, religious and linguistic minorities, who have been put at par in Article 30, have to be considered State-wise.

Q.2. What is meant by the expression "religion" in Article 30(1)? Can the followers of a sect or denomination of a particular religion claim protection under Article 30(1) on the basis that they constitute a minority in the State, even though the followers of that religion are in majority in that State?

A. This question need not be answered by this Bench; it will be dealt with by a regular Bench.

Q.3(a) What are the indicia for treating an educational institution as a minority educational institution? Would an institution be regarded as a minority educational institution because it was established by a person(s) belonging to a religious or linguistic minority or its being administered by a person(s) belonging to a religious or linguistic minority?

A. This question need not be answered by this Bench; it will be dealt with by a regular Bench.

Q.3(b) To what extent can professional education be treated as a matter coming under minorities rights under Article 30?

A. Article 30(1) gives religious and linguistic minorities the right to establish and administer educational institutions of their choice. The use of the words "of their choice" indicates that even professional educational institutions would be covered by Article 30.

Q.4. Whether admission of students to minority educational institution, whether aided or unaided, can be regulated by the State Government or by the University to which the institution is affiliated?

A. Admission of students to unaided minority educational institutions, viz., schools and undergraduate colleges where the scope for merit-based selection is practically nil, cannot be regulated by the concerned State or University, except for providing the qualifications and minimum conditions of eligibility in the interest of academic standards.

The right to admit students being an essential facet of the right to administer educational institutions of their choice, as contemplated under Article 30 of the Constitution, the state government or the university may not be entitled to interfere with that right, so long as the admission to the unaided educational institutions is on a transparent basis and the merit is adequately taken care of. The right to administer, not being absolute, there could be regulatory measures for ensuring educational standards and maintaining excellence thereof, and it is more so in the matter of admissions to professional institutions.

A minority institution does not cease to be so, the moment grant-in-aid is received by the institution. An aided minority educational institution, therefore, would be entitled to have the right of admission of students belonging to the minority group and at the same time, would be required to admit a reasonable extent of non-minority students, so that the

rights under Article 30(1) are not substantially impaired and further the citizens' rights under Article 29(2) are not infringed. What would be a reasonable extent, would vary from the types of institution, the courses of education for which admission is being sought and other factors like educational needs. The concerned State Government has to notify the percentage of the non-minority students to be admitted in the light of the above observations. Observations of *inter se* merit amongst the applicants belonging to the minority group could be ensured. 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. As regards non-minority students who are eligible to seek admission for the remaining seats, admission should normally be on the basis of the common entrance test held by the state agency followed by counselling wherever it exists.

Q.5(a) Whether the minority's rights to establish and administer educational institutions of their choice will include the procedure and method of admission and selection of students?

A. A minority institution may have its own procedure and method of admission as well as selection of students, but such a procedure must be fair and transparent, and the selection of students in professional and higher education colleges should be on the basis of merit. The procedure adopted or selection made should not tantamount to mal-administration. Even an unaided minority institution ought not to ignore the merit of the students for admission, while exercising its right to admit students to the colleges aforesaid, as in that event, the institution will fail to achieve excellence.

Q.5(b) Whether the minority institutions' right of admission of students and to lay down procedure and method of admission, if any, would be affected in any way be the receipt of State aid?

A. While giving aid to professional institutions, it would be permissable for the authority giving aid to prescribe by-rules or regulations, the conditions on the basis of which admission will be granted to different aided colleges by virtue of merit, coupled with the reservation policy of the state *qua* non-minority students. The merit may be determined either through a common entrance test conducted by the concerned University or the Government followed by counselling, or on the basis of an entrance test conducted by individual institutions - the method to be followed is for the university or the government to decide. The authority may also devise other means to ensure that admission is granted to an aided professional institution on the basis of merit. In the case of such institutions, it will be permissible for the government or the university to provide that consideration should be shown to the weaker sections of the society.

Q.5(c) Whether the statutory provisions which regulate the facets of administration like control over educational agencies, control over governing bodies, conditions of affiliation including recognition/withdrawal thereof, and appointment of staff, employees, teachers and Principals including their service conditions and regulations of fees, etc. would interfere with the right of administration of minorities?

A. So far as the statutory provisions regulating the facets of administration are concerned, in case of an unaided minority educational institution, the regulatory measure of control should be minimal and the conditions of recognition as well as the conditions of affiliation to an university or board have to be complied with, but in the matter of day-to-day management, like the appointment of staff, teaching and non-teaching, and administrative control over them, the management should have the freedom and there should not be any external controlling agency. However, a rational procedure for the selection of teaching staff and for taking disciplinary action has to be evolved by the management itself.

For redressing the grievances of employees of aided and unaided institutions who are subjected to punishment or termination from service, a mechanism will have to be evolved, and in our opinion, appropriate tribunals could be constituted, and till then, such tribunals could be presided over by a Judicial Officer of the rank of District Judge.

The State or other controlling authorities, however, can always prescribe the minimum qualification, experience and other conditions bearing on the merit of an individual for being appointed as a teacher or a principal of any educational institution.

Regulations can be framed governing service conditions for teaching and other staff for whom aid is provided by the State, without interfering with the overall administrative control of the management over the staff.

Fees to be charged by unaided institutions cannot be regulated but no institution should charge capitation fee.

Q.6(a) Where can a minority institution be operationally located? Where a religious or linguistic minority in State 'A' establishes an educational institution in the said State, can such educational institution grant preferential admission/reservations and other benefits to members of the religious/linguistic group from other States where they are non-minorities?

A. This question need not be answered by this Bench; it will be dealt with by a regular Bench.

Q.6(b) Whether it would be correct to say that only the members of that minority residing in State 'A' will be treated as the members of the minority vis-a-vis such institution?

A. This question need not be answered by this Bench, it will be dealt with by a regular Bench.

Q.7 Whether the member of a linguistic non-minority in one State can establish a trust/society in another State and claim minority status in the State?

A. This question need not be answered by this Bench; it will be dealt with by a regular Bench.

Q.8. Whether the ratio laid down by this Court in the St. Stephen's case (***St. Stephen's College vs. University of Delhi*** [(1992) 1 SCC 558] is correct? If no, what order?

A. The basic ratio laid down by this Court in the ***St. Stephen's College*** case is correct, as indicated in this judgment. However, rigid percentage cannot be stipulated. It has to be left to authorities to prescribe a reasonable percentage having regard to the type of institution, population and educational needs of minorities.

Q.9 Whether the decision of this Court in ***Unni Krishnan J.P. vs. State of A.P.*** [(1993) 1 SCC 645] (except where it holds that primary education is a fundamental right) and the scheme framed thereunder require reconsideration/modification and if yes, what?

A. The scheme framed by this Court in ***Unni Krishnan's*** case and the direction to impose the same, except where it holds that primary education is a fundamental right, is unconstitutional. However, the principle that there should not be capitation fee or profiteering is correct. Reasonable surplus to meet cost of expansion and augmentation of facilities does not, however, amount to profiteering.

Q.10 Whether the non-minorities have the right to establish and administer educational institution under Articles 21 and 29(1) read with Articles 14 and 15(1), in the same manner and to the same extent as minority institutions?

and

Q.11 What is the meaning of the expressions "Education" and "Educational Institutions" in various provisions of the Constitution? Is the right to establish and administer educational institutions guaranteed under the Constitution?

A. The expression "education" in the Articles of the Constitution means and includes education at all levels from the primary school level upto the post-graduate level. It includes professional education. The expression "educational institutions" means institutions that impart education, where "education" is as understood hereinabove.

The right to establish and administer educational institutions is guaranteed under the Constitution to all citizens under Articles 19(1)(g) and 26, and to minorities specifically under Article 30.

All citizens have a right to establish and administer educational institutions under Articles 19(1)(g) and 26, but this right is subject to the provisions of Articles 19(6) and 26(a). However, minority institutions will have a right to admit students belonging to the minority group, in the manner as discussed in this judgement.

Sd/-

.....C.J.I.

Sd/-

.....J.

[G.B. Pattanaik]

Sd/-

.....J.

[S. Rajendra Babu]

Sd/-

.....J.

[K.G. Balakrishnan]

Sd/-

.....J.

[P. Venkatarama Reddi]

Sd/-

.....J.

[Arijit Pasayat]

New Delhi,
October 31, 2002.

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. 317 OF 1995

T.M.A. PAI FOUNDATION & ORS. .. .. PETITIONER (S)

-VERSUS-

STATE OF KARNATAKA & ORS .. .. RESPONDENT (S)
(with other connected matters)

J U D G M E N T

V.N. KHARE, J.

It is interesting to note that Shri K.M. Munshi, one of the members of the Constituent Assembly while intervening in the debate in the Constituent Assembly with regard to the kind of religious education to be given in governmental aided institution stated thus:

> "if the proposed amendment is accepted, the matter has to be taken to Supreme Court and eleven worthy Judges have to decide whether the kind of education given is of a particular religion or in the nature of elementary philosophy of comparative religion. Then, after having decided that, the second point which the learned Judges will have to direct their attention to will be whether this elementary philosophy is calculated to broaden the minds of the pupils or to narrow their minds. Then they will have to decide upon the scope of every word, this being a justiciable right which has to be adjudicated upon by them. I have no doubt members of my profession will be very glad to throw considerable light on what is and is not a justiciable right of this nature (A Member: For a fee). Yes, for very good fee too." *(See - Constitutional Assembly Debates Official Report Reprinted by Lok Sabha Secretariat)*

It may be noted that at the time when the Constituent Assembly was framing the Constitution

of India the strength of Judges of Supreme Court was not contemplated as eleven Judges. It appears what Shri Munshi stated was prophetic or a mere co-incidence. Today eleven Judges of the Supreme Court have assembled to decide the question of rights of the minorities.

Question No. 1. What is the meaning and content of the expression of "minorities in Article 30 of the Constitution of India?

The first question that is required to be answered by this Bench is who is a minority. The expression "minority" has been derived from the Latin word "minor" and the suffix "ity" which means "small in number". According to Encyclopaedia Britannica 'minorities' means "groups held together by ties of common descent, language or religious faith and feeling different in these respects from the majority of the inhabitants of a given "political entity". J.A. Laponee in his book "The Protection to Minority" describes 'Minority' as a group of persons having different race, language or religion from that of majority of inhabitants. In the Year Book on Human Rights U.N. Publication 1950 ed. minority has been described as non-dominant groups having different religion or linguistic traditions than the majority population.

The expression minority has not been defined in the Constitution. As a matter of fact when Constitution was being drafted Shri T.T. Krishanamachari one of the members of the Constituent Assembly proposed an amendment which runs as under:

> "That in Part XVI of the Constitution, for the word "minorities" where it occurs, the word "certain classes"be substituted".

We find that expression 'minorities' has been employed only at four places in the Constitution of India. Head note of Article 29 uses the word minorities. Then again the expressions Minorities or minority have been employed in head note of Article 30 and sub clauses (1) and (2) of Article 30. However, omission to define minorities in the Constitution does not mean that the employment of words 'minorities' or 'minority' in Article 30 is of less significance. At this stage it may be noted that the expression 'minorities' has been used in Article 30 in two senses - one based on religion and other on basis of language. However prior to coming into force of the Constitution the expression minority was understood in terms of a class based on religion having different electorates. When India attained freedom, the framers of the Constitution threw away the idea of having seperate electorates based on religion and decided to have a system of joint electorates so that every candidate in an election would have to seek support of all sections of the constituency. In turn special safeguards were provided to minorities and they were made part of Chapter III of the Constitution with a view to install a sense of confidence and security to the minorities.

But the question arises what is the test to determine minority status based on religion or language of a group of persons residing in a State or Union Territory. Whether minority status of a given group of persons 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. When the Constitution of India was being framed it was decided that India would be Union of States and Constitution to be adopted would be of federal character. India is a country where many ethnic or religious and multi-language people reside. Shri K.M. Munshi one of the members of Constituent Assembly in

his Note and Draft Article on (Right to Religion and Cultural Freedom) referred to minorities as national minorities. The said draft Article VI(3) runs as under:

> "(3) Citizens belonging to national minorities in a State whether based on religion or language have equal rights with other citizens in forming, controlling and administering at their own expense; charitable, religious and social institutions, schools and other educational establishments with the free use of their language and practice of their religions."

Dr. B.R. Ambedkar while intervening in debate in regard to amendment to draft Article 23 which related to the rights of religious and linguistic minorities stated that "the term 'minority' was used therein not in the technical sense of the word minority as we have been accustomed to use it for purposes of certain political safeguards, such as representation in the legislature, representation in the services and so on". According to him, the word minority is used not merely to indicate, the minority in technical sense of the word, it is also used to cover minorities which are not minorities in the technical sense but which are nonetheless minorities in the cultural and linguistic sense. Dr. Ambedkar cited following example which runs as under:

> "For instance, for the purposes of this Article 23, if a certain number of people from Madras came and settled in Bombay for certain purposes, they would be, although not a minority in the technical sense, cultural minorities. Similarly, if a certain number of Maharashtrians went from Maharashtra and settled in Bengal, although they may not be minorities in technical true sense, they would be cultural and linguistic minorities in Bengal.
>
> The Article intends to give protection in the matter of culture, language and script not only to a minority technically, but also to a minority in the wider sense of the term as I have explained just now. That is the reason why we dropped the word minority because we felt that the word might be interpreted in the narrow sense of the term when the intention of this House, when it passed article 18, was to use the word "minority" in a much wider sense, so as to give cultural protection to those who were technically not minorities but minorities nonetheless." ***(See Constitutional Assembly Debates Official Report reprinted by Lok Sabha Secretariat)***

The draft article and the Constituent Assembly Debates in unambiguous terms show that minority status of a group of persons has to be determined on the basis of population of a State or Union Territory.

Further a perusal of Articles 350A and 350B which were inserted by the Constitution (7th Amendment) Act 1956 indicates that the status of linguistic minorities has to be determined as state-wise linguistic minorities/groups. Thus the intention of the framers of the Constitution and subsequent amendments in the Constitution indicate that protection was conferred not only to religious minorities but also to linguistic minorities on basis of their number in a State (unit) where they intend to establish an institution of their choice. It was not contemplated that status of linguistic minority has to be judged on the basis of population of the entire country. If the status of linguistic minorities has to be determined on basis of the population of the country, the benefit of Article 30

has to be extended to those who are in majority in their own States.

The question who are minorities arose for the first time in the case of **Kerala Education Bill** case 1959 SCR P.995 at 1047-50. In the said decision it was contended by the State of Kerala that in order to constitute a minority who may claim protection of Article 30(1) persons or group of persons must numerically be minority in the particular region in which the educational institution in question is or is intended to be situated. Further according to State of Kerala, Anglo-Indians or Christians or Muslims of that locality taken as a unit, will not be a minority within the meaning of the Article and will not, therefore, be entitled to establish and maintain educational institutions of their choice in that locality, but if some of the members belonging to the Anglo Indian or Christians community happen to reside in another ward of the same municipality and their number be less than that of the members of other communities residing there, then those numbers of Anglo-Indian or Christians community will be a minority within the meaning of Article 30 and will be entitled to establish and maintain educational institution of their choice in that locality. Repelling the argument this Court held thus:-

> "We need not however, on this occasion go further into the matter and enter upon a discussion and express a final opinion as to whether education being a State subject being item 11 of List II of the Seventh Schedule to the Constitution subject only to the provisions of entries 62, 63, 64 and 66 of List I and entry 25 of List III, the existence of a minority community should in all circumstances and for purposes of all laws of that State be determined on the basis of the population of the whole State or whether it should be determined on the State basis only when the validity of a law extending to the whole State is in question or whether it should be determined on the basis of the population of a particular locality when the law under attack applies only to that locality, for the Bill before us extends to the whole of the State of Kerala and consequently the minority must be determined by reference to the entire population of the State. By this test Christians, Muslims and Anglo-Indians will certainly be minorities in the State of Kerala."

In **A.M. Patroni vs. E.C. Kesavan** AIR 1965 Kerala, 75 it was held as this:

> "6. The contention of the petitioners is that they have an exclusive right to administer the institution under Art. 30(1) of the Constitution and that the order of the Director of Public Instruction constitutes violation of that right. Clause (1) of Art. 30 provides that all minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice; and clause (2) that the State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language. The word "minority" is not defined in the Constitution; and in the absence of any special definition we must hold that any community, religious and linguistic, which is numerically less than fifty per cent of the population of the State is entitled to the fundamental right guaranteed by the article."

The view that in a state where a group of persons having distinct language is numerically less than fifty per cent of population of that state are to be treated as linguistic minority was accepted by the Government of India and implemented while determining the minority status of persons or group of persons and the same is evident from the views expressed by Government of India before the Special Rapporteur of the U.N. Sub-Commission on Prevention of Discrimination

and Protection of Minorities, when he was collecting information relating to the study on the concept of Minority and cope of the ICCPR 1966.

The Special Rapporteur in his report "Study on the Rights of Persons Belonging to Ethnic Religious and Linguistic Minorities" published by the Centre for Human Rights, Geneva states on the interpretation of the term "Minority" as thus:

> "For the purposes of the study, an ethnic, religious or linguistic minority is a group numerically smaller than the rest of the population of the State to which it belongs and possessing cultural, physical or historical characteristics, a religion or a language different from those of the rest of the population"

In the said report, views of the Government of India which was based on decision of Kerala High Court in the case of **A.M. Paatroni** was referred to which runs as under:

> "(39) In India, the Kerala High Court, after observing that the Constitution granted specific rights to minorities, declared that "in the 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 rights guranteed by the Constitution".

However in the case of **D.A.V.College vs. State of Punjab** 1971 Suppl. S.C.R. p.688 at 697, an argument was raised that minority status of a person or group of persons either religious or linguistic is to be determined by taking into consideration the entire population of the country. While dealing with the said argument this Court held as follows:

> "Though, there was a faint attempt to canvas the position that religious or linguistic minorities should be minorities in relation to the entire population of the country, in our view they are to be determined only in relation to the particular legislation which is sought to be impugned, namely that if it is the State legislature these minorities have to be determined in relation to the population of the State."

It may be noted that in the case of **D.A.V.College** (supra), this Court was dealing with the State legislation and in that context observed that if it is the state legislation, minority status has to be determined in relation to the population of the State. However, curiously enough, there is no discussion that if the particular legislation sought to be impugned is a central legislation, minority status has to be tested in relation to the population of the whole of the country. In the absence of any such discussion it cannot be inferred that if there is a central legislation, the minority status of a group of persons has to be determined in relation to the entire population of the country.

In the year 1976 by Fourty-Second Amendment Act, the Entries 11 and 25 of List II of Seventh Schedule relating to Education and Vocational and Technical Training Labour respectively were transferred to the Concurrent List as Entry No.25. In the Constitution of India as enacted Entries 11 and 25 of List II were as under:

Entry 11

> "Education including Universities subject to the provisions of Entries 63, 64, 65 and 66 of List I and Entry 25 of List III".

Entry 25

"Vocational or Technical training of labour".

By the Constitution (42nd Amendment) Act, 1976 Entry 25 of List III was substituted by the following entry viz:

Entry 25

"Education including technical education, medical education and universities subject to the provisions of Entries 63, 64, 65 and 66 of List I; vocational and technical training of Labour".

And Entry 11 of List II was omitted.

On 6.2.1997 when these matters came up before a Bench of seven Judges of this court, the Bench passed an order which runs as under:

> "In view of the 42nd Amendment to the Constitution placing with effect from 3.1.1977 the subject "Education in Entry 25 List III of the 7th Schedule to the Constitution and the quoted decisions of the Larger Benches of this Court being of the pre amendment era, the answer to the brooding question, as to who in the context constitutes a minority, has become one of the utmost significance and therefore, it is appropriate that these matters are placed before a Bench of at least 11 Hon'ble Judges for determining the questions involved".

It is for the aforesaid reasons this question has been placed before this Bench.

In view of the referring order the question that arises for consideration is whether the transposition of the subject Education from List II to List III has brought change to the test for determining who are minorities for the purposes of Article 30 of the Constitution.

It may be remembered that various entries in three lists of the Seventh Schedule are not powers of legislation but field of legislation. These entries are mere legislative heads and democrate the area over which the appropriate legislatures are empowered to enact law. The power to legislate is given to the appropriate legislature by Article 246 and other articles. Article 245 provides that subject to the provisions of the Constitution, Parliament may make laws for the whole or any part of the territory of India and the legislature of a State may make laws for whole or any part of the State. Under Article 246 Parliament has exclusive power to make law with respect to any of the matters enumerated in List I in the Seventh Schedule. Further under clause (2) of Article 246 Parliament and subject to clause (1) the legislature of any State are empowered to make law with respect to any of the matters enumerated in List III Seventh Schedule and under clause (3) of Article 246, the legislature of any State is empowered to enact law with respect to any of the matters enumerated in List II in the Seventh Schedule subject to clauses (1) and (2). From the aforesaid provisions it is clear that it is Article 246 and other Articles which either empower Parliament or State Legislature to enact law and not the Entries finding place in three Lists of Seventh Schedule. Thus the function of entries in three lists of the Seventh Schedule is to demarcate the area over which the appropriate legislatures can enact laws but do not confer

power either on Parliament or State Legislatures to enact laws. It may be remembered, by transfer of Entries, the character of entries is not lost or destroyed. In this view of the matter by transfer of contents of entry 11 of List II to List III as entry 25 has not denuded the power of State Legislature to enact law on the subject 'Education' but has also conferred power on Parliament to enact law on the subject "Education". Article 30 confers fundamental right to linguistic and religious minorities to establish and administer educational institutions of their choice. The test who are linguistic or religious minorities within the meaning of Article 30 would be one and the same either in relation to a State legislation or Central legislation. There cannot be two tests one in relation to Central legislation and other in relation to State Legislation. Therefore, the meaning assigned to linguistic or religious minorities would not be different when the subject "Education" has been transferred to the Concurrent List from the State List. The test who are linguistic or religious minorities as settled in **Kerala Education Bill's case** continues to hold good even after the subject "Education" was transposed into Entry 25 List III of Seventh Schedule by the 42nd Amendment Act. If we give different meaning to the expression "minority" occurring in Article 30 in relation to a central legislation, the very purpose for which protection has been given to minority would disappear. The matter can be examined from another angle. It is not disputed that there can be only one test for determining minority status of either linguistic or religious minority. It is, therefore, not permissible to argue that the test to determine the status of linguistic minority would be different than the religious minorities. If it is not so, each linguistic State would claim protection of Article 30 in its own State in relation to a central legislation which was not the intention of framers of the Constitution nor the same is borne out from language of Article 30. I am, therefore, of the view that the test for determining who are the minority, either linguistic or religious, has to be determined independently of which is the law, Central or State.

In view of what has been stated above, my conclusion on the question who are minorities either religious or linguistic within the meaning of Article 30 is as follows:

> **The person or persons establishing an educational institution who belong to either religious or linguistic group who are less than fifty per cent of total population of the state in which educational institutional is established would be linguistic or religious minorities.**

Conflict between ARTICLE 29(2) AND ARTICLE 30(1) - whether Article 30(1) is subject to Article 29(2). What are the contents of Art. 30(1)?

The issue in hand is full of complexities and an answer is not simple. Under Article 30(1), linguistic or religious minorities' fundamental rights to establish and administer educational institution of their choice have been protected. Such institutions are of three categories. First category of institutions are the institutions which neither take government aid nor are recognised by the State or by the University. Second category of institutions are those which do not take financial assistance from the government but seek recognition either from the State or the University or bodies recognised by the government for that purpose and the third category of institutions which seek both government aid as well as recognition from the State or the University.

Here, I am concerned with the third category of minority institutions and my answer to the question is confined to the said category of minority educational institutions.

It is urged on behalf of the minority institutions that Article 30(1) confers an absolute right on linguistic or religious minorities to establish and administer educational institutions of their choice. According to them, the expression 'choice' indicates that one of the purposes of establishing educational institutions is to give secular education to the children of minority communities and, therefore, such institutions are not precluded from denying admission to members of non-minority communities on grounds only of religion, race, caste, language or any of them. In nutshell, the argument is that Article 30(1) is not subject to Article 29(2). Whereas, the argument of learned Solicitor General and other learned counsel is that any minority institution receiving government aid is bound by the mandate of Article 29(2) and such a minority institution cannot discriminate between the minority and majority while admitting students in such institutions. According to them, Article 30(1) does not confer an absolute right on the institutions set up by the linguistic or religious minorities receiving government aid and such institutions cannot extend preference to the members of their own community in the matter of admission of students in the institutions.

The question, therefore, arises whether minority institutions receiving government aid are subject to provisions of Article 29(2).

Learned counsel for the parties has pressed into service various rules of constructions for interpreting Article 29(2) and Article 30(1) in their own way. No doubt, various rules of construction laid down by the courts have been of considerable assistance as they are based on human experience. The precedents show that by taking assistance from rule of interpretations, the courts have solved many problems. We, therefore, propose to take assistance of judicial decisions as well as settled rules of interpretation while interpreting Articles 29(2) and 30(1) of the Constitution.

After the Constitution of India came into force, Articles 29 and 30 came up for interpretation before various High Courts and the Apex Court. There appears to be no unanimity amongst the judicial decisions rendered by Asiatic descent. One of the members of the Christian community sought admission in the school on the premise that his mother tongue was English. He was refused admission in view of the aforesaid Government Order, as the student was neither an Anglo-Indian whose mother tongue was English nor a citizen of non-Asiatic descent. This was challenged by means of a petition under Article 226 before the Bombay High Court and the Govt. order was struck down. On appeal to the Appex Court, this Court held thus:

> "Article 29(1) gives protection to any section of the citizens having a distinct language, script or culture by guaranteeing their right to conserve the same. Article 30(1) secures to all minorities whether based on religion or language, the right to establish and administer educational institutions of their choice. Now, suppose the State maintains an educational institution to help conserving the distint language, script or culture of a section of the citizens or makes grants-in-aid of an educational institution established by a minority community based on religion or language to conserve their distinct language, script or culture who can claim the protection of Article 29(2) in the matter of admission into any such institution.? Surely, the citizens of the very section whose language, script or culture is sought to be conserved by the institution or the citizen who belonged to the

minority group which has established and is administering the institution, do not need any protection against themselves and therefore, Article 29(2) is not designed for the protection of this section or this minority. Nor do we see any reason to limit article 29(2) to citizens belonging to a minority group other than the section or the minorities reffered to in article 29(1) or article 30(1), for the citizens, who do not belong to any minority group, may quite conceivably need this protection just as much as the citizens of such other minority groups. If it is urged that the citizens of the majority group are amply protected by article 15 and do not require the protection of article 29(2), then there are several obvious answers to that argument. The language of article 29(2) is wide and unqualified and may well cover all citizens whether they belong to the majority or minority group. Article 15 protects all citizens against the State whereas the protection of article 29(2) extents against the State or any body who denies the right conferred by it. Further article 15 protects all citizens against discrimination generally, but article 29(2) is a protection against a particular species of wrong namely denial of admission into educational institutions of the specified kind. In the next place article 15 is quite general and wide in its terms and applies to all citizens, whether they belong to the majority or minority groups, and gives protection to all the citizens against discrimination by the State on certain specific grounds. Article 29(2) confers a special right on citizens for admission into educational institutions maintained or aided by the State. To limit this right only to citizens belonging to minority groups will be to provide a double protection for such citizens and to hold that the citizens of the majority group have no special educational rights in the nature of a right to be admitted into an educational institution for the maintenance of which they make contributions by way of taxes. We see no cogent reason for such discrimination.

(emphasis supplied)

In **Re Kerala Education Bill, 1957** - 1959 SCR 995, it was held thus:

"Under cl. (1) of Article 29 any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own has the right to conserve the same. It is obvious that a minority community can effectively conserve its language, script or culture by and through educational institutions and, therefore, the right to establish and maintain educational institutions of its choice is a necessary concomitant to the right to conserve its distinctive language, script or culture and that is what is conferred on all minorities by Art. 30(1) which has hereinbefore been quoted in full. This right, however, is subject to cl. 2 of Art. 29 which provides that no citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them."

(emphasis supplied)

After holding that Article 30(1) is subject to clause (2) of Article 29, this Court further held thus:

"There is no such limitation in Art. 30(1) and to accept this limitation will necessarily involve the addition of the words "for their own community" in the Article which is ordinarily not permissible according to well established rules of interpretation. Nor is it reasonable to assume that the purpose of Art. 29(2) was to deprive minority educational institutions of the aid they receive from the State. To say that an institution which receives aid on account of its being a minority educational institution must not refuse to admit any member of any other community only on the grounds therein mentioned and then to say that as soon as such institution admits such an outsider it will cease to be a

minority institution is tantamount to saying that minority institutions will not, as minority institutions, be entitled to any aid. The real import of Art. 29(2) and Art. 30(1) seems to us to be that they clearly contemplate a minority institution with a sprinkling of outsiders admitted into it. By admitting a non-member into it the minority institution does not shed its character and cease to be a minority institution."

(emphasis supplied)

In **D.A.V. College etc. vs. Punjab State & Ors.** 1971 (suppl.) S.C.R. p.668 it was held thus:

"A reading of these two Articles together would lead us to conclude that a religious or linguistic minority has a right to establish and administer educational institutions of its choice for effectively conserving its distinctive language, script or culture, which right however is subject to the regulatory power of the State for maintaining and facilitating the excellence of its standards. This right is further subject to clause (2) of Article 29 which provides that no citizen shall be denied admission into any educational institution which is maintained by the State or receives aid out of State funds, on grounds only of religion, race, caste, language or any of them. While this is so these two articles are not inter-linked nor does it permit of their being always read together."

In **St. Stephen's College vs. University of Delhi** 1992 (1) SCC 558, Shetty J. speaking for the majority held that Article 29(2) applies to minority as well as non-minority institutions.

From the decisions referred to above, the principles that emerge are these:

(1) Article 29(2) confers right on the citizens for admission into educational institution maintained or aided by the State without discrimination. To limit this right only to citizens belonging to minority group will be to provide double protection for such citizens and to hold that citizens of the majority group have no special educational rights in the nature of a right to be admitted into an educational institution for maintenance of which they make contribution by way of taxes. There is no reason for such discrimination.

(2) Article 30(1) is subject to Article 29(2); and

(3) the real import of Articles 29(2) and 30(1) is that they clearly contemplate minority institutions with the sprinkling of the outsiders admitted into it and by admitting the non-minority into it, the minority institutions do not shed its character and cease to be minority institutions.

The first decision in the second category of cases is in **Fev. Father W. Proost & Ors. vs. The State of Bihar & Ors.** - 1969 (2) SCR 73. It was held therein that the right of minority to establish educational institutions of their choice under Article 30(1) is not so limited as not to admit members of other communities. Such minority institutions while admitting members from their own community are free to admit members of non-minority communities. The expression 'choice' includes to admit members from other communities. In the **State of Kerala etc. vs. Very Rev. Mother Provincial etc.** - 1971 (1) SCR 734, it was held that it is permissible that a minority

institution while admitting students from its community may also admit students from majority community. Admission os such non-minority students would bring income and the institution need not be turned away to enjoy the protection.

The legal principle that emerges from the aforesaid decisions is that a minority institution while admitting members from its own community is free to admit students from non-minority community also.

The first decision in the third category of cases is **Rev. Sidhajbhai Sabhai & Ors. vs. State of Bombay & Anr.** 1963 (3) SCR 837. In the said decision, although the question as to whether Article 30(1) is subject to Article 29(2) was not considered, yet it was held that under Article 30(1) fundamental right declared in terms absolute. It was also held that unlike fundamental freedoms guaranteed under Article 19 it is not subject to reasonable restrictions. It is intended to be a real right for the protection of minorities in the matter of setting up of educational institutions of their own choice. The right is intended to be effective and not to be whittled down by so-called regulatory measures conceived in the interest not of the minority educational institution, but of the public or the nation as a whole.

In **Rt. Rev. Magr. Mark Netto vs. Government of Kerala & Ors.** 1979 (1) SCR 609, a question arose whether Regional Deputy Director of Public Instructions can refuse permission to a minority institution to admit girl students. This Court while held that refusal to grant permission was violative of Article 30(1).

The legal principles that emerges from the aforesaid category of decisions are these:

(1) that article 30(1) is absolute in terms and the said right cannot be whittled by down regulatory measures conceived in the interest not of minority institutions but of public or the nation as a whole; and

(2) the power of refusal to admit a girl student in a boy's minority institution is violative of Article 30(1).

The fourth category of cases is the decision in the **State of Madras vs. Srimathi Champakam Dorairajan etc.** 1951 SCR 525 wherein it was held thus:

> "This Court in the context of communal reservation of seats in medical colleges run by the government was of the view that the intention of the Constitution was not to introduce communal consideration in matters of admission into any educational institution maintained by the State or receiving aid out of State funds. However, it may be noted that this case was in relation to an institution referred to in Article 30(1) but has been cited for the purpose that there cannot be communal reservation in the educational institution receiving aid out of State funds."
>
> (emphasis supplied)

From the aforesaid four categories of decisions, it appears that there is not a single decision of this Court where it has been held that Article 30(1) is not subject to Article 29(2). On the

contrary there are bulk of decisions of this Court holding that minority institution cannot refuse admission of members of non-minority community and Article 30(1) is subject to Article 29(2). If I go by precedent, it must be held that Article 30(1) is subject to Article 29(2). However, learned counsel for minority institutions strongly relied upon the decision in the case of **Rev. Sidhajbai** (supra) and argued that once Article 30(1) is fundamental right declared absolute in terms, it cannot be subjected to Article 29(2). Since this Bench is of eleven Judges and decisions of this Court holding that Article 30(1) is subject to Article 29(2) are by lesser number of Judges I shall examine the question independently.

One of the known methods to interpret a provision of an enactment or the Constitution is to look into the historical facts or any document preceding the legislation.

Earlier, to interpret a provision of the enactment or the Constitution on the basis of historical facts or any document preceding the legislation was very much frowned upon, but by passage of time, such injunction has been relaxed.

In **His Holiness Kesavananda Bharati Sripadagalvaru etc. vs. State of Kerala & Anr. Etc.** - 1973(4) SCC 225, it was held that the Constituent Assembly debates although not conclusive, yet the intention of framers of the Constitution in enacting provisions of the Constitution can throw light in ascertaining the intention behind such provision.

In **R.S. Nayak vs. A.R. Antulay** - AIR 1984 SC 684 at page 686, it was held thus:

> "Reports of the Committee which preceded the enactment of a legislation, reports of Joint Parliament Committee, report of a Commission set up for collecting information leading to the enactment are permissible external aids to construction. If the basic purpose underlying construction of legislation is to ascertain the real intention of the Parliament, why should the aids which Parliament availed of such as report of a Special Committee preceding the enactment, existing state of Law, the environment necessitating enactment of legislation, and the object sought to be achieved, be denied to Court whose function is primarily to give effect to the real intention of the Parliament in enacting the legislation. Such denial would deprive the Court of a substantial and illuminating aid to construction.
>
> The modern approach has to a considerable extent eroded the exclusionary rule even in England."

Thus, the accepted view appears to be that the report of the Constituent Assembly debates can legitimately be taken into consideration for construction of the provisions of the Act or the Constitution. In that view of the matter, it is necessary to look into the Constituent Assembly debates which led to enacting Articles 29 and 30 of the Constitution.

The genesis of the provisions of Articles 29 and 30 needs to be looked into in their two historical stages to focus them in their true prespective. The first stage relates to pre-partition deliberations in the Committees and Constituent Assembly and the second stage after the partition of the country. On 27th of February, 1947, several Committees were formed for the purpose of drafting Constitution of India and on the same day, the Advisory Committee appointed a Sub-Committee on minorities with a view to submit its report with regard to the rights of the minorities.

Before the Fundamental Rights Sub-Committee, Shri K.M. Munshi - one of its members wanted certain rights for minorities being incorporated in the fundamental rights. He was advised by the Fundamental Rights Committee that the said report regarding rights of minorities may be placed before the Minority Sub-Committee. On April 16, 1947, Shri K.M. Munshi circulated a letter to the members of the Sub-Committee on minorities recommending that certain fundamental rights of minorities be incorporated in the Constitution. The recommendations contained in the said letter run as under:

> "1. All citizens are entitled to the use of their mother tongue and the script thereof and to adopt, study or use any other language and script of his choice.
>
> 2. Citizens belonging to national minorities in a State whether based on religion or language have equal rights with other citizens in forming, controlling and administering at their own expense, charitable, religious and social institutions, schools and other educational establishments with the free use of their language and practice of their religion.
>
> (emphasis supplied)
>
> 3. Religious instruction shall not be compulsory for a member of a community which does not profess such religion.
>
> 4. It shall be the duty of every unit to provide in the public educational system in towns and districts in which a considerable proportion of citizens of other than the language of the unit are residents, adequate facilities for ensuring that in the primary schools the instruction shall be given to the children of such citizens through the medium of their own language.
>
> Nothing in this clause shall be deemed to prevent the unit from making the teaching of the national language in the variant and script of the choice of the pupil obligatory in the schools.
>
> 5. No legislation providing state aid for schools shall discriminate against schools under the management of minorities whether based on religion or language.
>
> 6. (a) Notwithstanding any custom or usage or prescription, all Hindus without any distinction of caste or denomination shall have the right of access to and worship in all public Hindu temples, choultries, *dharmasalas,* bathing ghats, and other religious places.
>
> (b) Rules of personal purity and conduct prescribed for admission to and worship in these religious places shall in no way discriminate against or impose any disability on any person on the ground that he belongs to impure or inferior caste or menial class."

studying their own language. The aforesaid recommendations were then placed before the Minority Sub-Committee. The Minority Sub-Committee submitted its report amongst other subjects on cultural, educational and fundamental rights of minorities which may be incorporated at the appropriate places in the Constitution of India. The recommendations of the said Sub-Committee were these:

> (i) All citizens are entitled to use their mother tongue and the script thereof, and to adopt, study or use any other language and script of their choice;
>
> (ii) Minorities in every unit shall be adequately protected in respect of their language and culture, and no government may enact any laws or regulations that may act

oppressively or prejudicially in this respect;

(iii) No minority whether of religion, community or language shall be deprived of its rights or discriminated against in regard to the admission into State educational institutions, nor shall any religious instruction be compulsorily imposed on them;

(iv) All minorities whether of religion, community or language shall be free in any unit to establish and administer educational institutions of their choice, and they shall be entitled to State aid in the same manner and measure as is given to similar State aided institutions;

(v) Notwithstanding any custom, law, decree or usage, presumption or terms of dedication, no Hindu on grounds of caste, birth or denomination shall be precluded from entering in educational institutions dedicated or intended for the use of the Hindu community or any section thereof;

(vi) No disqualification shall arise on account of sex in respect of public services or professions or admission to educational institutions save and except that this shall not prevent the establishment of seperate educational institutions for boys and girls."

Initially, Shri G.B. Pant was of the view that these minority rights should be made to form part of unjusticiable Directive Principles, but on intervention of Shri K.M. Munshi those minority rights were included in the fundamental rights chapter. On 22nd April, 1947, the report of Minority Sub-Committeee was placed before the Advisory Committee. The Advisory Committee, inter alia, recommended that Clause 16 which corresponds to Article 28 of the Constitution should be re-drafted as follows:

"All persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion subject to public order, morality or health, and to the other provisions of this chapter."

The Advisory Committee then considered the recommendations of the Sub-Committee and it was resolved to insert the following clauses among the justiciable fundamental rights:

"(1) Minorities in every unit shall be protected in respect of their language, script and culture, and no laws or regulations may be enacted that may operate oppressively or prejudicially in this respect;

(2) No minority whether based on religion, community or language shall be discriminated against in regard to the admission into State educational institutions, nor shall any religious instruction be compulsorily imposed on them;

(3) (a) All minorities whether based on religion, community or language shall be free in any unit to establish and administer educational institutions of their choice;

(b) The State shall not while providing State aid to schools discriminate against schools under the management of minorities whether based on religion, community or language."

This became Clause 18.

The recommendations of the Advisory Committee were then placed before the Constituent Assembly which met on 1st May, 1947. When Clause 18 was moved by Shri Sardar Vallabhbhai Patel for adoption by the House, several members were of the view that Clause 18 may be

referred back to the Advisory Committee for reconsideration in the light of discussion that took place on that day. However, Shri K.M. Munshi - another member of the Constituent Assembly suggested that only sub-clause (2) of Clause 18 be referred back to the Advisory Committee for reconsideration. Ultimately, the amendment moved by Shri K.M. Munshi was adopted and sub-clause (2) of Clause 18 was referred back to the Advisory Committee for reconsideration. Thereafter Clause 18(1) and Clause 18(3) were accepted without any amendment.

The Advisory Committee re-considered Clause 18(2) and recommended that Clause 18(2) be retained after deleting the words "nor shall any religious instruction be compulsorily imposed on them" as the said provision was already covered by Clause 16. Thus, sub-clause (2) was placed before the House on 30th August, 1947 for being adopted along with the recommendations of the Advisory Committee. When the matter was taken up, Mrs Purnima Banerji proposed the following amendments that after the word 'State' the words 'and State-aided' be inserted. While proposing the said amendment, Mrs. Banerji stated thus:

> "The purpose of the amendment is that no minority, whether based on community or religion shall be discriminated against in regard to the admission into State-aided and State educational institutions. Many of the provinces, e.g. U.P., have passed resolutions laying down that no educational institution will forbid the entry of any members of any community merely on the ground that they happened to belong to a particular community - even if that institution is maintained by a donor who has specified that that institution should only cater for members of his particular community. If that institution seeks State aid, it must allow members of other communities to enter into it. In the olden days, in the Anglo-Indian schools (it was laid down that, though those schools would be given to Indians. In the latest report adopted by this House it is laid down at 40 per cent. I suggest Sir, that if this clause is included without the amendment in the Fundamental Rights, it will be a step backward and many provinces who have taken a step forward will have to retrace their steps. We have many institutions conducted by very philanthropic people, who have left large sums of money at their disposal. While we welcome such donations, when a principle has been laid down that, if any institution receives State aid, it cannot discriminate or refuse admission to members of other communities, then it shall be follow. We know, Sir, that many a Province has got provincial feelings. If this provision is included as a fundamental right, I suggest it will be highly detrimental. The Honourable Mover has not told us what was the reason why he specifically excluded State-aided institutions from this clause. If he had explained it, probably the House would have been convinced. I hope that all the educationists and other members of this House will support my amendment".
>
> (emphasis supplied)

The amendment proposed by Mrs. Banerji was supported by Pandit Hirday Nath Kunzru and other members. However, on intervention of Shri Vallabhbhai Patel, the following Clause 18(2) as proposed by the Advisory Committee was adopted:

> "18 (2). No minority whether based on religion, community or language shall be discriminated against in regard to the admission into state educational institutions."

After clause 18 (2) was adopted by the Constituent Assembly, the same was referred to the Constitution Drafting Committee of which Dr. B.R. Ambedkar was the Chairman. The Drafting

Committee while drafting clause 18 deleted the word 'minority' from clause 18(1) and the same was substituted by the words 'any section of the citizens". However, rest of the clause as adopted by the Constituent Assembly was retained. Clause 18 (1), (2) and (3) (a) & (b) were transposed in Article 23 of the Draft Constitution of India. Article 23 of the Draft Constitution of India runs as under:

Cultural and Educational Rights

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

(2) No minority whether based on religion, community or language shall be discriminated against in regard to the admission of any person belonging to such minority into any educational institution maintained by the State.

(3) (a) All minorities whether based on religion, community or language shall have the right to establish and administer educational institutions of their choice.

(b) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion, community or language".

On 8.12.1948, the aforesaid draft Article 23 was placed before the Constituent Assembly. When draft Article 23 was taken up for debate, Shri M. Ananthasayanam Ayyangar stated that for the words "no minority"occuring in clause 2 of draft Article 23, the words "no citizen or minority" be substituted. He stated thus:

"I want that all citizens should have the right to enter any public educational institution. This ought not to be confined to minorities. That is the object with which I have moved this amendment."

It is at that stage, Shri Thakur Dass Bhargava moved amendment No.26 to amendment No. 687. According to him, for amendment No. 687 of the List of amendment, the following be substituted:

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

He further stated thus:

"Sir, I find there are three points of difference between this amendment and the provisions of the section which it seeks to amend. The first is to put in the words 'no citizen' for the words 'no minority'. Secondly that not only the institutions which are maintained by the State will be included in it, but also such institutions as are receiving aid out of state funds. Thirdly, we have, instead of the words "religion, community or language", the words, "religion, race, caste, language or any of them."

Now, Sir, it so happens that the words "no minority" seek to differentiate the minority from the majority, whereas you would be pleased to see that in the Chapter the words of the heading are "cultural and educational rights", so that the minority rights as such should not find any place under this section. Now if we read clause (2) it would appear

as if the minority had been given certain definite rights in this clause, whereas the national interest requires that no majority also should be discriminated against in this matter. Unfortunately, there is in some matters a tendency that the minorities as such posses and are given certain special rights which are denied to the majority. It was the habit of our English masters that they wanted to create discriminations of this sort between the minority and the majority. Sometimes the minority said they were discriminated against and on other occasions the majority felt the same thing. This amendment brings the majority and the minority on an equal status.

In educational matters, I cannot understand, from the national point of view, how any discrimination can be justified in favour of a minority or a majority. Therefore, what this amendment seeks to do is that the majority and the minority are brought on the same level. There will be no discrimination between any member of the minority or majority in so far as admission to educational institutions are concerned. So I should say that this is a charter of liberties for the student-world of the minority and the majority communities equally.

Now, Sir, the word "community" is sought to be removed from this provision because "community" has no meaning. If it is a fact that the existence of a community is determined by some common characteristic and all communities are covered by the words religion or language, then "community" as such has no basis. So the word "community" is meaningless and the words substituted are "race or caste". So this provision is so broadened that on the score of caste, race, language or religion no discrimination can be allowed.

My submission is that considering the matter from all the standpoints, this amendment is one which should be accepted unanimously by this House".

After Dr. B.R. Ambedkar gave clarification as to why the words "no minority" were deleted and its place "no section of the citizen" were substituted in clause (1) of Draft Article 23. Amendment as proposed by Shri Thakur Dass Bhargava was put to motion and the same was adopted. Thus the word 'minority' was deleted and the same was substituted by the word 'citizen' and for the words "religion, community or language", the words "religion, race, caste, language or any of them" were substituted. Thus, Article 23 was split into two Articles - Article 23 containing clause (1) and clause (2) of Article 23 and sub-claused (a) and (b) of clause (3) of Article 23 was numbered as Article 23-A. Subsequently Articles 23 and 23-A became Articles 29 and 30, respectively. Thus, Article 23, as amended, became part of the Constitution on 9th December, 1948.

The deliberations of the Constituent Assembly show that initially Shri K.M. Munshi recommended that citizens belonging to national minority in the State whether based on religion or language have equal rights with other citizens in setting up and administering at their own expense charitable, religious and social institutions, schools and other educational establishments with the free use of their language and practice of their religion for being incorporated in the proposed Constitution of India. This was with a view that the members of the majority community who are more in number may not at any point of time take away the rights of minorities to establish and administer educational institution of their choice. It was very much clear that there was a clear intention that the rights given to minorities under Article 30(1) were to be exercised by them if the institution established is administered at their own cost and expense. It is for that reason we find

that no educational institution either minority or majority has any common law right or fundamental right to receive financial assistance from the government. Non-discriminaroty clause (2) of Article 30 only provides that the State while giving grant-in-aid to the educational institutions shall not discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language. The subsequent deliberations of the Constituent Assembly further shows that there was thinking in the minds of the framers of the Constitution that equality and secularism be given paramount importance while enacting Article 30(1). It is evident that amendment proposed by Shri Thakur Dass Bhargava which is now Article 29(2) was a conscious decision taken with due deliberations. The Constituent Assembly was of the view that originally clause (2) of draft Article 23 sought to distinguish the minority from majority, whereas in the chapter the words are 'cultural and educational rights' and as such the word 'minority' ought not to have found place in that Article. The reason for omission of words in clause (2) of draft Article 23 was that minorities were earlier given certain rights under that clause where national interest required that no member of majority also should be discriminated against in educational matters. It also shows that by the aforesaid amendment discrimination between minority and majority was done away with and the amendment has brought the minority and majority in equal footing. The debate also shows what was originally proposed either in clause 18(2) or Art. 23(2). The debate further shows that the post partition stage members of the Constituent Assembly intended to broaden the scope of clause (2) of draft Article 23 and never wanted to confine the rights only to the minorities. The views of the members of the Constituent Assembly were that if any institution takes aid from the government for establishing and administering educational institutions it cannot discriminate while admitting students on the ground of religion, race and caste. It may be seen that by accepting the amendment proposed by Shri Thakur Dass Bhargava, the scope of Article 29(2) was broadened inasmuch as the interest of minority - either religious or linguistic was secured and, therefore, the intention of the framers of the Constitution for enacting clause (2) of Article 29(2) was that once a minority institution takes government aid, it becomes subject to clause (2) of Article 29.

It was then urged that if the intention of the framers of the Constitution was to make Article 30(1) subject to Article 29(2), the appropriate place where it should have found place was Article 30(1) itself rather than in Article 29 and, therefore, Article 29(2) cannot be treated as an exception to Article 30(1). There is no merit in the contention. It is earlier noticed that clause (18) when was placed before the Constituent Assembly contained the provisions of Article 29(1)(2) and 30(1)(2) and all were numbered as clause 18(1) (2) (3)(a) (b). Again when clause (18) was transposed in draft Article 23, Article 29(1)(2) an dArticle 30(1)(2) - both were together in draft Article 23. Shri Thakur Dass Bhargava's amendment which was accepted was in relation to clause (2) of Article 23 which ultimately has become Article 29(2). It is for that reason Article 29(2) finds place in Article 29.

It was also urged that if the framers of the Constitution intended to carve out an exception to Article 30(1), they could have used the words "subject to the provisions contained in Article29(2)" in the beginning of Article 30(1) or could have used the expression "notwithstanding" in the beginning of Article 29(2) and in absence of such words it cannot be held that Article 29(2) is an exception

to Article 30(1). Reference in this regard was made to Articles 25 and 26 which contained qualifying words. In fact, the structural argument was based on the absence of qualifying words either in Article 29(2) or 30(1). This argument based on structure of Articles 29(2) and 30(1) has no merit. In fact, it overlooks that the intention of the framers of the Constitution was to confer rights consistent with the other members of society and to promote rather than imperil national interest. It may be noted that there is a difference in the language of Articles 25 and 26. The qualifying words of Article 25 are "subject to public order, morality and health and to the other provisions of this part". The opening words of Article 26 are "subject to public order, morality and health". The absence of words "to the other provisions of this part" as occurring in Article 25 in Art.26 does not mean that Article 26 is over and above other rights conferred in Part-III of the Constitution. In **The Durgah Committee, Ajmer & Anr.** vs. **Syed Hussain Ali & Ors.** 1962(1) SCR 383 and **Tilkayat Shri Govindlalji Mahafaj** vs. **The State of Rajasthan & Ors.** - 1964(1) SCR 561, it has been held that Article 26 is subject to Article 25 irrespective of the fact that the words "subject to other provisions of this part" occurring in Article 25 is absent in Article 26. For these reasons, it must be held that even if there are no qualifying expressions "subject to other provisions of this part" and "notwithstanding anything" either in Article 30(1) or Article 29(2), Article 30(1) is subject to Article 29(2) of the Constitution.

There is another factor which shows that Article 30(1) is subject to Article 29(2). If Article 29(2) is meant for the benefit of minority, there was no sense in using the word 'caste' in Article 29(2). The word 'caste' is unheard of in religious minority communities and, therefore, Article 29(2) was never intended by the framers of the Constitution to confer any exclusive rights to the minorities.

Although Article 30(1) strictly may not be subject to reasonable restrictions, it cannot be disputed that Article 30(1) is subject to Article 28(3) and also general laws and the laws made in the interests of national security, public order, morality and the like governing such institutions will have to be necessarily read into Article 30(1). In that view of the matter the decision by this Court in **Rev. Sidhajbhai** (supra) that under Article 30(1) fundamental right conferred on minorities is in terms absolute is not borne out of that Article. It, therefore, cannot be held that the fundamental right guaranteed under Article 30(1) is absolute in terms. Thus, looking into the precedents, historical fact and Constituent Assembly debates and also interpreting Articles 29(2) and 30(1) contextually and textually, the irrestible concludion is that Article 30(1) is subject to Article 29(2) of the Constitution.

The question then arises for what purpose the celebrated Article 30(1) has been incorporated in the Constitution if the linguistic or religious minorities who establish educational institutions cannot admit their own students or are precluded from admitting members of their own communities in their own institution. It is urged that the rights under Article 30(1) conferred on the minorities was in return to minorities for giving up demand for separate electorate system in the country. It is also urged that an assurance was given to the minorities that they would have a fundamental right to establish and administer educational institution of their choice and in case the minority cannot admit their own students or members of their own community it would be breach of the assurance given

to the minorities. There is no denial of the fact that in a democracy the rights and interests of minorities have to be projected. In the year 1919, President Wilson stated that nothing is more likely to disturb the peace of the world than the treatment which might in certain circumstances be meted out to minorities. Lord Acton emphasized that the most certain test by which we judge whether a country is really free, is the amount of security enjoyed by minorities. It is also not disputed that in the field of international law in respect of minorities it is an accepted view that the minorities on account of their non dominance are in a vulnerable position in the society and in addition to the guarantee of non-discrimination available to all citizens, require special and preferential treatment in their own institutions. The Sub-Committee in its report to the Commission on Human Rights reported thus:

> "Protection of minorities is the protection of non-dominant groups, which, while wishing in general for equality of treatment with the majority, wish for a measure of differential treatment in order to preserve basic characteristics which they possess and which distinguish them from the majority of the population. The protection applies equally to individuals belonging to such groups and wishing the same protection. It follows that differential treatment of such groups or of individuals belonging to such groups is justified when it is exercised in the interest of their contentment and the welfare of the community as a whole."
>
> (cited in St. Xavier's College,(1947)1 SCC 717 at 798)

The aforesaid report was accepted by the Permanent Court of International Justice in a case relating to minority school in Albania which arose out of the fact that Albania signed a Declaration relating to th eposition of minorities in the State. Article 4 of the Decleration provided that all Albanian nationals shall be equal before the law and shall enjoy the same civil and political rights without distinction as the race, language or religion. Article 5 further provided that all Albanian nationals who belong to racial, religious or linguistic minorities will enjoy the same treatment and security in law and in fact as other Albanian nationals. In particular they shall have an equal right to maintain, manage and control at their own expense or to establish in the future charitable, religious and social institutions, schools and other educational establishments with the right to use their own language and to exercise their religion freely therein. Subsequently, the Albanian Constitution was amended and a provision was made for compulsory primary education for all Albanian nationals in State schools and all private schools were to be closed. The question arose before the Permanent Court of International Justice as to whether Albanian Government was right to abolish the private schools run by the Albanian minorities. The Court was of the view that the object of Declaration was to ensure that nationals belonging to the racial, religious or linguistic minorities shall be placed in every respect on a footing of perfect equality with other nationals of the State. The second was to ensure for the minority elements suitable means for the preservation of their racial peculiarities, their traditions and their national characteristics. These two requirements were indeed closely interlocked, for there would be no true equality between a majority and a minority if the latter were deprived of its own institutions and were consquently compelled to renounce that which constitutes the very essence of its being a minority. The Court was of the further view that "there must be equality in fact as well as ostensible legal equality in the sense of the absence of discrimination in the words of the law. Equality in law precludes discrimination of any kind; whereas equality in fact

may involve the necessity of different treatment in order to attain a result which establishes an equilibrium between different situations." (St. Xavier's Colleges case - 1974 (1) SCC 717 *(per Khanna, Mathew, JJ.).*

Article 27 of the International Covenant on Civil and Political Rights 1966 (ICCPR) guarantees minority rights in the following terms:

> "In those States in which ethnic, religious or linguistic minorities exist persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religions or to use their own language."

Prof. Francesco Capotorti in his celebrated study on the **Rights of Persons Belonging to Ethnic, Religious or linguistic Minorities** stated as follows:

> "Article 27 of the Covenant must, therefore, be placed in its proper context. To enable the objectives of this article to be achieved, it is essential that States should adopt legislative and administrative measures. It is hard to imagine how the culture and language of a group can be conserved without, for example, a special adaptation of the educational system of the country. The right accorded to members of minorities would quite obviously be purely theoretical unless adequate cultural institutions were established. This applies equally in the linguistic field, and even where the religion of a minority is concerned a purely passive attitude on the part of the State would not answer the purposes of article 27. However, whatever the country, groups with sufficient resources to carry out tasks of this magnitude are rare, if not non-existent. Only the effective exercise of the rights set forth in article 27 can guarantee observance of the principle of the real, and not only formal, equality of persons belonging to minority groups. The implementation of these rights calls for active and sustained intervention by States. A passive attitude on the part of the latter would render such rights inoperative."

The Human Rights Committee functioning under the Optional Protocol of ICCPR in its General Comment adopted by the Committee on 6th April, 1994 stated thus:

> "The Committee points out that Article 27 establishes and recognizes a right, which is conferred on individuals belonging to minority groups and which is distinct from, and additional to, all the other rights which, as individuals in common with everyone else, they are already entitled to enjoy under the Covenant."

From the aforesaid report it is clear that in certain circumstances rights conferred to minority groups are distinct from and additional to, all the other rights which as an individuals are entitled to enjoy under the covenant. The political thinkers have recognised the importance of minority rights as well as for ensuring such rights. According to them the rights conferred on linguistic or religious minorities are not in the nature of privilege or concession, but their entitlement flows from the doctrine of equality, which is the real *de facto* equality. Equality in law precludes discrimination of any kind, whereas equality in fact may involve the necessity of different treatment in order to attain a result which establishes equilibrium between different situations. Where there is a plurality in a society, the object of law should be not to split the minority group which makes up the society, but to find out political, social and legal means of preventing them from falling apart and so destroying the society of which they are members. The attempt should be made to assimilate the minorities

with majority. It is a matter of common knowledge that in some of the democratic countries where minority rights were not protected, those democracies acquired status of theocratic States.

In India, the framers of the Constitution of India with a view to instill a sense of confidence and security in the mind of minority have conferred rights to them under the Constitution. One of such rights is embodied in Art.30 of the Constitution. Under Art.30 the minorities either linguistic or religious have right to establish and administer educational institutions of their choice. However, under the Constitution every citizen is equal before law, either he may belong to minority group or minority community. But right conferred on minority under Article 30(1) would serve no purpose when they cannot admit students of their own community in their own institutions. In order to make Article 30(1) workable and meaningful, such rights must be interpreted in the manner in which they serve the minorities as well as the mandate contained in Article 29(2). Thus, where minorities are found to have established and administering their own educational institutions, the doctrine of the real *de facto* equality has to be applied. The doctrine of the real *de facto* equality envisages giving a preferential treatment to members of minorities in the matter of admission in their own institutions. On application of doctrine of the real *de facto* equality in such a situation not only Art.30(1) would be workable and meaningful, but it would also serve the mandate contained in Art.29(2). Thus, while maintaining the rule of non-discrimination envisaged by Art.29(2), the minorities should have also right to give preference to the students of their own community in the matter of admission in their own institution. Otherwise, there would be no meaningful purpose of Art.30(1) in the Constitution. True, the receipt of State aid makes it obligatory on the minority educational institution to keep the institution open to non-minority students without discrimination on the specified grounds. But, to hold that the receipt of State aid completely disentitles the management of minority educational institutions from admitting students of their community to any extent will be to denude the essence of Art.30 of the Constitution. It is, therefore, necessary that minority be given preferential rights to admit students of their own community in their own institutions in a reasonable measure otherwise there would be no meaningful purpose of Art.30 in the Constitution.

Article 337 of the Constitution provides that grants or government aid has to be given to the Anglo-Indian institution provided they admit 40% of members from other community. Taking the clue from Article 337 and spirit behind Art.30(1) it appears appropriate that minority educational institutions be given preferential rights in the matter of admission of children of their community in their own institutions while admitting students of non-minorities which, advisedly, may be upto 50% based on *inter se* merits of such students. However, it would be subject to assessment of the actual requirement of the minorities, the types of the institutions and the course of education for which admission is being sought for and other relevant factors.

Before concluding the matter, it is necessary to deal with few more aspects which relate to the regulatory measures taken by the government with regard to government aided minority institutions. In that connection, the State must see that the regulatory measures of control of such institutions should be minimum and there should not be interference in the internal or day-to-day working of the management. However, the State would be justified in enforcing the standard of

education in such institutions. In case of minority professional institutions, it can also be stipulated that passing of common entrance test held by the State agency is necessary to seek admission. It is for the reason that the products of such professional institutions are not only going to serve the minorities but also to majority community. So far as the redressal of grievances of staff and teachers of minority institutions are concerned, a mechanism has to be evolved. Past experience shows that setting up a Tribunal for particular class of employees is neither expedient nor conducive to the interest of such employee. In that view of the matter, each District Judge which includes the Addl. District Judge of the respective district be designated as Tribunal for redressal of the grievances of the employee and staff of such institutions.

Another question that arises in this connection as to on what grounds the staff and teachers, if aggrieved, can challenge the arbitrary decisions of the management. One of the learned senior counsel suggested that such decisions be tested on the grounds available under the labour laws. However, seeing the nature of the minority institutions the grounds available under labour laws are too wide and it would be appropriate if adverse decisions of the Management are tested on grounds of breach of principles of natural justice and fair play or any regulation made in that respect.

Subject to what have been stated above, I concur with the judgement of Hon'ble the Chief Justice.

Sd/-

.....J.

(V.N.Khare)

New Delhi;

31st October, 2002

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL/APPELLATE JURISDICTION

WRIT PETITION (CIVIL) NO.317 OF 1993

T.M.A.Pai Foundation & Ors.Etc.Etc. ... Petitioners/Appellants

vs.

State of Karnataka & Ors.Etc.Etc. ... Respondents

WITH

Writ Petition (Civil) Nos.252 of 1979, 54-57, 2228 of 1981, 2460, 2582, 2583-84, 3362, 3517, 3602, 3603, 3634, 3635, 3636, 8398, 8391, 5621, 5035, 3701, 3702, 3703, 3704, 3715, 3728, 4648, 4649, 2479, 2480, 2547 and 3475 of 1982, 7610, 4810, 9839, and 9683-84, of 1983, 12622-24 of 1984, 119 and 113 of 1987, 620 of 1989, 133 of 1992, 746, 327, 350, 613, 597, 536, 626, 444, 417, 523, 474, 485, 484, 355, 525, 469, 392, 629, 399, 531, 603, 702, 628, 663, 284, 555, 343, 596, 407, 737, 738, 747, 479, 610, 627, 685, 706, 726, 598, 482 and 571 of 1993, D.No. 1741, 295 and 764 of 1994, 331, 446 and 447 of 1995, 364 and 435 of 1996, 456, 454, 447 and 485 of 1997, 356, 357 and 328 of 1998, 199, 294, 279, 35, 181, 373, 487 and 23 of 1999, 561 of 2000, 6 and 132 of 2002, Civil Appeal Nos.1236-1241 and 2392 of 1977, 687 of 1976, 3179, 3180, 3181, 3182, 1521-56, 3042-91 of 1979, 2929-31, 1464 of 1980, 2271 of 1981, 2443-46 of 1981, 4020, 290, 10766 of 1983, 5042 and 5043 of 1989, 6147 and 5381 of 1990, 71, 72 and 73 of 1991, 1890-91, 2414 and 2625 of 1992, 4695-4746, 4754-4866 of 1993, 5543-5544 of 1994, 8098-8100 and 11321 of 1995, 4654-4658 of 1997, 608, 3543 and 3584-3585 of 1998, 5053-5054 of 2000, 5647, 5648-5649, 5650, 5651, 5652, 5653-5654, 5655, 5656 of 2001 and 2334 of 2002, SLP (C) Nos.9950 and 9951 of 1979, 11526 and 863 of 1980, 12408 of 1985, 8844 of 1986, 12320 of 1987, 14437, 18061-62 of 1993, 904-05 and 11620 of 1994, 23421 of 1995, 4372 of 1996, 10360 and 10664 of 1997, 1216, 9779-9786, 6472-6474 and 9793 of 1998, 5101, 4480 and 4486 of 2002, T.C.(Civil) No.26 of 1990, T.P.(Civil) Nos.1013-14 of 1993].

JUDGMENT

SYED SHAH MOHAMMED QUADRI J.

I have perused the majority judgement prepared by Hon'ble the Chief Justice, the concurring opinion of my learned brother, Khare, J. and the dissenting opinions given by our learned sister Ruma Pal, J. and learned brother S.N. Variava, J.

Though the questions referred to and re-framed are eleven, the Bench deemed it fit not to answer four of them. On the contentions advanced by the learned counsel who argued these cases in regard to the remaining seven questions, the learned Chief Justice has formulated the following five issues which encompass the entire field :

1. IS THERE A FUNDAMENTAL RIGHT TO SET UP EDUCATIONAL INSTITUTIONS AND IF SO, UNDER WHICH PROVISION?
2. DOES UNNIKRISHNAN'S CASE REQUIRE RE-CONSIDERATION?
3. IN CASE OF PRIVATE INSTITUTIONS (UNAIDED AND AIDED), CAN THERE BE GOVERNMENT REGULATIONS AND, IF SO, TO WHAT EXTENT?
4. IN ORDER TO DETERMINE THE EXISTENCE OF A RELIGIOUS OR LINGUISTIC MINORITY IN RELATION TO ARTICLE 30, WHAT IS TO BE THE UNIT, THE STATE OR THE COUNTRY AS A WHOLE?
5. TO WHAT EXTENT CAN THE RIGHTS OF AIDED PRIVATE MINORITY INSTITUTIONS TO ADMINISTER BE REGULATED?

Before I advert to these issues, it would be appropriate to record that there was unanimity among the learned counsel appearing for the parties, institutions, States and the learned Solicitor General appearing for the union of India on two aspects; the first is that all the citizens have the right to establish educational institutions under Article 19(1)(g) and Article 26 of the Constitution and the second is that the judgement of the Constitution Bench of this court in Unnikrishnan J.P & Ors. vs. State of Andhra Pradesh & Ors. [(1993 (1) SCC 645] requires re-consideration, though there was some debate with regard to the aspects which require re-consideration.

1. IS THERE A FUNDAMENTAL RIGHT TO SET UP EDUCATIONAL INSTITUTIONS AND IF SO, UNDER WHICH PROVISION?

On this issue I respectfully agree with the view expressed by Hon'ble the Chief Justice speaking for the majority.

Part III of the Constitution which embodies fundamental rights does not specify such a right vis-a-vis all citizens as such. However, we shall refer to Articles 19, 26 and 30 having a bearing on this issue.

Article 19 of the Constitution, insofar as it is relevant for the present discussion, is as under:

"19.Protection of certain rights regarding freedom of speech, etc. - (1) All citizens shall have the right -

(a) to (f) xxx xxx xxx

(g) To practise any profession, or to carry on any occupation, trade or business

(2) to (5)xxx xxx xxx

(6) Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law insofar as it imposes, or prevent the state from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, nothing in the said sub-clause shall affect the operation of any existing law insofar as it relates to, or prevent the State from making any law relating to, --

(i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or

(ii) the carrying on by the State, or by a Corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise."

Article 19 confers on all citizens rights specified in sub-clauses (a) to (g). The fundamental rights enshrined in sub-clause (g) of clause (1) of Article 19 of the Constitution are to practise any profession, or to carry on any occupation, trade or business. We are concerned here with the right to establish educational institution to impart education at different levels, primary, secondary, higher, technical, professional, etc. Education is essentially a charitable object and imparting education is, in my view, a kind of service to the community, therefore, it cannot be brought under 'trade or business' nor can it fall under 'profession'. Nevertheless, having regard to the width of the meaning of the term 'occupation' elucidated in the judgement of Hon'ble the Chief Justice, the service which a citizen desires to render by establishing educational institutions can be read in 'occupation'. This right, like other rights enumerated in sub-cluause (g), is controlled by clause (6) of Article 19. The mandate of clause (6) is that nothing in sub-clause (g) shall affect the operation of any existing law, insofar it imposes or prevent the State from making any law imposing, in the interests of general public, reasonable restrictions on the exercise of right conferred by the said sub-clause and, in particular, nothing in the said sub-clause shall affect the operation of any existing law insofar as it relates to or prevent the State from making any law relating to:

(i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business; or (ii) the carrying on by the State, or by a Corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise. Therefore, it may be concluded that the right of a citizen to run educational institutions can be read into "occupation" falling in sub-clause (g) of clause (1) of Article 19 which would be subject to the discipline of clause (6) thereof.

Every religious denomination or a section thereof is conferred the right, inter alia, to establish and maintain institution for religious and charitable purpose, incorporated in clause (a) of Article 26, which reads thus :

> "26. Freedom to manage religious affairs - subject to public order, morality and health, every religious denomination or any section thereof shall have the right --
>
> (a) to establish and maintain institutions for religious and charitable purposes;
>
> (b) to (d)xxx xxx xxx

The right under clause (a) is a group right and is available to every religious denomination or any section thereof, be it of majority or any section thereof. It is evident from the opening words of Article 26 that this right is subject to public order, morality and health.

The Constitution protects the cultural and educational rights of such minorities as are specified in Articles 29 and 30.

Article 29 deals with the protection of interests of minorities. It affords protection of interests of minorities. It affords protection to minorities who have a distinct language, script or culture of their own and declares that they shall have the right to conserve the same provided they form a section of citizens residing in the territory of India. Sub-clause (1) of section 29 is in the following terms:

> "29. Protection of interests of minorities - (1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same."

We shall advert to clause (2) of Article 29 separately.

Article 30 of the Constitution confers a special right on the minorities to establish and administer educational institutions. For the purposes of this Article, religious or linguistic minorities alone are recognised for conferring rights under Article 30. Article 30 reads as under :

> "30. Right of minorities to establish and administer educational institutions -
>
> (1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.
>
> (1A) In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.
>
> (2) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

Clause (1) of Article 30 provides that all minorities, whether based on religion or language, shall have the right (i) to establish and (ii) administer educational institutions of their choice. The amplitude of the right is couched in very wide language. It is also a group right but any individual belonging to minorities, linguistic or religious, may exercise this right for the benefit of his own group. It is significant to note that the right conferred under Article 30 is not subjected to any limitations. The Article speaks of "their choice". The right to establish and administer educational institutions is of the choice of the minorities. The expression "institutions of their choice" means institutions for the benefit of the minorities; the word 'choice' encompasses both of the students as well as of the type of education to be imparted in such educational institutions.

It has been settled by a catena of decisions of this Court [In Re The Kerala Education Bill, 1957 [(1959 SCR 995], Rev.Sidhajbhai Sabhjai & Ors. vs. State of Bombay & Anr. [1963 (3) SCR 837], The Ahmedabad St.Xavier's College Society & Anr. Etc. vs. State of Gujarat & Anr. [1975 (1) SCR 173] and St. Stephen's College vs. University of Delhi [1992 (1) SCC 558] that Article 30 of the Constitution conferred special rights on the minorities (linguistic or religious). The word 'minority' is not defined in the Constitution but literally it means 'a non-dominant' group. It is a relative term and is referred to, to represent the smaller of two numbers, sections or group called 'majority'. In that sense, there may be political minority, religious minority, linguistic minority, etc.

The other clauses of this Article will be discussed separately.

With these few comments, I am in respectful agreement with the majority judgment on issue No. 1.

2. DOES UNNIKRISHNAN'S CASE REQUIRE RE-CONSIDERATION?

3. IN CASE OF PRIVATE INSTITUTION (UNAIDED AND AIDED) CAN THERE BE GOVERNMENT REGULATIONS AND, IF SO, TO WHAT EXTENT?

4. IN ORDER TO DETERMINE THE EXISTENCE OF A RELIGIOUS OR LINGUISTIC MINORITY IN RELATION TO ARTICLE 30, WHAT IS TO BE THE UNIT, THE STATE OR THE COUNTRY AS A WHOLE?

On these issues, I respectfully agree with the reasoning and conclusion of the majority.

5. TO WHAT EXTENT CAN THE RIGHTS OF AIDED PRIVATE MINORITY INSTITUTIONS TO ADMINISTER BE REGULATED?

In regard to this issue and particularly on the interpretation of Article 29(2) vis-a-vis, clauses (1) and (2) of Article 30 and the conclusion recorded by the majority, I have some reservations. I could not persuade myself to agree with the majority judgment as well as the opinions of my learned brathren Khare, J. and more so with the dissenting opinion of Variava,J. with which Ashok Bhan,J. agreed. On this aspect, I agree with the reasoning and conclusion of our learned sister Ruma Pal,J. I would give my reasons for this conclusion later.

In the result I am in respectful agreement with the answer recorded in the majority judgment on question Nos.1, 2, 3(a), 3(b) and 4 except to the extent of reasoning and interpretation of

Articles 29(2) and 30(1) on which the answer is based. I agree, with respect, with answers to questions 5(a), 5(c), 6(a), 6(b) and 7. In regard to question No.8, reconsideration of the judgment of the Constitution Bench of this Court in St.Stephen's College (supra) which relates to aided minority institutions, I agree with the answer recorded in the majority judgment, except to the extent of interplay between Article 29(2) and 30(1) and giving to the authorities power to prescribe a percentage having regard to the type of institution and educational needs of minorities. I agree also with the answer to question No.9.

With regard to answer to question No.5(b) and the common answer to question Nos.10 and 11, in the light of the comments made above, I would answer that all the citizens have a right to establish and administer educational institutions under Articles 19(1)(g) and 26. The minorities have an additional right to establish and administer educational institution 'of their choice' under Article 30(1). The extent of these rights are, therefore, different. A comparison of Articles 19, 26 and 30 would show that whereas the educational institutions established and run by the citizens under Article 19(1)(g) and Article 26(a) are subject to the discipline of Articles 19(6) and 26 there are no such limitations in Article 30 of the Constitution, so in that the right conferred thereunder is absolute. However, the educational institutions established by the minorities under Article 30(1) will be subject only to the regulatory measures which should be consistent with Article 30(1) of the Constitution. My answer to question 5(b) is that the right of the minority institutions to admit students of the minority, if any, would not be affected in any way by receipt of State aid. I intend to dilate on this aspect of the matter in my separate reasoned opinion later. It is sufficient to state at this stage that subject to this, I agree with the common answer to question Nos.10 and 11.

Sd/-

.....J.

[Syed Shah Mohammed Quadri]

New Delhi,

October 31, 200

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO.317 OF 1993 etc.

T.M.A.Pai Foundation & Ors. ... Petitioners

versus.

State of Karnataka & Ors. ... Respondents

WITH

Writ Petition (Civil) Nos. 252 of 1979, 54-57, 2228 of 1981, 2460, 2582-2584, 3362, 3517, 3602, 3603, 3634-3636, 8398, 8391, 5621, 5035, 3701-3704, 3715, 3728, 4648-4649, 2479, 2480, 2547 and 3475 of 1982, 7610, 4810, 9839 and 9683-84 of 1983, 12622-24 of 1984, 119 and 133 of 1987, 620 of 1989, 133 of 1992, 746, 327, 350, 613, 597, 536, 626, 444, 417, 523, 474, 485, 484, 355, 525, 469, 392, 629, 399; 531; 603; 702; 628; 663; 284; 555; 343, 596, 407, 737, 738, 747, 479, 610, 627, 685, 706, 726, 598, 482 and 571 of 1993, ----------(D. No.1741), 295 and 764 of 1994, 331, 446 and 447 of 1995, 364 and 435 of 1996, 456, 454, 447 and 485 of 1997, 356, 357 and 328 of 1998, 199, 294, 279, 35, 181, 373, 487 and 23 of 1999, 561 of 2000, 6 and 132 of 2002. Civil Appeal Nos. 1236-1241 and 2392 of 1977, 687 of 1976, 3179-3182, 1521-1556, 3042-3091 of 1979, 2929-2931, 1464 of 1980, 2271 and 2443-2446 of 1981, 4020, 290 and 10766 of 1983, 5042-5043 of 1989, 6147 and 5381 of 1990, 71-73 of 1991, 1890-1891, 2414 and 2625 of 1992, 4695-4746, 4754-4866 of 1993, 5543-5544 of 1994, 8098-8100 and 11321 of 1995, 4654-4658 of 1997, 608, 3543 and 3584-3585 of 1998, and 5053-5054 of 2000, 5647-5656 of 2001, and 2334 of 2002. Special Leave Petition (C) Nos.9950-9951 of 1979, 11526 and 863 of 1980, 12408 of 1985, 8844 of 1986, 12320 of 1987, 14437, 18061-18062 of 1993, 904-905 and 11620 of 1994, 23421 of 1995, 4372 of 1996, 10360 and 10664 of 1997, 1216, 9779-9786, 6472-6474 and 9793 of 1998, 5101, 4480 and 4486 of 2002 and T.C.(C) No. 26 of 1990, T.P.(C) 1014 of 1993.

RUMA PAL, J.

I have had the privilege of reading the opinion of Hon'ble the Chief Justice. Although I am in broad agreement with most of the conclusions arrived at in the judgment, I have to record my respectful dissent with the answer to Question 1 and Question 8 in sofar as it holds that Article 29(2) is applicable to Article 30(1). I consequently differ with the conclusions as stated in answer to Questions 4, 5(b) and 11 to the extent mentioned in this opinion.

Re: Question 1

What is the meaning and content of the expression "minorities" in Article 30 of the Constitution of India?

Article 30 affords protection to minorities in respect of limited rights, namely, the setting up and administration of an educational institution. The question of protection raises three questions: (1)protection to whom? (2) against whom? and (3) against what? The word minority means "numerically less". The question then is numerically less in relation to the country or the State or some other political or geographical boundary?

The protection under Article 30 is against any measure, legislative or otherwise, which infringes the right's granted under that article. The right is not claimed in a vacuum - it is claimed against a particular legislative or executive measure and the question of minority status must be judged in relation to the offending piece of legislation or executive order. If the source of the infringing action is the State, then the protection must be given against the State and the status of the individual or group claiming the protection must be determined with reference to the territorial limits of the State. If however the protection is limited to State action, it will leave the group which is otherwise a majority for the purpose of State legislation, vulnerable to Union legislation which operates on a national basis. When the entire nation is sought to be affected, surely the question of minority status must be detrmined with reference to the country as a whole.

In **Re: Kerala Education Bill, 1957 1959 SCR 995, p.1047,** the contention of the State of Kerala was that in order to constitute a minority for the purposes of Articles 29(1) and 30(1), persons must be numerically in the minority in the particular area or locality in which educational institution is or is intended to be constituted. The argument was negatived as being held inherently fallacious (p.1049) and also contrary to the language of Article 350-A. However, the Court expressly refrained from finally opining as to whether the existence of a minority community should in circumstances and for the purposes of law of that State be determined on the basis of the population of the whole State or whether it should be determined on the basis only when the validity of a law extending to the whole State is in question or whether it should be determined on the basis of the population of a particular locality when the law under attact applies only to that locality. In other words the issue was - should the minority status be determined with reference to the source of legislation viz., the State legislature or with reference to the extent of the law's application. Since in that case the Bill in question was admittedly a piece of State legislation and also extended to the whole of the State of Kerala it was held that "the minority must be determined by reference to the entire population of that State". (p. 1050)

In the subsequent decision in **DAV College V. State of Punjab(1)**[1], this Court opted for the first principle namely that the position of minorities should be determined in relation to the source of the ligislation in question and it was clearly said:

> *"Though there was a faint attempt to canvas the position that religious or linguistic minorities should be minorities in relation to the entire population of the country, in our view they are to be determined only in relation to the particular legislation which is sought to be impugned, namely that if it is the State legislature these minorities have to be determined in relation to the population of the State."*

In **D.A.V. Collegs V. State of Punjab (II),**[2] Punjabi had been sought to be enforced as the sole medium of instruction and for examinations on the ground that it was the national policy of the Government of India to energetically develop Indian languages and literature. The College in queston used Hindi as the medium of instruction and Devnagri as the script. Apart from holding that the State Legislature was legislatively incompetent to make Punjabi the sole medium of instruction, the Court reaffirmed the fact that the College although run by the Hindu community which represents the national majority, in Punjab it was a religious minority with a distinct script and therefore the State could not compel the petitioner-College to teach in Punjabi or take examinations in that language with Gurmukhi script.

But assuming that Parliament had itself prescribed Hindi as the compulsory medium of instruction in all educational institutions throughout the length and breadth of the country.. If a minority's status is to be determined only with respect to the territorial limits of a State, non-Hindi speaking persons who are in a majority in their own State but in a minority in relation to the rest of the country, would not be able to impugn the legislation on the ground that it interferes with their right to preserve a distinct language and script. On the other hand a particular institution run by members of the same group in a different State would be able to challenge the same legislation and claim protection in respect of the same language and culture.

Apart from this incongruity, such an interpretation would be contrary to Article 29(1) which contains within itself an indication of the 'unit' as far as minorities are concerned when it says that any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same. Merely because persons having a distinct language, script or culture are resident within the political and geographical limits of a State within which they may be in a majority, would not take them out of the phrase "section of citizens residing in the territory of India". It is a legally fortuitous circumstance that states have been created along linguistic lines after the framing of the Constitution.

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[1] 1971 SCR (Supp) 688,697

[2] 1971 SCR (Supp) 677.

In my opinion, therefore, the question whether a group is a minority or not must be determined in relation to the source and territorial application of the particular legislation against which protection is claimed and I would answer question 1 accordingly.

Re: Question 8

Whether the ratio laid down by this Court in the St.Stephen's case (St. Stephen's College vs. University of Delhi [(1992) 1 SCC 558] is correct? If no, what order?

In **St. Stephen's College**[3], the Court decided (a) that the minorities right to admit students under Article 30(1) had to be balanced with the rights conferred under Article 29(2). Therefore the State could regulate the admission of students of the minority institutions so that not more than 50% of the available seats were filled in by the children of the minority community and (b) the minority institution could evolve its own procedure for selecting students for admission in the institutions. There can no quarrel with the decision of the court on the second issue.. However, as far as first principle is concerned, in my view the decision is erroneous and does not correctly state the law.

Article 30(1) of the Constitution provides that "All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice". Article 29(2) on the other hand says that "no citizen shall be denied admission into any educational institution, maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them".

Basically, the question is whether Article 30(1) is subject to Article 29(2) or is Article 29(2) subject to Article 30(1)? If Article 30(1) does not confer the right to admit students then of course there is no question of conflict with Article 29(2) which covers the field of admission into "any educational institution". The question, therefore, assumes that the right granted to minorities under Article 30(1) involves the right to admit students. Is this assumption valid? The other assumption on which the question proceeds is that minority institutions not receiving aid are outside the arena of this apparent conflict. Therefore the issue should be more appropriately framed as: - does the receipt of State aid and consequent admission of non-minority students affect the rights of minorities to establish and administer educational institution of their choice?. I have sought to answer the question on an interpretation of the provisions of the Constitution so that no provision is rendered nugatory or redundant[4]; on an interpretation of the provisions in the context of the objects which were sought to be achieved by the framers of the Constitution; and, finally on a consideration of how this Court has construed these provisions in the past.

Both Articles 29 and 30 are in Part III of the Constitution which deals with 'Fundamental Rights'. The fundamental rights have been grouped and placed under separate headings. For the

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[3] 1992 (1) SCC 558

[4] Sri Venkataramana Devaru & Ors. v. The State of Mysore & Ors. 1958SCR 895, 918; Pandit M.S.M. Sharma v. Shri Sri Krishna Sinha; 1959 Suppl. 1 SCR 806

present purposes, it is necessary to consider the second, fourth and fifth groups. The other Articles in the other groups are not relevant. The second group consists of Articles 14 to 18 which have been clubbed under 'Right to Equality'. Articles 25 to 28 are placed under the fourth heading 'Right to Freedom of Religion'. Articles 29 and 30 fall within the fifth heading 'Cultural and Educational Rights'.

The rights guaranteed under the several parts of Part III of the Constitution overlap and provide different facets of the objects sought to be achieved by the Constitution. These objectives have been held to contain the basic structure of the Constitution which cannot be amended in exercise of the powers under Article 368 of the Constitution.[5] Amongst these objectives are those of Equality and Secularism. According to those who have argued in favour of a construction by which Article 29(2) prevails order Article 30, Article 29(2) ensures the equal right to education to all citizens, whereas if Article 30 is given predominance it would not be in keeping with the achievement of this equality and would perpetuate differences on the basis of language and more importantly, religion, which would be contrary to the secular character of the Constitution. Indeed the decision in ***St.Stephen's*** in holding that Article 29(2) applies to Article 30(1) appears to have proceeded on similar considerations. Thus it was said that unless Article 29(2) applied to Article 30(1) it may lead to "religious bigotry"; that it would be "inconsistent with the central concept of secularism" and "equality embedded in the Constitution" and that an "educational institution irrespective of community to which it belongs is a melting pot in our national life".[6] Although Article 30(1) is not limited to religious minorities, having regard to the tenor of the arguments and the reasoning in ***St. Stephen's*** in support of the first principle, I propose to consider the argument on 'Secularism' first.

Article 30 and Secularism

The word 'secular' is commonly understood in contradistinction to the word 'religious'. The political philosophy of a secular Government has been developed in the west, in the historical context of the pre-eminence of the established church and the exercise of power by it over society and its institutions. With the burgeoning presence of diverse religious groups and the growth of liberal and democratic ideas, religious intolerance and the attendant violence and persecution of "non-believers" was replaced by a growing awareness of the right of the individual to profession of faith, or non-profession of any faith. The democratic State gradually replaced and marginalised the influence of the church. But the meaning of the word 'secular State' in its political context can and has assumed different meanings in different countries, depending broadly on historical and social circumstances, the political philosophy and the felt needs of a particular country. In one country, secularism may mean an actively negative attitude to all religions and religious institutions; in another it may mean a strict "wall of separation" between the State and religion and religious institutions. In India the State is secular in that there is no official religion. India is not a theocratic State. However the Constitution does envisage the involvement of the State in matters associated

[5] Keshvananda Bharati V. State of Kerala AIR 1973 SC 1461, para.292,559,682 and 1164

[6] 1992 (1) SCC 558, 607 (para 81)

with religion and religious institutions, and even indeed with the practice, profession and propagation of religion in its most limited and distilled meaning.

Although the idea of secularism may have been borrowed in the Indian Constitution from the west, it has adopted its own unique brand of secularism based on its particular history and exigencies which are far removed in many ways from secularism as it is defined and followed in European countries, the United States of America and Australia.

The first Amendment to the American Constitution is as follows:

> *"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."*

In the words of Jefferson, the clause against establishment of religion by law was intended to erect 'a wall of separation between Church and State'. ***'Reynolds v. United States', (1878) 98 U S 145 at p.164.***

The Australian Constitution has adopted the First Amendment in S. 116 which is based on that Amendment. It reads: The Commonwealth shall not make any laws for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth.[7]

Under the Indian Constitution there is no such "wall of separation" between the State and religious institutions. Article 16(5) recognises the validity of laws relating to management of religious and denominational institutions. Art. 28(2) contemplates the State itself managing educational institutions wherein religious instructions are to be imparted. And among the subjects over which both the Union and the States have legislative competence as set out in List No. III of the Seventh Schedule to the Constitution Entry No.28 are :

> *"Charitable and charitable institutions, charitable and religious endowments and religious institutions".*

Although like other secular Governments, the Indian Constitution in Article 25(1) provides for freedom of conscience and the individual's right freely to profess, practice and propogate religion, the right is expressly subject to public order, morality and health and to the other provisions in Part III of the Constitution. The involvement of the State with even the individual's right under Article 25(1) is exemplified by Article 25(2) by which the State is empowered to make any law.

> "a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;
>
> b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sectiona of Hindus.

[7] Kidangazhi Manakkal Narayanan Nambudiripad v. State of Madras AIR 1954 Madras 385 (vol. 41)

As a result the courts have upheld laws which may regulate or restrict matters associated with religious practices if such practice does not form an integral part of the particular religion[8].

Freedom of religious groups or collective religious rights are provided for under Article 26 which says that:

> *"Subject to public order, morality and health, every religious denomination or any section thereof shall have the right -*
>
> *(a) to establish and maintain institutions for religious and charitable purposes.*
>
> *(b) To manage its own affairs in matters of religion;*
>
> *(c) To own and acquire movable and immovable property; and*
>
> *(d) To administer such property in accordance with law.*

The phrase "matters of religion" has been strictly construed so that matters not falling strictly within that phrase may be subject to control and regulation by the State. The phrase 'subject to public order, morality and health' and "in accordance with law" also envisages extensive State control over religious institutions. Article 26(a) allows all persons of any religious denomination to set up an institution for a charitable purpose, and undisputedly the advancement of education is a charitable purpose. Further, the right to practise, profess and propagate religion under Article 25 if read with Article 26(a) would allow all citizens to exercise such rights through an educational institution. These rights are not limited to minorities and are available to 'all persons'. Therefore, the Constitution does not consider the setting up of educational institutions by religious denominations or sects to impart the theology of that particular denomination as anti-secular. Having regard to the structure of the Constitution and its approach to 'Secularism', the observation in **St. Stephens** noted earlier is clearly not in keeping with 'Secularism' as provided under the Indian Constitution. The Constitution as it stands does not proceed on the 'melting pot' theory. The Indian Constitution, rather represents a 'salad bowl' where there is homogeneity without an obliteration of identity.

The ostensible separation of religion and the State in the field of the States' revenue provided by Article 27 (which prohibits compulsion of an individual to pay any taxes which are specifically appropriated for the expenses for promoting or maintaining any particular religious or religious denomination) does not, however, in terms prevent the State from making payment out of the proceeds of taxes generally collected towards the promotion or maintenance of any particular religious or religious denomination. Indeed, Article 290(A) of the Constitution provides for annual payment to certain Devaswom funds in the following terms: "A sum of forty-six lakhs and fifty thousand rupees shall be charged on, and paid out of the Consolidated Fund of the State of Kerala every year to th eTravancore Devaswom fund; and a sum of thirteen lakhs and fifty thousand rupees shall be charged on, and paid out of the Consolidated Fund of the State of Tamil Nadu

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[8] Ramanuja V. State of Tamil Nadu AIR 1972 SC 1586; Quareshi V. State of Bihar 1959 SCR 629

every year to the Devaswom Fund established in that State for the maintenance of Hindu temples and shrines in the territories transferred to that State on the 1st day of November, 1956, from the State of Travancore-Cochin." This may be compared with the decision of the **U.S. Supreme Court in Everson V. Board of Education (330 IUS 1)** where it was held that the State could not reimburse transportation charges of children attending a Roman Catholic School.

Article 28 in fact brings to the fore the nature of the word 'secular' used in the preamble to the Constitution and indicated clearly that there is no wall of seperation between the State and religious institutions under the Indian Constitution. No doubt Article 28(1) provides that if the institution is an educational one and it is wholly maintained by the State funds, religious instruction cannot be provided in such institution. However, Article 28(1) does not forbid the setting up of an institution for charitable purposes by any religious denomination nor does it prohibit the running of such institution even though it may be wholly maintained by the State. What it prohibits is the giving of religious instruction. Even, this prohibition is not absolute. It is subject to the extent of sub-Article (2) of Article 28 which provides that if the educational institution has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution, then despite the prohibition in Article 28(1) and despite the fact that the education institution is in fact administered by the State, religious instruction can be imparted in such institution. Article 28(2) thus in no uncertain terms envisages that an educational institution administered by the State and wholly maintained by the State can impart religious instruction. It recognises in Article 28(3) that there may be educational institutions imparting religious instruction according to whichever faith and conducting religious worship which can be recognised by the State and which can also receive aid out of State funds.

Similarly, Article 28(3) provides that no individual attending any educational institution which may have been recognised by the State or is receiving State aid can be compelled to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution without such person's consent. Implicit in this prohibition is the acknowledgement that the State can recognize and aid an educational institution giving religious instruction or conducting religious worship. In the United States, on the other hand it has been held that State maintained institutions cannot give religious instruction even if such instruction is not compulsory. (See, ***Tilinois V. Board of Education 1947 (82) Law Ed. 649).***

In the ultimate analysis the Indian Constitution does not unlike the United States, subscribe to the principle of non-interference of the State in religious organisations but it remains secular in that it strives to respect all religions equally, the equality being understood in its substantive sense as is discussed in the subsequent paragraphs.

Article 30(1) and Article 14

'Equality' which has been referred to in the Preamble is provided for in a group of Articles led by Article 14 of the Constitution which says that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. Although stated in absolute terms Article 14 proceeds on the premise that such equality of treatment is required to be given to persons who are equally circumstanced. Implicit in the concept of equality is the concept

that persons who are in fact unequally circumstanced cannot be treated on par. The Constitution has itself provided for such classification in providing for special or group or class rights. Some of these are in Part III itself [Article 26, Article 29(1) and Article 30(1)] Other such Articles conferring group rights or making special provision for a particular class include Articles 336 and 337 where special provision has been made for the Anglo-Indian Community. Further examples are to be found in Articles 122, 212 and other Articles giving immunity from the ordinary process of the law to persons holding certain offices. Again Articles 371 to 371(H) contain special provisions for particular States.

The principles of non-discrimunation which form another facet of equality are provided for under the Constitution under Articles 15(1), 16(1) and 29(2). The first two articles are qualified by major exceptions under Articles 15(3) and (4), 16 (3),(4),(4A) and Article 335 by which the Constitution has empowered the Executive to enact legislation or otherwise specially provide for certain classes of citizens. The fundamental principle of equality is not compromised by these provisions as they are made on a consideration that the persons so 'favoured' are unequals to begin with whether socially, economically or politically. Furthermore, the use of the word 'any person' in Article 14 in the context of legislation in general or executive action affecting group rights is construed to mean persons who are similarly situated. The classification of such persons for the purposes of testing the differential treatment must, of course, be intelligble and reasonable - the reasonableness being determined with reference to the object for which the action is taken. This is the law which has been settled by this Court in a series of decisions, the principle having been enunciated as early as in 1950 in **Chiranjit Lal Chowdhury V. Union of India and Others 1950 SCR 869.**[9]

The equality, therefore, under Article 14 is not indiscriminate. Paradoxical as it may seem, the concept of equality permits rational or discriminating discrimination. Conferment of special benefits or protection or rights to a particular group of citizens for rational reasons is envisaged under Article 14 and is implicit in the concept of equality. There is no abridgment of the content of Article 14 thereby - but an exposition and practical application of such content.

The distinction between classes created by Parliament and classes provided for in the Constitution itself, is that the classification under the first may be subjected to judicial riview and tested against the touchstone of the Constitution. But the classes originally created by the Constitution itself are not so subject as opposed to constitutional amendments.[10]

On a plain reading of the provisions of the Article, all minorities based on religion or language, shall have the right to (1) establish and (2)administer educational institutions of their choice. The emphasized words unambiguously and in mandatory terms grant the right to all minorities to establish and administer educational institutions. I would have thought that it is self evident and in any event, well settled by a series of decisions of this Court that Article 30(1) creates a special class in the field of educational institutions - a class which is entitled to special protection in the matter of setting up and administering educational institutions of their choice. This has been affirmed

[9] See also in Re. Kerala Education Bill, 1957: 1959 SCR 995, 1037

[10] See Keshavananda Bharati V. State of Kerala:AIR 1973 1461

in the decision of this Court where the right has been variously described as "a sacred obligation"[11], "an absolute right"[12], "a special right"[13], "a guaranteed right"[14], "the conscience of the nation"[15], "a befitting pledge"[16], "a special right"[17] and an "article of faith"[18].

The question then is - does this special right in an admitted linguistic or religious minority to establish and administer an educational institution encompass the right to admit students belonging to that particular community.

Before considering the earlier decisions on this, a semantic analysis of words used in Article 30(1) indicates that the right to admit students is an intrinsic part of Article 30(1).

First - Article 30(1) speaks of the right to set up an educational institution. An educational institution is not a structure of bricks and mortar. It is the activity which is carried on in the structure which gives it its character as an educational institution. An educational institution denotes the process or activity of education not only involving the educators but also those receiving education. It follows that the right to set up an educational institution necessarily includes not only the selection of teachers or educators but also the admission of students.

Second - Article 30(1) speaks of the right to "administer" an educational institution. If the administration of an educational institution includes and means its organisation then the organization cannot be limited to the infrastructure for the purposes of education and exclude the persons for whom the infrastructure is set up, namely, the students. The right to admit students is, therefore, part of the right to administer an educational institution.

Third - the benefit which has been guaranteed under Article 30 is a protection or benefit uaranteed to all members of the minority as a whole. What is protected is the community right which includes the right of children of the minority community to receive education and the right of parents to have their children educated in such institution. The content of the right lies not in merely managing an educational institution but doing so for the benefit of the community. Benefit can only lie in the education received. It would be meaningless to give the minorities the right to establish and set up an organisation for giving education as an end in itself, and deny them the benefit of the education as an end in itself, and deny them the benefit of the education. This would render the right a mere form without any content. The benefit to the community and the purpose of the grant of the right is in the actual education of the members of the community.

Finally - the words 'of their choice' is not qualified by any words of limitation and would include the right to admit students of the minority's choice. Since the primary purpose of Article 30(1) is to give benefit to the members of the minority community in question that 'choice' cannot be exercised in a manner that deprives the community of the benefit. Therefore, the choice must be directed towards fulfilling the needs of the community. How that need is met, whether by

[11] In re:Kerala Education Bill, 1957 1959 SCR 995, 1070
[12] Rev. Sidhajbhai Sabhai V. State of Bombay 1963 (3) SCR 837
[13] Rev. Father W. Proost and Ors. V. State of Bihar 1969 (2) SCR 173, 192
[14] State of Kerala V. Very Rev. Mother Pronvincial 1971 (1) SCR 734, 740
[15] St. Xaviers College V. Gujrat 1975 (1) SCR 173, 192
[16] ibid 223
[17] ibid 224
[18] Lily Kurian V. Lewina 1979(2) SCC 124, 137

general education or otherwise, is for the community to determine.

The interpretation is also in keeping with what this Court has consistently held. In **State of Bombay v. Bombay Education Society** [19], the Court said:

> *"---surely then there must be implicit in such fundamental right the right to impart instruction in their own institutions to the children of their own Community in their own language. To hold otherwise will be to deprive article 29(1) and article 30(1) of the greater part of their contents."*

In ***Kerala Education Bill, 1957,*** it was said:

> *"The minorities, quite understandably, regard it as essential that the education of their children should be in accordance with the teachings of their religion and they hold, quite honestly, that such an education cannot be obtained in ordinary schools designed for all the members of the publilc but can only be secured in schools conducted under the influence and guidance of people well versed in the tenets of their religion and in the traditions of their culture. The minorities evidently desire that education should be imparted to the children of their community in an atmosphere congenial to the growth of their culture. Our Constitution makers recognised the validity of their claim and to alley their fears conferred on them the fundamental rights referred to above."*

The issue of admission to minority institutions under Article 30 arose in the decision of **Rev. Sidhajbhai Sabhai** where the State's order reserving 80 per cent of the available seats in a minority institution for admission of persons nominated by the Government under threat of derecognition if the reservation was not complied with, was struck down as being violative of Article 30(1). It was said that although the right of the minority may be regulated to secure the proper functioning of the institution, the regulations must be in the interest of institution and not 'in the interest of outsiders'. The view was reiterated in **St. Xaviers College** when it was said:

> *"The real reason embodied in Article 30(1) of the Constitution is the conscience of the nation that the minorities, religious as well as linguistic, are not prohibited from establishing and administering educational institutions of their choice for the purpose of giving their children the best general education to make them complete men and women of the country."*

In **St.Stephen's College,** the Court recognised that:

> *"The right to select students for admission is a part of administration. It is indeed an important facet of administration. This power also*

[19] 1955 (1) SCR 568

could be regulated but the regulation must be reasonable just like any other regulation. It should be conducive to the welfare of the minority institution or for the betterment of those who resort to it."

However, in a statement which is diametrically opposed to the earlier decisions of this Court, it was held:

"The choice of institution provided in Article 30(1) does not mean that the minorities could establish educational institution for the benefit of their own community people. Indeed they cannot. It was pointed out in Re, Kerala Education Bill that the minorities cannot establish educational institution only for the benefit of their community. If such was the aim, article 30(1) would have been differently worded and it would have contained the words "for their own community". In the absence of such words it is legally impermissible to construe the article as conferring the right on the minorities to establish educational institution for their own benefit..." (P.607)

This conclusion, in my respectful view, is based on a misreading of the decision of this Court in **Kerala Education Bill.** In that case, there was no question of the non-minority students being given admission overlooking the needs of the minority community. The Court was not called upon to consider the question. The underlying assumption in that case was that the only obstacle to the non-minority student getting admission into the minority institution was the State's order to that effect and not the "choice" of the minority institution itself and a minority institution may choose to admit students not belonging to the community without shedding its minority character, provided the choice was limited to a 'sprinkling'. In fact the learned Judges in **St. Stephens** case have themselves in a subsequent portion of the judgment (p.611) taken a somewhat contradictory stand to the view quoted earlier when they said:

".....the minorities have the right to admit their own candidates to maintain the minority character of their institutions. That is a necessary concomitant right which flows from the right to establish and administer educational institution in Article 30(1). There is also ***a related right to the parents in the minority communities. The parents are entitled to have their children educated in institutions having an atmosphere congenial to their own religion."*** .

The conclusion, therefore, is that the right to admission being an essential part of the constitutional guarantee under Article 30(1), a curtailment of the fundamental right in so far as it affect benefit of the minority community would amount to the an infringement of that guarantee.

An institution set up by minorities for educating members of the minority community does not cease to be a minority institution merely because it takes aid. There is nothing in Article 30(1)

which allows the drawing of a distinction in the exercise of the right under that Article between needy minorities and affluent ones. Article 30(2) of the Constitution reinforces this when it says, "The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language". This assumes that even after the grant of aid by the State to an educational institution under the management of the minority, the educational institution continues to be a minority educational institution. According to some, Article 30(2) merely protects the minority's right of management of the educational institution and not the students who form part of such institution. Such a reading would be contrary to Article 30(1) itself. The argument is based on the construction of the word 'management'. 'Management' may be defined as 'the process of managing' and is not limited to the people managing the institution.[20] In the context of Article 30(1) and having regard to the content of the right, namely, the education of the minority community, the word 'management' in Article 30(2) must be construed to mean the 'process' and not the 'persons' in management. 'Aid' by definition means to give support or to help or assist. It cannot be that by giving 'aid' one destroys those to whom 'aid' is given. The obvious purpose of Article 30(2) is to forbid the State from refusing aid to a minority educational institution merely because it is being run as a minority educational institution. Besides Article 30(2) is an additional right conferred on minorities under Article 30(1). It cannot be construed in a manner which is destructive of or as a limitation on Article 30(1). As has been said earlier by this Court in and Article 30(1). There are two ways of considering the relationship between Article 30(1) and Article 29(2), the first in the context of Article 14, the second by an interpretation of Article 29(2) itself.

Article 29(2) has not been expressed as a positive right. Nevertheless in substance it confers a right on a person not to be denied admission into an aided institution only on the basis of religion, race, etc. The language of Article 29(2) reflects the language used in other non-discriminatory Articles in the Constitution namely, clauses (1) and (2) of Article 15 and clauses (1) and (2) of Article 16. As already noted both the Articles contain exceptions which permit laws being made which make special provisions on the basis of sex, caste and race. Even in the absence of clauses (3) and (4) of Article 15 and clauses (3), (4) and 4(A) of Article 16, Parliament could have made special provisions on the forbidden bases of race, caste or sex, provided that the basis was not the only reason for creating a separate class. There would have to be an additional rational factor qualifying such basis to bring it within the concept of 'equality in fact' on the principle of 'rational classification', For example when by law a reservation is made**Rev. Sidhabhai Sabhai,**[21] clause (2) of Article 30 is only another non-discriminatory clause in the Constitution. It is a right in addition to the rights under Article 30(1) and does not operate to derogate from the provisions in clause (1). When in decision after decision, this Court has held that aid in whatever form is necessary for an educational institution to survive, it is a specious argument to say that a minority institution can preserve its rights under Article 30(1) by refusing aid.

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[20] Concise Oxford Dictionary (10 th Edition) 864

[21] supra

I would, therefore, respectfully agree with the conclusion expressed in the majority opinion that grant of aid under Article 30(2) cannot be used as a lever to take away the rights of the minorities under Article 30(1).

Articles 29(2) and 30(1)

Article 29(2) says that "No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them".

It is because Article 30(1) covers the right to admit students that there is an apparent conflict between Article 29(2) in favour of a member of a backward class in the matter of appointment, the reservation is no doubt made on the basis of caste. It is also true that to the extent of the reservation other citizens are discriminated against on one of the bases prohibited under Article 16(1). Nevertheless such legislation would be valid because the reservation is not only on the basis of caste/race but because of the additional factor of their backwardness. Clauses (3) and (4) of Article 15 like clause 3, 4 and 4(A) of Article 16 merely make explicit what is otherwise implicit in the concept of equality under Article 14.

By the same token, Article 29(2) does not create an absolute right for citizens to be admitted into any educational institution maintained by the State or receiving aid out of State funds. It does not prohibit the denial of admission on grounds other than religion, race, caste or language. Therefore, reservation of admission on the ground of residence, occupation of parents or other bases has been held to be a valid classification which does not derogate from the principles of equality under Article 14. [See: **Kumari Chitra Ghosh v. Union of India : 1969(2) SCC 228**)[22]. Even in respect of the "prohibited" bases, like the other non-discriminatory Articles, Article 29(2) is constitutionally subject to the principle of 'rational classification'. If a person is denied admission on the basis of a constitutional right, that is not a denial only on the basis of religion, race etc. This is exemplified in Article 15(4) which provides for :

> *"Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Tribes"*

To the extent that legislation is enacted under Article 15(4) making special provision in respect of a particular caste, there is a denial of admission to others who do not belong to that caste. Nevertheless, Article 15(4) does not contradict the right under Article 29(2). This is because of the use of the word 'only' in Article 29(2). Article 15(4) is based on the rationale that Schedule Castes and Tribes are not on par with other members of society in the matter of education and, therefore, special provision is to be made for them. It is not, therefore, only caste but this additional factor which prevents clause 15(4) from conflicting with Article 29(2) and Article 14.

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[22] D.N. Chanchala V. State of Mysore : 1971 SCR (Supp.) 608

Then again, under Article 337, grants are made available for the benefit of the Anglo-Indian community in respect of education, provided that any educational institution receiving such grant makes available at least 40% of the annual admissions for members of communities other than the Anglo-Indian community. Hence 60% of the admission to an aided Anglo-Indian School is constitutionally reservable for members of the Anglo-Indian community. To the extent of such reservation, there is necessarily a denial of admission to non-Anglo Indians on the basis of race.

Similarly, the Constitution has also carved out a further exception to Article 29(2) in the form of Article 30(1) by recognising the rights of special classes in the form of minorities based on language or religion to establish and administer educational institutions of their choice. The right of the minorities under Article 30(1) does not operate as discrimination against other citizens only on the ground of religion or language. The reason for such classification is not only religion or language *per se* but minorities based on religion and language. Although, it is not necessary to justify a classification made by the Constitution, this fact of 'minorityship' is the obvious rationale for making a distinction, the underlying assumption being that minorities by their very numbers are in a politically disadvantaged situation and require special protection at least in the field of education.

Articles 15(4), 337 and 30 are therefore facets of substantive equality by making special provision for special classes on special considerations.

Even on general principles of interpretation, it cannot be held that Article 29(2) is absolute and in effect wipes out Article 30(1). Article 29(2) refers to 'any educational institution' - the word "any" signifying the generality of its application. Article 30(1) on the other hand refers to 'educational institutions established and administered by minorities'. Clearly, the right under Article 30(1) is the more particular right and on the principle of '*generalia specialibus non derogant*', it must be held that Article 29(2) does not override the educational institutions even if they are aided under Article 30(1)[23].

Then again Article 29(2) appears under the heading 'Protection of interests of minorities'. Whatever the historical reasons for the placement of Article 29(2) under this head, it is clear that on general principles of interpretation, the heading is at least a pointer or aid in construing the meaning of Article 29(2). As Subba Rao, J said "if there is any doubt in the interpretation of the words in the section, the heading certainly helps us to resolve that doubt." [24] Therefore, if two interpretations of the words of Article 29(2) are possible, the one which is in keeping with the heading of the Article must be preferred. It would follow that Article 29(2) must be construed in a manner protective of minority interests and not destructive of them.

When 'aid' is sought for by the minority institution to run its institution for the benefit of students belonging to that particular community, the argument on the basis of Article 29(2) is that if such an institution asks for aid it does so at the peril of depriving the very persons for whom aid was asked for in the first place. Apart from this anomalous result, if the taking of aid implies that the minority institution will be forced to give up or waive its right under Article 30(1), then on the

[23] Pandit M.S.M. Sharma v. Shri Sri Krishna Sinha; 1959 Suppl. 1 SCR 806;860, 1939 FCR 18

[24] Bhinka V. Charan Singh AIR 1959 SC 960, 966

principle that it is not permissible to give up or waive fundamental rights, such an interpretation is not possible. It has been urged that Article 29(2) applies to minority institutions under Article 30(1) much in the same way that Article 28(1) and 28(3) do. The argument proceeds on the assumption that an educational institution set up under Article 30(1) is set up for the purposes and with the sole object of giving religious instruction. The assumption is wrong. At the outset, it may also be noted that Article 28(1) and (3) do not in terms apply to linguistic minority educational institutions at all. Furthermore, the right to set up an educational institution in which religious instruction is to be imparted is a right which is derived from Article 26(a) whcih provides that every religious denomination or any section thereof shall have the right to establish and maintain institutions for religious and charitable purposes, and not under Article 30(1). Educational institutions set up under Article 26(a) are, therefore, subject to clauses(1) and (3) of Article 28. Article 30(1) is a right additional to Article 26(a). This follows from the fact that it has been separately and expressly provided for and there is nothing in the language of Article 30(1) making the right thereunder subject to Articles 25 and 26. Unless it is so construed Article 30(1) would be rendered redundant[25]. Therefore, what Article 30 does is to secure the minorities the additional right to give general education. Although in a particular case a minority educational institution may combine general education with religious instruction that is done in exercise of the rights derivable from Article 26(a) and Article 30(1) and not under Article 30(1) alone. Clauses (1) and (3) of Article 28, therefore, do not apply toArticle 30(1). The argument in support of reading Article 30(1) as being subject to Article 29(2) on the analogy of Article 28(1) and 28(3) is, I would think, erroneous.

For the reasons already stated I have held the right to admit minority students to a minority educational institutions is an intrinsic part of Article 30(1). To say that Article 29(2) prevails over Article 30(1) would be to infringe and to a large extent wipe out this right. There would be no distinction between a minority educational institution and other institutions and the rights under Article 30(1) would be rendered wholly inoperational. It is no answer to say that the rights of unaided minority institutions would remain untouched because Article 29(2) does not relate to unaided institutions at all. Whereas if one reads Article 29(2) as subject to Article 30(1) then effect can be given to both. And it is the latter approach which is to be followed in the interpretation of constitutional provisions.[26] In other words, as long as the minority educational institution is being run for the benefit of and catering to the needs of the members of that community under Article 30(1), Article 29(2) would not apply. But once the minority educational institution travels beyond the needs in the sense of requirements of its own community, at that stage it is no longer exercising rights of admission guaranteed under Article 30(1). To put it differently, when the right of admission is exercised not to meet the need of the minorities, the rights of admission given under Article 30(1) is to that extent removed and the institution is bound to admit students for the balance in keeping with the provisions of Article 29(2).

A simple illustration would make the position clear. 'Aid' is given to a minority institution. There are 100 seats available in that institution. There are 150 eligible candidates according to the

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[25] St. Xaviers College, 1975 (1) SCR 173, paras 7 to 12

[26] Sri Venkataramana Dev Aru V. State of Mysore 1958 SCR 895, 918

procedure evolved by the institution. Of the 150, 60 candidates belong to that particular community and 90 to other communities. The institution will be entitled, under Article 30(1) to admit all 60 minority students first and then fill the balance 40 seats from the other communities without discrimination in keeping with Article 29(2).

I would, therefore, not subscribe to the view that Article 29(2) operates to deprive aided minority institutions the right to admit members of their community to educational institutions established and administered by them either on any principle of interpretation or on any concept of equality or secularism.

The next task is to consider whether this interpretation of Article 29(2) and 30(1) is discordant with the historical context in which these Articles came to be included in the Constitution. Before referring to the historical context, it is necessary to keep in mind that what is being interpreted are constitutional provisions which "have a content and a significance that vary from age to age".[27] Of particular significance is the content of the concept of equality which has been developed by a process of judicial interpretation over the years as discussed earlier. It is also necessary to be kept in mind that reports of the various Committees appointed by the Constituent Assembly and speeches made in the Constituent Assembly and the record of other proceedings of the Constituent Assembly are admissible, if at all, merely as extrinsic aids to construction and do not as such bind the Court. Ultimately, it is for this Court to say what is meant by the words of the Constitution.

The proponents of the argument that Article 29(2) overrides Article 30(1) have referred to excerpts from the speeches made by members of Constituent Assembly which have been quoted in suppot of their view. Apart from the doubtfulness as to the admissibility of the speeches,[28] in my opinion, there is nothing in the speeches which shows an intention on the part of the Constituent Assembly to abridge in any way the special protection afforded to minorities under Aricle 30(1). The intention indicated in the speeches relating to the framing of Article 29(2) appears to be an extension of the right of non-discrimination to members of the non-minority in respect of State aided or State maintained educational institutions. It is difficult to find in the speeches any unambiguous statement which points to a determination on the part of the Constituent Assembly to curtail the special rights of the minorities under Article 30(1). Indeed if one scrutinises the broad historical context and the sequence of events preceding the drafting of the Constitution it is clear that one of the primary objectives of the Constitution was to preserve, protect and guarantee the rights of the minorities unchanged by any rule or regulation that may be enacted by Parliament or any State legislature.

The history which preluded the independence of this country and the framing of the Constitution highlights the political context in which the Constitution was framed and he political content of the "special" rights given to minorities. I do not intend to burden this judgnent with a detailed reference to the historical run-up to the Constitution as ultimately adopted by the Constituent

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[27] Cardozo: Nature of Judicial Process, p.17

[28] K.P. Verghese V. Income Tax Officer 1982 (1) SCR 629, 645; Sanjeev Coke V. Bharat Cooking Coa Ltd. 1983 (1) SCR 1000, 1029 and P.V. Narasimha Rao AIR 1998 SC 2120, 2158-1998 (4) SCC 626

Assembly vis-a-vis the rights of the minorities and the importance that was placed on enacting effective and adequate constitutional provisions to safeguard their interests. This has been adequately done by Sikri, C.J. in ***Keshavanand Bharati V. State of Kerala***[29] on the basis of which the learned Judge came to the conclusion that the rights of the minorities under the Constitution formed part of the basic structure of the Constitution and were un-amendable and inalienable.

I need only add that the rights of linguistic minorities assumed special significance and support when, much after independence, the imposition of a 'unifying language' led not to unity but to an assertion of differences. States were formed on linguistic bases showing the apparent paradox that allowing for and protecting differences leads to unity and integrity and enforced assimilation may lead to disaffection and unrest. The recognition of the principle of "unity in diversity" has continued to be the hall mark of the Constitution - a concept which has been further strengthened by affording further support to the protection of minorities on linguistic bases in 1956 by way of Articles 350-A and 350-B and in 1978 by introducing clause (1-A) in Article 30 requiring "the State, that is to say, Parliament in the case of a Central legislation or a State legislature in the case of State legislation, in making a specific law to provide for the compulsory acquisition of the property of minority educational institutions, to ensure that the amount payable to the educational institution for the acquisition of its property will not be such as will in any manner impair the functioning of the educational institution".[30] Any judicial interpretation of the provisions of the Constitution whereby this constitutional diversity is diminished would be contrary to this avowed intent and the political considerations which underlie this intention.

The earlier decisions of this Court show that the issue of admission to a minority educational institution almost invariably arose in the context of the State claiming that a minority institution had to be 'purely' one which was established and administered by members of the minority community concerned, strictly for the members of the minority community, with the object only of preserving of the minority religion, language, script or culture. The contention on the part of the executive then was that a minority institution could not avail of the protection of Article 30(1) if there was any non-minority element either in the establishment, administration, admission or subjects taught. It was in that context that the Court in ***Kerala Education Bill*** held that a 'sprinkling of outsiders' being admitted into a minority institution did not result in the minority institution shedding its character and ceasing to be a minority institution.[31] It was also in that context that the Court in ***St.Xaviers College*** (supra) came to the conclusion that a minority institution based on religion and language had the right to establish and administer educational institution for imparting general secular education and still not lose its minority character. While the effort of the Executive was to retain the 'purity' of a minority institution and thereby to limit it, "the principle which can be discerned in the various decisions of this Court is that the catholic approach which led to the drafting of the provisions relating to minority rights should not be set at naught by narrow judicial interpretation.[32]

The 'liberal, generous and sympathetic approach' of this Court towards the rights of the

[29] 1973 (4) SCC 225, para 168, 178.

[30] Society of St. Joseph's College V. Union of India 2002 (1) SCC 273, 278

[31] p.1052

[32] 1975 (1) SCR 173, 234

minorities has been somewhat reserved in the ***St. Stephens case.*** Of course, this was the first decision of this Court which squarely dealt with the inter-relationship of Article 29(2) and Article 30(1). None of the earlier cited decisions did.

The decision of this Court in ***Champakam Dorairajan V. State of Madras***[33] cannot be construed as an authority for the proposition that Article 29(2) overrides the constitutional right guaranteed to the minorities under Article 30(1), as Article 30(1) was not at all mentioned in the entire course of the judgment. Similarly, the Court in ***State of Bombay v. Bombay Education Society***[34] was not called upon to consider a situation of conflict between Article 30(1) and 29(2). The ***Bombay Education Society,*** was in fact directly concerned with Article 337 and an Anglo-Indian educational institution. In that background, when it was suggested that Article 29(2) was intended to benefit minorities only, the Court negatived the submission as it would amount to a 'double protection', "double" because an Anglo-Indian citizen would then have not only the protection of Article 337 by way of a 60% reservation but also the benefit of Article 29(2). It was not held by the Court that Article 29(2) would override Article 337.

There is thus no question of striking a balance between Article 29(2) and 30(1) as if they were two competing rights. Where once the Court has held:

> *"Equality of opportunity for unequals can only mean aggravation of inequality. Equality of opportunity admits discrimination with reason and prohibits discrimination without reason. Discrimination with reasons means rational classification for differential treatment having nexus to the constitutional permissible objects."*

and where Article 29(2) is nothing more than a principle of equality, and when "the whole object of conferring the right on minorities under Article 30 is to ensure that there will be equality between the majority and the minority, if the minorities do not have such special protection they will be denied equality[35], it must follow that Article 29(2) is subject to the constitutional classification of minorities under Article 30(1).

Finally, there appears be an inherent contradiction in the statement of the Court in ***St. Stephens*** that:

> *"the minority aided educational institutions are entitled to prefer their community candidates to maintain the minority character of the institutions subject of course to conformity with the University standard. The State may regulate the intake in this category with due regard to the need of the community in the area which the institution is intended to serve. But in no case such intake shall exceed 50 per cent of the annual admission. The minority institutions shall make available at least 50 per cent of the annual admission to*

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[33] 1951 SCR 525

[34] 1955 SCR 568

[35] Ahmedabad St. Xaviers College

members of communities other than the minority community. The admission of other community candidates shall be done purely on the basis of merit." (p.614)

I agree with the view as expressed by the Learned Chief Justice that there is no question of fixing a percentage when the need may be variable. I would only add that in fixing a percentage, the Court in ***St. Stephens*** in fact "reserved" 50% of available seats in a minority institution for the general category ostensibly under Article 29(2). Article 29(2) pertains to the right of an individual and is not a class right. It would therefore apply when an individual is denied admission into any educational institution maintained by the State or receiving aid from the State funds, solely on the basis of the ground of religion, race, caste, language or any of them. It does not operate to create a class interest or right in the sense that any educational institution has to set apart for non-minorities as a class and without reference to any individual applicant, a fixed percentage of available seats. unless Article 30(1) and 29(2) are allowed to operate in their separate fields then what started with the voluntary 'sprinkling' of outsiders, would become a major inundation and a large chunk of the right of an aided minority institution to operate for the benefit of the community it was set up to serve, would be washed away.

Apart from this difference with the views expressed by the majority view on the interpretation of Article 29(2) and Article 30(1), I am also unable to concur in the mode of determining the need of a minority community for admission to an educational institution set up by such community. Whether there has been a violation of Article 29(2) in refusing admission to a non-minority student in a particular case must be resolved as it has been in the past by recourse to the Courts. It must be emphasised that the right under Article 29(2) is an individual one. If the non-minority student is otherwise eligible for admission, the decision on the issue of refusal would depend on whether the minority institution is able to establish that the refusal was only because it was satisfying the requirements of its own community under Article 30(1). I cannot therefore subscribe to the view expressed by the majority that the requirement of the minority community for admission to a minority educational institution should be left to the State or any other Governmental authority to determine. If the Executive is given the power to determine the requirements of the minority community in the matter of admission to its educational institutions, we would be subjecting the minority educational institution in question to an "intolerable encroachment" on the right under Article 30(1) and let in by the back door as it were, what should be denied entry altogether.

Sd/-

.....J.

(Ruma Pal)

New Delhi

October 31, 2002

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO.317 OF 1993

T.M.A.Pai Foundation & Ors. ... Petitioners

versus.

State of Karnataka & Ors. ... Respondents

WITH

Writ Petition (Civil) Nos. 252 of 1979, 54-57, 2228 of 1981, 2460, 2582, 2583-84, 3362, 3517, 3602, 3603, 3634, 3635, 3636, 8398, 8391, 5621, 5035, 3701, 3702, 3703, 3704, 3715, 3728, 4648, 4649, 2479, 2480, 2547 and 3475 of 1982, 7610, 4810, 9839 and 9683-84 of 1983, 12622-24 of 1984, 119 and 133 of 1987, 620 of 1989, 133 of 1992, 746, 327, 350, 613, 597, 536, 626, 444, 417, 525, 474, 485, 484, 355, 525, 469, 392, 629, 399, 531, 603, 702, 628, 663, 284, 555, 343, 596, 407, 737, 738, 747, 470, 610, 627, 635, 706, 726, 598, 482, and 571 of 1993, 295 and 764 & D.No. 1741 of 1994, 331, 446 and 447 of 1995, 364 and 435 of 1996, 456, 454, 447 and 485 of 1997, 356, 357 and 328 of 1998, 199, 294, 279, 35, 181, 373, 487 and 23 of 1999, 561 of 2000, 6 and 132 of 2002, Civil Appeal Nos. 1236-1241 and 2392 of 1977, 687 of 1976, 3179, 3180, 3181, 3182, 1521-56, 3042-91 of 1979, 2929-31, 1464 of 1980, 2271 & 2443-46 of 1981, 4020, 290 and 10766 of 1983, 5042 and 5043 of 1989, 6147 and 5381 of 1990, 71, 72 and 73 of 1991, 1890-91, 2414 and 2625 of 1992, 4695-4746, 4754-4866 of 1993, 5543-5544 of 1994, 8098-8100 and 11321 of 1995, 4654-4658 of 1997, 608, 3543 and 3584-3585 of 1998, 5053-5054 of 2000, 5647, 5648-5649, 5650, 5651, 5652, 5653-5654, 5655, 5656 of 2001 and 2334 of 2002, S.L.P. (C) Nos. 9950 and 9951 of 1979, 11526 and 863 of 1980, 12408 of 1985, 8844 of 1986, 12320 of 1987, 14437, 18061-62 of 1993, 904-05 and 11620 of 1994, 23421 of 1995, 4372 of 1996, 10360 and 10664 of 1997, 1216, 9779-9786, 6472-6474 and 9793 of 1998, 5101, 4480 and 4486 of 2002 and T.C. (Civil) Nos. 26 of 1990, T.P. (Civil) Nos. 1013-14 of 1993.

JUDGMENT

S.N. Variava, J.

1. We have had the advantage of going through the Judgment of the learned Chief Justice of India, brother Justice Khare, brother Justice Quadri and sister Justice Ruma Pal. We are unable to agree with the views expressed by brother Justice Quadri and sister Justice Ruma Pal. The learned Chief Justice has categorized the various questions into the following categories.

    1) Is there a fundamental right to set up educational institutions and, if so, under which provision?

    2) Does the judgment in Unnikrishnan's case require reconsideration?

    3) In case of private unaided institutions can there be Government regulations and if so to what extent?

    4) In determining the existence of a religious of linguistic minority, in relation to Article 30, what is to be the unit, the State or Country as a whole; and

    5) To what extent the rights of aided minority institutions to administer be regulated.

2. Justice Khare has dealt with categories 4 and 5 above. On other aspects he has agreed with the learned Chief Justice.

3. We are in agreement with the reasoning and conclusions of the learned Chief Justice on categories 1 and 4. In respect of category 2 we agree with the learned Chief Justice that the cost incurred on educating a student in an unaided professional college was more than the total fee which is realized on the basis of the formula fixed in the scheme. This had resulted in revenue shortfalls. As pointed out by the learned Chief Justice even though by a subsequent decision (to ***Unni Krishnan's)*** this court had permitted some percentage of seats within the payment seats to be alloted to Non-Resident Indians, against payment of a higher amount as determined by the authorities, sufficient funds were still not available for the development of those educational institutions. As pointed out by the learned Chief Justice experience has shown that most of the "free seats" were occupied by students from affluent families, while students from less affluent families were required to pay much more to secure admission to "payment seats". As pointed out by the learned Chief Justice the reason for this was that students from affluent families had had better school education and the benefit of professional coaching facilities and were, therefore, able to secure higher merit positions in the common entrance test, and thereby secured the free seats. The education of these more affluent students was in a way being cross-subsidized by the financially poorer students who, because of their lower position in the merit list, could secure only "payment seats". Thus we agree with the conclusion of the learned Chief Justice that the scheme cannot be considered to be a reasonable restriction and requires re-consideration and that the regulations must be minimum. However, we cannot lose sight of the ground realities in our country. The majority of our population come from the poorer section of our society. They cannot and will not be able to afford the fees which will now be fixed pursuant to the judgment. There must therefore

be an attempt, not just on the part of the Government and the State, but also by the educational institutions to ensure that students from the poorer section of society get admission. One method would be by making available scholarships or free seats. If the educational institution is willing to provide free seats then the costs of such free seats could also be partly covered by the fees which are now to be fixed. There should be no harm in the rich subsidising the poor.

4. The learned Chief Justice has repeatedly emphasised that capitation 'fees cannot be charged and that there must be no profiteering. We clarigy that the concerned authorities will always be entitled to prevent by enactment or by regulations the charging of exhorbitant fees or capitation fees. There are many such enactments already in force. We have not gone into the validity or otherwise of any such enactment. No arguments regarding the validity of any such enactment have been submitted before us. Thus those enactments will be deemed to have been set aside by this judgment. Of course now by virtue of this judgment the fee structure, fixed under any regulation or enactment, will have to be reworked so as to enable educational institutions not only to break even but also to generate some surplus for future development/expansion and to provide for free seats.

5. We also wish to emphasis, what has already been stated by the learned Chief Justice, that an educational institution must grant admission on some identifiable and acceptable manner. It is only in exceptional cases, that the management may refuse admission to a student. However such refusal must not be whimsical or for extraneous reasons meaning thereby that the refusal must be based on some cogent and justifiable reasons.

6. In respect of categories 3 and 5 we wish to point out that this Court has been constantly taking the view that these aided educational institutions (whether majority or minority) should not have unfettered freedom in the matter of administration and management. The State which gives aid to educational institution including minority educational institution can impose such conditions as are necessary for the proper maintenance for the higher standards of education. State is also under an obligation to protect the interests of the teaching and non-teaching staff. In many States, there are various statutory provisions to regulate the functioning of these educational institutions. Every educational institution should have basic amenities. If it is a school, it should have healthy surroundings for proper education; it should have a playground, a laboratory, a library and other requisite facilities that are necessary for a proper functioning of the school. The teachers who are working in the schools should be governed by proper service conditions. In States where the entire pay and allowances for the teaching staff and non-teaching staff are paid by the State, the State has got ample power to regulate the method of selection and appointment of teachers. State can also prescribe qualifications for the teachers to be appointed in such schools. Similarly in an aided schools, State sometimes provides aid for some of the teachers only while denying the aid to other teachers. Sometimes the State does not provide aid for the non-teaching staff. The State could, when granting aid, provides for the age and qualifications for recruitment of a teacher, the age of retirement and even for the manner in which an enquiry has to be held by the institution. In other words there could be regulations which ensure that service conditions for teachers and staff receiving aid of the State and the teachers or the staff for which no aid is being provided are the same. Pre-requisite to attract good teachers is to have good service conditions. To bring about an

uniformity in the service conditions State should be put at liberty to prescribe the same without intervening in the process of selection of the teachers or their removal, dismissal etc. We agree that there need not be either prior and subsequent approval from any functionaries of the State/University/ Board (as the case may be) for disciplinary action, removal or dismissal. However principles of natural justice must be observed and as already provided, by the learned Chief Justice all such action can be scrutinised by the Educational Tribunal. The provisions contained in the various enactments are not specially challenged before us. The constitutional validity of the statutory provisions vis-a-vis the rights under Articles 19(1)(g), Article 26, Article 29 and Article 30(1) of the Constitution can be examined only if a specific case is brought before the Court. Educational Institutions receiving State aid cannot claim to have complete autonomy in the matter of administration. They are bound by various statutory provisions which are enacted to protect the interests of the education, students and teachers. Many of the Statutes were enacted long back and stood the test of time. Nobody has ever challenged the provisions of these enactments. The regulations made by the State, to a great extent, depend on the extent of the aid given to institutions including minority institutions. In some States, a lumpsum amount is paid as grant for maintenance of schoools. In such cases, the State may not be within its rights to impose various restrictions, specially regarding selection and appointment of teachers. But in some States the entire salary of the teaching and non-teaching staff are paid, and these employees are given pension and other benefits, the State may then have a right and an obligation to see that the selection and appointment of teachers are properly made. Similarly the State could impose conditions to the effect that in the matter of appointments, preference shall be given to weaker sections of the community, specially physically handicapped or dependents of employees who died in the harness. All such regulations may not be said to be ban and/or invalid and may not even amount to infringing the rights of the minority conferred under Article 30(1) of the Constitution. Statutory provisions such as labour laws and welfare legislations etc. would be applicable to minority educational institutions. As this decision is being rendered by a larger bench consisting of eleven judges, we feel that it is not advisable and we should not be taken to have laid down extensive guidelines in respect of myriads of legal questions that may arise for consideration. In our view in this case the battlelines were not drawn up in the correct perspective and many of the aggrieved or affected parties were not before us.

7. As regards category 5, we agree with the conclusions of both the learned Chief Justice as well as justice Khare that Article 29(2) aplies to Article 30. However, we are unable to agree with the final reasoning that there must be a balancing between Articles 29(2) and 30(1). We, therefore, give our reasons for dis-agreeing with the final conclusion that there must be a balancing between Articles 29(2) and 30.

8. We are conscious of the fact that the learned Chief Justice and Justice Khare have exhaustively dealt with the authorities. However in our view there is need to emphasise the same. We are here called upon to interpret Articles 29(2) and 30. Submissions have been made that in interpreting these Articles the historical background must be kept in mind and that a contextual approach should be taken. We must, therefore, a) look at the history which led to incorporation of these Articles. The intention of the framers will then disclose how the contextual approach must be based; b) apply the well settled principles of interpretation; and c) keep the doctrine of "Stare

Decisis" in mind.

9. In the case of *Kesavananda Bharati v. State of Kerala* [(1973) 4 SCC 225], it has been held that in interpreting the provisions of a Statute or the Constitution it is the duty of the Court to find out the legislative intent. It has been held that Constituent Assembly debates are not conclusive but that, in a Constitutional matter where the intent of the framers of the Constitution is to be ascertained, the Court should look into the proceedings and the relevant data, including the speeches, which throw light on ascertaining the intent. In considering the nature and extent of rights conferred on minorities on must keep in mind the historical background and see how and for what purpose Article 30 was framed.

10. In the case of *R.S. Nayak vs. A.R. Antulay* reported in AIR (1984) SC 684 at page 686, it has been held as follows:

> "Reports of the Committee which preceded the enactment of a legislation, reports of Joint Parliament Committee, report of a Commission set up for collecting information leading to the enactment are permissible external aid to construction. If the basic purpose underlying construction of legislation is to ascertain the real intention of the Parliament, why should the aids which Parliament availed of such as report of a Special Committee preceding the enactment, existing state of Law, the environment necessitating enactment of legislation, and the object sought to be achieved, be denied to Court whose function is primarily to give effect to the real intention of the Parliament in enacting the legislation. Such denial would deprive the Court of a substantial and illuminating aid to construction.
>
> The modern approach has to a considerable extent eroded the exclusionary rule even in England."

11. The partition of India caused great anguish, pain, bitterness and distrust amongst the various communities residing in India. Initially there was a demand for separate electorate and reservation of seats. However the principle of unity and equality for all prevailed. In return it was agreed that minorities would be given special protections.

12. The reason why Article 30(1) was embodied in the Constitution has been set out by Chief Justice Ray (as he then was) in the case of *St. Xaviers College v. State of Gujarat* reported in (1975) 1 SCR 173. The relevant portion reads as follows:

> "The right to establish and administer educational institutions of their choice has been conferred on religious and linguistic minorities so that the majority who can always have their rights by having proper legislation do not pass a legislation prohibiting minorities to establish and administer educational institutions of their choice.
>
> xxx xxx xxx
> xxx xxx xxx
> Every section of the public, the majority as well as minority has rights in

respect of religion as contemplated in Articles 25 and 26 and rights in respect of language, script, culture as contemplated in Article 29. The whole object of conferring the right on minorities under Article 30 is to ensure that there will be equality between the majority and the minority. If the minorities do not have such special protection they will be denied equality.

xxx xxx xxx

xxx xxx xxx

The real reason embodied in Article 30(1) of the Constitution is the conscience of the nation that the minorities, religious as well as linguistic, ar not prohibited from establishing and administering educational institutions of their choice for the purpose of giving their children the best general education to make them complete men and women of the country. The minorities are given this protection under Article 30 in order to preserve and strengthen the integrity and unity of the country. The sphere of general secular education is intended to develop the commonness of boys and girls of our country. This is in the true spirit of liberty, equality and fraternity through the medium of education. If religious or linguistic minorities are not given protection under Article 30 to establish and administer educational institutions of their choice, they will feel isolated and separate. General secular education will open doors of perception and act as the natural light of mind for our countrymen to live in the whole." (emphasis supplied)

In the same Judgment, Justice Khanna has held as follows:

"Before we deal with the contentions advanced before us and the scope and ambit of article 30 of the Constitution, it may be pertinent to refer to the historical background. India is the second most populous country of the world. The people inhabiting this vast land profess different religions and speak different languages. Despite the diversity of religion and language, there runs through the fabric of the nation the golden thread of a basic innate unity. It is a mosaic of different religions, languages and cultures. Each of them has made a mark on the Indian polity and India today represents a synthesis of them all. The closing years of the British rule were marked by communal riots and dissentions. There was also a feeling of distrust and the demand was made by a section of Muslims for a separate homeland. This ultimately resulted in the partition of the country. Those who led the fight for independence in India always laid great stress on communal amity and accord. They wanted the establishment of a secular State wherein people belonging to the different religions should all have a feeling of equality and non-discrimination. Demand had also been made before the partition by sections of people belonging to the minorities for reservation of seats and separate electorates. In order to bring about integration and fusion of the different sections of the population, the framers of the

Constitution did away with separate electorates and introduced the system of Joint electorates , so that every candidate in an election should have to look for support of all sections of the citizens. Special safeguards were guaranteed for the minorities and they were made a part of the fundamental rights with a view to instil a sense of confidence and security in the minorities. Those provisions were a kind of a Charter of rights for the minorities so that none might have the feeling that any section of the population consisted of first-class citizens and the others of second-class citizens." (emphasis supplied)

13. This was the basis on which minority rights were guaranteed. The rights were created so that minorities need have no apprehension that they would not be able, either in the religious or in the educational fields, to do what the politically powerful majority could do. In matters of education what the politically powerful majority could do was to establish and administer educational institutions of their choice at their own expense. Principles of equality required that the minorities be given the same rights. The protection/special right was to ensure that the minorities could also establish and administer educational institutions of their choice at their own expense. The demand for separatism and separate electorates was given up as principles of secularism and equality were considered more important. The principle of secularism and equality meant that State would not discriminate on grounds of religion, race, caste, language or any of them. Thus once State aid was given and/ or taken then, whether majority or minority, all had to adhere to principles of equality and secularism. There never was any intention or desire to create a special privileged class of citizens.

14. With this background, it is necessary to see how Articles 29 and 30 came to be framed/ incorporated in the Constitution. Mr. Munshi was a strong advocate for minority rights. Mr. Munshi sent to the Advisory Committee a Note with which he forwarded a draft Constitution. This draft Constitution clearly indicates what rights were contemplated in framing, what is now, Article 30(1). Draft Article VI read as follows:

"The Right to Religious and Cultural Freedom

(1) All citizens are equally entitled to freedom of conscience and to the right freely to profess and practise religion in a manner compatible with public order, morality or health.

Provided that the economic, financial or political activities associated with religious worship shall not be deemed to be included in the right to profess or practise religion.

(2) All citizens are entitled to cultural freedom, to the use of their mother tongue and the script thereof, and to adopt, study or use any other language and script of their choice.

(3) Citizens belonging to national minorities in a State whether based on religion or language have equal rights with other citizens in forming, controlling and administering at their own expense, charitable, religious and social institutions, schools and other educational establishments with the free use of

their language and practice of their religion. (emphasis supplied)

(4) No person may be compelled to pay taxes the proceeds of which are specifically appropriated in payment of religious requirements of any community of which he is not a member.

(5) Religious instruction shall not be compulsory for a member of a community which does not profess such religion.

(6) No person under the age of eighteen shall be free to change his religious persuasion without the permission of his parent or guardian.

(7) Conversion from one religion to another brought about by coercion, undue influence or the offering of material inducement is prohibited and is punishable by the law of the Union.

(8) It shall be the duty of every unit to provide, in the public educational system in towns and districts in which a considerable proportion of citizens of other than the language of the unit are residents, adequate facilities for ensuring that in the primary schools the instruction shall be given to the children of such citizens through the medium of their own language.

Nothing in this clause shall be deemed to prevent the unit from making the teaching of the national language in the variant and script of the choice of the pupil obligatory in the schools.

(9) No legislation providing State-aid for schools shall discriminate against schools under the management of minorities whether based on religion or language.

Every monument of artistic or historic interest or place of natural interest throughout the Union is guaranteed immunity from spoliation, destruction, removal, disposal or export except under a law of the Union, and shall be preserved and maintained according to the law or the Union."

This shows that the intention was to give to the minorities the right to form, control and administer, amongst others educational institutions, at their own expense. It is also to be noted that Article (9) is similar to what is now Article 30(2). As the educational institutions were to be at their own expense, State aid was not made compulsory.

15. At this stage it must be remembered that the minorities to whom rights were being given, were not minorities who were socially and/or economically backward. There was no fear that economically, these religious or linguistic minorities, would not be able to establish and administer educational institution. There was also no fear that, in educational institutions established for the benefit of all citizens, the children of these religious or linguistic minorities would not be able to compete. These rights were being conferred only to ensure that the majority, who due to their numbers would be politically powerful, did not prevent the minorities from establishing and administering their own educational institutions. In so providing, the basic feature of the Constitution,

namely, secularism and equality for all citizens, whether majority or minority was being kept in mind.

16. In this behalf, an extract from *Kesavananda's case* is very relevant. It reads as follows:

> "It may be recalled that as regards the minorities the Cabinet Mission had recognised in their report to the British Cabinet on May 6, 1946, only three main communities: general, Muslims and Sikhs. General community included all those who were non-Muslims or non-Sikhs. The Mission had recommended an Advisory Committee to be set up by the Constituent Assembly which was to frame the rights of citizens, minorities, tribals and excluded areas. The Cabinet Mission statement had actually provided for the cession of sovereignty to the Indian people subject only to two matters which were: (1) willingness to conclude a treaty with His Majesty's Government to cover matters arising out of transfer of power and (2) adequate provisions for the protection of the minorities. Pursuant to the above and Paras 5 and 16 of the Objectives Resolution the Constituent Assembly set up an Advisory Committee on January 24, 1947. The Committee was to consist of representatives of muslims, the depressed classes or the scheduled castes, the Sikhs, Christians, Parsis, Anglo-Indians, tribals and excluded areas besides the Hindus. As a historical fact it is safe to say that at a meeting held on May 11, 1949, a resolution for the abolition of all reservations for minorities other than the scheduled castes found whole-hearted support from an overwhelming majority of the members of the Advisory Committee. So far as the scheduled castes were concerned it was felt that their peculiar position would necessitate special reservation for them for a period of ten years. It would not be wrong to say that the seperate representation of minorities which had been the feature of the previous Constitutions and which had witnesses so much of communal tension and strife was given up in favour of joint electorates in consideration of the guarantee of fundamental rights and minorities' rights which it was decided to incorporate into the next Constitution. The Objectives Resolution can be taken into account as a historical fact which moulded its nature and character. Since the language of the Preamble was taken from the resolution itself the declaration in the Preamble that India would be a Sovereign Democratic Republic which would secure to all its citizens justice, liberty and equality was implemented in Parts III and IV and other provisions of Constitution. These formed not only the essential features of the Constitution but also the fundamental conditions upon and the basis on which the various groups and interests adopted the Constitution as the Preamble hoped to create one unified integrated community. (emphasis supplied)"

17. The draft Articles were then forwarded by the Advisory Committee to a Committee for fundamental rights. They were also forwarded to another Committee known as the Committee of Minorities. These two Committees thereafter revised the draft and the revised draft was then

forwarded to the Constituent Assembly for discussion. The relevant portion of the rivised draft read as follows:

"Rights relating to religion

13. All persons are equally entitled to freedom of conscience, and the right freely to profess, practise and propagate religion subject to public order, morality or health, and to the other provisions of this Part.

Explanation 1. - The wearing the carrying of kirpans shall be deemed to be included in the profession of the Sikh religion.

Explanation 2. - The above rights shall not include any economic, financial, political or other secular activities that may be associated with religious practice.

Explanation 3. - The freedom of religious practice guaranteed in this clause shall not debar the State from enacting laws for the purpose of social welfare and reform and for throwing open Hindu religious institutions of a public character to any class or section of Hindus.

14. Every religious denomination or a section thereof shall have the right to manage its own affairs in matters of religion and, subject to law, to own, acquire and administer property, movable and immovable, and to establish and maintain institutions for religious or charitable purposes.

15. No person may be compelled to pay taxes, the proceeds of which are specifically appropriated to further or maintain any particular religion or denomination.

16. No person attending any school maintained or receiving aid out of public funds shall be compelled to take part in the religious instruction that may be given in the school or to attend religious worship held in the school or in the premises attached thereto.

17. Conversion from one religion to another brought about by coercion or undue influence shall not be recognised by law.

Cultural and Educational Rights

18. (1) Minorities in every unit shall be protected in respect of their language, script and culture, and no laws or regulations may be enacted that may operate oppressively or prejudicially in this respect.

(2) No minority whether based on religion, community or language shall be discriminated against in regard to the admission into State educaional institutions, nor shall any religious instruction be compulsorily imposed on them.

(3)(a). All minorities whether based on religion, community or language shall be free in any unit to establish and administer educational institutions of

their choice.

(b). The State shall not, while providing State aid to schools, discriminate against schools under the management of minorities whether based on religion, community or language."

Thus under Clause 18(3)(a) minorities based on religion, community and language were to be free to establish and administer educational institutions. The Constituent Assembly Debates, of 30th August, 1947, indicate that it was understood and clear that the right to establish and administer educational institutions was to be at their own expense. During the Debate on 30th August, 1947, Mr. K.T.M. Ahmed Ibrahim Sahib Bahadur proposed an amendment in Clause 18(2). The suggested amendment read as follows:

"Provided that this clause does not apply to state Educational Institutions maintained mainly for the benefit of any particular community or section of the people."

18. Similarly Mrs. Purnima Banerji proposed an amendment to the effect that under Clause 18(2) after the words "State" the words "and State-aided" be inserted. To be noted that both Mr.K.T.M. Ahmed and Mrs. Purnima Banerji were, by their proposed amendments, seeking to enhance rights of minorities. The discussions which follow these proposed amendments are very illustrative and informative. These discuddions read as follows:

"**Mrs. Purnima Banerji** Sir, my amendment is to clause 18(2). It reads as follows:-

"That after the word 'State', the words 'and State-aided' be inserted."

The purpose of the amendment is that no minority, whether based on community or religion shall be discriminated against in regard to the admission into State-aided and State educational institutions. Many of the provinces, e.g., U.P., have passed resolutions laying down that no educational institution will forbid the entry of any members of any community merely on the ground that they happened to belong to a particular community - even if that institution is maintained by a donor who has specified that that institution should only cater for members of his particular community. If that institution seeks State aid, it must allow members of other communities to enter into it. In the olden days, in the Anglo-Indian schools (it was laid down that, though those school were specifically intended for Anglo-Indians, 10 per cent of the seats should be given to Indians. In the latest report adopted by this House, it is laid down at 40 per cent. I suggest Sir, that if this clause is included without the amendment in the Fundamental Rights, it will be a step backward and many Provinces who have taken a step forward will have to retract their steps. We have many institutions conducted by very philanthropic people, who have left large sums of money at their disposal. While we welcome such donations, when a principle has been laid down that, if any institution receives State aid, it cannot discriminate

or refuse admission to members of other communities, then it should be followed. We know, Sir, that many a Province has got provincial feelings. If this provision is included as a fundamental right, I suggest that it will be highly detrimental. The Honourable Mover has not told us what was the reason why he specifically excluded State-aided institutions from this clause. If he had explained it, probably the House would have been convinced. I hope that all the educationists and other members of this House will support my amendment. (emphasis supplied)

Even though Mrs. Purnima Banerji is seeking to give further protection to students of minority community, her speech indicates the principle, accepted by all, that if an institute receives State aid it cannot discriminate or refuse admission to members of other communities. The reply of Mr. Munshi is as follows:

Mr. K. M. Munshi: Mr. President, Sir, the scope of this clause 18(2) is only restricted to this, that where the State has got an educational institution of its own, no minority shall be discriminated against. Now, this does recognise to some extent the principle that the State cannot own an institution from which a minority is excluded. As a matter of fact, this to some extent embodies the converse proposition over which discussion took place on clause 16, namely no minority shall be excluded from any school maintained by the State. That being so, it secures the purpose which members discussed a few minutes ago. This is the farthest limit to which I think, a fundamental right can go.

Regarding Ibrahim Sahib's amendment, I consider that it practically destroys the whole meaning and content of this fundamental right. This minority right is intended to prevent majority control legislatures from favouring their own community to the exclusion of other communities. The question therefore is : Is it suggested that the State should be at liberty to endow schools for minorities? Then it will come to this that the minority will be a favoured section of the public. This destroys the very basis of a fundamental right. I submit that it should be rejected. (emphasis supplied)

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Then comes Mrs. Banerji's amendment. It is wider than the clause itself. As I pointed out, clauses 16 to 18 are really two different propositions. This is with regard to communities. Through the medium of a fundamental right, not by legislation, not by administrative action this amendment seeks to close down thousands of institutions in this country.

I can mention one thing in so far as my province is concerned there are several hundreds of Hindu Schools and several dozens of Muslim Schools. Many of tem are run by charities which are exclusively Hindu or Muslim. Still the educational policy of the State during the Congress regime has been that as

far as possible no discrimination should be permitted against any pupil by administrative action in these schools. Whenever a case of discrimination is found, the Educational Inspector goes into it; particularly with regard to Harijans it has been drastically done in the Province of Bombay. Now if you have a fundamental right like this, a school which has got a thousand students and receives Rs. 500 by way of grant from Government, becomes a State aided School. A trust intended for one community maintains the School and out of Rs.50,000 spent for the School Rs.500 only comes from Government as grant. But immediately the Supreme Court must hold that this right comes into operation as regards this School. Now this, as I said, can best be done by legislation in the provinces, through the administrative action of the Government which takes into consideration susceptibilities and sometimes makes allowances for certain conditions. How can you have a Fundamental law about this? How can you divert crores of rupees of trust for some other purpose by a stroke of the pen? The idea seems to be that by placing these two lines in the constitution everything in this country has to be changed without even consulting the people or without even allowing the legislatures to consider it. I submit that looking into the present conditions it is much better that these things should be done by the normal process of educating the people rather than by putting in a Fundamental Right. This clause is intended to be restrictive that neither the Federation nor a unit shall maintain an institution from which minorities are excluded. If we achieve this, this will be a very great advance that we would have made and the House should be content with this much advance."

Thus to be seen that Mr. Munshi echoed the sentiment so often expressed by Counsel before us i.,e., that by securing a small amount of aid, the right to administer educational institutions cannot be given up. This was immediately answered as follows:

"**Mr. Hussain Imam :** I will not take more than two minutes of the time of the House. I think there is nothing wrong with the amendment which has been moved by Mrs. Banerji. She neither wants those endowed institutions to be closed, nor their funds to be diverted to purposes for which they were not intended. What she does ask is that the State being a secular State, must not be a party to exclusion. It is open to the institutions which want to restrict admission to particular communities or particular classes, to refuse State aid and thereby, after they have refused the State aid, they are free to restrict their admission of the students to any class they like. The State will have no say in the matter. Here the word 'recognize' has not been put in. In clause 16 we put the all embracing word 'recognize'. Therefore all this trouble arose that we had to refer that to a small Committee. In this clause the position is very clear. And Mr. Munshi, as a clever lawyer has tried to cloud this. It is open to the institution which has spent Rs.40,000 from its funds not to receive Rs.500 as grant from the State but it will be open to the State to declare that as a matter

of State policy exclusiveness must not be accepted and this would apply equally to the majority institutions as well as minority institutions. No institution receiving State aid should close its door to any other class of persons in India merely because its donor has originally so desired to restrict. They are open to refuse the State aid and they can have any restriction they like. (emphasis supplied)

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Pandit Hirday Nath Kunzru : Mr. President, I support the amendment moved by Mrs. Banerji. I followed with great interest Mr. Munshi's exposition. His view was that if we accepted the principle that educational institutions maintained by the State shall be bound to admit boys of all communities, it would be a great gain and that we should not mix up this matter with other matters howsoever important they may be. I appreciate his view point. Nevertheless I think that it is desirable in view of the importance that we have attached to various provisions accepted by us regarding the development of a feeling of unity in the country that we should today accept the principle that a boy shall be at liberty to join any school whether maintained by the State or by any private agency which receives aid from State funds. No school should be allowed to refuse to admit a boy on the score of his religion. This does not mean, Sir, as Mr. Munshi seems to think, that the Headmaster of any school would be under a compulsion to admit any specified number of boys belonging to any particular community. Take for instance an Islamia School. If 200 Hindu boys offer themselves for admission to that School, the Headmaster will be under no obligation to admit all of them. But the boys will not be debarred, from seeking admission to it simply because they happen to be Hindus. The Headmaster will lay down certain principles in order to determine which boys should be admitted.

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Sir, we have decided not to allow separate representation in order to create a feeling on oneness throughout the country. We have even disallowed cumulative voting because, as Sardar Vallabhbhai Patel truly stated the other day, its acceptance would mean introduction by the backdoor of the dangerous principle of communal electorates which we threw out of the front door. So great being the importance that we attach to the development of a feeling of nationalism, it is not desirable and it is not necessary that our educational institutions which are maintained or aided by the State should not cater exclusively for boys belonging to any particular religion or community? If it is desirable in the case of adults that a feeling of unity should be created, is it not much more desirable where immature children and boys are concerned that no principle should be accepted which would allow the dissemination, directly or indirectly, of anti-national ideas or feelings?

Sir, since the future welfare of every State depends on education, it is I think very important that we should today firmly lay down the principle that a school, even though it may be a private school, should be open to the children of all communities if it receives aid from Government. This principle will be in accordance with the decisions that we have arrived at on other matters so far. Its non-acceptance will be in conflict with the general view regarding the necessity of unity which we have repeatedly and emphatically expressed in this House. (emphasis supplied)

These discussions clearly indicate that the main emphasis was on unity and equality. The protection which was being given to the minorities was merely to ensure that the politically strong majority did not prevent the minorities from having educational institutions at their own expense. It is clear that the framers always intended that the principles of secularism and equality were to prevail over even minorities rights. If the State aid was taken then there could be no discrimination or refusal to admit members of other communities. On the basis the amendments moved by Mr. K.T.M. Ahmed Ibrahim Sahib Bahadur and Mrs. Purnima Banerji (which sought to create additional rights in favour of minorities) were rejected.

19. The draft was then sent back to the Committee. When it came back to the Constituent Assembly the relevant Articles read as follows:

"22.(1) No religious instruction shall be provided by the State in any educational institution wholly maintained out of State funds:

Provided that nothing in this clause shall apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction whall be imparted in such institution.

(2) No person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person, or if such person is a minor, his guardian has given his consent thereto.

(3) Nothing in this article shall prevent any community or denomination from providing religious instruction for pupils of that community or denomination in an educational institution outside its working hours.

Cultural and educational rights

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

(2) No minority whether based on religion, community or language shall be

discriminated against in regard to the admission of any person belonging to such minority into any educational institution maintained by the State.

(3)(a) All minorities whether based on religion, community or language shall have the right to establish and administer educational institutions of their choice.

(b) The State shall not, in granting aid to educational institutions, discriminate against any educational institutionon the ground that it is under the management of a minority, whether based on religion, community or language.

20. These were discussed in the Constituent Assembly on 7th and 8th December, 1948. It must be noted that there was a practice to circulate in advance, any proposed amendment, which a Member desired to move. The proposed amendment was circulated in advance for sound reasons, namely that every body else would have notice of it and be prepared to express views for or against the proposed amendment. On 7th December, 1948 Clause 22 was being considered. Mr. H.V. Kamath proposed as follows:

"**Shri H.V. Kamath** (C.P. and Berar : General) : Mr. Vice President, I move-

"That in clause (2) of article 22, the words "recognised by the State or" be deleted."

I move this amendment with a view to obtaining some clarification on certain dark corners of these two articles - articles 22 and 23. I hope that my learned Friend Dr. Ambedkar will not, in his reply, merely toe the line of least resistance and say "I oppose this amendment", but will be good enough to give some reasons why he opposes or rejects my amendment, and I hope he will try his best to throw some light on the obscure corners of this article. If we scan the various clauses of this article carefully and turn a sidelong glance at the next articles too, we will find that there are some inconsistencies or at least an inconsistency. Clause (1) of article 22 imposes an absolute ban on religious instruction in institutions which are wholly maintained out of State funds. The provisio, however, excludes such institutions as are administered by the State which have been established under an endowment or trust - that is, under the proviso those institutions which have been established under an endowment or trust and which require, under the conditions of the trust, that religious instruction must be provided in those institutions, about those, when the State administers then, there will not be any objection to religious instruction. Clause (2) lays down that no person attending an institution recognised by the State or receiving aid out of State funds shall be required to take part in religious instruction. That means, it would not be compulsory. I am afraid I will have to turn to clause 23, sub-clause (3)(a) where it is said that all minorities, whether based on religion, community or language, shall have the right to establish and administer educational institutions of their choice. Now, it is intended that in these institutions referred to in the subsequent clause which minorities may

establish and conduct and administer according to their own choice, is it intended that in these institutions the minorities would not be allowed to provide religious instruction? There may be institutions established by minorities, which insist on students' attendance at religious classes in those institutions and which are otherwise unobjectionable. There is no point about State aid, but I cannot certainly understand why the State should refuse recognition to those institutions established by minorities where they insist on compulsory attendance at religious classes. Such interference by the State I feel is unjustified and unnecessary. Besides, this conflicts with the next article to a certain extent. If minorities have the right to establish and administer educational institutions of their own choice, it is contended by the Honourable Dr. Ambedkar that the State will say "You can have institutions, but you should not have religious instructions in them if you want our recognition". Really it beats me how you can reconcile these two points of view in articles 22 and 23. The minority, as I have already said, may establish such a school or its own pupils and make religious instruction compulsory in that school. If you do not recognise that institution, they certainly that school will not prosper and it will fall at attract pupils. Moreover, we have guaranteed certain rights to the minorities and, it may be in a Christian school, they may teach the pupils the Bible and in a Muslim school the Koran. If the minorities, Christians and Muslims, can administer those institutions according to their choice and manner, does the House mean to suggest that the State shall not recognize such institutions? Sir, to my mind, if you pursue such a course, the promises we have made to the minorities in our country, the promises we have made to the ear we shall have broken to the heart. Therefore I do not see any point why, in institutions that are maintained and conducted and administered by the minorities for pupils of their own community the State should refuse to grant recognition, in case religious instruction is compulsory. When once you have allowed them to establish schools according to their choice, it is inconsistent that you should refuse recognition to them on that ground. I hope something will be done to rectify this inconsistency."

Thus it is to be seen that Shri H.V. Kamath is referring not just to draft Article 22 but also to draft Article 23(3)(a). He is pointing out that there is an apparent conflict between these two Articles. Draft Articles 22 and 23(3)(a) are, with minor changes, what are now Articles 28(3) and 30(1). Dr. Ambedkar opposed the amendments proposed by Shri H.V. Kamath for various reasons, one of which is as follows:

> "We have accepted the proposition which is embodied in article 21, that public funds raised by taxes shall not be utilised for the benefit of any particular community."

21. Shri H.V. Kamath then asked for a clarification as follows:

> "On a point of clarification, what about institutions and schools run by a

community or a minority for its own pupils - not a school where all communities are mixed but a school run by the community for its own pupils?"

22. Thus Shri H.V. Kamath is again emphasising that there could be minority educational institutions run for their own pupils. The answer to this, by Dr. Ambedkar, is as follows:

> **The Honourable Dr. B.R. Ambedkar :** If my Friend Mr. Kamath will read the other article he will see that once an institution, whether maintained by the community or not, gets a grant, the condition is that it shall keep the school open to all communities, that provision he has not read." (emphasis supplied)

23. To be noted that in the draft Articles there is no clause which provides that if an institution, whether maintained by the community or not, gets a grant, it shall keep the school open to all communities. The next clause which Dr. Ambedkar referred to, was the proposed amendment moved by Pandit Thakur Dass Bhargava. As stated above this proposed amendment had already been circulated to all. It is clear that Dr. Ambedkar had already accepted the proposal of Pandit Thakur Dass Bhargava.

24. On 8th December, 1948, when Pandit Thakur Dass Bhargava moved his amendment, the debate read as follows:

> **"Pandit Thakur Das Bhargava:** Sir, I beg to move.
>
> That for amendment No. 687 of the List of amendments, the following be substituted:-
>
> "That for clause (2) of article 23, the following be substituted :-
> "(2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them."
> and sub-clauses (a) and (b) of clause (3) of article 23 be renumbered as new article 23-A".
>
> Sir, I find there are three points of difference between this amendment and the provisions of the section which it seeks to amend. The first is to put in the words 'no citizen' for the words 'no majority'. Secondly that not only the institutions which are maintained by the State will be included in it, but also such institutions as are receiving aid out of state funds. Thirdly, we have, instead of the words "religion, community or language", the words, "religion, race, caste, language or any of them".
>
> Now, Sir, it so happens that the words "no minority" seek to differentiate the minority from the majority, whereas you would be pleased to see that in the Chapter the words of the heading are "cultural and educational rights", so that the minority rights as such should not find any place under this section. Now if we read Clause (2) it would appear as if the minority had been given certain definite rights in this clause, whereas the national interests require that no majority

also should be discriminated against in this matter. Unfortunately, there is in some matters a tendency that the minorities as such possess and are given certain special rights which are denied to the majority. It was the habit of our English masters that they wanted to create discriminations of this sort between the minority and the majority. Sometimes the minority said that they were discriminated against and on other occasions the majority felt the same thing. This amendment brings the majority and the minority on an equal status.

In educational matters, I cannot understand, from the national point of view, how any discrimination can be justified in favour of a minority and majority. Therefore, what this amendment seeks to do is that the majority and the minority are brought on the same level. There will be no discrimination between any member of the minority or majority in so far as admission to educational institutions are concerned. So I should say that this is a charter of the liberties for the student-world of the minority and the majority communities equally.

The second change which this amendment seeks to make is in regard to the institutions which will be governed by the provision of law. Previously only the educational institutions maintained by the State were included. This amendment seeks to include such other institutions as are aided by State funds. There are a very large number of such institutions, and in future, by this amendment the rights of the minority have been broadened and the rights of the majority have been secured. So this is a very healthy amendment and it is a kind of nation-building amendment.

Now, Sir, the word "community" is sought to be removed from this provision because "community" has no meaning. If it is a fact that the existence of a community is determined by some common characteristic and all communities are covered by the words religion or language, then "community as such has no basis. So the word "community" is meaningless and the words substituted are "race or caste". So this provision is so broadened that on the score of caste, race, language, or religion no discrimination can be allowed.

My submission is that considering the matter from all the standpoints, this amendment is one which should be accepted unanimously by this House." (emphasis supplied)

25. To be noted that the proposed Article 23(2) is now Article 29(2). It is being incorporated in Article 23 which also contained what is now Article 30(1). Pandit Thakur Dass Bhargava was proposing this amendment with the clear intention that it should apply to minority educational institutions under, what is now Article 30(1). The whole purpose is to further principles of secularism and to see that in State maintained and State aided educational institutions there was no distinction between majority or minority communities. At this stage it must be noted that no contrary view was expressed at all. Dr. Ambedkar then replied as follows:

"**The Honourable Dr. B.R. Ambedkar:** Sir, of the amendments which have been moved to article 23, I can accept amendment No.26 to amendment No.687 by Pandit Thakur Dass Bhargava. I am also prepared to accept amendment No. 31 to amendment No.690, also moved by Pandit Thakur Dass Bhargava."

26. The amendment proposed by Pandit Thakur Dass Bhargava was unanimously accepted by the Constituent Assembly. This is how and why, what is now Article 29(2) was framed and incorporated. Clearly it was to govern all educational institutions including minority educational institutions under what is now Article 30(1). The final resolution is as follows:

"**Mr. Vice-President:** The question is:

That for clause (2) of article 23, the following be substituted:-

"No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them";

and sub-clause(a) adn (B) of clause (3) of article 23 be renumbered as new article 23-A.

The motion was adopted."

27. A reading of the Constituent Assembly debated clearly show that the intention of the framers of the Constitution was that Article 29(2) was to apply to all educational institutions, including minority educational institutions under Article 30.

28. This being the historical background and the intention of the framers, the contextual approach must also be one which gives effect to the minority rights but which does not elevate them into a special or privileged class of citizens. The contextual approach must therefore be that minorities have full rights to establish and administer educational institution at their own costs, but if they choose to take State aid they must then abide by the Constitutional mandate of Article 29(2) and with principles of equality and secularism.

29. The same result follows if well settled principles of interpretation are applied. It is settled law that if the language of the provision, being considered, is plain and unambiguous the same must be given effect to, irrespective of the consequences that may result or arise. It is also settled law that while interpreting provisions of a Statute, if two interpretations are possible, one which leads to no conflict between the various provisions and another which leds to a conflict between the various provisions, then the interpretation which leads to no conflict must always be accepted. As already been seen, the intention of the framers of the Constitution is very clear. The framers unambiguously and unanimously intended that rights given under Article 30(1) could be fully enjoyed so long as the educational institutions were established and administered at their own costs and expense. Once State aid was taken, then principles of equality and secularism, on which our Constitution is based, were to prevail and admission could not be denied to any student on grounds of religion, race, caste, language or any of them.

30. A plain reading of Article 29(2) shows that it applies to "any educational institution" maintained by the State or receiving aid out of State funds. The words "any educational institution" takes within its ambit an educational institution established under Article 30(1). It is to be remembered that when Article 29(2) [i.e., Article 23(2)] was framed it was part of the same Article which contained what is now Article 30(1). Thus it was clearly meant to apply to Article 30(1) as well. Significantly Article 30 nowhere provides that the provisions of Article 29(2) would not apply to it. Article 30(1) does not exclude the applicability of the provisions of Article 29(2) to educational institutions established under it. A plain reading of the two Articles indicates that the rights given under Article 30(1) can be fully exercised so long as no aid is taken from the State. It is for this reason that Article 30 does not make it compulsory for a minority educational institution to take aid or for the State to give it. All that Article 30(2) provides is that the State is granting aid to educational institutions shall not discriminate against any educational institution on the ground that it is under the management of a minority. In cases where the State gives aid to educational institutions the State would be bound by the Constitutional mandate of Article 29(2) to ensure that no citizen is denied admission into the educational institution on grounds of religion, race, caste, language or any of them. By so insisting the State would not be discriminating against a minority educational institution. It would ony be performing the obligation cast upon it by the Constitution of India.

31. This interpretation is also supported by the wording of Article 30(2). Article 30(2) merely provides that the State shall not discriminate on the ground that it is under the management of a minority. To be noted that Article 30(2) does not provide that State shall not in granting aid impose any condition which would restrict or abridge the rights guaranteed under Article 30(1). The framers were aware that when State aid was taken the principles of equality and secularism, which are the basis of our Constitution, would have to prevail. Clearly the framers of the Constitution considered the principle of equality and secularism to be more important than the rights under Article 30(1). Thus in Article 30(2) it was advisedly not provided that rights under Article 30(1) could not be restricted or abridged whilst granting aid. A plain reading of Article 30(2) shows that the framers of the Constitution envisaged that certain rights would get restricted and/or abridged when a minority educational institute chose to receive aid. It must also be noted that when property rights were deleted [by deletion of Article 19(1)(f)] the framers of the Constitution realised that rights under Article 30(1) would get restricted or abridged unless specifically protected. Thus Article 30(1A) was introduced. Article 30(1A), unlike Article 30(2), specifically provides the acquisition of property of a minority educational institute must be in a manner which does not restrict or abrogate the rights under Article 30(1). When the framers so intended they have specifically so provided. Significantly even after Judgments of this Court (see out hereafter) which laid down that Article 29(2) applied to Article 30(1), the framers have not amended Article 30 to provide to the contrary.

32. Even though a plain reading of Articles 29(2) and Article 30 leads to no clash between the two Articles, it has been submitted by counsel on behalf of minorities that the right to establish and administer educational institutions be considered an absolute right and that by giving aid the State cannot impose conditions which would restrict or abrogate and/or abridge, in any manner, the right

under Article 30(1). It has been submitted that the rights to administer educational institutions includes the right to admit students. It has been submitted that the minorities, whether based on religion or language, have a right to admit students of their community. It is submitted that this right is not taken away or abridged because State aid is taken. It is submitted that notwithstanding the plain language of Articles 29(2) and 30 it must be held that the rights under Article 30(1) prevail over Article 29(2).

33. To accept such an argument one would have to read into Article 30(2) words to the effect "state cannot in granting aid lay down conditions which would restrict, abridge or abrogate rights under Article 30(1)" or read into Article 30(1) words to the effect "notwithstanding the provisions of Article 29(2)". Purposely no such words are used. A clash is sought to be creaed between Article 30(1) and 29(2) when no such clash exists. The interpretation sought to be given is on presumption that rights under Article 30(1) are absolute. As is set out in greater detail hereafter, every single authority of this Court, for the past over 50 years, has held that the rights under Article 30(1) are subject to restrictions. All counsel appearing for the minority educational institutions conceded that rights under Article 30(1) are subject to general secular laws of the country. If rights under Article 30(1) are subject to other laws of the country it can hardly be argued that they are not subject to a constitutional provision.

34. The interpretation sought to be replaced not only creates a clash between Article 29(2) and 30 but also between Article 30 and Article 15(1). Article 15(1) prohibits the State from discriminating against citizens on grounds only of religion, race, caste, sex, place of birth or any of them. If the State were to give aid to a minority educational institution which only admits students of its community then it would be discriminating against other citizens who cannot get admission to such institutions. Such an interpretation would also lead to clash between Article 30 and Article 28(3). There may be a religious minority educational institute set up to teach their own religion. Such an institute may, if it is unaided, only admit students who are willing to say their prayers. yet once aid is taken such an institution cannot compel any student to take part in religious instructions unless the student or his parent consents. If Article 30(1) were to be read in a manner which permits State aided minority educational institutions to admit students as per their choice, then they could refuse to admit students who do not agree to take part in religious instructions. The prohibition prescribed in Article 28(2) could then be rendered superfluous and/or nugatory. Apart from rendering Article 28(2) nugatory such an interpretation would set up a very dangerous trend. All minority educational institutions would then refuse to admit students who do not agree to take part in religious instructions. In all fairness to all the counsels appearing for minority educational institutions, it must be stated that not a single counsel argued that Article 28(2) would not govern Article 30(1). All counsel fairly conceded that Article 30(1) would be governed by Article 28(2). One fails to understand how Article 30(1) can be held to be subject to Article 28(2) but not subject to Article 29(2).

35. Accepting such an interpretation would also lead to an anomalous situation. As is being held all citizens have a fundamental right to establish and carry on an educational institution under Article 19(1)(g). An educational institution can also be established and maintained under Article

26(a). An educational institution could also be established under Article 29(1) for purposes of conserving a distinct language, script or culture. All such educational institutions would be governed by Article 29(2). Thus if a religious educational institution is established under Article 26(a) it would on receipt of State aid have to comply with Article 29(2). Similarly an educational institute established for conserving a distinct language, script or culture would, if it receives State aid, have to comply with Article 29(2). Such institution would also have been established for benefit of their own community or language or script or culture. If such educational institutions have to comply with Article 29(2) it would be anomalous to say that a religion or linguistic educational institution, merely because it is set up by a minority need not comply with Article 29(2). The anomaly would be greater because an educational institute set up under Article 26(a) would be for teaching religion and an educational institute set up under Article 29(1) would be for conserving a distinct language. On the other hand an educational institute set up under Article 30(1) may be to give general secular education. It would be anomalous to say that an educational institute set up to teach religion or to conserve a distinct language, script or culture has to comply with Article 29(2) but an educational institute set up to give general secular education does not have to comply with Article 29(2). It must again be remembered that Article 30 was not framed to create a special or privileged class of citizens. It was framed only for purposes of ensuring that the politically powerful majority did not prevent the minority from having their educational institutes. We cannot give to Article 30(1) a meaning which would result in making the minorities, whether religious or linguistic, a special or privileged class of citizens. We should give to Article 30(1) a meaning which would further the basic and overriding principles of our Consitution viz., equality and secularism. The interpretation must not be one which would create a further divide between citizen and citizen.

36. It has also been submitted that a minority educational institute would have been established only for the purpose of giving education to students of that particular religious or linguistic community. It has been submitted that if Article 29(2) were to apply then the very basis of establishing such an educational institution would disappear once State aid is taken. Whilst considering such a submission one must keep in mind that the desire to establish educational or other institutions for the benefit of students of their own community would be there not only in minority communities. Such a desire would be there in all citizens and communities, whether majority or minority. If the majority communities, whether religious or linguistic, can establish and administer educational institutions for their own community at their own costs why should the position be different for minorities. If an educational institute established by a majority community for members of that community only, takes States aid, it would then lose the right to admit only students of its own community. It would have to comply with the Constitutional mandate of Article 29(2). The position is no different for an educational institute established by a minority. The basic feature of our Constitution is equality and secularism. It follows that the minority cannot be a more privileged class or section of citizen. At the cost of repetition it is again emphasised that Article 30 does not deal with minorities who are economically or socially backward. These are not communities whose children are not capable of competing on merit, e.g., a Tamilian in Tamil competes with others and gets admission on merit. Even when he/she shifts to Maharashtra he/she continues to be able to compete openly and get admission on merit. Merely because a Tamilian shifts to Maharashtra or some other State does

not mean that Tamilian becomes a citizen entitled to special privilege or rights not available to other citizens. This was not the purpose or object of Article 30. Article 30 was framed only to ensure that the Maharashtrians, by reason of their being politically powerful, do not prevent the Tamilian from establishing an educational institution at their own cost. Article 30 merely protects the right of the minority to establish and administer an educational institution, i.e., to have the same rights as those enjoyed by majority. Article 30 gives no right to receive State aid. It is for the institution to decide whether it wants to receive aid. If it decides to take State aid then Article 30(2) merely provides that the State will not discriminate against it. When State, whilst giving aid, asks the minority educational institute to comply with a constitutional mandate, it can hardly be said that the State is discriminating against that institute. The State is bound to ensure that all educational institutes, whether majority or minority, comply with the constitutional mandate.

37. Another aspect to be kept in mind is that in practical terms, throwing open admission to all, does not affect rights under Article 30(1). If the educational institution is for purposes of teaching the religion or language of the concerned minority, then even though admission is thrown open to all very few students of other communities will take admission in such an educational institution. If the educational institution is giving general secular education, then the minority character of that institution does not get affected by having a majority of students from other communities. Even though the majority of students may be from other communities the institution will still be under the management of the minority. Further if the educational institution is a school, then the management will, in spite of Article 29(2), still be able to take a sizable number of students from their own community into the school. Article 29(2) precludes reservations on grounds of religion, race, caste or language. But it does not preclude giving of preference, if everything else is equal. Admission into schools generally are by interview. At this stage there is no common entrance test which determines merit. Undoubtedly children of the minority communities, contemplated by Article 30(1), would be as bright or capable as children of other communities. Thus whilst admitting at this stage preference can always be given to members of their own community so long as some students of other communities are also admitted and denial is not on basis of religion, race, caste, language or any of them. Thus for admissions in schools, Article 29(2) will pose no difficulty to minority institutions. However, Article 29(2) will require, if State aid is taken, that admissions into college, either under graduate or post graduate and admission into professional course, be not denied to any citizen on grounds of religion, race, caste, language or any of them. This would mean that admissions must be on merit from the common entrance test prescribed by the University or State. Here also if two students have equal merit, preference can be given to a student of their own community. Also Article 29(2) does not preclude minority (or even other educational institutions) admitting or denying admission on grounds other than religion, race, caste, language or any of them. Thus e.g. preferential admission could be given to those students who are willing to serve the community or work in a particular region, for a particular period of time after passing out. Also in such cases marks not exceeding 15% can be allotted for interviews. This will ensure that a sufficient number of students of their own community are admitted. More importantly there is no reason to believe that students of these minority communities will not be able to compete on merit. A sizable number will be available on merit also.

38. Most importantly we are interpreting the Constitution. As the language of Articles 29(2) and 30 is clear and unambiguous the Court has to give effect to it, irrespective of the consequences. This is all the more necessary as the same is in consonance with the intention of the framers. Court cannot give an interpretation which creates a clash where none exists. Court cannot add words which the framers purposely omitted to use/add. Courts cannot give an interpretation, not supported by a plain reading, on considerations, such as minority educational institutions not being able to admit their own students. To be remembered that there is no compulsion to receive State aid. As was mentioned during the Constituent Assembly Debates the management can refuse to take aid. But if they choose to take State aid, then even a minority educational institution must abide by the Constitutional mandate of Article 29(2) just as they have to comply with the Constitutional mandate of Article 28(2) and comply with general secular laws of the country.

39. Thus looked at either from the historical point of view and/or the intention of the framers and/or from the contextual viewpoint and/or from principles of interpretation it is clear that Article 29(2) fully applies to Article 30. If a minority educational institute chooses to take State aid, it cannot then refuse to admit students on grounds of religion, race, caste, language or any of them.

40. Now let us see whether the principles of "stare decisis" require us to take a different view. A large number of authorities have been cited and one has to consider these authorities.

41. The first case, which was decided as far back as on 9th April, 1951, was the case of *The State of Madras v. Srimathi Champakam Dorairajan.* It is reported in (1951) SCR 525. In this case the State of Madras was maintaining Engineering and Medical Colleges. In those colleges, for many years before the commencement of the Constitution, the seats used to be filled up in a proportion, set forth in what was called "the Communal G.O.". The allocation of seats was as follows:

"Non-Brahmin (Hindus)	6
Backward Hindus	2
Brahmins	2
Harijans	2
Anglo-Indians and Indian Christians	1
Muslims	1"

After the Constitution was framed a Writ Petition under Article 226 came to be filed by Srimathi Champakam Dorairajan and one another in the High Court of Madras. She complained that this Communal G.O. affected her fundamental rights, inter alis, under Article 29(2). On behalf of the State it was argued that there was no discrimination and no infringement of fundamental rights. It was argued that it was the duty of the State to take care of and promote educational and economic interest of the weaker section of the people. It was argued that giving preferences and/or reservations did not violate Article 29(2). This argument was repelled and it was held as follows:

> "It will be noticed that while clause (1) protects the language, script or culture of a section of the citizens, clause (2) guarantees the fundamental right of an individual citizen. The right to get admission into any educational institution of

the kind mentioned in clause (2) is a right which an individual citizen has as a citizen and not as a member of any community or class of citizens. This right is not to be denied to the citizen on grounds only of religion, race, caste, language or any of them. If a citizen who seeks admission into any such educational institution has not the requisite academic qualifications and is denied admission on that ground, he certainly cannot be heard to complain of an infraction of his fundamental right under this article. But, on the other hand, if he has the academic qualifications but is refused admission only on ground of religion, race, caste, language or any of them, then there is a clear breach of his fundamental rights.

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Take the case of the petitioner Srinivasan. It is not disputed that he secured a much larger number of marks than the marks secured by many of the Non-Brahmin candidates and yet the Non-Brahmin candidates who secured less number of marks will be admitted into six out of every 14 seats but the petitioner Srinivasan will not be admitted into any of them. What is the reason for this denial of admission except that he is a Brahmin and not a Non-Brahmin. He may have secured higher marks than the Anglo-Indian and Indian Christians or Muslim candidates but, nevertheless, he cannot get any of the seats reserved for the last mentioned communities for no fault of his except that he is a Brahmin and not a member of the aforesaid communities. Such denial of admission cannot but be regarded as made on ground only of his caste.

It is argued that the petitioners are not denied admission only because they are Brahmins but for a variety of reasons, e.g., (a) they are Brahmins, (b) Brahmins have an allotment of only two seats out of 14 and (c) the two seats have already been filled up by more meritorious Brahmin candidates. This may be true so far as these two seats reserved for the Brahmin are concerned but this line of argument can have no force when we come to consider the seats reserved for candidates of other communities, for so far as those seats are concerned, the petitioners are denied admission into any of them not on any ground other than the sole ground of their being Brahmins and not being members of the community for whom these reservations have been made. The classification in the Communal G.O. proceeds on the basis of the religion, race and caste. In our view, the classification made in the Communal G.O. is opposed to the Constitution and constitutes a clear violation of the fundamental rights guaranteed to the citizen under article 29(2). In this view of the matter, we do not find it necessary to consider the effect of articles 14 or 15 on the specific articles discussed above."

Thus as far back as in 1951 it has been held that Article 29(2) does not permet reservation in favour of any caste, community or class of people. An argument based on the word "only" in

Article 29(2), to the effect that admitting students of their own community did not amount to refusing admission on grounds of religion, race, caste, language or any of them was rejected. Undoubtedly, this was a case pertaining to educational institutions maintained by the State. But the interpretation of Article 29(2) would remain the same even in respect of "educational institutions aided by the State". In all such institutions there can be no reservations based on religion, race, caste, language or any of them. The term "any educational institution" in Article 29(2) would also include a minority educational institution under Article 30. Thus the interpretation of Article 29(2) would remain the same even in respect of a minority educational institution under Article 30(1).

42. In *Champakam Dorairajan's* case the reservations were not just for economically or socially backward communities. There were reservations for Anglo Indians, Indian Christians, Muslims, Brahmins and Non-Brahmins. After this Court struck down the reservations the framers of the Constitution amended Article 15 by adding Article 15(4) which reads as follows:

> "15(4). Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes."

Thus when the framers of the Constitution did not want Article 29(2) to apply they have specifically so provided. Significantly no such amendment was made in Article 30(1) even though reservations in favour of minority communities was also held to be violative of Article 29(2).

43. In the case of *The State of Bombay v. Bombay Education Society* and others reported in (1955) 1 SCC 568 an Anglo-Indian School, called Barnes High Court at Deolali, received aid from the State of Bombay. The State of Bombay issued a circular order on 6th January, 1954 which enjoined that no primary or secondary school could admit to a class where English is used as the medium of instruction, any pupil other than the pupil whose mother tongue was English. This was challenged in a Writ Petition under Article 226 in the High Court of Bombay. The petition having been allowed, the State filed an Appeal to this Court. This Court held as follows:

> "Assuming, however, that under the impugned order a section of citizens, other than Anglo-Indians and citizens of non-Asiatic descent, whose language is English, may also get admission, even then citizens, whose language is not English, are certainly debarred by the order from admission to a School where English is used as a medium of instruction in all the classes. Article 29(2) *ex facie* puts no limitation or qualification on the expression "citizen". Therefore, the construction sought to be put upon clause 5 does not apparently help the learned Attorney-General, for even on that construction the order will contravene the provisions of article 29(2).
>
> The learned Attorney-General then falls back upon two contentions to avoid the applicability of article 29(2). In the first place he contends that article 29(2) does not confer any fundamental right on all citizens generally but guarantees the rights of citizens of minority groups by providing that they must

not be denied admission to educational institutions maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them and he refers us to the marginal note to the article. This is certainly a new contention put forward before us for the first time. It does not appear to have been specifically taken in the affidavits in opposition filed in the High Court and there is no indication in the Judgment under appeal that it was advanced in this form before the High Court. Nor was this point specifically made a ground of appeal in the petition for leave to appeal to this Court. Apart from this, the contention appears to us to be devoid of merit. Article 29(1) gives protection to any section of the citizens having a distinct language, script or culture by guaranteeing their right to conserve the same. Article 30(1) secures to all minorities, whether based on religion or language, the right to establish and administer educational institutions of their choice. Now suppose the State maintains an educational institution to help conserving the distinct language, script or culture of a section of the citizens or makes grants in aid to an educational institution established by a minority community based on religion or language to conserve their distinct language, script or culture, who can claim the protection of article 29(2) in the matter of admission into any such institution? Surely the citizens of the very section whose language, script or culture is sought to be conserved by the institution or the citizens who belong to the very minority group which has established and is administering the institution, do not need any protection against themselves and therefore article 29(2) is not designed for the protection of this section or this minority. Nor do we see any reason to limit article 29(2) to citizens belonging to a minority group other than the section or the minorities referred to in article 29(1) or article 30(1), for the citizens, who do not belong to any minority group, may quite conceivably need this protection just as much as the citizens of such other minority groups. If it is urged that the citizens of the majority group are amply protected by article 15 and do not require the protection of article 29(2), then there are several obvious answers to that argument. The language of article 29(2) is wide and unqualified and may well cover all citizens whether they belong to the majority or minority group. Article 15 protects all citizens against the State whereas the protection of article 29(2) extends against the State or any body who denies the right conferred by it. Further article 15 protects all citizens against discrimination generally but article 29(2) is a protection against a particular species of wrong namely denial of admission into educational institutions of the specified kind. In the next place article 15 is quite general and wide in its terms and applies to all citizens, whether they belong to the majority or minority groups, and gives protection to all the citizens against discrimination by the State on certain specific grounds. Article 29(2) confers a special right on citizens for admission into educational institutions maintained or aided by the State. To limit this right only to citizens belonging to minority groups will be to provide a double protection

for such citizens and to hold that the citizens of the majority group have no special educational rights in the nature of a right to be admitted into an educational institution for the maintenance of which they make contributions by way of taxes. We see no cogent reason for such discrimination. The heading under which articles 29 and 30 are grouped together - namely "Cultural and Educational Rights" - is quite general and does not in terms contemplate such differentiation. If the fact that the institution is maintained or aided out of State funds is the basis of this guaranteed right then all citizens, irrespective of whether they belong to the majority of minority groups, are alike entitled to the protection of this fundamental right. In view of all these considerations the marginal note alone, on which the Attorney-General relies, cannot be read as controlling the plain meaning of the language in which article 29(2) has been couched. Indeed in *The State of Madras v. Srimathi Champakam Dorairajan* [(1951) SCR 525], this Court has already held as follows:

"It will be noticed that while clause (1) protects the language, script or culture of a section of the citizens, clause (2) guarantees the fundamental right of an individual citizen. The right to get admission into any educational institution of the kind mentioned in clause (2) is a right which an indivudual citizen has as a citizen and not as a member of any community or class of citizens."

In our judgment this part of the contention of the learned Attorney-General cannot be sustained." (emphasis supplied)

In this case it was also argued that the word "only" in Article 29(2) had to be given some meaning and that the circular order did not deny citizens admission only on ground of religion, race, caste, language or any of them. It was submitted that the object of the circular order was to secure advancement of Hindi which was ultimately to be the National language. It was submitted that thus there was no denial "only" on the ground of religion, race, caste, language or any of them. It was submitted that the denial was for the purposes of promoting the advancement of the national language and to facilitate imparting of education through the medium of the pupils mother tongue. This argument was repelled in the following terms:

"Granting that the object of the impugned order before us was what is claimed for it by the learned Attorney-General, the question still remains as to how that object has been sought to be achieved. Obviously that is sought to be done by denying to all pupils, whose mother tongue is not English, admission into any School where the medium of instruction is English. Whatever the object, the immediate ground and direct cause for the denial is that the mother tongue of the pupil is not English. Adapting the language of Lord Thankerton, it may be said that the laudable object of the impugned order does not obviate the prohibition of article 29(2) because the effect of the order involves an infringement of this fundamental right, and that effect is brought about by denying admission only on the ground of language. The same principle is implicit in the

> decision of this Court in *The State of Madras v. Srimathi Champakam Dorairajan* [(1951) SCR 525]. There also the object of the impugned communal G.O. was to advance the interest of educationally backward classes of citizens but, that object notwithstanding, this Court struck down the order as un-constitutional because the *modus operandi* to achieve that object was directly based only on one of the forbidden grounds specified in the article. In our opinion the impugned order offends against the fundamental right guaranteed to all citizens by article 29(2)."

It may be mentioned, even though not relevant for the purposes of this judgment, that in this case it has also been submitted that the rights under Article 30(1) are only for the purposes of conserving language, script or culture as set out in Article 29(1). This argument was also repelled by this Court.

44. Thus, as far back in 1955, a Constitution Bench of this Court has held that Article 29(2) is applicable to Article 30. It has been held that even in a minority educational institution all citizens of India are entitled to admission. It has been held that a citizen cannot be denied admission in a minority educational institution on ground "only" of religion, race, caste, language or any of them. To be noted that one of the petitioners was from the Gujarati Hindu community and she was seeking admission into an Anglo-Indian School. Her right to be admitted was upheld. It has been categorically held that Article 29(2) applied to an Article 30 educational institute. The framers of the Constitution did not and have not amended the Constitution to provide otherwise.

45. In *Re The Kerala Education Bill,* 1957 reported in (1959) SCR 995, the President of India made a Reference under Article 143(1) of the Constitution of India for obtaining opinion of this Court upon certain questions relating to the constitutional validity of some of the provisions of the Kerala Education Bill which had been passed by the Kerala Legislative Assembly, but had been reserved by the Governor for consideration of the President of India. The questions which were referred to this Court for consideration were as follows:

> "(1) Does sub-clause (5) of clause 3 of the Kerala Education Bill, read with clause 36 thereof, or any of the provisions of the said sub-clause, offend article 14 of the Constitution in any particulars or to any extent?
>
> (2) Do sub-clause (5) of clause 3, sub-clause (3) of clause 8 and clauses 9 to 13 of Kerala Education Bill, or any provision thereof, offend clause (1) of article 30 of the Constitution in any particulars or to any extent.
>
> (3) Does clause 15 of the Kerala Education Bill, or any provisions thereof, offend article 14 of the Constitution in any particulars or to any extent?
>
> (4) Does clause 33 of the Kerala Education Bill, or any provision thereof, offend article 226 of the Constitution in any particulars or to any extent?"

46. Only question No. 2 is relevant for our purpose. Whilst answering question No. 2 this Court, inter alia, observed as follows:

"Re. Question 2: Articles 29 and 30 are set out in Part III of our Constitution which guarantees our fundamental rights. They are grouped together under the sub-head "Cultural and Educational Rights". The text and the marginal notes of both the Articles show that their purpose is to confer these fundamental rights on certain sections of the community which constitute minority communities. Under cl. (1) Art. 29 any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own has the right to conserve the same. It is obvious that a minority community can effectively conserve its language, script or culture by and through educational institutions and therefore, the right to establish and maintain educational institutions of its choice is a necessary concomitant to the right to conserve its distinctive language, script or culture and that is what is conferred on all minorities by Art. 30(1) which has hereinbefore been quoted in full. This right, however, is subject to cl. 2 of Art. 29 which provides that no citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

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The second proviso imposes the condition that at least 40 percent of the annual admissions must be made available to the members of communities other than the Anglo-Indian community. Likewise Art. 29(2) provides, *inter alia,* that no citizen shall be denied admission into any educational institution receiving aid out of State funds on grounds only of religion, race, caste, language or any of them. These are the only constitutional limitations to the right of the Anglo-Indian educational institutions to receive aid. Learned counsel appearing for two Anglo-Indian schools contends that the State of Kerala is bound to implement the provisions of Art. 337. Indeed it is stated in the statement of case filed by the State of Kerala that all Christian schools are aided by that State and, therefore, the Anglo-Indian schools, being also Christian schools, have been so far getting from the State of Kerala the grant that they are entitled to under Art. 337. Their grievance is that by introducing this Bill the State of Kerala is now seeking to impose besides the constitutional limitations mentioned in the second proviso to Art. 337 and Art. 29(2), further and more onerous conditions on this grant to the Anglo-Indian educational institutions although their constitutional right to such grant still subsists." (emphasis supplied)

47. In this case it was argued on behalf of the State that as the minority institute received State aid it was bound, by virtue of Article 29(2), to admit students of all communities and thus did not retain its minority character. That article 29(2) applied to a minority educational institute was not denied. The argument that, it lost its minority character because it admitted students of other

communities, was repelled in the following terms:

> "By admitting a non-member into it the minority institution does not shed its character and cease to be a minority institution. Indeed the object of conservation of the distinct language, script and culture of a minority may be better served by propagating the same amongst non-members of the particular minority community. In our opinion, it is not possible to read this condition into Art. 30(1) of the Constitution."

Thus even in this case it has been accepted and held that Article 29(2) applies to minority educational institutions established under Article 30. It has been held that merely because students of their communities are admitted, the institute does not lose its minority character. In this case it was also held that State can prescribe reasonable regulations. In this case regulations which provided for qualifications of teachers and which provided for State Public Service Commission to select teachers in aided schools were upheld. Thus even in this case it is accepted that Article 29(2) would govern Article 30(1).

48. In *Rev. Sidhajbhai Sabhai v. State of Bombay* reported in (1963) 3 SCR 837, the petitioners belonged to the United Church of Nothern India. They maintained educational institutions primarily for the benefit of the Christian community. Admittedly these institutions did not receive State aid. Therefore, the question of Article 29(2) and its applicability to Article 30 did not arise. On the contrary (as is set out on page 840 of the Report) it was an admitted position that these institutions did not deny admissions to students belonging to other communities. The Government of Bombay issued an order directing all private training colleges to reserve 60% of the seats for trainee teachers of the schools maintained by the Board. It was held that this Order violated rights under Article 30. All obserbvations made in this case are in this context. They cannot be drawn out of context to hold that even where a minority institute receives aid the Constitutional mandate of Article 29(2) would not apply. In this case also it is held that the rights under Article 30(1) are subject to reasonable restrictions and regulations. It was held that restrictions in the interest of efficiency, discipline, health, sanitation, public order etc., could be imposed.

49. In *Rev. Father W. Proost v. State of Bihar* reported in (1969) 2 SCR 73, the petitioners maintained St. Xavier's College which was affiliated to the Patna University. With effect from 1st March, 1962 Section 48-A was introduced. Under this Section a University Service Commission was established for affiliated colleges. Sub-clause(6) of Section 48-A provided that appointments, dismissals, removals, termination of service or deduction in rank of teachers of an affiliated college should be made by the Governing body of the college on the recommendation of the Commission. Further, sub-clause (11) provided that all disciplinary actions could be taken only in consultation with the Commission. The petitioners challenged the virus of the provision and claimed that it affected their rights under Article 30(1) of the Constitution. Whilst the Petition was pending in this Court; Section 48-B was introduced in the Bihar State Universities Act, which provided that appointments, dismissals, removals, termination of service or reduction in rank of teachers or disciplinary measures could only be taken with the approval of the Commission and the Syndicate of the University. This was also challenged. Thus in this case the interplay of Sections 29(2) and

30(1) did not come into question at all. In this case it was an admitted position that the college was open to non-Catholics also. One of the arguments raised on behalf of the State was that since the admissions were not reserved only for students of the Jesuits community the college did not qualify for protection under Article 30(1). This argument was negatived by holding that merely because members of other communities were admitted into the institution did not mean the institution lost its minority character. This case thus shows that even if members of other community are admitted into the institution the institution would still remain a minority institution which is under the management of the minority.

50. In *Rev. Bishop S. K. Patro v. State of Bihar* reported in (1970) 1 SCR 172, an educational institute was started by a Christian with the help of funds received from London Missionary Society. The question was whether the institute was not entitled to protection of Article 30(1) merely because funds were obtained from United Kingdom and the management was carried on by some persons who may not have been born in India. This Court held that rights under Articles 29 could only be claimed by Indian citizens, but Articles 30 guarantees the rights of minority. It was held that the said Article does not refer to citizenship as the qualification for members of the minority. This case therefore does not deal with the question of the interplay between Articles 29(2) and 30(1).

51. In the case of *State of Kerala v. Very Rev. Mother Provincial* reported in (1971) 1 SCR 734, the constitutional validity of Sections 48, 49, 53, 56, 58 and 63 of the Kerala University Act was challenged as violating the rights under Section 30(1). In this case there is no discussion regarding the effect of Article 29(2) on Article 30. In this case also it was held that rights under Article 30(1) are subject to reasonable restrictions.

52. The case of *D.A.V. College v. Punjab* reported in (1971) Supp. SCR 677 does not deal with Article 29(2) and its effect on Article 30. In this case Punjabi was made the sole medium of instruction and examination under the Punjab University Act. It was held that this violated the rights under Article 29(1) as well as Article 30(1) inasmuch as the right to have an educational institution of a choice includes the right to have a choice of the medium of instruction also.

53. In the second case of *D.A.V. College v. State of Punjab* reported in (1971) Supp. SCR 688 the Dayanand Anglo Vedic College Trust was formed to perpetuate the memory of the founder of the Arya Samaj. It ran various institutions in the country. The colleges managed and administered by the Trust were, before the Punjab Reorganisation Act, affiliated to the Punjab University. After the reorganisation of the State of Punjab in 1969, the Punjab Legislative passed the Guru Nanak University (Amritsar) Act (21 to 1969). Colleges in the districts specified ceased to be affiliated to the Punjab University and were to be associated with and admitted to the privileges of the new university. Sub-section (2) of Section 4 of the Act provided that the University "shall make provision for study and research on the life and teachings of Guru Nanak and their cultural and religious impact in the context of Indian and World Civilisation; and sub-section (3) enjoined the University "to promote studies to provide for research in Punjabi language and literature and to undertake measures for the development of Punjabi language, literature and culture". By clause 2(1)(a) of the Statutes framed under the Act, the colleges were required to have a regularly constituted

governing body consisting of not more than 20 persons approved by the Senate including, among others, two representatives of the University and the principal of the College. Under Clause (1)(3) if these requirements were not complied with the affiliation was liable to be withdrawn. By clause 18 the staff initially appointed were to be approved by the Vice Chancellor and subsequent changes had to be reported to the University for the Vice Chancellor's approval. And by Clause 18 non-government colleges were to comply with the requirements laid down in the ordinance governing service and conduct of teachers. It was held that Clause 2(1)(a) interfered with the right of the religious minority to administer their educational institutions, but that Clause 18 did not suffer from the same vice. It was held that ordinances prescribing regulations governing the conditions of service and conduct of teachers must be considered to be one enacted in the larger interest of the institution to ensure their efficiency and excellence. It was similarly held that sub-sections (2) and (3) of Section 4 do not offend any of the rights under Articles 29(1) and 30(1). It must be observed that, whilst dealing with the Articles 29 and 30, this Court observed as follows:

> "It will be observed that Article 29(1) is wider than Article 30(1), in that, while any Section of the citizens including the minorities, can invoke the rights guaranteed under Article 29(1), the rights guaranteed under Article 30(1) are only available to the minorities based on religion or language. It is not necessary for Article 30(1) that the minority should be both a religious minority as well as a linguistic minority. It is sufficient if it is one or the other or both. A reading of these two Articles together would lead us to conclude that a religious or linguistic minority has a right to establish and administer educational institutions of its choice for effectively conserving its distinctive language, script or culture, which right however is subject to the regulatory power of the State for maintaining and facilitating the excellence of its standards. This right is further subject to clause (2) of Article 29 which provides that no citizen shall be denied admission into any educational institution which is maintained by the State or receives aid out of State funds, on grounds only of religion, race, caste, language or any of them." (emphasis supplied)

54. Thus, even in 1971, this Court has held that Article 29(2) governs Article 30(1). The law laid down in *Champakam Dorairajan's case,* In *Bombay Education Society's case* and in *Kerala Education Bill's case* has been reaffirmed. Till this date no contrary view has been taken. Not a single case has held that rights under Article 30(1) would not be governed by Artivle 29(2).

55. The authority on which strong reliance has been placed by the counsel of the minority is *St. Xaviers Collegs's case (supra).* St. Xaviers College was affiliated to the Gujarat University. A resolution was passed by the Senate of the University that all instruction, teaching and training in courses of studies in respect of which the University was competent to hold examinations shall be conductive by the University and shall be imported by teachers of the University. Section 5 of the Act provided that no educational institution situated within the University shall, save with the sanction of the State Government, be associated in any way with or seek admission to any privilege of any other University established by law. Section 33A(1)(a) of the Act provided that every College

other than a Government College or a College maintained by the Government, shall be under the management of a governing body which included among others, the Principal of the College and a representative of the University nominated by the Vice-Chancellor. Section 33A(1)(b)(I) provided that in the case of recruitment of the Principal, a selection committee is required to be constituted consisting of, among others, a representatives of the University nominated by the Vice-Chancellor and (ii) in the case of selection of a member of the teaching staff of the College a selection committee consisting of the Principal and a representative of the University nominated by the Vice-Chancellor. Sub-section (3) of the Section stated that the provisions of sub-section (1) of section 33A shall be deemed to be a condition of affiliation of every college referred to in that sub-section. Section 39 provided that within the University area all post-graduate instruction, teaching and training shall be conducted by the University or by such affiliated College or institution and in such subjects as may be prescribed by statutes. Section 40(1) enacted that the Court of the University may determine that all instructions, teaching and training in courses of studies in respect of which the University is competant to hold examinations shall be conducted by the University and shall be imparted by the teachers of the University. Sub-section (2) of Section 40 stated that the State Government shall issue a notification declaring that the provisions of Section 41 shall come into force on such date as may be specified in the notification. Section 41(1) of the Act stated that all colleges within the University area which are admitted to the privilege of the university under Section 5(3) and all colleges within the said area which may hereafter be affiliated to the University shall be constituent colleges of the University. Sub-section (4) stated that the relations of the constituent colleges and other institutions within the University area shall be governed by statutes to be made in that behalf. Section 51A(a)(b) enacted that no member of the teaching other academic and non-teaching staff of an affiliated college shall be dismissed or removed or reduced in rank except after an enquiry in accordance with the procedure prescribed in clause (a) and the penalty to be inflicted on him is approved by the Vice-Chancellor or any other Officer of the University authorised by the Vice-Chancellor in this behalf. Similarly clause (b) of sub-section (2) required that such termination should be approved by the Vice-Chancellor or any officer of the University authorised by the Vice-Chancellor in this behalf. Section 52A(1) enacted that any dispute between the governing body and any member of the teaching and other staff shall, on a request of the governing body or of the member concerned be referred to a tribunal of arbitration consisting of one member nominated by the governing body of the college, one member nominated by the member concerned and an umpire appointed by the Vice-Chancellor. The Petitioner Society contended that they had a fundamental right to establish and administer educational institutions of their choice and that such a right included the right of affiliation. They therefore challenged the constitutional validity of the above Sections. It is in this context that various observations have been made. These observations cannot be drawn out of context. In this case it was an admitted position, as set out by Justice Khanna, that children of all classes and creeds were admitted to the college provided they met the qualifying standards. Thus the College never claimed the right to only admit students of its own community. It acknowledged the fact that it had to admit students of all classes and creeds. The majority Judgment, therefore, did not deal with the question of interplay between Articles 29(2) and 30. Even though it did not deal with the interplay of Articles 29(2) and 30, it was clear that reasoning of the majority is based on the fact that the College did not deny admissions to the

students of other communities. This is clearly indicated by the test which had been laid down by the majority. This test reads as follows:

> "Such regulation must satisfy a dual test - the test of reasonableness, and the test that it is regulative of the educational character of the institution and is conducive to making the institution an effective vehicle of education for the minority community or other persons who resort to it." (emphasis supplied)

Thus it is held by the majority that the institute is to be made an effective vehicle of education not just for the minority community but also for other persons who resort to do. This indicates that the majority made the observations on the understanding that admissions were not restricted only to students of minority community once State aid was received. This aspect is clearly brought out in the Judgment of Justice Dwivedi who, whilst dealing with the various provisions of the Constitution, held as follows:

> "A glance at the context and scheme of Part III of the Constitution would show that the Constitution makers did not intend to confer absolute rights on a religious or linguistic minority to establish and administer educational institutions. The associate Art. 29(2) imposes one restriction on the right in Art. 30(1). No religious or linguistic minority establishing and administering an educational institution which receives aid from the State funds shall deny admission to any citizen to the institution on grounds only of religion, race, caste, language or any of them. The right to admit a student to an educational institution is admittedly comprised in the right to administer it. This right is partly curtailed by Art. 29(2).
>
> The right of admission is further curtailed by Art. 15(4) which provides an exception to Art. 29(2). Article 15(4) enables the State to make any special provision for the advancement of any socially and educationally backward class of citizens or for the scheduled caste and scheduled tribes in the matter of admission in the educational institutions maintained by the State or receiving aid from the State.
>
> Article 28(3) imposes a third restriction on the right in Art. 30(1). It provides that no person attending any educational institution recognised or receiving aid by the State shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto. Obviously, Art. 28(3) prohibits a religious minority establishing and administering an educational institution which receives aid or is recognised by the State from compelling any citizen reading in the institution to receive religious instruction against his wishes or if minor against the wishes of his guardian. It cannot be disputed that the right of a religious minority to impart religious instruction in an educational institution forms part of the right to administer the

institution. And yet Art. 28(3) curtails that right to a certain extent.

> To sum up, Arts. 29(2), 15(4) and 28(3) place certain express limitations on the right in Art. 30(1). There are also certain implied limitations on this right. The right should be read subject to those implied limitations." (emphasis supplied)

Thus even in this authority the principle that Article 29(2) applies to Article 30(1) has been recognised and upheld. This case also holds that reasonable restrictions can be placed on the rights under Article 30(1) subject to the test set out hereinabove.

56. In the case of *Gandhi Faizeam College v. Agra University* reported in (1975) 3 SCR 810 the minority college was affiliated to the University of Agra. It applied for permission to start teaching in certain courses of study. The University, as a condition of permitting the additional subjects, insisted that the Managing Committee must be re-constituted in line with Statute 14-A which provided that the principal of the College and senior-most staff member should be part of the Managing Committee. The Petitioners filed a Writ Petition in the High Court challenging the imposition of such a condition on the ground that it was violative of their rights under Article 30(1). The High Court dismissed the Writ Petition. Therefore the Petitioners came to this Court. The majority of Judges upheld the order of the High Court, inter alia, on the ground that the right under Article 30(1) is not the absolute right and that it is a right which can be restricted. After considering the various authorities (including some of those set out hereinabove) it was held that reasonable regulations are desirable, necessary and constitutional, provided they shape but not cut out of shape the individual personality of the minority. It was held as follows:

> "In all these cases administrative autonomy is imperilled transgressing purely regulatory limits. In our case autonomy is virtually left intact and refurbishing, not restructuring, is prescribed. The core of the right is not gouged out at all and the regulation is at once reasonable and calculated to promote excellence of the institution - a text book instance of constitutional condititons."

Thus a condition that the Managing Committee be reconstituted is upheld. To be noted that this directly affects the right of administration. Now compulsory the principal and one of the staff members would be part of the Managing Committee. Yet it has been held that this is not violative of rights under Article 30(1).

57. In the case of *St. Stephen's College v. University of Delhi* reported in (1992) 1 SCC 558, one of the questions was the applicability of Article 29(2) to Article 30(1). Even in this case it has been accepted that Article 29(2) applies to Section 30(1). However, the majority of the Judges, after noting that Article 29(2) applies to Article 30(1), sought to compromise and/or strike a balance between Articles 29(2) and 30(1). They therefore prescribed a ration of 50% to be admitted on merits and 50% to be admitted by the College from their own community. All Counsel, whether appearing for the minorities or for the States/local authorities attacked this judgment and submitted that it is not correct. Of course Counsel for the minorities were claiming a right to admit students of their own community even to the extent of 100%. On the other hand the submission

was that once State aid is taken Article 29(2) applied and not even a single student could be admitted on basis of religion, race, caste, language or any of them. Thus all counsel attacked the judgment as being not correct. In matters of interpretation, there can be no compromise. As stated above if the language and meaning are clear then Courts must give effect to it irrespective of the consequence. With the greatest of respect to the learned Judges concerned, once it was held that Article 29(2) applied to Article 30, there was no question of trying to balance rights or to seek a compromise.

58. Justice Kasliwal dissented from the majority view. It must be noted that in *St. Stephen's case,* in his minority judgment, he has held that Article 29(2) governs Article 30(1) and that if the minority educational institute chooses to take aid it must comply with the constitutional mandate of Article 29(2). The Judgment in *St. Stephen's case* is of recent origin. It is therefore cannot form the basis for applying the principles of "Stare Decisis".

59. Thus, from any point of view i.e. historical or contextual or on principles of pure interpretation or on principles of "stare decisis" the only interpretation possible is that the rights under Article 30(1) are conferred on minorities to establish and administer educational institutions of their choice at their own cost. This right is a special right which is given by way of protection so that the majority, which is politically powerful, does not prevent the minorities from establishing their educational institutions. This right was not created because the minorities were economically and socially backward or that their children would not be able to compete on merit with children of other communities. This right was not conferred in order to create a special category of the citizens. What has been granted to them is a right which was equal to the rights enjoyed by the majority community, namely, to establish and administer educational institutions of their choice at their own cost. As the institution was to be established and maintained at their own espense no right to receive aid has been conferred on the minority institute. All that Article 30(2) provides is that the State while granting aid would not discriminate merely on the ground that an educational institute was under the management of a minority. Article 30(2) has been so worded as the framers were aware that once State aid was taken some aspects of the right of administration would have to be compromised and given up. The minority educational institute have a choice. They need not take State aid. But if they choose to take State aid then they have to comply with constitutional mandates which are based on principles which are as important as if not more important than the rights given to the minorities. Our Constitution mandates that the State cannot discriminate on grounds only of religion, race, caste, language or any of them. Our Constitution mandates that all citizens are equal and that no citizen can be denied admission into educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them. Thus if State aid is taken the minority educational institution must then not refuse admission to students of other communities on any of those grounds. In other words, they cannot then insist that they would admit students only of their community. Of course, as stated above, preferences could always be given to students of their own community. But preference necessarily implies that all other things are equal, i.e. that on merit the student of their community is equal to the merit of the student of other community. As stated above, in para 37, in schools the minority community would have a larger amount of leeway and so long as the school admits a sufficient

number of outsiders Article 29(2) would not be violated if the refusal is not made on the basis of the religion, race, caste, language or any of them. Of course, at the under-graduate and post-graduate stages merit would have to be the criteria. At these stages there are common entrance examinations by which inter se merit can be assessed. But even here, the minority educational institute can admit students of its own community on grounds like those set out in part 37 above. They could give some preference to students coming from their own schools. There could be interviews wherein not more than 15% marks can be allotted. Students of their community will be able to compete on merit also. All these would ensure that a sufficient number of students of their own community receive admissions. But the minority institute, once it receives State aid, cannot refuse to abide by the constitutional mandate of Article 29(2). It would be paradoxical to unsettle settled law at such a late stage. It would be paradoxical to hold that the rights under Article 30(1) are subject to municipal and other laws, but that they are not subject to the constitutional mandate under Article 29(2). It would be paradoxical to held that Article 30(1) is subject to Article 28(3) but not to Article 29(2). It must be remembered that when Article 29(2) was introduced it was part of the same Article (viz. Article 23) which also included what is now Article 30(1). Not only the Constituent Assembly Debates but also the fact that they were part of the same Article shows that Article 29(2) was intended by the framers of the Constitution to apply even to institutions established under Article 30(1). Thus Article 29(2) governs educational institutions established under Article 30(1). The language is clear and unambiguous. It is clear that Article 30(1) has full play so long as the educational institution is established and maintained and administered by the minority at their own costs. Article 30(2) purposely and significantly does not make taking or granting of aid compulsory. The monority educational institution need not take aid. However if it chooses to take aid then it can hardly claim that it would not abide by the Constitutional mandate of Article 29(2). Once the language is clear and unambigious full effect must be given to Article 29(2) irrespective of the consequences. This can be the only interpretation. The only interplay between Articles 29(2) and 30(1) is that once State aid is taken, then students of all communities must be admitted. In other words, no citizen can be refused admission on grounds of religion, race, caste or creed or any of them. Reserving seats for students of one's own community would in effect be refusing admission on grounds of religion, race, caste or creed. As there is no conflict the question of balancing rights under Article 30(1) and Article 29(2) of the Constitution does not arise. As stated by the US Supreme Court in the case of *San Antonio Independent School District v. Demetrio P. Rudriguez* (411 US 1), it is not the province of this Court to create substantive Constitutional rights in the name of a guaranteeing equal protection.

60. In view of above discussion we answer the question as follows:

Q.1. What is the meaning and content of the expression "minorities in Article 30 of the Constitution of India?

A. Linguistic and religious minorities are covered by the expression "minority" under Article 30 of the Constitution. Since reorganization of the States in India has been on linguistic lines, therefore, for the purpose of determining the minority, the unit will be the State and not the whole of India. Thus, religious and linguistic minorities, who have been put at par in Article 30, have to be considered State-wise.

Q.2. What is meant by the expression "religion" in Article 30(1)? Can the followers of a sect or denomination of a particular religion claim protection under Article 30(1) on the basis that they constitute a minority in the State, even though the followers of that religion are in majority in that State?

A. This question need not be answered by this Bench; It will be dealt with a regular Bench.

Q3(a) What are the indicia for treating an educational institution as a minority educational institution? Would an institution be regarded as a minority educational institution because it was established by a person(s) belonging to a religious or linguistic minority or its being administered by a person(s) belonging to a religious or linguistic minority?

A. This question need not be answered by this Bench, it will be dealt with by a regular Bench.

Q3(b) To what extent can professional education be treated as a matter coming under minorities rights under Article 30?

A. Article 30(1) gives religious and linguistic minorities the right to establish and administer educational institutions of their choice. The use of the words "of their choice" indicates that even professional educational institutions would be covered by Article 30.

Q.4. Whether the admission of students to minority educational institution, whether aided or unaided, can be regulated by the State Government or by the University to which the institution is affiliated?

A. Admission of students to unaided minority educational institutions, viz., Schools where scope for merit based selection is practically nil, cannot be regulated by the State or the University (except for providing the qualifications and minimum conditions of eligibility in the interest of academic standards)

Right to admit students being an essential facet of right to administer educational institutions of their choice, as contemplated under Article 30 of the Constitution, the State Government or the University may not be entitled to interfere with that right in respect of unaided minority institutions provided however that the admission to the unaided educational institutions is on transparent basis and the merit is the criteria. The right to administer, not being an absolute one, there could be regulatory measures for ensuring educational standards and maintaining excellence thereof and it is more so, in the matter of admissions to undergraduate Colleges and professional institutions.

The moment aid is received or taken by a minority educational institution it would be governed by Article 29(2) and would then not be able to refuse admission on grounds of religion, race, caste, language or any of them. In other words it cannot then give preference to students of its own community. Observance of *inter se* merit amontst the applicants must be ensured. In the case of aided professional institutions, it can also be stipulated that passing of common entrance test held by the State agency is necessary to seek admission.

Q5(a) Whether the monority's rights to establish and administer educational institutions of their choice will include the procedure and method of admission and selection of students?

A. A minority institution may have its own procedure and method of admission as well as selection of students, but such procedure must be fair and transparent and selection of students in professional and higher educational colleges should be on the basis of merit. The procedure adopted or selection made should not tantamount to mal-administration. Even an unaided minority institution, ought not to ignore merit of the students for admission, while exercising its right to admit students to the colleges aforesaid, as in that event, the institution will fail to achieve excellence.

Q5(b) Whether the minority institution's right of admission of students and lay down procedure and method of admission, if any, would be affected in any way by the receipt of State aid?

A. Further to what is stated in answer to question No. 4, it must be stated that whilst giving aid to professional institutions, it would be permissible for the authority giving aid to prescribe by-rules or regulations, the conditions on the basis of which admission will be granted to different aided colleges by virtue of merit, coupled with the reservation policy of the state. The merit may be determined either through a common entrance test conducted by the University or the Government followed by counselling, or on the basis of an entrance test conducted by individual institutions - the method to be followed is for the university or the government to decide. The authority may also devise other means to ensure that admission is granted to an aided professional institution on the basis of merit. In the case of such institutions, it will be permissible for the government or the university to provide that consideration should be shown to the weaker sections of the society.

Q5(c) Whether the statutory provisions which regulate the facets of administration like control over educational agencies, control over governing bodies, conditions of affiliation including recognition/withdrawal thereof, and appointment of staff, employees, teachers and Principals including their service conditions and regulation of fees, etc. would interfere with the right of administration of minorities?

A. So far as the statutory provisions regulating the facets of administration is concerned, in case of an unaided minority educational institution, the regulatory measure of control should be minimal and the conditions of recognition as well as conditions of affiliation to an University or Boart have to be compiled with, but in the matter of day-to-day Management, like appointment of staff, teaching and non-teaching and administrative control over them, the Management should have the freedom and there should not be any external controlling agency. However, a rational procedure for selection of teaching staff and for taking disciplinary action has to be evolved by the Management itself. For redressing the grievances of such employees who are subjected to punishment or termination from service, a mechanism will have to be evolved and in our opinion, appropriate tribunals could be constituted, and till then, such tribunal could be presided over by a Judicial Officer of the rank of District Judge. The State or other controlling authorities, however, can always

prescribe the minimum qualifications, salaries, experience and other conditions bearing on the merit of an individual for being appointed as a teacher of an educational institution.

Regulations can be framed governing service conditions for teaching and other staff for whom aid is provided by the State without interfering with overall administrative control of Management over the staff, Government/University representative can be associated with the selection committee and the guidelines for selection can be laid down. In regard to un-aided minority educational institutions such regulations, which will ensure a check over unfair practices and general welfare, of teachers could be framed.

There could be appropriate mechanism to ensure that no capitation fee is charged and profiteering is not resorted to.

The extent of regulations will not be the same for aided and un-aided institutions.

Q6(a) Where can minority institution be operationally located? Where a religious or linguistic minority in State 'A' establishes an educational institution in the said State, can such educational institution grant preferential admission/reservations and other benefits to members of the religious/linguistic group from other States where they are non-minorities?

A. This question need not be answered by this Bench; it will be dealt with by a regular Bench.

Q6(b) Whether it would be correct to say that only the members of that minority residing in State 'A' will be treated as the members of the minority vis-a-vis such institution?

A. This question need not be answered by this Bench; it will be dealth with by a regular Bench.

Q.7. Whether the member of a linguistic non-minority in one State can establish a trust/society in another State and claim minority status in that State?

A. This question need not be answered by this Bench; it will be dealth with by a regular Bench.

Q.8. Whether the ratio laid down by this Court in the St. Stephen's cast (*St. Stephen's College vs. University of Delhi* [(1992) 1 SCC 558] is correct? If no, what order?

A. The ratio laid down in *St. Stephen's College* case is not correct. Once State aid is taken and Article 29(2) comes into play, then no question arises of trying to balance Articles 29(2) and 31. Article 29(2) must be gien its full effect.

Q.9. Whether the decisions of this Court in *Unni Krishnan J.P vs. State of A.P.* [(1993) 1 SCC 645] (except where it hold that primary education is a fundamental right) and the scheme framed thereunder require reconsideration/modification and if yes, what?

A. The scheme framed by this Court in Unni Krishnan's case and the direction to impose the same, except where it holds that primary education is a fundamental ritht, is unconstitutional. However, the principle that there should not be capitation fee or profiteering is correct.

Reasonable surplus to meet cost of expansion and augmentation of facilities does not, however, amount to profiteering.

Q.10. Whether the non-minorities have the right to establish and administer educational institution under Articles 21 and 29(1) read with Articles 14 and 15(1), in the same manner and to the same extent as minority institutions? and

Q.11. What is the meaning of the expressions "Education" and "Educational Institutions" in various provisions of the Constitution? Is the right to establish and administer educational institutions guaranteed under the Constitution?

A. The expression "education" in the Articles of the Constitution means and includes education at all levels from the primary school level up to the post-graduate level. It includes professional education. the expression "educational institutions" means institutions that impart education, where "education" is as understood hereinabove.

The right to establish and administer educational institutions is guaranteed under the Constitution to all citizens under Article 19(1)(g) and 26, and to minorities specifically under Article 30.

All citizens have a right to establish and administer educational institutions under Articles 19(1)(g) and 26, but this right will be subject to the provisions of Articles 19(6) and 26(a). However, minority institutions will have a right to admit students belonging to the minority group, in the manner as discussed in this judgment.

Sd/-
.....J.
(S.N. Variava)

Sd/-
.....J.
(Ashok Bhan)

Sd/-
.....J.

New Delhi,
October 31, 2002.

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

TRANSFER PETITION (CIVIL) NOS. 1013-1014 OF 1993

Karnataka State Jr. Doctors Asson. & Anr. .....Petitioners

Versus

State of Karnataka & Ors. .....Respondents

ORDER

The transfer petitions are allowed as prayed for.

Sd/-
.....CJI.
(B.N. KIRPAL)
Sd/-
.....J.
(G.B. PATTANAIK)
Sd/-
.....J.
(V.N. KHARE)
Sd/-
.....J.
(S. RAJENDRA BABU)
Sd/-
.....J.
(SYED SHAH MOHAMMED QUADRI)
Sd/-
.....J.
(RUMA PAL)
Sd/-
.....J.
(S.N. VARIAVA)
Sd/-
.....J.
(K.G. BALAKRISHNAN)
Sd/-
.....J.
(P. VENKATARAMA REDDI)
Sd/-
.....J.
(ASHOK BHAN)
Sd/-
.....J.
(ARIJIT PASAYAT)

New Delhi,
October 31, 2002.