

CONSTITUTIONAL PRIVILEGES TO THE MINORITIES IN RESPECT TO THE EDUCATION: A REFLECTION ON ARTICLE 30 OF THE CONSTITUTION OF INDIA

Ms. Masumi Nanavaty*

In this paper Article 30 will be looked upon mainly, whereas there are many other Fundamental Rights (Article 15 to 17, and 25 to 30) and Directive Principles of State Policy (Article 330 to 339 and 350) are there for the benefits of the minorities. For an easy reference the Article 30 is stated below:

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 own 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 the 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.

Article 30 guarantees the right of minorities to establish and administer educational institutions. It does not

* Student, 2nd year, Institute of Law, Nirma University, Ahmedabad.

expressly refer to citizenship as a qualification for the members of the minorities.¹

Whereas, Clause (1) of Article 30 provides the right to all the minorities to establish and administer educational institutions of their choice. It is essential that the rights available to minorities are protected in regard to institutions established and administered by them. Accordingly, institutions declared by the State to be minority institutions under cl. (1) of Article 30 are omitted.² The object of Article 30(1) is to give the minorities "a sense of security and a feeling of confidence" not merely by guaranteeing the right to profess, practice and propagate religion to religious minorities and the right to conserve their language, script and culture, but also to enable all the minorities, religious or linguistic, to establish and administer educational institutions of their choice.^{3 4}

Whereas, Article 30(2) mandates that in granting aid to educational institutions, the State shall not discriminate against any educational on the ground that it is under the management of a minority, whether based on religion or language. Minority institutions are not to be treated differently while giving financial assistance. Receipt of aid by a minority educational institution does not impair its right under Article 30(1)^{5 6}

The expression "educational institutions" means institutions that impart education, including education at all levels from the primary school level up to the postgraduate level as also professional education.⁷

¹ Right Rev. Bishop S.K. Patro v. State of Bihar, (1969)1 S.C.C. 363: AIR 1970 S.C. 259.

² Ashok Kumar Thakur v. Union of India (2008)6 SCC 1, p. 541.

³ A.P. Christians Medical Educational Society v. Government of A.P. (1986)2 S.C.C. 667: AIR 1986 S.C. 1490.

⁴ Prof. M.P. JAIN, Indian Constitutional Law 1351 (Justice Ruma Pal, Samaraditya Pal edn., LexisNexis Butterworths Wadhwa, Nagpur 2012) (1962).

⁵ Professor M.P. JAIN, Indian Constitutional Law 1351 (Justice Ruma Pal, Samaraditya Pal edn., LexisNexis Butterworths Wadhwa, Nagpur 2012) (1962).

⁶ V.N. Shuklas, Constitution of India 261 (Mahendra P. Singh, 11th edn., Eastern Book Company, Lucknow 2012) (1950).

⁷ Durga Das Basu, Indian Constitutional Law 327 (3rd edn., Kamal Law House, Kolkata 2011) (2007).

The concern behind the solemn guarantee in all the cases was to try and convince the minorities that their interests shall and would be protected under the Indian Constitution after the need for the same was felt when the minority- majority context was heightened during the British Period. This minority- majority rule had estranged the minorities to a very large extent. And because of this divide and rule policy the constitutional rights to a minority person were guaranteed and was considered as a motivating force to compel away fear and also to convince the minorities that their rights would be considered in the Independent India. But, because of the Partition of India- Pakistan and because of the assassination of Mahatma Gandhi the rights were then confined to the minorities to socio-cultural field like education.⁸

A few relevant interpretations defining the interpretations of the cases of both High Court and Supreme Court on the Article 30 are discussed in the subsequent research paper.

Who is a Minority?

The term "minority" cannot be just explained simply by interpreting the words in its factual sense. In some societies, it is based on the numerical ratio to the population as a whole at a particular place. The minority is thought of as an opposite to the majority. The international law though uses the term "minority" in a very restricted sense. The origin of the minority group may be possible in any of the following manners:⁹

1. It may formerly have constituted an independent state with its own tribal organization;
2. It may formerly have been part of a State living under its own territory, which was later segregated from this jurisdiction and annexed to another State; or

⁸ Ranu Jain, *Minority Rights In Education: Reflections On Article 30 2430-2437 (ECONOMIC AND POLITICAL WEEKLY, Vol. 40, No. 24)*.

⁹ Dr. Satish Chandra, *Minorities In National And International Laws 11 (Deep & Deep Publications, New Delhi) (1985)*.

3. It might have been, or yet to be, a regional scattered group which although was bound to the predominant group by certain feelings of solidarity, has not reached even a minimum degree of real assimilation with the predominant group.

To identify the minority group, five distinctive features are as under:¹⁰

1. A minority group is a subordinate social group. Its members suffer disadvantages resulting from prejudice and discrimination. These may include segregation and persecution.
2. The members of a minority group have their own physic, culture, dialect etc. which the dominant group holds in low esteem. The group usually has distinguished characteristics.
3. The members of a minority group identify themselves as a part of the group. There is an in-group feeling of loyalty.
4. Membership in a minority group is usually not voluntary. It is by birth.
5. Members of a minority group have strong bounds of brotherhood and generally believe in endogamy.

Article 30(1) gives the linguistic or religious minorities the following two rights¹¹:

1. The right to establish, and
2. The right to administer educational institutions of their choice.

As regards the indicia to be prescribed for grant of minority status certificate, a reference to Section 2(g) of the National Commission for Minority Educational Institution Act, 2004, has become inevitable as it defines

¹⁰ Dr. Satish Chandra, *Minorities In National And International Laws* 11 (Deep & Deep Publications, New Delhi) (1985).

¹¹ Prof. M.P. JAIN, *Indian Constitutional Law* 1351 (Justice Ruma Pal, Samaraditya Pal edn., LexisNexis Butterworths Wadhwa, Nagpur 2012) (1962).

a Minority Educational Institution. Section 2(g) is as under:¹²

“Minority Educational Institution” means a college or institution (other than a University) established or maintained by a person or group of persons from amongst the minorities.”

Sec. 2(f) of the Central Educational Institutions (Reservation in Admission) Act, 2006, defines a minority educational institution as under: “Minority Educational Institution” means an institution established and administered by the minorities under clause (1) of article 30 of the Constitution and so declared by an Act of Parliament or by the Central Government or declared as a minority educational institution under the National Commission for Minority Educational Institutions Act, 2004.

The Supreme Court has pointed out in *Ahmedabad St. Xavier's College v. State of Gujarat*,¹³ that the spirit behind Article 30(1) 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 have been given protection under Article 30 in order to preserve and strengthen the integrity and unity of the country. The sphere of general secular education will develop the commonness of boys and girls of India. The minorities will feel isolated and separate if they are not given the protection of Article 30.¹⁴

The Constitution uses the term "minority" even though they have not defined it anywhere. In *In Re: The Kerala Education Bill*¹⁵, the Supreme Court opined that while it is easy to say that minority means a community which is numerically less than 50 per cent, the most important

¹² Government of India National Commission for Minority Educational Institutions, *Guidelines for determination of minority status, recognition, affiliation and related matters in respect of minority educational institutions under the Constitution of India*, 02 – 03.

¹³ AIR 1974 S.C. 1389: (1974)1 S.C.C. 717.

¹⁴ V.N. Shukla's, *Constitution Of India* 265 (Mahendra P. Singh, 11th edn., Eastern Book Company, Lucknow 2012) (1950).

¹⁵ AIR 1958 SC 956.

question is 50 per cent of what? Should it be of the entire population of India, or of a State, or a part thereof? Is it possible that the community may be in majority in a State but in a minority in the whole of India. A community in a part of a State and may thus be in majority there, though it may be in minority in the State as a whole. The Supreme Court did not however decide this point definitively. However, it had come to be accepted that 'minority' is to be determined only in relation to the particular legislation which is being challenged.¹⁶

Thus, if a State law extending to the whole of a State is in question, the minority must be determined with reference to the entire State population. In such a case, any community, linguistic or religious, which is numerically less than 50 per cent of the entire State population, will be regarded as a minority for the purposes of Article 30(1).¹⁷

The same ruling was then reiterated by the Supreme Court in the *D.A.V. College, Jullundur v. State of Punjab*¹⁸ and ruled that the minority should be a minority in relation to the particular legislation which is sought to be impugned. If it is a State law, the minorities have to be determined in relation to the State population.

The Supreme Court had ruled in *S.K. Patro v. State of Bihar*¹⁹, that a minority claiming privilege under Article 30 should be a minority of persons residing in India. Foreigners not residing in India do not fall within the scope of Article 30. Residents in India forming the "well defined religious or linguistic minority" fall under the protection of Article 30.²⁰

¹⁶ Prof. M.P. JAIN, *Indian Constitutional Law* 1351 (Justice Ruma Pal, Samaraditya Pal edn., LexisNexis Butterworths Wadhwa, Nagpur 2012) (1962).

¹⁷ Government of India National Commission for Minority Educational Institutions, *Guidelines for determination of minority status, recognition, affiliation and related matters in respect of minority educational institutions under the Constitution of India*, 10–11.

¹⁸ AIR 1971 S.C. 1737, 1742.

¹⁹ AIR 1970 S.C. 259.

²⁰ DURGA DAS BASU, *INDIAN CONSTITUTIONAL LAW* 329 (3rd edn., Kamal Law House, Kolkata 2011) (2007).

In *Azeez Basha v. Union of India*²¹, a Constitutional Bench of the Supreme Court has held that the expression “establish and administer” used in Article 30(1) was to be read conjunctively that is to say, two requirements have to be fulfilled under Article 30(1):²²

- a) That the institution was established by the community and,
- b) Its administration was vested in the community.

The court in *T.M.A. Pai Foundation v. State of Karnataka*²³ was unanimously of the view that the right to establish and administer an institution in Article 30(1) of the Constitution, comprises the rights²⁴:

- 1. To admit students;
- 2. To set up a reasonable fee structure;
- 3. To constitute a governing body;
- 4. To appoint staff;
- 5. To take action if there is any recklessness on the part of the employees.

In *S.P. Mittal v. Union of India*²⁵, the Supreme Court has held that in order to claim the benefit of article 30(1), the community must show;

- a) That it is a religious/linguistic minority,
- b) That the institution was established by it.

Without specifying these two conditions it cannot claim the guaranteed rights to administer the educational institution.²⁶

Article 30(1) postulates that the religious community will have the right to establish and administer educational institutions of their choice implicating that where a religious minority establishes an educational institution, it will have the right to administer that. The

²¹ AIR 1968 S.C. 662.

²² *Ibid* 16.

²³ AIR 2003 S.C. 355.

²⁴ DURGA DAS BASU, INDIAN CONSTITUTIONAL LAW 335 (3rd edn., Kamal Law House, Kolkata 2011) (2007).

²⁵ AIR 1983 S.C. 1.

²⁶ DURGA DAS BASU, INDIAN CONSTITUTIONAL LAW 327 (3rd edn., Kamal Law House, Kolkata 2011) (2007).

same right has been given to the minority, so that it can mould the institution as it may think fit, and also in the accordance with its ideas of how the interest of the community and the institution in particular will be best served.²⁷

It has been held by a Division Bench of the Madras High Court in *T.K.V.T.S.S. Medical Educational and Charitable Trust v. State of Tamil Nadu*²⁸ that “once it is established that the institution has been established by a linguistic minority, and is administered by that minority, that would be sufficient for claiming the fundamental right guaranteed under Article 30(1) of the Constitution.” The same principle applies to religious minority also.²⁹

A minority educational institution continues to be so whether the Government declares it as such or not. When the Government declares an educational institution as a minority institution, it merely recognizes a factual position that the institution was established and is being administered by a minority community. The declaration is merely an open acceptance of the legal character of the institution which must necessarily have existed antecedent to such declaration.³⁰

A Society or Trust consisting of members of a minority community, or even a single member of a minority community, may establish an institution. The position has been clarified by the Supreme Court in *State of Kerala v. Mother Provincial*³¹. Where the Supreme Court had observed that:

“Establishment means 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, institution or the community at large founds the institution or the community at large contributes the funds. The position in law is

²⁷ *Manager, St. thomas U.P. School, Kerala v. Commr. and Secy. to General Education Dept.*, AIR 2002 SC 756.

²⁸ AIR 2002 Madras 42.

²⁹ Government of India National Commission for Minority Educational Institutions, *Guidelines for determination of minority status, recognition, affiliation and related matters in respect of minority educational institutions under the Constitution of India*, 10–11.

³⁰ *N. Ammad v. Emjay High School*, (1998) 6 SCC 674.

³¹ AIR 1970 SC 2079.

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 to this right that in addition to the minority community, others from other minority communities or even from the majority community can take advantage of these institutions.”

A minority institution may impart general secular education; it need not confine itself only to the teaching of minority language, culture or religion. But to be treated as a minority institution, it must be shown that it serves or promotes in some manner the interests of the minority community by promoting its religious tenets, philosophy, culture, language or literature.³²

In *Andhra Pradesh Christian Medical Association v. Government of Andhra Pradesh*³³, the Supreme Court emphasized that the object of Article 30(1) is not to allow bogies to be raised by pretenders. The institution must be an educational institution of minority in truth and reality and not mere masked phantom. The Supreme Court had also asserted that the Government, the University and ultimately the court can go behind the claim that the institution in question is a minority institution and to "investigate and satisfy itself whether the claim is well-founded or ill-founded". The Government, the University and ultimately the court "have the undoubted right to pierce the minority veil" and "discover whether there is lurking behind it no minority at all and in any case no minority institution."

It has been held in *P.A. Inamdar v. State of Maharashtra*³⁴ that "the minority institutions are free to admit students of their own choice including students of non-minority community and also members of their own community from other States, both to a limited extent only and not in a manner and to such an extent that their minority educational status is lost. If they do so, they lose the protection of Article 30(1) of the Constitution".

³² V.N. SHUKLA's, CONSTITUTION OF INDIA 266 (Mahendra P. Singh, 11th edn., Eastern Book Company, Lucknow 2012) (1950).

³³ AIR 1986 SC 1490.

³⁴ (2005) 6 SCC 537.

Under Article 30(1), the requirements of establishment and management have to be read conjunctively. The twin requirements have to be established and in the absence of one, an institution cannot be granted minority status. Thus the Supreme Court has tried to restrict the misuse of the benefits granted to the minorities.³⁵

In *St. Stephe's College v. State of Delhi*³⁶, the Court observed: " Every educational institution irrespective of community to which it belongs is a 'melting pot' in our national life" and that it is essential that there should be a "proper mix of students of different communities in all educational institutions." this only meant that a minority institution cannot refuse admission to the students of other minority and majority communities.

The Supreme Court through the *P.A. Inamdar's*³⁷ case held that the twin objects sought to be achieved by Article 30(1) in the interest of minorities are:

- To enable such to conserve its religion and language, and
- To give a thorough good general education to the children belonging to such minority.

So long as the institution retains its minority character by achieving and continuing to achieve the aforesaid two objectives, the institution would remain a minority institution.

The crucial phrase of Article 30(1) is 'of their choice' and their 'choice' cannot be limited merely to institutions seeking to conserve languages, scripts or culture of the minorities. Thus, a minority whether based on religion or language has a right to establish institutions of a general education. Nor, is the right of the minority taken away if in an educational institution established by it, students of other communities are also admitted.

It was observed in *P.A. Inamdar's*³⁸ case that "it necessarily follows from the law laid down in *T.M.A. Pai*

³⁵ DURGA DAS BASU, *INDIAN CONSTITUTIONAL LAW* 329 (3rd edn., Kamal Law House, Kolkata 2011) (2007).

³⁶ AIR 1992 SC 1630.

³⁷ *P.A. Inamdar v. State of Maharashtra*, (2005) 6 SCC 537.

Foundation that to establish a minority institution, the institution must primarily cater to the requirements of the State else its character of the minority institution is lost. However, to borrow the words of Chief Justice S.R. Dass in *In Re: The Kerala Education Bill*, “a sprinkling of that majority from the other States on the same footing as a sprinkling of non minority students would be permissible and would not deprive the institution of its essential character of being a minority institution, determined by reference to that State as a unit”.

On reading Article 30(1) with several landmark judgments and some authoritative pronouncements, the definition of Minority Educational Institution in Section 2(g) of the National Commission for Minority Educational Institution Act, 2004 and Section 2(f) of the Central Educational Institutions (Reservation in Admission Act), 2006 the following facts should be proved for grant of a minority status to an educational institution on regular basis:³⁹

1. That the educational institution was established by member(s) of the religious minority community;
2. That the educational institution was established for the benefit of the minority community;
3. That the educational institution is being administered by the minority community.

The aforesaid facts may be proved either by direct or circumstantial evidence. There must be some positive index to enable the educational institution to be identified with religious minorities. There should be nexus between the means employed and the ends desired.⁴⁰ If the minority educational institution concerned is being run by a trust or a registered society, then majority of the trustees of the trust or members of the society, as the case may be, must be from the

³⁸ *Ibid* 37.

³⁹ Government of India National Commission for Minority Educational Institutions, *Guidelines for determination of minority status, recognition, affiliation and related matters in respect of minority educational institutions under the Constitution of India*, 09 – 10.

⁴⁰ PROFESSOR M.P. JAIN, INDIAN CONSTITUTIONAL LAW 1346 (JUSTICE RUMA PAL, SAMARADITYA PAL edn., LexisNexis Butterworths Wadhwa, Nagpur 2012) (1962).

minority community and the trust deed or Articles of Association or any other document duly executed in this regard must reflect the objective of sub-serving the interest of the minority community. In the absence of any documentary evidence some clear or cogent evidence must be produced to prove the aforesaid facts. There is no bar to the members of other communities to extend their help to the member of a minority community to establish an educational institution of its choice.⁴¹

According to the *T.K.V.T.S.S. Medical Educational and Charitable Trust v. State of Tamil Nadu*⁴², the Madras Court had held that, "a minority status cannot be conferred on a minority educational institution for particular period to be renewed periodically like a driving license. It is not open for the State Government to review its earlier order conferring minority status on a minority educational institution unless it is shown that the institution concerned has suppressed any material fact while passing the order of conferral of minority status or there is fundamental change of circumstances warranting cancellation of the earlier order."⁴³

If a minority status certificate has been obtained by practicing fraud or if there is any suppression of any material fact or any fundamental change of circumstances warranting cancellation of the earlier order, the authority concerned would be within its powers to cancel the minority status certificate after affording an opportunity of being heard to the management of the institution concerned, in conformity with the principles of natural justice.

It is also relevant to note that the minority status certificate granted by the National Commission or by any authority can be cancelled under Section 12C of the National Commission for the Minority Educational Act, 2004 on violation of any of the conditions enumerated therein.

⁴¹ S.K. Patro v. State of Bihar AIR 1970 SC 259.

⁴² AIR 2002 Madras 42.

⁴³ Government of India National Commission for Minority Educational Institutions, *Guidelines for determination of minority status, recognition, affiliation and related matters in respect of minority educational institutions under the Constitution of India*, 10 - 11.

Section 12C of the National Commission Minority Educational Act, 2004 is as under

12C. Power to cancel- The Commission may, after giving a reasonable opportunity of being heard to a Minority Educational Institution to which minority status has been granted by an authority or Commission, as the case may be, cancel such status under the following circumstances, namely: -

- a) if the constitution, aims and objects of the educational institution, which has enabled it to obtain minority status has subsequently been amended in such a way that it no longer reflects the purpose, or character of a Minority Educational Institution;
- b) if, on verification of the records during the inspection or investigation, it is found that the Minority Educational Institution has failed to admit students belonging to the minority community in the institution as per rules and prescribed percentage governing admissions during any academic year.

Regulation of Minority Educational Institution

The Fundamental Freedom under Article 30(1) is prima facie absolute in nature as it is not made subject to any reasonable restrictions. This means that all minorities, linguistic or religious, have by Article 30(1) the right to establish and administer the 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." The same does not mean that the state cannot impose any regulations on the minority institutions.

In *In Re: The Kerala Education Bill*⁴⁴, Regulations which do not affect the substance of the guaranteed rights, but ensure the excellence of the institution and its proper functioning in matters educational, are permissible.

⁴⁴ AIR 1958 SC 956, 1053.

Regulations could be made to maintain educational character and standard of institution.

By its interpretative process over the years, the Supreme Court has given a wide sweep to the protection conferred on the minority educational institutions under Article 30(1) as well as permitted some regulation thereof by the concerned government in the interest of the well being of the institution concerned.⁴⁵

From this point of view of regulation, minority educational institutions can be placed into two categories⁴⁶:

1. Institutions receiving aid from the State;
2. Institutions not getting aid from the State, each category being further sub-divided according to the nature of the educational institution, namely schools, undergraduate colleges, post-graduate colleges and also professional colleges.

Grants and Recognition from the Government

The situation in today's era is such that an educational institution cannot possibly hope to survive, and function effectively, without government grants, nor can it confer degrees without affiliation to the University. Without recognition, a minority run institution cannot fulfill its role effectively and the right conferred by Article 30(1) is diluted. The right and real exercise of Article 30(1) is to establish effective educational institutions which may sub serve the real needs of the minorities and the scholars who resort to them.

Article 30(2) debars the state from discriminating against minority institutions in the matter of giving grants.

In *Frank Anthony*⁴⁷, the Court had explained thus: "The extent of the right under Article 30(1) is to be determined,

⁴⁵ DURGA DAS BASU, INDIAN CONSTITUTIONAL LAW 329 (3rd edn., Kamal Law House, Kolkata 2011) (2007).

⁴⁶ PROFESSOR M.P. JAIN, INDIAN CONSTITUTIONAL LAW 1351, (JUSTICE RUMA PAL, SAMARADITYA PAL edn., LexisNexis Butterworths Wadhwa, Nagpur 2012) (1962).

not with reference to nay concept of state necessity and general societal interest but with reference to the educational institutions themselves, that is, with reference to the goal of making the institutions effective vehicles of education for the minority community or other persons who resort to them....The main question in each case is whether the particular measure is, in the ultimate analysis, designed to achieve such goal, without of course nullifying any part of the right of the management in substantial measure."⁴⁸

The *State of Karnataka*⁴⁹ had denied recognition to a minority teachers' training college on the basis that the State had already had other such institutions and therefore the policy of the government was to not permit the starting of any more such minority institutions.⁵⁰ The High Court held the denial of recognition not valid. Without specifically deciding the question whether or not the State can have such a policy, the court concluded that the State had no such firm policy as a matter of fact as it had given permission to another similar institution which applied later than the institution in question.

The same High Court⁵¹ then held that a minority institution need not take prior permission of the government to be started. Recognition must be given to a minority institution if all the conditions are fulfilled and are satisfied. Recognition cannot be denied on the ground that because of the existence of one school in locality there is no need for another school. Such a factor and the policy is irrelevant and invalid so far as a minority institution is in question.

The Supreme Court had observed when the question of government aid in minority institutions, in *St. Stephen's*

⁴⁷ Frank Anthony Public Schools Employees' Assn. v. Union of India AIR 1987 SC 311.

⁴⁸ PROFESSOR M.P. JAIN, INDIAN CONSTITUTIONAL LAW 1352, (JUSTICE RUMA PAL, SAMARADITYA PAL edn., LexisNexis Butterworths Wadhwa, Nagpur 2012 (1962).

⁴⁹ Socio Literati Advancement Society, Bangalore v. State of Karnataka, AIR 1979 Kant 217.

⁵⁰ PROFESSOR M.P. JAIN, INDIAN CONSTITUTIONAL LAW 1352, (JUSTICE RUMA PAL, SAMARADITYA PAL edn., LexisNexis Butterworths Wadhwa, Nagpur 2012 (1962).

⁵¹ Deccan Model Education Society v. State of Karnataka, AIR 1983 Kant 207.

*college*⁵²: "The educational institutions are not business homes. They do not generate wealth. They cannot survive without public funds or private aid. It is said that there is also restraint on collection of student's fees. With the same restraint on the collection of fees, the minorities cannot be saddled with the burden of maintaining the institutions without grant-in-aid. They do not have economic advantage over others. It is not possible to have educational institutions without state aid. The minorities cannot, therefore, be asked to maintain educational institutions on their own."

The conditions are of two types:⁵³

1. It may relate to matters as syllabi, curricula, courses, minimum qualification of the teachers, age of superannuation, library, conditions which are concerned with sanitary problems, health and hygiene etc.
2. It may relate to the management of the institutions.

The underlying purpose for the conditions for grants and recognition is to promote educational standards and uniformity and help the institutions concerned achieve efficiency and excellence and are imposed not only in the interest of general secular education but are also conducive to improvement of minority institutions themselves. Regulatory measures are necessary to maintain the educational character and content of minority institutions. Such conditions cannot be regarded as violative of Article 30(1) and should, therefore, be followed by all educational institutions.

Even the conditions for grant and recognition must satisfy a test⁵⁴:

- i. These conditions must be reasonable.

⁵² St. Stephen's College v. University of Delhi, AIR 1992 SC 1630.

⁵³ Government of India National Commission for Minority Educational Institutions, *Guidelines for determination of minority status, recognition, affiliation and related matters in respect of minority educational institutions under the Constitution of India*, 26 - 27.

⁵⁴ PROFESSOR M.P. JAIN, INDIAN CONSTITUTIONAL LAW 1353, (JUSTICE RUMA PAL, SAMARADITYA PAL edn., LexisNexis Butterworths Wadhwa, Nagpur 2012) (1962).

- ii. These are regulatory of the educational character of the institution and are conducive to making it an effective vehicle of education for the minority community or other persons who resort to it.

Affiliations and Recognition

Section 10(A) of the Act confers a right on the minority educational institution to seek affiliation to any university of its choice.

10A. Right of a Minority Educational Institution to seek affiliation

1. A Minority Educational Institution may seek affiliation to any University of its choice subject to such affiliation being permissible within the Act under which the said University is established.
2. Any person who is authorized in this behalf by the Minority Educational Institution, may file an application for affiliation under sub-section (1) to a University in the manner prescribed by the Statute, Ordinance, rules or regulations, of the University: Provided that such authorized person shall have right to know the status of such application after the expiry of sixty days from the date of filing of such application.”

The Supreme Court in *Managing Board of the Milli Talimi Mission Bihar and Ors. v. State of Bihar and Ors.*⁵⁵, had clearly recognized that running a minority institution is also as fundamental and important as other rights conferred on the citizens of the country. If the State Government declines to grant recognition or a university refuses to grant affiliation to a minority educational institution without just and sufficient grounds, the direct consequence would be to destroy the very existence of the institution itself. Thus, refusal to grant recognition or affiliation by the statutory authorities without just and sufficient grounds amounts to violation of the right guaranteed under Article 30(1) of the Constitution. The

⁵⁵ 1984 (4) SCC 500.

right of the minorities to establish educational institutions of their choice will be without any meaning if affiliation or recognition is denied.

The primary purpose of affiliation is that the students reading in the minority institutions will have qualifications in the shape of degrees necessary for a useful career in life. The establishment of a minority institution is not only ineffective but also unreal unless such institution is affiliated to a University for the purpose of conferment of degrees on students.” It has been held in *T.M.A. Pai Foundation*⁵⁶ case that affiliation and recognition has to be available to every institution that fulfills the conditions for grant of such affiliation and recognition.

A minority educational institution seeking recognition or affiliation must fulfill the statutory requirements like:⁵⁷

1. The academic excellence,
2. The minimum qualifications of eligibility prescribed by the statutory authorities for Head Master/ Principal/ teachers/ lecturers and
3. The courses of studies and curriculum.
4. It must have sufficient infrastructural and instructional facilities as well as financial resources for its growth.

No condition should be imposed for grant of recognition or affiliation, which would, in truth and in effect, infringe the right guaranteed under Article 30(1) of the Constitution or impinge upon the minority character of the institution concerned.

If an object surrender of the right guaranteed under Article 30(1) is made a condition of recognition or affiliation, the denial of recognition or affiliation would be violative of Article 30(1).

⁵⁶ Supra 18.

⁵⁷ Government of India National Commission for Minority Educational Institutions, *Guidelines for determination of minority status, recognition, affiliation and related matters in respect of minority educational institutions under the Constitution of India*, 20-21.

The right of the minorities to establish and administer educational institutions of their choice under Article 30(1) of the Constitution is subject to the regulatory power of the State for maintaining and facilitating the excellence of the standard of education. Taking reference to the same, the Supreme Court had held in *P.A. Inamdar's*⁵⁸ case that:

"...Subject to a reconciliation of the two objectives, any regulation accompanying affiliation or recognition must satisfy the triple tests: (1) the test of reasonableness and rationality, (2) the test that the regulation would be conducive to making the institution an effective vehicle of education for the minority community or other persons who resort to it, and (3) that there is no in road into the protection conferred by Article 30(1) of the Constitution, that is by framing the regulation the essential character of the institution being a minority educational institution, is not taken away."

The right of the minorities to establish and administer educational institutions of their own choices comprises of the following rights:⁵⁹

- a) To choose the governing body in whom the founders of the institutions have faith and confidence to conduct and manage the affairs of the institution.

The Supreme Court has invariably invalidated provisions seeking to regulate the composition and personnel of the managing bodies of minority institutions. A provision if interfering with the minorities' choice of the managing body for an institution has been held to violate the Article 30(1). In the *St. Xavier's College* case,⁶⁰ the Court declared the provisions as non - applicable to minority institutions because it displaced the management and entrusted it to a different agency because the autonomy was lost and new elements in the

⁵⁸ P.A. Inamdar v. State of Maharashtra (2005) 6 SCC 537.

⁵⁹ Government of India National Commission for Minority Educational Institutions, *Guidelines for determination of minority status, recognition, affiliation and related matters in respect of minority educational institutions under the Constitution of India*, 28-29.

⁶⁰ The Ahmedabad St. Xavier's College Society v. State of Gujarat, AIR 1974 SC 1389.

shape of representatives were brought in. The court declared these provisions invalid as they took away from the founders the right to administer their own institution.

The Calcutta High Court⁶¹ has said that the Education board cannot, under any of the circumstances, interfere or take - over the management of a minority school/ college by super-seeding its managing committee and appointing an administrator to take charge of school and also administer it.

- b)** To appoint teaching staff and also non - teaching staff, and to take action if there is dereliction of duty on the part of the employees.

The selection and appointment of teachers, and the head of the institution, is regarded as pre-eminently the function of the administration. The position taken by the Supreme Court⁶² is that while a University can prescribe qualifications for the academic staff, the actual selection of teachers must remain in the hands of the administration on the institution and any dilution of this right of the management infringes Article 30(2). It is the management's right to choose the Head Master/ Principal of a minority educational institution and cannot be interfered with by the State.⁶³

- c)** To admit the eligible students of their own choice and to set up a reasonable fee structure.

In *St. Stephen's College v. University of Delhi*⁶⁴ exempting St. Stephen's College from the uniform admission procedure applicable to all affiliated and constituent colleges of the University of Delhi at the under-graduate level, the Court held that the admission of students to educational institutions is also an important aspect of the administration. The court found that denial of this power to the college to supplement its admission procedure by interview and to compel it to

⁶¹ Nanda Ghosh v. Guru Nanak Education Trust, AIR 1984 Cal 40.

⁶² Ahmedabad St. Xavier's College v. State of Gujarat, AIR 1974 SC 1389.

⁶³ Board of Secondary Education v. Director of Public Instructions, (1998)8 SCC 555.

⁶⁴ (1992) 1 SCC 558.

make admissions exclusively on the basis of marks obtained in the qualifying examination would be against the rights of the minority community under Article 30(1).⁶⁵

Every Institution is free to devise its own fee structure but the same can be regulated in order to prevent profiteering. No capitation fee can be charged directly or indirectly or in any other form.⁶⁶ Capitation fee cannot be changed and no seat can be permitted to be appropriated by payment of capitation fee.⁶⁷ Delhi High Court had ruled that⁶⁸ under Article 30(1), the right to freely administer educational institutions does not permit the minorities to indulge in commercialization of education in the garb of constitutional protection. The court has ruled that "on the aspect of commercialization and exploitation, minority institution would be primarily placed as other institutions."⁶⁹

Article 30(1A) became necessary because Article 31 was being abrogated from the Constitution. The State has the right to acquire the property belonging to a minority institution. This provision seeks to protect the minority rights somewhat in the regard but the actual implications of Article 30(1A) are not clear. The Supreme Court commented on the scope of Article 30(1A) in *Society of St. Joseph's College v. Union of India*⁷⁰, where the court pointed out that Article 30(1A) had been introduced in the Constitution because Parliament in its constituent capacity apprehended that minority educational institutions could be compelled to close down or curtail their activities by the expedient of acquiring their property and paying them inadequate amounts on compensation.

⁶⁵ V.N. SHUKLA's, CONSTITUTION OF INDIA 270 (Mahendra P. Singh, 11th edn., Eastern Book Company, Lucknow 2012) (1950).

⁶⁶ DURGA DAS BASU, INDIAN CONSTITUTIONAL LAW 331 (3rd edn., Kamal Law House, Kolkata 2011) (2007).

⁶⁷ P.A. Inamdar v. State of Maharashtra, (2005)6 SCC 537.

⁶⁸ Delhi Abibhavak Mahasangh v. Union of India, AIR 1999 Del 128, 149.

⁶⁹ V.N. SHUKLA's, CONSTITUTION OF INDIA 269 (Mahendra P. Singh, 11th edn., Eastern Book Company, Lucknow 2012) (1950).

⁷⁰ AIR 2002 SC 195.

Conclusion

Minority educational institutions have a great role to fulfill for the nation and minorities of the State as well. The religious and the linguistic minorities also need to understand that they are the only minorities who need special protection from the majorities. These religious and linguistic minorities should keep in mind their special rights like their Independent State, Reasonable Fee Structure, Government and Private aid, the loyalty towards their own group, etc and help the nation in servicing the real minorities like the poor people, their children, women, the *Dalits*, *Adivasis*, women of the tribal groups and also those who are not mentally and physically fit, because in spite of the additional regulations and less restrictions the minorities should not wary about establishing aided nature of the institutions but go and help these poorer sections of the society.

Lastly if these minority institutions are not masked phantoms who are lurking behind and truly want to help the minorities, the possibilities and the potentialities of the members of the minorities and non - minorities as well, would also change.

