



Cultural and educational rights of religions minorities

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1. Introduction

Nation building in a democratic setup, is a dynamic process of integrating a plurality of social groups, into a common framework of identity and loyalty in a political community. A true democratic set up envisage not only a majority to rule, but to maintain and continue a system, political, economic, social and legal in which every section of the community is provided with due share and an opportunity of participation in the national reconstruction and social progress without loosing its separate entity and individual cultural made of life ^[1].

In a democratic set up, the interests of minority deserve a special regard and concern for its development and welfare. The Indian constitution also provides certain safeguards for the minority communities. However, notwithstanding these safeguards, the minorities in all democracies present problems which have baffled solutions ^[2].

The problems of minorities draw considerable attention of the Drafting committee of our constitution. While introducing the draft in the Constituent Assembly, the Chairman of the Drafting Committee in reference to this problem regretfully remarked:

“In this country both the minorities and the majorities have followed wrong path, it is wrong for the majority to deny the existence of minorities, it is equally wrong for the minorities to perpetrate themselves ^[3].”

Thus, the good will and confidence of the minorities is necessary for national unification. However, Minority rights should not become impediments for the promotion of a secular society based on pluralistic National unity.

Frank Anthony, a member of Constituent Assembly, very pertinently put the problem of minorities in these words:

“I believe that today the conditions are a challenge to the minorities. Every wise minority will look forward to the time sooner or later when it will take its place not under commander label or designation but as a part and parcel of the Indian community. I say to then let us march forward inspired by this spirit. Let us work up for this goal and we shall sooner then later shed all communal labels and be bound together by all compelling sense of belonging to one Indian community ^[4].”

Thus, to ensure, all round development of human personality and to maintain and strengthen national unity, the minorities have been granted cultural and Educational Rights under Articles 29 and 30 of the constitution Beger discussing the scope of these Articles, it is desirable to discuss the definition of Minority.

2. What is Minority

Laying down a definition of minority capable of universal acceptance has always been a difficult and comuple task, because of the fact that minorities are social realities which is dynamic rather than static, and which changes the influence of varying circumstances ^[5]. Thus, it is not possible to define Minority’ in exact words. The expression ‘Minority’ in exact words. The expression ‘Minority’ is compound of Latin word ‘Minor’ and the Suffix ‘ity’ meaning, inter alia, ‘the smaller in number.’

Encyclopedia Britannica, defines minorities as “groups held together by ties of common descent in these respects from the majority of the inhabitants of a given political entity ^[6].”

The permanent court of International Justice interpreted the concept of minority in its advisory opinion in the Greece-Bulgarian communities case in the following words:

“The criterion to be applied to determine what is a minority within the meaning of the Articles of the convention (referring to convention of 27th November, 1919 between Bulgaria and Greece) is the existence of a group of persons living in a given country or locality, having a race, religion, language and traditions of their own, and united by the identity of such race, religion, language and traditions in a sentiments of solidarity, with a view to preserving their tradition, maintaining their own form of worship, securing the instruction and upbringing of their children in accordance with the spirit and traditions of their race and mutually assisting one another ^[7].”

The problem of minorities figured prominently in the Constituent Assembly, the framers of our constitution did not make any effort to define the expression “minority.” The question what is minority was posed in Re Kerala Education Bill ^[8] and the court commented that minority is a term which is not defined in the constitution and in the absence of any precise definition it must be held that a minority community means a population of the state concerned.

In order to constitute a linguistic minority, the community must at least have a separate spoken language. It is not necessary that it must a separate script for those who speak it. In our country some languages have no script of their own but nonetheless, Articles 29 and 30 will apply to people who speak these language ^[9].

A community may be treated as minority on the basis of religion also. It has been held that the Jains and Sikhs are minority communities based on religions in the Union Territory of Delhi ^[10].

The Anglo-Indian Community has been held to a minority community, which is based inter alia on religion, language and culture ^[11].

The Church of South Indian which represent a denomination among Christians has been held to be a minority within the meaning of Article 30 ^[12].

The formulation to determine minority as given by the Supreme Court of India is rather simple and arithmetical. There are certain snags in it. According to K.K. Wadhwa, the population of a state may be so heterogeneous that no single community may constitute more than 50% of the state population, and therefore, all groups may claim the title of Minority community ^[13].

The other difficulty about this definition is that, there might be certain communities which are in majority in case of states but in minority in the case of the union. Thus, such communities will have a double status of being in majority at one and at the same time in minority in different context. For example Muslims, Sikhs and Christians are More than 50% in J.K., Punjab and Nagaland respectively, but are in minority in all India Context ^[14].

We can say that minority in India is relative term. It is primarily apolitical and not merely a numerical concept. This assertion is substantiated by Dr. B.R. Ambedkar who observed in the constituent Assembly ^[15]:

“The word is used not merely to indicate the minority in the technical sense of the word, it is also used to cover minorities which are not minorities in the technical sense, but which are nonetheless, minorities in the cultural and linguistic sense”.

In our constitution Articles 29 and 30 are expressly meant for the protection of interest of minorities.

Articles 29 says that “Any Section of the citizens residing in the territory of India or any part thereof, having a script or culture of its own, shall have the right to conserve the same.”

Article 30 acknowledges, the right of minorities based on religion or language to establish and administer educational institution of their choice.

Thus, putting together, both the Articles we can conclude that three categories of minorities are given protection under our constitution and they are based on language, religion and culture.

Apart from the religious and the linguistic minorities, the scheduled castes, the scheduled tribes and other backward classes have also been labeled as minority due to their low level of social, economic and cultural development. The word minority generally understood, is restricted as social, linguistic and religious minorities and these classes do not directly fit in this category because of the fact that the backward classes like those of the religious and linguistic minorities, are not to remain in perpetuity, whereas the character of religious and linguistic minority does not change ^[16]. They generally refuse to be assimilated and want to keep their distinctive characteristics permanently. But the backward classes do not want to maintain their individuality any longer rather they wish to be merged with the rest of the population as early as

possible. They seek special treatment and concession simply in order to come on par with other privileged claim.

K.M. Murthi and Seth Govind Das also did not agree in the Constituent Assembly that backward classes are a minority. K.M. Munshi remarked:

“The Harijans generally known as the Scheduled Castes, are neither a racial minority nor a linguistic minority. The Harijans are part and parcel of Hindu Community ^[17].”

Seth Govind Das observed:

“So far as minorities are concerned, there are many minorities which in fact cannot be called as such. For instance, take the case of Harijans they are in fact Hindus, they are not a minority like a Muslim or the Christians ^[18].”

The backward classes are depressed Section of the society and our constitution has dealt with the problem of backward with a feeling of justice, equity and good conscience. Thus, they can't be treated as 'Minority' under Articles 29 and 30 of our constitution.

3. Scope of Article 29 of the Constitution

Article 29 of the constitution is meant for the protection of the interest of minorities. The Article reads as under 29 protection of Interest 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 of only of religion, race, caste, language or any of them.

The two clauses guarantee two different rights to ten different section of the citizen. Clause (1) of Article 29 protects the distinct language, script or culture of a section of the citizens; whereas, Clause (2) of the Article 29 guarantees the right to an individual citizen not to be discriminated against only on the ground of religion, race, caste, language or any of them in the matter of admission in an educational institution. To claim the protection of clause (1) of Article 29, the condition must be satisfied:

1. The claimant of protection must belong to a section of the citizens of India;
2. They must reside in the territory of India or any part thereof;
3. They must have a distinct language, script or culture; and
4. That the distinct language, Script or culture is their own.

All the above requisite are to be proved simultaneously to claim the protection of Article 29 of the constitution. Further the right is available to “any Section of Citizens” as different from the individual. The “Section of Citizens” claiming the protection of Article 29 must not only prove that it has got a distinct language, Script or culture but also that it is “their own”. If any section of the society wants to conserve their language, script or culture, the state can't interfere. A minority community can effectively conserve the same through educational institutions. However, the right available under Clause (1) of the Article is a general right.

4. Clause (1) Article 29

To claim the protection of Article 29 (1) it is neither necessary to prove that the petitioner is a separate religions denomination for the purpose of Article 26 (1) (a) of the constitution nor it is necessary to establish that the petitioner is a religions or linguistic minority for the purpose of Article 30(1) of the constitution. In *DAV College Bhatinda v. State of Punjab* ^[19], it was held:

“It would be sufficient for the petitioner if they could establish that they had distinct script of their own and they were a religions minority, to invoke protection of Articles 29 (1) and 30(1).”

H.R. Khanna J. in *Ahmedabad St. Xavier College Society and other v. State of Gujrat* ^[20], rightly pointed out that:

“Although the marginal note of Article 29 mentions protection of minorities rights, the rights actually conferred by that Article are not restricted to minorities. According to clause (1) of that Article, any section of the citizens residing in the territory of India or any part there of having a distinct language, script or culture of its own shall have the right to conserve the same. In order to invoke the benefit of this clause, all that is essential is that a section of the citizen residing in the territory of India or any part thereof should have a distinct language, script or culture of its own. Once it is proved those citizens shall have the right to conserve their language, Script or culture irrespective of the fact, whether they are members of the majority community or minority community.”

S.R. Das C.J. in *State of Bombay v Bombay Education Society and other* ^[21] held that:

“Article 29(1) gives protection to any section of the citizen having a distinct language, script or culture by guaranteeing their right to conserve the same. Article 30(1) secures to all the minorities, whether based on religions language, the right to establish and administer educational institution of their choice.”

In *Rev. Father W. Poost v. State of Bihar* ^[22], one of the question for decision before the court was, whether protection guaranteed under Article 30(1) of the constitution is a corollary to the right guaranteed under Article 29(1) of the constitution. It was held that:

“The width of Article 30 could not be cut down by introducing any consideration on which Article 29(1) is based. Article 29(1) is a general protection given to section of citizens to conserve their language, script or culture Article 30 is a special rights to minorities to establish educational institutions of their choice. The two Articles create two separate rights though it is possible that the rights meet in a given case.”

Thus, the rights guaranteed by Articles 29(1) and 30(1) of the constitution are independent rights, however, it is not ruled out that in a given case both the rights might meet.

Ray C.J. in *Ahmedabad St. Xavier College Society and others v. State of Gujrat* ^[23] also held that:

“It will be wrong to read Article 30(1) as restricting right of

minority to establish and administer educational institutions of their choice only to cases where such institutions are concerned with language, Script or culture of the minorities. There are reasons First, Article 29 confers fundamental right on any section of the citizens which include the majority where as Article 30(1) deals with minorities of the nation based on religion or language. His Lordship further pointed one that:

“... If rights under 29(1) and Article 30(1) are the same then the consequence will be that any section of citizens, not necessarily linguistic or religions minorities, will have the right to establish and administer educational institutions of their choice. The scope of Article 30 rests on linguistic or religions minorities and no other Section of citizens of India has such a right.”

Thus, it is clear that the religions and minorities referred to in Article 30(1) of the constitution have a right under Article 29(1) of the Constitution. The right under Article is available to any Section of the citizens,” and the minorities are also comes under the expression. Thus, the minorities have right to establish and administer educational institutions of their choice to conserve their distinct language, Script or culture or for imparting general secular education or for both the purposes.

The text of clause (1) stresses on the word ‘conserve.’ It intends to preserve the Special traditions and characteristics of “any Section, of the Citizen” including minorities. The love for one’s language and religion is eternal and universal. Thus the right of conservation is of primary importance for the health and growth of every section of the citizens. The term conservation has been given wide connotation and is not limited to its literal meaning i.e., to retain or to preserve. According to D.K. Sen, the right of conservation within its sweep includes the following rights.

1. the right to follow its own Social, moral and intellectual ways of life;
2. the right to impart instruction in its tradition and culture;
3. The right to perform any other lawful act or to adopt any other lawful measure for the purpose of preserving its culture ^[24].

The right to conserve includes the right not only to preserve it through educational institution but also to agitate for its protection.

In *Jagdev Singh Sicihanhi v. Partap Singh Daults* ^[25], Clause (3) of Section 123 of The Representation of People Act, 1951 came for interpretation before the court. The appellant who was declared elected to the House of People, was alleged to have used corrupt practices to promote communal enmity between the Hindu and the Sikh Community prohibited by Section 123(3) of the 1951 Act. The instances, were given by the respondent, a defeated sitting member, in support of his allegation:

1. that the appellant by taking help of the Hindi agitation, propagated that the respondent was an enemy of the Arya Samaj and the Hindi language, and
2. That the appellant used a religious symbol a flag called “Om Dhvaj” in his meetings. The High Court accepted the contention of the respondent and set aside a election of the appellant. But the Supreme Court unanimously allowed the appeal and set aside the judgement of the Punjab High Court. As to the first ground Shah J. read Clause (3) of

Section 123 in the light of the fundamental right guaranteed in Article 29(1) of the constitution. He observed:

“The constitution has thereby (by Article 29) Conferred the right, among others, to conserve their language upon the citizens of India. Right to conserve the language of the citizens includes the right to agitate for the protection of the language. Political agitation for 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 People Act, 1951 unlike Article 19(1), Article 29 (1) is not subject to any reasonable restriction.”

The court also said that the right, under Article 29(1) is absolute [26].

In *S.P. Mittal v. Union of India* [27], the society, challenged the validity of Auroville (emergency provision) Act, 1980 on the ground that it was violative of its right under Art 29 and 30 of the constitution. The society was established to preach and propagate the arid teaching of Sri Aurbindo and the Mother through its numerous centers in India and abroad. An international cultural township Auroville was set up in Pondicherry and huge amount of Money was received by the society for the development of the Auroville Ashram. On receiving complaints about mismanagement of the affairs of society, the central government enacted the impugned legislation for taking over the management of the Society and the Auroville Ashram. It was held that the Act was not violative of the rights of any Section of citizens to conserve its own language, Script or Culture Conferred Article 29. Thus clause (1) guarantees right to conserve distinct language script or culture to any Section of the citizens in India including both majority as well as minorities communities.

5. Clause (2) of Article 29

This clause relates to admission into educational institution which is maintained or aided by State funds. No citizen shall be denied admission in such institutions on grounds only of religion, race, caste, language or any of them. The clause is general and wide in terms and applies to all citizens whether they belong to majority or minority groups. The right to admission into an educational institution is a right which an individual citizen has as a citizen and not as a member of any community or class of citizen [28]. However, this right can be denied to the citizens-

- a. if the institution is neither maintained by the State nor is receiving aid out of the State funds, and also,
- b. On the ground in addition to the grounds of religion, race, caste, language or any them.

If a citizen seeking admission into such educational institution does not fulfill the requisite academic qualifications, then the admission can be denied. But if he has the academic qualification but is refused admission only on grounds of religion, race, caste, language or any of them, then there is a clear breach of his fundamental right. Refusing admission of the ground of discipline is permissible [29].

6. Significance of the Expression ‘Only’

The expression “on grounds only” appearing in clause (2) of Article 29 of the constitution is significant. If there exists any other ‘valid ground then those mentioned under clause (2), the

protection would not be available. In *State of Madras v. Chinpakam Dorejanan* [30], an order of Madras government had fixed the proportion of students of each community that could be admitted into the state medical and Engineering College. The order was challenged on the ground that it denied admission to a person only on the ground of religion or caste. The petitioners were denied admission only because they were Brahmins. The Supreme Court held the order invalid for being violative of Article 29(2). S Das, J. head that:

“Though the object of communal G.O. was laudable as it was to ‘advance the interest of educationally backward classes of citizens, but that object notwithstanding, the order was struck down as unconstitutional because the modus operandi to achieve that object was directly based on one of the forbidden grounds specified in Article 29(2) of the constitution [31].”

Hence, a school run by a minorities, if it is aided by State funds, cannot refuse admission to children belonging to other communities [32].

In *State of Bombay v. Bombay Education Society* [33], S.R. Das, J., considered the constitutional validity of circular No SSN 2054 (a) dated 6-1-1954 entitled “Admission’ to Schools teaching through The Medium of English.” Operative portion of the order Set fourth in clause (5) closely forbade “all the primary or secondary Schools where English is used as medium of instruction, to admit to any class any student other than a student belonging to a section of citizens, the language of which is English namely Anglo Indians arid citizens of Non-Asiatic descent”.

It was argued by the state, relying on the expression. “only” in Article 29(2)of the constitution that the admission has been denied by imuged order not “only” on the ground of religion, race, caste language or any of them but also “secure the advancement of Hindi” which ultimately is to be our National Language.

Relying to the contention of the State their lordship held that:

“The Attorney General overlook the distinction between the object or motive underlying the impugned order and the mode and manner adopted therein far achieving the object.” It was held and rightly so,

“Laudable object of the impugned order does not obviate the prohibition of Article 29(2).”

What was sought to be done by the impugned order was to deny admission only on the ground of Language. Court cited from the *State of Madras v. Charripakam Dorairajan* [34] that, in that case also though the object, was advancement of the interest of educationally backward classes but the modus operandi was denial of admission only on the ground of religion, hence was violative of Article 29(2) of the Constitution.

Article 29(2), however, does not confer a legal right on the members of other communities to freely profess, practice and propagate their religion within the precincts of a college run by a minority community [35].

The time when state of Madras v. Chempakam Dorairajan was decided the constitution did not contain clause (4) of Article 15 of the constitution. This made S.R. Das J., to observe that:

“Seeing, however, that clause (4) was inserted in Article 16, the omission of such an express provision from Article 29

cannot but be regarded as significant. It may well be that the intention of the constitution was not to introduce at all communal consideration in matters of admission into any educational institution maintained by the state or receiving aid out of State funds. The protection of backward classes of citizen may require appointment of backward classes in State services and the reason why power has been given to the State to provide for reservation of such appointments for backward classes may under these circumstances be understood. That, consideration, however, was not obviously considered necessary in the case of admission into an educational institution and that may well be the reason for the omission from Article 29 of a clause similar to clause (4) of Article 16.”

After the judgement of the court in this case, clause (4) was added to Article 15 by the constitution (first Amendment) Act 1951.

This clause reads as follows:

“Nothing in Article or Clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward class of citizens or for the Scheduled Castes the Schedules Tribes.”

Accordingly, the state is now empowered to reserve seats in State College for any socially and educationally backward Classes of citizen or the Scheduled Castes and Scheduled Tribes^[36].

While ordinarily educational institution established in pursuance of Article 29 (1) or 30 (1) are subject to Article 29 (2), they are not so if they do not receive any aid from the State therefore, they are free in the matter of admission^[37].

7. Distinction between Article 29 (2) and Article 15(1)

Article 15 (1) of the constitution also prohibits discrimination on ground of religion, race, caste, Sex or place of birth. However, the scope of 15(1) and of 29 (2) differs in many respects.

1. Article 15 protects all citizens against the state whereas the protection of Art. 29(2) extends against the state, or anybody else who denies the right conferred by it.
2. Article 15 protects all citizens against discrimination generally while Art 29 (2) is a protection against as particular species of wrongs, namely denial of admission into educational institution of the types mentioned there in.
3. Article 15 is quite general and wide in its terms and applies to all citizens whether they belong to the majority groups or minority groups and gives protection to all citizens against discrimination by the State on certain specific grounds. Article 29 (2) confers a special right on citizens of admission into educational institutions maintained or aided by the State.
4. Article 15 (1) prohibits discrimination on the ground of Sex or place of birth where as Art 29 (2) does not mention these grounds. Thus under Article 29 (2) a girl student can be denied admission in educational institution^[38].

Thus, Act. 15(1) is broader in scope and applies to those cases also where Act 29(2) is not applicable. Thus, refusal to admit a person in educational institution on the grounds of sex or place

of birth will be invalid under Art. 15 (1) and will not be under Art. 29 (2)^[39]

In State of Madras v. Chempakarn Dorairajan^[40], an order of Madras government had fixed the proportion of Students of each community that could be admitted into state Medical and Engineering Colleges. The order was challenged on the ground that it denied admission to a person only on ground of religion or caste. The petitioners in this case were denied admission only because they were brahmins. Though the petitioner relied upon Article 15 (1) and 29 (2) of the constitution, but the decision was based on the right guaranteed by Article 29 (2) of the constitution. In State of Bombay v. Bombay Education Society and others^[41], the scope of Article 15 (1) Vis- a-Vis Article 29 (2) was thoroughly discussed. In this case their Lordship of the Supreme Court did not agree with the contention of the State that as the majority is amply protected by Article 15 of the constitution hence they do not need the protection of Article 29 (2) of the Constitution. S.R. Das, J. pointed out that:

“The language of Article 29 (2) is wide and unqualified and may well cover all citizens whether they belong to the majority or minority groups. Article 15 protects all citizens against the State where as the protection of Article 29 (2) extends against the state or anybody who denies the right, conferred by it. Further Article 15 protects all citizens against discrimination generally but Article 29 (2) is a protection granted against a particular species of wrong namely, the denial of admission into educational institution of the specified kind. In the next place Article 15 is quite general and wide in its term and applies to all citizens, whether they belong to the majority against or minority groups; and gives protection to all the citizens discrimination by the State on certain specified grounds. Article 29 (2) confers a special right on citizens for admission into educational institution maintained or aided by the State^[42].”

His Lordship held that:

“To limit this right only to citizens belonging to majority group will be to provide a double protection for such citizens and to hold that the citizen of the majority group have no special educational rights in the nature of a right to be admitted in an educational institution for th maintenance of which they make contribution by way of taxes. We see no cogent reason for such discrimination. The heading under which Article 29 and 30 are grouped together - namely “Cultural and Educational Rights” - is quite general and does not in terms contemplates such differentiation. If the fact that the institution is maintained or aided out of State funds is the basis of this guaranteed right then all citizens, irrespective of whether they belong to the majority or minority groups, are alike entitled to the protection of this fundamental right. In view of all these considerations the marginal note alone, on which the Attorney General relies, cannot be read as controlling the plain meaning of the Language in which Article 29 (2) had been couched^[43].”

S.R. Das, J. cited with approval State of Madras v. Champakarn Dorairajan^[44].

“It will be noticed that while clause (1) protects the language, Script or Culture of a Section of the citizens, Clause (2)

guarantees the fundamental right of an individual citizen. The right to get admission into any educational institution of the kind mentioned in clause (2) is a right which an individual citizen has as a citizen and not as a member of any community or class of citizens”.

After the decision given in *State of Madras v. Chempakam Dorairajan* ^[45] Article 15 was amended by the constitution (1st Amendment) Act, 1954. The amendment empowers the State to make special provisions for the advancement of any socially and educationally backward classes of citizens or the Scheduled Castes and the Scheduled Tribes. Accordingly the State can now reserve Seats in public institutions for members of backward classes.

8. Article 29 and the Directive Principles

The Directive principles of State policy contained in Part IV of the constitution set out the aims and objectives to be taken up by the States in the governance of the country. The idea of welfare State envisaged by our constitution can only be achieved if the States endeavour to implement them with a high sense of moral duty. They impose certain obligation on the state to take positive action in certain direction in order to promote the welfare of the people and achieve economic democracy. However; these obligation are to be discharged in conformity with the provisions of the right guaranteed by Article 29.

In *State of Madras v. Chempakam Dorairajan* ^[46], the learned Advocate General appearing for the State contended that the provision of Article 29 were to be read along with other Articles in the constitution. He contended Article 46 charges the State with promotions with special care the educational and economic interests of the weaker Sections of people, and in particular, of the Scheduled Castes and Scheduled Tribes, and with protecting them from Social injustice and all forms of exploitation. It was pointed out that although Article 46 finds a place in part iv of the constitution which lays down certain Directive Principles of State policy and though the provisions contained in that part are not enforceable by any court the principles their in laid down are nevertheless fundamental for the governance of the country and Article 37 makes it obligatory on the part of the State to apply those principles in making laws.

Their Lordship rejected the contention of Advocate General and held:

“The Directive Principle of state policy, which by Article 37 are expressly made unenforceable by a court cannot override the provisions found’ in part III which, notwithstanding other provisions are expressly made enforceable by appropriate writs, orders or directions under Article 32. The chapter of fundamental rights is sacrosanct and not liable to be abridged by any legislature or executive acts or order, except to the extent provided in the appropriate Articles in Part III. The Directive Principles of State policy have to conform to and run as subsidiary to the chapter of fundamental rights. In our (opinion that is the correct way in which the provisions found in Part III and IV have to be understood. However, so long as there is no infringement of fundamental right to the extent conferred by the provision in part III there can be no objection to the state acting in accordance with the Directive Principles

set out in Part IV, but subject again to the legislative and executive powers and limitations conferred on the state under differed provisions of the constitution.

The Supreme Court refused to let the fundamental right declared in Article 29 (2) to be whittled down by this Article, thus declared the order void being violative of fundamental rights given under Article 29 (2). The court rejected the argument of Advocate General and asserted the supremacy of the fundamental rights over the Direct Principles of State Policy.

The difficulty was resolved by introducing clause (4) in Article 15 by first Amendment Act, 1951. In spite of this amendment, in *M.R. Balaji v. State of Mysore* ^[47], the Supreme Court emphasized the need for balancing the interests of sections of the people covered by Article 46 and the rest of the society: however, after the Forty fourth Amendment Act which confers superior Status on Directive-Principles amid the judgement in *Minerva case* the statement would no longer be In *Minerve Mill case* ^[48], the Supreme Court laid down that there is harmony and balance between fundamental Rights and Directive Principle of State policy, and this harmony and balance is one of the basic features of our constitution. The earlier decision of Supreme Court needs reconsideration. Article 15 has been amended after *Champakarn case*. Under Article 15 (4) it is permissible for the states to make reservation of seats in educational institutions for the members of backward classes. Such reservation would no doubt offend Article 29(2). Hence, Article 15 (4) specifically excludes clause (2) of Article 29. This means reservation under Article 15 (4) will be valid inspite of Article 29 (2). In the *Chitralakha case* ^[49] the Supreme Court laid down that the state government has power to prescribe a machinery and also the criterion for admission of qualified students to medical and Engineering colleges run by the Government and with the consent of the management of the government aided college to the said colleges also. While ordinary educational institution established in pursuance of Article 29 (1) or 30 (1) are subject to Article 29 (2), they are not so if they do not receive any aid from the State. Thus efforts should be made to keep harmonium relationship between Article 29 and the Directive Principles of State policy.

9. Relationship between Article 29 and 30 of the Constitution

Article 29 (1) confers a limited right to conserve distinct language, script or culture on any section of the citizens-Article 30 (1) of the Constitution guarantees a specified right to establish and administer educational institution of there choice only to religious or linguistic minorities.

Under Article 29 (1) of the Constitution, the petitioner would get the protection only if it has a distinct language, script or culture to conserve, whereas, under Article 30 (1) a religions or linguistic minority may establish an educational institution to conserve its distinct language, script or culture and also impart general secular education and thus claims protection of Article 29 (1) and Article 30 (1) of the constitution simultaneously. The inter-relation of Article 29 (1) and 30 (1) was elaborately examined by the Supreme Court in the case of *St. Xavier College v. State of Gujrat* ^[50]. In this case the validity of

Sections 33-A, 40,41,51-A,52-A of the Gujrat University Act, 1948 as amended by Act of 1973 were questioned by the petitioners who were running St. Xavier College of Arts and Commerce in Ahmadabad. On behalf of the state it was contended that the protection to minorities guaranteed by Article 30 (1) was not available to this college because it was not founded for the conservation of language, Script, or as mentioned in Article 29 of the constitution Ray, C.J. rightly pointed out that:

“It will be wrong to read Article 30 (1) as restricting the right of minorities to establish and administer educational institution of their choice only to cases where such institutions is concerned with language, script or culture of the minorities. The reason is there. First, Article 29 confers the fundamental right on any section of the citizens which include the majority Section whereas Article 30 (1) confers the right on all minorities. Second, Article 29 (1) is concerned with language, Script or culture, whereas Article 30 (1) deals with minorities of the nation based an religion or language. Third Article 29 (1) is concerned with the right to conserve language, Script or culture. Whereas Article 30 (1) deals with the right to establish and administer educational institution of the minorities of their choice. Fourthly, the conservation of language, script or culture under Article 29 (1) may be means wholly unconnected with educational institution and similarly establishment and administration of educational institutions by a minority under Article 30(1) may be unconnected with any motive to conserve language, Script or culture. A minority may administer an institution for religious education which is wholly unconnected with any question of conserving a language, Script or culture.

Similar views was expressed by Methew J. in this case. His lordship observed:

“Article 29 (1) confers on any section of citizen resident in the territory of India, the right to conserve its language, Script or culture. It does not speak of any minority, religion or otherwise whereas, Article 29 (1) confers the right not only upon a minority as understood in its technical sense but also upon a section of the citizens resident in the territory of India which may not be a minority in its technician sense, the beneficiary of the right under Article 30 is a minority, either religions or linguistic. This is one distinction between Article 29(1) and Article 30(1). The second distinction to be noted is that whereas Article 29 (1) confers right in respect of three subjects viz. language, script or culture, Article 30(1) deals only with the right to establish and administer educational institutions. It is true that under Article 29 (1), a section of citizens having a distinct language, script or culture might establish an educational institution for conserving the same. But under Article 30 (1) the right conferred on the religious or linguistic minority is not only the right to establish an educational institution for the purpose of conserving its language, script or culture, but educational institution of its choice whereas Article 29 (1) does not deal with education as such, Article 30 deals not only with the establishment and administration of educational institution. It might me that in a given case, the two Articles might overlap when a linguistic minority establishes on educational institution to conserve its language, the

linguistic minorities can invoke the protection of both the Articles. When Article 30 (1) says that a linguistic minority can establish and administer educational institutions of its choice, it means that it can establish and administer any educational institution. If a linguistic minority can establish only an educational institution to conserve its language then the expression of their choice” in Article 30(1) is practically robbed of its meaning.”

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