



Minorities' right to education under the constitution of India

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Abstract

The desire to protect the rights of the minorities in India by the founding fathers has been there since the independence of India. Hence the constituent Assembly which drafted the Constitution had a special committee headed by H. C. Mookerjee who was a Christian. This sincere and patriotic desire by the founding fathers of India to protect the interest and rights of the minorities crystallized in devoting Article 30 of the Constitution of India to guaranteeing the minorities the right to establish and manage educational institutions to preserve, promote and protect their cultures, languages and religions. This right however does not derogate on the minorities' right to enjoy the other fundamental rights to education or other rights guaranteed to other citizens of India. This article examines the extent of this right, its limits and practical applications in the life of Indians especially the said minorities.

Keywords: constitution, minorities, education, rights, language, religion

Introduction

There has been that desire to protect the interest of the minorities in India by the founding fathers. Thus during the Constituent Assembly there was a special sub-committee for the minorities headed by H.C. Mookerjee who was a Christian. This patriotic effort by the founding fathers of India to protect the interest of the minorities crystallized in devoting article 30 of the constitution to guaranteeing the minorities right to establish and administer educational institutions to promote and protect their languages and religions. This right however is in addition to the other rights enjoyed by them under the Constitution which are enjoyed by the majority. In other words, the rights guaranteed to the minorities under Article 30 of the Constitution is without prejudice to the other rights to education guaranteed and enjoyed by all citizens of India. In India minorities consist of Christians (2.5%), Sikhs (2%), Jain (1%) and Muslims (12%). While the majority consist predominantly of the Hindus with more than 80% of the Indian population^[1].

Literacy rates among the minorities generally and in particular among the Muslims are low, leading to deprivation of jobs in higher positions in government offices and skilled professions in the service sector, thus granting them special right to establish and administer their own educational institutions was not only patriotic but a commitment to fraternity.

Constitutional provisions on right to education

It is important to note that apart from the provisions of Article 30 which specifically guaranteed the right of the minorities to establish and administer educational institutions for the promotion of their languages and religions, there are other constitutional provisions which provides for rights to education for the entire citizens of India. These provisions are not restricted to the majority group only. The majority and

minority alike are entitled to enjoy those rights, hence the need to highlight those provisions.

Article 21A of the Constitution provides "the state shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the state may, by law determine." This Article which was added by the Constitution (86th Amendment) Act 2002 makes education from six years to 14 years old a fundamental right, especially primary education. This right as guaranteed by Article 21A of the Constitution is meant to be enjoyed by every Indian child of the age as specified in that Article whether the child is of minority or majority tribe. The children of the minorities who are of the age of 6 to 14 years are entitled to free and compulsory education and cannot be denied that right on ground of minority. In the case of Associated Management of (Government Recognized Unaided English Medium) Primary and Secondary Schools in Karnataka v. State of Karnataka^[2] the Karnataka High Court held that by virtue of Article 21A, the medium of instructions to a child was to be entirely the choice of the parents and the student and that no one could claim to know better than the parents about the child, to decide as to what the child required in the sphere of education to shape its career and destiny. Also in Ng. Komon v. State of Manipur^[3] the court held that shifting of a school from Komlathabi to Liwanchanagning would deprive school going children of Komlathabi village of their fundamental rights to have free and compulsory education in Government School and is therefore a violation of the right to education under Article 21A of the Constitution.

The provisions of Article 21A has been reinforced by the enactment of Right of Children to Free and Compulsory Education Act 2009, which provides in Section 3(1) that "every child of the age of six to fourteen years including a child referred to in clause (d) or clause (e) of Section 2, shall

have the right to free and compulsory education in a neighbourhood school till the completion of his or her elementary education.”

Articles 41 and 45, though under directive principles of state policy also provide for right to education to citizens of India. By Article 41, “the state shall within the limits of its economic capacity and development, make effective provision, for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.” While Article 45 provides that “the state shall endeavour to provide early childhood care and education for all children until they complete the age of six years.” The benefits created in all these constitutional provisions are all accruable to the minorities as citizens of India without any form of discrimination.

Article 29 provides that:

(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 the state funds on grounds only of religion, race, caste, language or any of them.”

Article 30 provides:

(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 an educational institution on the ground that it is under the management of a minority whether based on religion or language.

The provisions of Article 29(1) appear to complement Article 30(1). This is because the educational institution to be established and administered has its inbuilt purpose of promoting the language, script, and religion of the minority in question besides the general advancement and development of the individuals and the society. Article 29(2) no doubt is not a right meant for the minority but as argued earlier, the minorities like any other citizens of the country are entitled to enjoy the right guaranteed by Article 29(2) in terms of admission into any educational institution owned or aided by the Government. It is a right of a citizen as a citizen and not as a member of any community or class. In *State of Bombay v. Bombay Educational Society* ^[4] the Supreme Court struck down an order of the Bombay Government banning admission of those whose language was not English into schools having English as a medium of instruction because it denied admission on the ground of language only.

Meaning of minority

To enjoy the rights guaranteed by Article 30 of the Constitution, the community or class must be a minority group

or community or class. The term “minority” though had been used by the Motilal Nehru Report of 1928 and the Sapru Report 1945 which proposed a minority commission but none of these reports defined the term. The constitution did not also define the term “minority”. Minority, could mean the smaller part of a group, less than half of the people or thing in a large group, or a small group within a community or country that is different because of race, religion, language etc ^[5]. Literally, minority means a non-dominant group. It is a relative term and is referred to, to represent the smaller of two members, sections or group called majority. In that series there may be, political minority, religious minority, linguistic minority etc ^[6]. The question has always been asked as to how to determine “minority”? is it based on the population of India or based on the population of the state? It appears that it is settled that the population of a state is the basis for determining minority from the judicial point of view.

In the case of re-Kerala Education Bill ^[7] The Indian Supreme Court was of the opinion that while it was easy to say that the minority meant a community which was numerically less than 50%, the important question is 50% of what the entire population of India or of a state or part thereof? A community might be in majority in a state, but it might be a minority in the whole of India. A community having concentration in a part of the state would be a majority there, through it may be in a minority in the state as whole. If a fraction of a state is to be taken then the question would be where to draw a line and what unit would be taken into consideration – a district, a town, a municipality or its ward ^[8].

The Supreme Court did not decide the issue of minority definitely, but it observed that minority has to be determined only in relation to the particular legislation which is being challenged. If a state law extending to the whole of a state is in question, the minority will be determined with reference to the entire state population. In such a case any community linguistic or religious, which is numerically less than 50% of the entire state population, will be regarded as a minority for the purposes of Article 30(1) of the Constitution. The Supreme Court therefore held in the Re-Kerala Education case that Christians, Muslims and Anglo-Indian would be minorities in that state of Kerala. In *DAV College v. State of Punjab* ^[9], the Supreme Court also maintained that with regard to state laws, the unit to determine minority whether “religious” or “linguistic” is the state population.” The court held that the Hindus constitute religious minority in Punjab and Arya Samajist, constitute a religious minority in Punjab since they have their own district language and script and therefore they are entitled to the rights guaranteed under Articles 29(1) and 30(1) of the Constitution. In *T.M.A. Pai Foundation v. State of Karnataka* ^[10] the majority judgment was that language being the basis for the establishment or creation of different states, for the purposes of Article 30, a linguistic minority will have to be determined in relation to the state in which the educational institution is to be established. In *Bal Patil v. Union of India* ^[11] the Supreme Court opined that ‘minority’ as understood from the constitutional scheme signified an identifiable group of people or community who were seen deserving protection from likely deprivation of their religious, cultural and educational rights by other communities who happened to be in majority and

likely to gain political power in a democratic form of government based on elections.

In *T.M.A. Pai Foundation v. State of Karnataka* *Supra*, however, the court did not decide about the authority that is competent to decide the minority status under Article 30, the National Commission for Minority Educational Institutions Act, 2004, now enables the commission set up under the Act, to “decide all questions relating to the status of any institution as Minority Educational Institution and declare its status as such.” By section 10 of the said Act, any person desiring to establish a Minority Educational Institution has to approach the competent authority to grant him or her “No Objection Certificate” for the said purpose and any person aggrieved by the order of refusal to grant such “No objection certificate” by the competent authority may prefer an appeal against such order to the commission. It is settled that for the purposes of determining the minority, whether it is linguistic or religious, the unit will be the state and not the entire population of India.

Types of minority

Two types of minorities are identified by the provisions of Article 30(1) of the Constitution, namely-Religious and Linguistic. /Article 30(1) specifically provides that, all minorities whether based on “Religion” or “Language”, shall have the right to establish and administer educational institutions of their choice. Thus for any person or community to enjoy the rights guaranteed under article 30(1) the community must be a minority community, and the minority must be based on language or Religion.

Linguistic Minority within the meaning of Article 30(1) of the constitution must be one which has a separate spoken language and that language need not have a distinct script ^[12]. In India, a number of languages are spoken having no script of their own. People speaking such languages having no script of their own constitute a linguistic minorities for the purposes of Article 30(1). A linguistic minority is determined with reference to the language spoken by the community and not with reference to any other language which the community wants its children to learn. A community whose language is one of the official languages of the state can, still be a linguistic minority community. A minority based on religion means that the only and principal basis of minority must be adherence to one of the many religions and not a sect or part of the religion ^[13]. A minority based on religion should be restricted only to those religious minorities for example, Muslims, Christians, Jains, Buddhism, Sikhs, etc. which have their identity separate from the majority namely the Hindus.

In *Bramchari Sidheswar Shai v. State of West Bengal* ^[14] the Supreme Court held that Ramakrishna religion is not distinct and separate from Hindu religion and therefore not a minority religion. Citizens of India who are followers of Ramakrishna cannot claim to belong to a minority based on religion as such are not entitled to the rights guaranteed under Article 30(1) of the Constitution. Therefore a denomination in a religion cannot enjoy the rights under Article 30(1) of the Constitution.

Right to establish and administer educational institutions – under article 30 – different facets

Article 30(1) specifically gives the minorities right to establish and administer educational institutions of their choice. These

words “establish” and “administer” it has been stated are to be interpreted conjunctively. Therefore, a minority can only claim the right to administer an educational institution if the institution has been established by the minority and not otherwise. Thus in *Azeez Basha v. Union of India* ^[15] the Supreme Court held that Aligarh Muslim University was established by an Act of Parliament and not by any Muslim therefore the Muslims have no right to maintain it. In *T.M.A. Pai Foundation* *supra* the supreme court unanimously stated that the right to establish and administer an institution under Article 30(1) has the following components – (i) right to admit students; (ii) right to set up a reasonable fee structure; (iii) right to constitute a governing body; (iv) right to appoint staff (academic and non-academic); (v) right to discipline the staff or employees if there is misconduct etc. These components are discussed briefly below against the backdrop of judicial opinions and government policies.

1. Right to admission of students

The admission of students to educational institutions is part and parcel of the right to establish and administer under Article 30(1) of the Constitution. Any Government Policy or order or law which interferes with this right would amount to a violation of article 30(1) unless it is aimed at making the institution an effective vehicle of education for the minority group or other persons, who resort to it. In the case of *Sidhrajibhai v. State of Gujarat* ^[16] the petitioners were the management of the Mary Brown Memorial Training College at Ahmedabad, established by the Christian Minority. The Government of Gujarat issued an order, reserving 80% of the seats in the colleges for the nominees of the Government, and that refusal to admit the candidates nominated by the Government would result in withholding the recognition and grant-in-aids to the institution. The supreme court held that the order and regulation violated the right of the minorities under article 30(1) of the constitution. The court was of the opinion, that, such a right cannot be whittled down by any measure in the guise of regulation. That regulation which may be lawfully imposed as a condition for receiving grant or of recognition must be directed to making the institution effective as educational institution, while retaining its character as minority institution. Such regulations (a) must be reasonable, and (b) are regulative of the educational character of the institution and are conducive in making the institution an effective vehicle of education for the minority or other persons who resort to it. Again in *Mark Netto v. Government of Kerala* ^[17], the Managers of a Roman Catholic Boy’s School applied to the education authorities in Kerala for permission to admit girls as well. The permission was required to be obtained under the Kerala Education Rules 1959. Permission was refused on the ground that there was a facility for the education of girls in a nearby Muslim girls school situated within a distance of one mile, and that the school was purely a boys’, school not established as a co-educational school. The supreme court held that the said Kerala Education rules was not applicable to the minority institutions, and that the refusal to permit the school amounts to violation of article 30(1) as this would amount to interference with the administration of the institution own by a minority.

The right of the minority institutions to admit students of its

own community has been described as a necessary concomitant right which flows from the right to establish and administer educational institutions under Article 30(1). Thus in the case of *St. Stephen's College v. University of Delhi* ^[18] where the issue was whether a minority institution has the right to admit candidates of the community which founded the college to maintain its minority character on a preferential basis or on reservation of seats for them, the supreme court on a majority of 4 to 1 answered that the institution can reserve seats for the minority community. The court ruled that the college was not bound by the university circular as this will deprive the college of its minority character. The right to select students for admission was part of administration. In *T.M.A. Pai Foundation v. State of Karnataka* ^{Supra} the Supreme Court also considered the admission of students to minority institutions. The court held that minority educational institution could draw up to 50% seats from the minority community, and that the minority community students must be admitted on the basis of merit inter se determined on the basis of common/joint entrance test as is adopted for selecting students belonging to general categories. The court also declared that admission of students to unaided minority educational institutions could not be regulated at all by the university or state so long as the admission was on a transparent basis and merit was adequately taken care of:

2. Right to set up fee structure

Obviously the unaided minority institution cannot be made to charge the same fee as an aided institution ^[19]. The reason being that unaided institutions have to meet the cost of imparting quality education from their own resources and the main source is only the fees collected from the students. However the institutions should not commercialize education no matter the circumstances. No minority institution therefore should be involved in commercialization and mal administration in the guise of right under article 30(1) of the constitution. The Supreme Court in *T.M.A. Pai Foundation v. State of Karnataka* ^{Supra} unanimously maintained that unaided educational institutions (minority or non-minority) cannot be regulated but none should charge capitation fees. Reasonable surplus to meet cost of expansion and augmentation of facilities does not amount to profiteering.

3. Right to Constitute a Governing Council:

It has been declared as a violation of Article 30(1) any provision seeking to regulate the composition and personnel of the managing or governing bodies of a minority educational institution. In the *Ahmedabad St. Xavier's College Society v. State of Gujarat* ^[20] wherein the Gujarat University Act provided that the governing body of every college must include among its members a representative of the university nominated by the Vice-Chancellor, representatives of teaching and non-teaching staff and of the college students, the Supreme Court held that the provision was not applicable to minority institutions because it displaced the management and entrusted it to a different agency. The court opined that while the university could take steps to cure maladministration in the college, the choice of personnel of management was part of administration which could not be interfered with. In *B.S.M. Education Board, Patna v. M.C. of MHA College*

^[21] the Court held that a statutory provision conferring power on the school board to dissolve the management committee of a minority educational institution providing instructions in Islamic, Arabic and Persian studies was violative of Article 30(1) of the Constitution. A minority institution cannot be allowed to mal administer an institution and the state can exercise regulatory powers over minority institutions but the power to completely take over the management of a minority is not contemplated under Article 30(1) of the constitution ^[22]. As stated above Government can regulate the minority institutions for the purposes of achieving educational standard and better administration. Thus in *All Bihar Christian School Association v. State of Bihar* ^[23], the Supreme Court examined the constitutional validity of the Bihar Non-Government Secondary Schools (Taking over of management and control) Act 1981. Section 3 of the Bihar Act provides that the state government may by notification in the official gazette take over the management and control of recognized minority secondary schools if its managing committee voluntarily makes an unconditional offer to hand over the school with her property. It also requires every minority secondary school to have a managing committee and written bye-laws. The court held that the provisions of the Act are regulatory in nature and are meant to secure excellence in education and efficiency in management and does not interfere with the right to administer the school as provided under Article 30(1).

4. Right to appoint staff

The appointment or selection of staff (whether academic or non-academic), the principal or headmaster or other head of the institution is considered as part of the right to administer under Article 30(1) of the constitution. The state may regulate only to the extent of the qualifications of the staff or the principal or headmaster of the school, but the right to select or appoint candidates or teachers of her choice is that of the management of the minority institution. In the case of *Ahmedabad St. Xaviers College v. State of Gujarat* ^[24] Justice K.K. Mathew observed as follows: "It is upon the principal and teachers of a college that the tone and temper of an educational institution depends. On them would depend its reputation, the maintenance of discipline and its teaching. The right to choose the principal and to have the teaching conducted by teachers appointed by the management after an overall assessment of their outlook and philosophy is perhaps the most important facet of the right to administer an educational institution."

The minority has an inbuilt right to appoint persons, which in its opinion are better culturally and linguistically compatible to the institution. In *Secretary Malankara Syrian Catholic College v. T. Jose* ^[25], the issue was the applicability of section 57(3) of the Kerala University Act 1974 which provides that the post of principal when filled by promotion is to be made on the basis of seniority-cum-fitness to minority institutions. The supreme court declared that the general principles relating to establishment and administration of educational institutions by the minorities under Article 30 includes the right to appoint teaching staff (teachers, lectures, headmasters and principals) and non-teaching staff and to take action if there is dereliction of duty on the part of any of its employees and that the freedom to choose the person to be appointed as principal is

an important facet of the right to administer educational institution. Therefore, the provisions of section 57(3) will not apply to minority institutions even if they are aided.

5. Right to discipline employees

The right to maintain discipline among the employees is a significant facet of the right to establish and administer educational institutions under Article 30(1) of the constitution. Any rule interfering with this right cannot be said to be compatible with Article 30(1) of the Constitution. Thus, while fair procedural safeguards may be laid down for that purpose, the final power to take disciplinary action must be vested in the management of the institution and be not subjected to the control or veto of any outside body^[26]. However, a fair rational and reasonable procedure for the selection of teaching staff and for taking disciplinary action has to be evolved by management.

In Lily Kurian v. St. Lewina^[27] the appellant was the principal of St. Joseph Training College for Women, Ernakulam established by the society of Nuns belonging to the Catholic Church, and affiliated to the university of Kerala. There were allegations of misconduct against the appellant which were proved and she was subsequently dismissed. She invoked order 33(4) issued under the University Act 1957 which entitled a teacher to make an appeal to the Vice-Chancellor against any disciplinary action taken by the management of the minority institution. The Vice-Chancellor quashed the order of dismissal and directed the management to allow the appellant to continue to function as Principal. The Supreme Court struck down order 33(4) and held that it violates the right of the minorities under Article 30(1). The court held that conferring on the Vice-Chancellor “encarnalized” and “unguided” power would definitely and directly interfere with the disciplinary control of the management of a minority educational institution over its teachers. In W. Proost v. State of Bihar^[28] the Supreme Court held that, a provision requiring the governing body of a private affiliated college to take disciplinary action – (dismissal, removal, termination of service, reduction in rank) against teachers on the recommendation of the university service commission and subject to the approval of the university violated article 30(1) as it totally takes away the autonomy of the governing body of the college, and vest control over the college staff in the university service commission.

In All Saints High School v. State of Andhra Pradesh^[29], the Andhra Pradesh Private Educational Institutions Control Act 1975 provided that no teacher would be suspended except an inquiry was contemplated into his gross misconduct. The court held that the provision was valid because (i) it was regulatory in nature; (ii) it did not place unreasonable restraint on management to discipline an erring teacher (iii) the restriction imposed bore a reasonable relationship with the attainment of educational excellence and therefore did not violate article 30(1). The Court however held that the provision of the said Act which provided that no teacher employed in any institution would be dismissed, removed or reduced in rank except with the prior approval of the competent authority, was invalid as it gave an unqualified mandate, that no teacher could be dismissed without the prior approval of the

competent authority. This violated article 30(1) of the Constitution.

6. Right to oppress or exploit the staff/teachers

In Frank Anthony Public School Employees’ Association v. Union of India^[30] the Delhi School Education Act 1973 provided for better organization and development of school education in Delhi. Section 8 to 11 of the Act dealt with the terms and conditions of service of employees of recognized private schools. Section 10 provided that the salaries and allowances of the employees of recognized private schools would not be less than those of the government schools. By Section 12, these provisions would not be applicable to unaided minority schools. The Supreme Court held that section 12 of the Act was discriminatory and therefore violates Article 14 of the constitution, while sections 8 to 11 were valid as they were regulatory in character and did not violate article 30(1) of the constitution. The court also declared that the management of a minority school would not be permitted, under the guise of the right guaranteed by Article 30(1) to oppress and exploit its staff as such exploitation and oppression will lead to discontent and invariably to deterioration of the standard of instruction imparted in the institution, thereby defeating the object of making the institution an effective vehicle of education for the minority community and any other persons who may resort to it for learning^[31]. Professor Kumar has therefore concluded “that regulations made by the state concerning generally the welfare of students and teachers; laying down eligibility criteria and qualifications as also, conditions of service of employees to prevent exploitation or oppression of employees; prescribing syllabus and curriculum of study, will apply, equally, to minority institutions. However the question as to whether the state has exercised this power properly, being an intricate question is to be determined by the court^[32].”

7. Right to Impart Religious Instructions

It has also been established that the right to establish and administer under Article 30(1) also include the right to impart religious instructions in the institution. This right however is subject to Articles 28(2) (3) and 29(2) especially when the minority school receives aid from government. Article 28(2) (3) provides exceptions to article 28(1) which prohibits religious instructions in any educational institution which is wholly maintained out of state funds; while article 29(2) prohibits denial of admission to any citizen on ground of religion, race, caste, language or any of them by any educational institution that is maintained by the state or receiving aid out of state funds.

8. Right to Medium of Instructions

The right of a minority group to establish and administer educational institution of its choice also includes the right to impart instruction in the institution in its own language. This can be deciphered from the provisions of Article 30(1) and Article 29(1) of the Constitution. A rule or regulation which prohibits a minority from using a medium of instruction of its choice constitutes a restraint on the right of the minority to establish and administer educational institution of its choice.

To hold otherwise will be to denude Articles 29(1) and 30(1) of much of their content; the state should therefore use its power to determine the medium of instruction in such a manner as to effectuate minority right. In *DAV College, Bhatinda v. State of Punjab* ^[33], the Government of Punjab by a notification compulsorily affiliated certain colleges to the Punjab University which prescribed Punjab in the Gurmukhi Script as the sole and exclusive medium of instruction and examination. The Supreme Court declared that the Notification violated the right of the Arya Samajist to use their own script in the colleges run by it and compulsorily affiliated to the university. The court observed that the right granted to the minorities under Article 30(1) included right to have a choice of medium of instruction.

9. No right to recognition or affiliation

Although minorities establish and administer educational institutions with a view to educate their children and other persons who may resort to such schools in an atmosphere congenial to the preservation of their Religion, Language and or culture, this may not be the sole aim. The minorities besides the above aim, also desire that their students are well equipped for useful carrier in life. They also want the children to be useful in society, get good jobs in public and private organization, occupy important positions in Government etc. The students of unrecognized institutions cannot get admission in institutions of higher learning cannot get jobs either in private or public organizations, cannot award degrees and issue certificates that will be acknowledged, therefore, the need for affiliation or recognition arises. A minority run institution cannot effectively fulfill its role and meaningfully enjoy the rights under Article 30(1) without recognition or affiliation. This affiliation or recognition it has been declared is not a fundamental right and does not form part of the right to establish and administer educational institutions under Article 30(1) of the constitution. In *St. Xaviers College Society v. State of Gujarat* Supra the Court held that there was no fundamental right conferred on any minority to be affiliated to any university. The issue of affiliation or recognition is at best a privilege which is premised on regulations as to, the course of study; the qualifications and appointment of teachers; the conditions of employment of teachers and other staff; the health and hygiene of students; facilities for libraries and laboratories etc.

10. Discrimination in grant of aid to educational institutions

By the provisions of Article 30(2) the state or Government shall not discriminate in granting aids to educational institution on the ground that it is an educational institution under the management of religious or linguistic minority. The provisions of article 30(2) fortifies and gives meaning to article 30(1), however the granting of aid is not imperative or automatic and it is not a right. The state may impose conditions while granting aids to a minority institution. The conditions for aid have to be uniformly applied, whether it is a majority or minority managed institution. Again the conditions must have relevance to the proper utilization of the aid.

11. Acquisition of property of a minority educational institution

This item is on article 30(1A) of the constitution. This article 30(1A) was inserted by the Constitution (44th Amendment) Act 1978 to take care of Article 31 which was abrogated from the constitution. By that article 30(1A) the state has right to acquire the property owned by a minority institution. What is not very clear is whether the state must pay adequate compensation for the property or pay any amount and whether the adequacy of the compensation can be a subject of litigation. In *Society of St. Joseph's College v. Union of India* ^[34], the Supreme Court stated that Article 30(1A) requires the parliament or the legislature to make specific law to provide for the compulsory acquisition of property belonging to minority educational institutions. That law must make provisions that ensured that the amount fixed for the acquisition was such as did not restrict or abrogate the right guaranteed under Article 30. The general law (i.e. the Land Acquisition Act) is not adequate for the purpose of acquiring the property of a minority educational institution. It appears that from the decision that the compensation contemplated is adequate compensation so that the school can continue to function.

12. Right under Article 30(1) to establish and administer is not absolute

The provisions of Article 30(1) did not open with any subjective clause nor is it subject to any proviso, which would have by every implication subjected the rights created to obvious limitations or restrictions. However, the right cannot be said to be absolute. Thus even though the words of Article 30(1) are framed in such an unqualified manner the rights conferred by the said article will be subject to any laws of the land dealing with health, morality and standard of education. The Supreme Court in the case *TMA Pai Foundation v. State of Karnataka* ^[35], held that any regulation framed in the National interest or for the welfare of the students and teachers must necessarily apply to all institutions whether managed by the majority or the minority. Thus the absolute nature of Article 30(1) appears to be subject to the following limitations as stated by the Supreme Court:

- a. The fundamental right declared by Art. 30(1) of the Constitution is absolute in terms, but subject to regulatory measures.
- b. There is no fundamental right under Art. 19(1) (g) of the Constitution to establish and administer an educational institution, if recognition is sought there for.
- c. The institutions must be educational institutions of the minorities in truth and reality and not mere masked phantoms.
- d. There is no fundamental right to recognition and any institution seeking recognition should abide by the regulations prescribed by the state as conditions there for.
- e. The minority institutions must be fully equipped with educational excellence to keep in step with other institutions in the state.
- f. The regulations framed by the state cannot abridge the fundamental right of the minorities and they should be in

- the interest of the minority institutions themselves and not based on state necessity or general societal necessities.
- g. The regulations should be with a view to promoting excellence of educational standards and ensuring security of the services of teachers and other employees of the institutions and in the true interests of efficiency of institutions, discipline, health, sanitation, morality, public order and the like.
 - h. Even unaided institutions, are not immune from the operations of general laws of the land such as contract law, tax measures, economic laws, social welfare legislations, labour and industrial laws and similar other laws which are intended to meet the needs of the society^[36].

Concluding remarks

This work has examined the right to education of the minorities under the Indian Constitution. The right to education of the minorities is not limited to article 30(1) which stipulates the minorities right to establish and administer educational institutions of their choice. It has been argued that the minorities enjoy other rights to education under the constitution which are enjoyed by other citizens of India – whether they are majorities or minorities. For example the right under Articles 21A which is a fundamental right to education for children from the age of six years to 14 years, the right under Articles 41 and 45 of the constitution which are Directive Principles etc. The right under Article 30 of the constitution is a special right guaranteed only to the minorities to enable them establish and administer educational institution to make them to conserve their culture, language and religion besides building up their children and students for the challenges of tomorrow. The work also elicited the various facet of the said Article 30(1) against the backdrop of the judgments of the court and concluded that though the rights were couched without proviso as though there are no limitations, they are not absolute as no right can be absolute in any civilized society. Obviously the provisions of Article 30 is the core of the commitment of the founding fathers of India to secure the rights of the minorities.

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5. *Oxford Advanced Learner's Dictionary*, 976 (Oxford University Press, 8th edn. 2010).
6. TMA. Pai Foundation v. State of Karnataka, AIR 2003 SC 355 at 440.
7. AIR 1958 SC 956
8. Narender Kumar, *Constitutional Law of India* 412 (Allahabad Law Agency, Haryana, India, 8th edn. 2011 reprint 2014).
9. AIR 1971 SC 1731
10. AIR 2003 SC 355

11. AIR 2005 SC 3172
12. Narender Kumar, op.cit., 414.
13. Narender Kumar Ibid.
14. AIR 1995 SC 2089
15. AIR 1968 SC 662
16. AIR 1963 SC 540
17. AIR 1979 SC 83
18. AIR 1992 SC 1630
19. MP. Jain, *Indian Constitutional Law* 1295 (Lexis Nexis Haryana India 7th edn. 2014).
20. AIR 1974 SC 1389
21. AIR 1990 SC 695
22. See also State of Kerala v. Mother Provincial AIR 1970 SC 2079 wherein the Supreme Court declared Kerala University Act invalid which allowed the governing body to nominate 6 members out of 11 of the college's management body.
23. AIR 1988 SC 305
24. AIR 1974 SC 1389 at 1445
25. AIR 2007 SC 570 or (2007) 1 SCC 386
26. MP. Jain, op. cit 1286
27. AIR 1979 SC 52
28. AIR 1969 SC 465
29. AIR 1980 SC 1042
30. AIR 1988 SC 311
31. St. John's Teachers Institute v. State of Tamil Nadu, AIR 1994 SC 43
32. Narender Kumar, op. cit 434
33. AIR 1971 SC 1731
34. AIR 2002 SC 195
35. AIR 2003 SC 355
36. See Supreme Court Opinion in the case of St. John Teachers Institute (Women) v. State of Tamil Nadu, AIR 1994 43 at 46.