

# MINORITY RIGHTS AND THE INDIAN CONSTITUTION

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## Introduction

Human rights took the shape of manmade laws and statutes, changing contents from country to country and from century to century.

Human rights shaped in statutory rules developed on the national level through the *Magna Carta* 1215 in 13<sup>th</sup> century, Britain, through the 1776 American Declaration of Independence and through 1789 French Declaration of rights of men which are the turning points on the long road which mankind had travelled from ancient natural rights to fundamental rights (Part III Constitution of India) and modern human rights. Throughout the 13<sup>th</sup> to 20<sup>th</sup> centuries, fundamental rights were successively included into the constitutions of various States.

A new approach to the idea of human rights in the 20<sup>th</sup> century was propounded by the socialist States which advanced the idea of economic, social and cultural rights (right of nations to self determination, and also to natural resources, etc), supplementing the traditional, and individual, political and civil rights.<sup>1</sup>

## Meaning of Human Rights

Human rights, as such, are incorporated in various international Human Rights Instruments.<sup>2</sup> “Human rights mean the rights relating to life, liberty equality of the individuals guaranteed by the constitution or embodied in the International covenants and enforceable by courts in India.<sup>3</sup> As pointed out by Faw Cett: “Human Rights are sometimes called fundamental rights or basic

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<sup>1</sup> Dr. Tripathi G.P., Constitutional Law-New Challenges 131 (Central Law Publications, Allahabad, First Edition 2013).

<sup>2</sup> Dr. Chandra U., Human Rights 1 (Allahabad Law Agency, Allahabad, Eighth edition 2010).

<sup>3</sup> Dr. Nirmala V., Law Relating to Human Rights 5 (Asia Law house, Hyderabad, 15<sup>th</sup> edition).

rights or natural rights”<sup>4</sup>. E. Barker opines: “Rights are the external conditions necessary for the greatest possible development of the capacities of the personality.”<sup>5</sup>

### **Provisions Regarding Minority Rights in Indian Constitution**

#### **Article 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.
- (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.

#### **Article 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.  
(1-A) 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.(Ins. by the Constitution (Forty-fourth Amendment) Act1978.)
- (2) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the

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<sup>4</sup> Dr. Kapoor S.K., International Law and Human Rights 56 (Central Law Agency, Allahabad, 15<sup>th</sup> edition).

<sup>5</sup> Jayapalan N., Human Rights 2(Atlantic Publishers and Distributors, New Delhi, First Edition 2000) also see Dr. More V.M., Phad M.N., “Human Rights and Global Challenges in a Dialectics and Dynamics of Human Rights”, Dr. Mrs. Annie John pp. 452-453(Asia Law House, Hyderabad, 1st Edition, 2012).

management of a minority, whether based on religion or language.<sup>6</sup>

Articles 29 and 30 confer certain special cultural and educational rights on ‘minorities’. The word ‘minority’ has not been defined in the Constitution. The term ‘minority’ in Article 30(1) covers linguistic and religious minorities. Minority means less than 51 percent. A person belonging to linguistic or religious group may be in minority at one place and may become a member of majority at another place. For example Muslims, are in majority in the State of Jammu and Kashmir. But if Jammu is formed as a separate State within the Union of India under Article 3 of the Constitution, the Muslims are reduced to minority. The Supreme Court has held that for the purpose of determining the ‘minority’ the unit will be the State and not the whole of India. Thus, linguistic and religious minorities, which have been put at par in Article 30 have to be considered State-wise<sup>7</sup> Article 29(1) is available to all citizens whether in majority or minority but, Article 30(1) is not available to majorities.<sup>8</sup>

Article 29(1) does not mention any restriction. In *Jagdev Singh Sidhanti v. Pratap Singh Daulta*<sup>9</sup>, the Supreme Court held that the right to conserve language, script and culture under Article 29(1) is absolute. The marginal note of Article 29 is “protection of interests of minorities”. However, Article 29 is available to all the citizens and is not confined to minorities.

Article 30 does not use the word ‘citizens’ this raises the question can foreigners not residents in India establish minority educational institutions of their choice? In *S.K. Patro v. State of Bihar*<sup>10</sup>, the Court held that foreigners not resident in India have no such right. This position has again been clarified by the Supreme Court in *St. Stephen’s College v. University of Delhi*<sup>11</sup>.

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<sup>6</sup> Majumdar P.K. & Kataria, R.P., *The Constitution of India* 13(Orient Publishing Company, New Delhi, Eighth Edition reprint 2001).

<sup>7</sup> Dr. Joshi K.C., *The Constitutional Law of India* 291 (Central Law Publications, Allahabad, First Edition 2011) also see *T.M.A. Pai Foundation v. State of Karnataka*, A.I.R. 2003 S.C. 355).

<sup>8</sup> *Id.*

<sup>9</sup> *Id* also see A.I.R.1965 S.C. 183.

<sup>10</sup> *Id* at p. 294 also see A.I.R.1970 S.C. 259.

<sup>11</sup> *Id* also see A.I.R.1992 S.C.1630.

The rights of minorities under Articles 29 and 30 are not higher rights but mere additional protections conferred on minorities. Minority communities have no higher rights than the majority communities. The rights of Articles 30(1) are not absolute. The laws such as pertaining to health, morality and standards of education apply to Article 30 also.

An article 29 and 30 protect the interest of minorities and provides certain rights to the minorities. "These provisions are unique in their thoroughness. There is nothing comparable to these rights in the Bill of Rights of the U.S. Constitution. Two Constitutions which do have provision which resemble certain parts of these two articles are the Burmese and the Irish Republic's....A third country which too thought in terms of making an express provision in this regard is West Germany...None of these Constitutions, however, goes so far as the Constitution of India.<sup>12</sup>

### **Scope of Arts. 29-30**

- Right of any section of citizens to conserve its own language, script or culture {Art. 29 (1)};
- Right of all religious or linguistic minorities to establish and administer educational institutions of their choice {(Art. 30 (1)};
- Right of educational institution not to be discriminated against in the matter of state aid on the ground that it is under management of a minority {Art. 30 (2)};
- Right of a citizen not to be denied admission into State-maintained or state aided educational institution on ground only of religion ,race, caste, or language {Art. 29(2)}

These rights are conferred on certain sections of the community which constitute minority communities Art. 29 and 30 are intended to confer protection to minorities rather than a right as such.

Art. 29(2) and Art. 30(1), read together, clearly contemplate a minority institution with a "sprinkling of

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<sup>12</sup> Prof. Rai Kailash, *The Constitutional Law of India 297* (Central Law Publications, Allahabad, 10th Edition, 2011).

outsiders” admitted in it. By admitting a member of non-minority into the minority institution, it does not shed its character and cease to be a minority institution<sup>13</sup>. The right to administer may be said to consist of the following rights—to choose its managing or governing body, to choose its teachers and Headmaster/Principal, not to be compelled to refuse admission to students, to use its properties and assets for the benefits of the institution, to select its own medium of instruction, hence, a legislation which would penalize by disaffiliation from the university any institution which uses a language as the medium of instruction other than the one prescribed by it, offends against Art. 30(1)<sup>14</sup>

Limits of the right to administer are such as—to maintain the educational character and standard of such institution, e.g., to lay down qualifications or conditions of service to secure appointment of good teachers, to ensure interests of students, to maintain a fair standard of teaching, to ensure orderly, efficient and sound administration and to prevent maladministration, and to secure its proper functioning as an educational institution, to ensure that its funds are spent for the betterment of education and not for extraneous purposes, to prevent anti-national activity, to enforce the general laws of the land, applicable to all persons e.g., taxation, sanitation, social welfare, economic regulations, public order, morality, to prescribe syllabus, curriculum of study and regulate the appointment of teachers, to ensure efficiency and discipline of the institution.<sup>15</sup>

*In Bal Patil v. Union of India*<sup>16</sup> it was held that the Jain community is not a minority in the State of Maharashtra. Against the background of partition, Articles 29 and 30 were inserted in the Constitution to give special security to the minds of minorities—Muslims and other religious communities—and thus maintain integrity of nation. This was the aim of the constitutional Scheme. But if on the basis of different religious thought or less numerical

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<sup>13</sup> Basu Durga Das, *Shorter Constitution of India* 492 (Butterworths Wadhwa, Nagpur, 14<sup>th</sup> edition reprint 2010) also see P.A. Inamdar v. State of Maharashtra (2005) 6 SCC 537 591-592 (para 98).

<sup>14</sup> *Id* at p. 500.

<sup>15</sup> *Id* at pp. 502-503.

<sup>16</sup> Dr. Pandey J.N., *The Constitutional Law of India* 365 (Central Law Agency, Allahabad, 49<sup>th</sup> edition 2012) also see AIR 2005 SC 3172.

strength or lack of health, wealth, education, power or social rights the claim of a section of Indian society to the status of 'minority' is considered and conceded, there would be no end to such claims. A claim by one group of citizens would lead to a similar claim by another group of citizens and conflict and strike would ensue. "Hinduism" can be called a general religion unlike "Jainism" a special religion.

Articles 29 and 30 are intended to protect the minorities so as to enable them to conserve their own language, script and culture and prevent discrimination against minorities on grounds only of religion, race, language or any of them in educational institutions. In the past in certain countries minorities were forced to adopt the script and language of ruling majorities. They were also subjected to certain disadvantages because they had religion different from that of ruling majority and were even forced to convert themselves to the religion of the majority ruling class. In the background of such historical experience many countries have now provided for safeguards to minorities in their constitutions.<sup>17</sup>

The provisions of these two Articles were incorporated in Article 23 of the Draft Constitution which was adopted by the Constituent Assembly but subsequently, at the revision stage, the Drafting Committee divided the provisions of Article 23 of the Draft Constitution and put them into two Articles 29 and 30. Article 29, which incorporates clauses (1) and (2) of the Draft Article 23, guarantees to minorities the right to conserve their language, script and culture, etc., and right to admission in educational institutions, whereas Article 30 guarantees them right to establish and administer educational institutions of their choice.<sup>18</sup>

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

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<sup>17</sup> Pande G.S, Constitutional Law of India 187 (Allahabad Law Agency, Haryana, 7th Edition, 1999).

<sup>18</sup> *Id* at pp.187-188.

that sense, there may be political minority, religious minority, linguistic minority, etc.<sup>19</sup>

### **Article 29(1) Right of Minorities to Conserve Language, Script or Culture**

Clause (1) of Article 29 guarantees to any section of citizens who have distinct language, script or culture of their own, a right to conserve the same. As the heading of the Article is protection of interests of Minorities' it suggests that only those sections of citizens who are in minority, can claim this right but the Supreme Court in *St Xavier's College v. State of Gujrat*<sup>20</sup> held that the words 'section of citizens' in Article 29 includes minorities as well as majority. No doubt, in the original draft of the Constitution the word 'minority' was used and the Drafting Committee substituted the words 'sections of citizens' in place of the word 'minority.' However the substitution of the words 'sections of citizens' in place of the word 'minority' was only with a view to give protection of Article 29 not only to minorities in technical sense but minorities in a wider sense.

In *D.A.V. College Jullunder v. State of Punjab*<sup>21</sup> the Supreme Court held that religious or linguistic minorities are to be determined in relation to the particular legislation which is attacked. If the legislation in question is of State Legislature these minorities should be determined on the basis of the population of the whole of the State. It is logically follows that if it is Central legislation minority character may be determined on the basis of the population of the whole country. As in the case the legislation in question was of State Legislature it was held that Hindus in Punjab were in minority.

In the original Draft Constitution the words were "language, script and culture" but the Drafting Committee substituted the words "language, script or culture". Shri B.N. Rau pointed out that it was necessary because there were sections of people with separate

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<sup>19</sup> Bakshi P.M., *The Constitution of India* 69 (Universal Law Publishing Co, New Delhi, 10th Edition Reprint 2011) also see *T.M.A. Pai Foundation v. State of Karnataka*, AIR 2003 SC 355.

<sup>20</sup> *Supra* note 18 at p.188. kindly see AIR 1974 SC 1389.

<sup>21</sup> *Id* at p.189 also see AIR 1971 SC 1737.

language and script but who had no separate culture (e.g., Andhras in Orissa). On the other hand, there were sections of people who had separate culture but no separate language or script (e.g., Muslims in Bengal).

In *Shri Krishna v. Gujarat University*<sup>22</sup> the Gujarat High Court had to consider the validity of an Act which prohibited the use of English as a medium of instruction. The Court held that the Act violated Arts. 29 and 30 of the Constitution. The University of Gujarat went in appeal to the Supreme Court, but lost the appeal.

An important consequence of the 'right to conserve' one's script is that citizens have the right to agitate for the protection of their language. 'Political' speeches for the conservation of the language of a section of the citizens cannot, therefore, be regarded as a corrupt practice within the meaning of section 123(3) of the Representation of the people Act, 1951.<sup>23</sup>

In *State of Bombay v. Bombay Education Society*<sup>24</sup> the State Government issued an Order banning admission of all whose language was not English into schools having English as medium of instruction. The Order of the Government was struck down as violative of Article 29(2)

### **Article 29(2) Right of Citizens to Admission in Educational Institutions**

Clause (2) of Article 29 prohibits denial of admission to any educational institution, which is maintained by the state or which receives aid from the State funds, only on grounds of race, religion, caste or language. Thus, reservation of seats on ground of residence in any particular territory does not violate Article 29(2)<sup>25</sup> Under Article 29(2) all citizens belonging to majority group have

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<sup>22</sup> Jhabvala Noshirvan H., *The Constitution of India* 62-63 (C. Jambadas & Co. educational & law publishers, Mumbai, Nineteenth Edition, 1999), kindly see AIR 1962 Guj. 86.

<sup>23</sup> *Supra* note 20 at p. 66 kindly see Jagdev Singh Sidhani v. pratap Singh, AIR 1965 SC 183(188).

<sup>24</sup> Prof. Narender Kumar, *Constitutional Law of India* 398 (Allahabad Law Agency, Haryana, Seventh edition reprint 2010) also see AIR 1954 SC 561.

<sup>25</sup> *Supra* note 18 at p. 191 also see Chitra Ghosh v. Union of India, AIR 1970 SC 35.



been given a general right to admission to State maintained or aided schools. If an institution maintained by a minority community receives aid from the state it cannot refuse admission to members of other communities.<sup>26</sup> In *St. Stephen's College v. University of Delhi*<sup>27</sup> the Supreme Court has laid down that the minority aided institutions are entitled to prefer candidates of their own community to maintain minority character of the institution but at least 50 percent of the annual admissions should be made available to candidates of other communities. Thus, reservation in favour of candidates of the community administering the institution should not exceed 50 percent. The decision thus allows reservations up to 50 percent.

In *State of Bombay v. Bombay Educational Society*<sup>28</sup> a circular issued by the State Government directed that from the day of the order no primary or secondary school should admit to a school, where English was used as the medium of instruction, any pupil other than a pupil belonging to a section of citizens the language of which was English namely Anglo Indians and citizens of non-Asiatic descent. The order was held unconstitutional for violation of Article 29(2) as denial of admission was solely on the ground of language. However where a writ petition was filed seeking direction that premedical and pre dental entrance examination be held by the Central Government in Hindi and other regional languages and not in English alone, the Supreme Court held that not holding of entrance examination in Hindi or others regional languages does not amount to denial of admission on the ground of language..<sup>29</sup>

Where seats in the educational institutions are reserved by the State Government on the basis of residence or domicile or sex or on the basis of the need of the inhabitants of that State, there would be no violation of Article 29(2)<sup>30</sup>.

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<sup>26</sup> *Id* at p.192 also held in *State of Madras v. Champakam Dorairajan*, AIR 1951 SC 226.

<sup>27</sup> *Id* also see A.I.R. 1992 S.C. 1630.

<sup>28</sup> *Ibid* also see A.I.R.1954 S.C. 561.

<sup>29</sup> *Ibid* kindly see *Hindi Hit Rakshak Samiti v. Union of India*, A.I.R. 1990 S.C. 851.

<sup>30</sup> *Supra* note 25 at p. 398.

Article 29(2) cannot be invoked for seeking admission into educational institutions getting no grants-in-aid from the State.<sup>31</sup>

The High Court of Madras had held that the effect of omitting the word “sex” from Article 29(2) is that the right of women to admission in educational institutions is a matter within the regulation of college authorities<sup>32</sup> In *English Medium Students Parents Assn. v. State of Karnataka*<sup>33</sup> it held that Karnataka’s language policy which provided instruction in mother tongue at the primary stage with progressive use of Kannada from class III onwards did not violate minority rights under Article 29 or 30.

### **Article 30(1) Right to Establish and Administer Educational Institutions of Their Choice**

Clause (1) of Article 30 guarantees that all minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice. It is clear from the language that the right is two-fold. They can establish an institution of their choice and they also have right to administer it. The expression “educational institution” may include a university. What distinguishes a university from other educational institutions is that a university grants degree of its own which other educational institutional cannot do. The words “establish” and “administer” must be read conjunctively and so read, the minorities will have right to administer educational institution of their choice, provided they have established them, but not otherwise. Minorities will not have right to administer institution which has been established by someone else. The word “establish” means to bring into existence and therefore if minorities bring into existence an educational institution then they will have right to administer it<sup>34</sup>.

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<sup>31</sup> *Id* also see *Asha Gupta v. State of Punjab*, AIR 1987 P & H 227.

<sup>32</sup> *Singh Mahendra P., V.N. Shukla’s Constitution of India* 259 (Eastern Book Company, Lucknow, Eleventh Edition 2010) also see *University of Madras v. Shantha Bai*, AIR 1954 Mad 67.

<sup>33</sup> *Id* at p. 272 kindly see AIR 1994SC 1702.

<sup>34</sup> *Supra* note 18 at p.189.

In *D.A.V. College, Jullundhar v. State of Punjab*<sup>35</sup>, the University prescribed Punjabi language in Gurumukhy script as the exclusive medium of instruction and examination. D.A.V. College was one of the colleges which were compulsorily affiliated to Punjab University. The college was run by D.A.V. College Trust and Society registered under Societies Registration Act as an association comprised of Arya Samajis who were held to be minority community in the State of Punjab. Following *Gujarat University v. Krishna Ranganath*<sup>36</sup> the Supreme Court held “ While the University can prescribe Punjabi as a medium of instruction it cannot prescribe it as the exclusive medium or compel affiliated colleges established and administered by linguistic or religious minorities or by a section of society who wish to conserve their language, script and culture to teach in Punjabi or take examination in that language with the Gurumukhy script.”

In *Bramchari Sidheswar Shai v. State of W.B.*<sup>37</sup> Ram Krishna Mission was held to be a section of Hindu religion and not a religious minority.

### **Article 30(1) does not Confer Any Right on Non-resident Foreigners**

Unlike Article 29 the word ‘citizen’ is not to be found in Articles 30(1) or 30(2). The guarantee is to minorities. The expression ‘minority’ here suggests a section of persons residing in India. It is, therefore, necessary that the persons establishing educational institution must be residing in India but it is not necessary that they should also be citizens of India.<sup>38</sup>

### **State’s Power to Regulate Minority Institutions**

Unlike Article 19 freedom to establish and administer educational institutions by minorities guaranteed under Article 30 is absolute in terms. It is not made subject to any reasonable restrictions to which freedom mentioned

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<sup>35</sup> *Id.* kindly see A.I.R. 1971 S.C. 1731.

<sup>36</sup> *Id.* at p.190 also see A.I.R.1963 S.C. 703.

<sup>37</sup> *Id.* also see(1995) 4 SCC 646.

<sup>38</sup> *Id.* at p.191 also see Bishop S.K. Patro v. State of Bihar, A.I.R. 1970 S.C. 259.

in Article 19 may be subjected<sup>39</sup>. Minority character of an institution does not depend upon declaration of the Government. Declaration is only open acceptance of an existing factual position<sup>40</sup>. Minority institutions may be categorized in three classes:

- (i) Educational institutions which neither seek aid nor recognition from the State,
- (ii) Educational institutions which seek recognition from the State but not aid and
- (iii) Educational institutions which seek aid as well as recognition from the State

Institutions falling in the second and third categories are subject to regulatory measures which may be imposed as conditions for granting recognition or aid such as prescribing syllabus for examination, courses of study, conditions of employment of teachers and discipline of students etc. but not onerous conditions compelling them to surrender their right to administer the institution to the Government. Institutions falling in category (1) are free to administer their affairs in the manner they like. The State has no power under the Constitution to place restrictions on their right to administer<sup>41</sup>. But this does not mean that they are immune from operation of general laws of the land. They cannot claim immunity from contract law; tax measures economic regulations, industrial and social welfare legislations and other measures to meet the need to the society. Right is to administer not to mal administer the institution<sup>42</sup>. The right is subject to regulatory measures which the State might impose for furthering the excellence of standard of education or of ensuring orderly, efficient and sound administration.<sup>43</sup> It is permissible to make regulations for ensuring regular payment of salaries before a particular date of each month. Regulations may provide that the institution would appoint qualified teachers or those funds of the

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<sup>39</sup> *Id* at p.193 also see *Sidhrajibhai v. State of Gujrat*, A.I.R. 1963 S.C. 540.

<sup>40</sup> *Id* kindly see *N. Ahmad v. Manager Emjay High School*, (1998) 6 S.C.C. 674.

<sup>41</sup> *Id* also see *All Bihar Christian Schools Association v. State of Bihar*, (1988) 1 SCC 206.

<sup>42</sup> *Id* also see *In Re: The Kerala Education Bill*, A.I.R. 1958 S.C.956.

<sup>43</sup> *Id* at p.194 kindly see *St.Xavier's College v. State of Gujarat*, A.I.R. 1974 S.C. 1389, 1396.

institution should be spent for the purpose of the education and betterment of the institution. Regulation may also provide for health and sanitation.<sup>44</sup>

In *the All Saints High School v. The Government of Andhra Pradesh & Others*<sup>45</sup> the Supreme Court observed that although, unlike Art.19, the right under Art. 30 is absolute and unconstitutional, this does not mean that it contains a free license for maladministration, so as to defeat the very object behind Art. 30, namely the advancement of excellence and perfection in the field of education

In *Father Thomas Shingare v. State of Maharashtra*<sup>46</sup>, the Supreme Court held that the State cannot impose any restrictions on the right of the minorities to administer unaided educational institutions excepting to ensure excellence in education, but no immunity can be claimed by minority institutions for carrying on nefarious practices of misusing administration for making huge profits by collecting exorbitant sum from them and parents of the students under the cover of Art. 30 (1).

'Minorities' educational institutions will be protected under Art 30 at the stage of law making. But, they don't become immune from the operation of regulatory measures because the right to administer does not include right to mal-administer. The manner and number of admission should not be violative of minority character.<sup>47</sup>

In *State of Bihar v. Syed Asad Raza*,<sup>48</sup> it has been held that for creation of post in a minority institution for appointment prior approval of the Vice-Chancellor is not necessary and the persons so appointed would be entitled to grant in aid in view of Art. 30 (1) of the Constitution.

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<sup>44</sup> *Id* .

<sup>45</sup> *Supra* note 23 at p.63 kindly see A.I.R. 1980 S.C. 1042.

<sup>46</sup> Prof. (Dr.) Rao Pola Koteswar, Prof. G.C.V. Subba Rao's Indian Constitutional Law 232 (S. Gogia & Company Hyderabad, 10th Edition, 2009) Kindly see A.I.R. 2002 SC 463.

<sup>47</sup> *Id* at p.238 also see P.A. Inamdar v. State of Maharashtra, AIR 2005 SC 3226.

<sup>48</sup> *Supra* note 17 at p. 349 also see AIR 1997 SC2425.

The Gujarat University prescribed Gujarati or Hindi as the sole medium of instruction and examination. The Court held that it infringed the right of the Anglo-Indians whose mother-tongue was English and violated Article 30(1).<sup>49</sup>

In Kerala, the Christian community was running a boys school. It sought permission from the authorities to admit girls. The permission was refused on the ground that there was a Muslim girls' school nearby. The Supreme Court lay down that the order refusing the permission was unconstitutional.<sup>50</sup>

### **Article 30(1A) Right to Compensation in Case of Acquisition of Property**

Article 30(1A), which has been inserted by Constitution (Forty-fourth Amendments) Act 1978, provides that in making any law providing for compulsory acquisition of any property of an educational institution established and administered by a minority referred to in clause (1) of Article 30 the State shall ensure that the amount fixed or determined under such law is such as would not restrict or abrogate right guaranteed by Article 30(1). Prior to Constitution (Forty-fourth Amendment Act), 1978 this provisions was in proviso to Article 31(2) which has been repealed by Constitution (Forty-fourth Amendment) Act, 1978<sup>51</sup>

If the State seeks to acquire property belonging to a minority educational institution, the relevant law must provide for such compensation as would enable the minority community to replace the acquired institution by a new one comparable to the acquired one as regards site, size and shape. This cost of reproduction, to say the least, must not be less than the market value of the acquired property, and in the case of scarcity of land and

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<sup>49</sup> Manohar Sujata V., Tope's T.K. Constitutional Law of India 301-302 (Eastern Book Company, Lucknow, Third edition 2010) kindly see Gujrat University v. Krishna Rangnath Mudholkar, AIR 1963 SC 703.

<sup>50</sup> *Id* at pp.304-305 also see Mark Netto v. State of Kerala, (1979)1 SCC 23.

<sup>51</sup> *Supra* note 18 at p.191.

cost of construction, it may even be higher than the market value of the acquired property.<sup>52</sup>

Right to property of minority Institutions Article 30(1-A) Clause 1-A was inserted in Article 30 by the Constitution (Forty-fourth Amendment) Act, 1978. The Constitution Bench of the Supreme Court in *Society of St. Joseph's College v. Union of India*,<sup>53</sup> has held that the property of minority educational institution under Article 30 cannot be acquired under any general law, such as, the Land Acquisition Act, 1894. For this purpose, there must be a separate law for acquiring the property of minority community which does not restrict or abrogate the right guaranteed under Article 30 of the Constitution of India. However, such an extended special protection to minority educational institutions does not seem to be justified. The Court can always examine the abuse of power even under the general law providing for acquisition of the property of the minority educational institutions.

Protection under Articles 29 and 30 is not a privilege, but is a protection to the religious/linguistic minority communities, to attain equality with other religious/linguistic groups of India.<sup>54</sup>

### **Article 30(2) Right against Discrimination in Matters of Granting Aid**

Clause(2) of Article 30 says that State shall not in granting aid to educational institutions discriminate against any educational institution on the ground that it is managed by a linguistic or religious minority. The enactment of special provision by the Supreme Court in *Sidharajbhai v. State of Gujarat*<sup>55</sup> that the right under Article 30(1) is intended to be effective right not to be whittled down by so called regulatory measures.

State can attach reasonable condition to recognition or grant-in-aid but so as not to discriminate on the ground

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<sup>52</sup> *Supra* note 13 at p.309.

<sup>53</sup> *Supra* note 8 at p. 305 also see A.I.R. 2002 S.C. 195.

<sup>54</sup> *Supra* note 25 at p. 396 also see *Committee of Management v. State of U.P.*, AIR 2007 (NOC) 1989(All).

<sup>55</sup> *Supra* note 18 at p.191 kindly see A.I.R.1963 S.C. 540.

that the institution is managed by a religious or linguistic minority.

The Apex Court in *T.M.A. Pai Foundation v. State of Karnataka*<sup>56</sup> has observed that the expression “education” means and includes education at all levels from the primary school level up to the post-graduate level...even professional educational institutions would be covered by Article 30.

The State can regulate the appointment by prescribing requisite qualifications, but the right to appoint candidate of its choice, from amongst qualified candidates, shall be with the management.<sup>57</sup>

A minority whether based on religion or language has a right to establish institutions of a general secular character not designed to conserve their language etc. such as a college of general education, or a teachers’ training college, etc. *Anjuman-e-Islamiah, Kurnool v. State of Andhra* “established by it, students of other communities are also admitted.

As early as 1958, in the famous Kerala Education Bill, the Supreme Court has observed: “The right conferred on the religious and linguistic minorities to administer educational institutions of their choice is not an absolute right”.<sup>58</sup>

A significant facet of the administration of an educational institution is the maintenance of discipline among the members of its staff. The right of the minority institution to take disciplinary action against the teachers and other employees is a very vital aspect of the management’s Fundamental Right to administer the institution. Any rule taking away or interfering with this right cannot be regarded as compatible with Art. 30(1).<sup>59</sup>

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<sup>56</sup> *Supra* note 25 at p. 404 also see AIR 2003 SC 355.

<sup>57</sup> *Id* at p. 407 also see *Malakara Syrian Catholic College v. T. Jone*, (2007) 1 SCC 386.

<sup>58</sup> *Id.*

<sup>59</sup> *Id* at pp. 1447-1448.



## **Conclusion**

From this research paper researcher has attempted to clarify minority rights. Rights and duties are correlated with each other. Some rights are available to person from his birth and end with his death these are called as human rights or fundamental rights. This research paper deals with minority rights and Indian Constitution. Constitution confers fundamental rights to minorities. Constitutional Law is Supreme Law. In India different type of people are residing together. There is no religion of state. State never favours any religion. All religions are respected in India. Arts. 25 to 28 of the Constitution speak about freedom of religion. Every person has fundamental right to profess, practice and propagate religion. Art.29 and Art.30 recognized and preserve rights of minority. But minority has not defined in the Indian Constitution. According to Art 29 any Indian citizen residing in India has right to conserve its own language, script or culture. Generally state is considered as unit while determining minority. One can work for one's mother language, script or culture. If any institution maintained or receiving aid from state funds then state control such institution. There can be discrimination on the ground of sex or place of birth. Under minority rights seat can be reserved on the basis of residence or sex. Art 29(2) available against state as well as state aided educational institutions. All minorities have right to establish and administer educational institutions from primary to post graduate as well as professional education, but this right is not absolute. Even private educational institution can be controlled by state if administration is not proper or unfair. State shall not discriminate in granting aid to educational institution. State shall not acquire land of minority institution without giving market value of the land. State can control minority institution. Minorities are of two types i.e., Linguistic minority and Religious minority. Minority educational institutions enjoy some special rights these are right to choose and appoint any qualified person as principal. Right to administer includes disciplinary action against the employees, no right to collect capitation fee, determination of fee structure, right to administer excludes right to oppress or exploit the teaching staff. Above all points are highlighted by Supreme Court in

number of case laws recently Central Government declared Jain as religious minority community.

