

**GOVERNMENT OF INDIA  
NATIONAL COMMISSION FOR MINORITY  
EDUCATIONAL INSTITUTIONS**

**Guidelines for determination of Minority Status, Recognition,  
Affiliation and related matters in respect of Minority Educational  
Institutions under the Constitution of India.**

Article 30(1) of the Constitution of India gives linguistic and religious minorities a fundamental right to establish and administer educational institutions of their choice. These rights are protected by a prohibition against their violation. The prohibition is contained in Article 13 of the Constitution which declares that any law in breach of the fundamental rights would be void to the extent of such violation. It is well-settled that Article 30(1) can not be read in a narrow and pedantic sense and being a fundamental right, it should be given its widest amplitude. The width of Article 30(1) cannot be cut down by introducing in it considerations which are destructive to the substance of the right enshrined therein.

The National Commission for Minority Educational Institutions Act (for short the 'Act') has been enacted to safeguard the educational rights of the minorities enshrined in Article 30(1) of the Constitution.

It has been held by the Eleven Judges Bench of the Supreme Court in T.M.A. Pai Foundation vs. State of Karnataka (2002) 8 SCC 481 that a minority, whether linguistic or religious, is determinable only by reference to demography of the State and not by taking into consideration the population of the country as a whole. The application of numerical test with reference to religion in states like Punjab, Jammu & Kashmir and Nagaland makes Sikhism, Islam and Christianity, the majority religions in those states respectively. (See D.A.V. College vs. State of Punjab AIR 1971 SC 1731).

As regards the indicia to be prescribed for grant of minority status certificate, a reference to Section 2(g) of the Act has become inevitable as it defines a Minority Educational Institution. Section 2 (g) is as under : -

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

In Section 2(g), the expressions ‘established’ or ‘maintained’ have been used by the legislature. The word ‘or’ is normally disjunctive and the word ‘and’ is normally conjunctive (See Hyderabad Asbestos Cement Product vs. Union of India 2000 (1) SCC 426), but at times they are read as vice versa to give effect to the manifest intention of the legislature as disclosed from the context. (See Ishwar Singh Bindra vs. State of Uttar Pradesh AIR 1968 SC 140; MCD of Delhi vs. Tek Chand Bhatia AIR 1980 SC 360)

In Azeez Basha vs. Union of India AIR 1968 SC 662, a Constitutional Bench of the Supreme Court has held that the expression “establish and administer” used in Article 30(1) was to be read conjunctively that is to say, two requirements have to be fulfilled under Article 30(1), namely, that the institution was established by the community and its administration was vested in the community. In S.P. Mittal vs. Union of India AIR 1983 SC 1, the Supreme Court has held that in order to claim the benefit of article 30(1), the community must show; (a) that it is a religious/linguistic minority, (b) that the institution was established by it. Without specifying these two conditions it cannot claim the guaranteed rights to administer it. Thus the word ‘or’ occurring in the definition of minority educational institution in Section 2(g) of the National Commission for Minority Educational Institutions Act has to be read conjunctively as the context showed that it was the intention of the legislature.

In St. Stephen’s College vs. University of Delhi (1992) SCC 558, the Supreme Court has declared the St. Stephen’s College as a minority educational institution on the ground that it was established and administered by members of the Christian Community. Thus, these were the indicia laid down by the Supreme Court for determining the status of a minority educational institution and they have also been

incorporated in Section 2(g) of the Act. Article 30(1) of the Constitution postulates that members of religious or linguistic minority has the right to establish and administer educational institutions of their choice. It is a matter of proof through production of satisfactory evidence that the institution in question was established by the minority community claiming to administer it. The proof of the fact of the establishment of the institution is a condition precedent for claiming the right to administer the institution. The onus lies on one who asserts that an institution is a minority institution. It has been held by a Division Bench of the Madras High Court in T.K.V.T.S.S. Medical Educational and Charitable Trust vs. State of Tamil Nadu AIR 2002 Madras 42 that “once it is established that the institution has been established by a linguistic minority, and is administered by that minority, that would be sufficient for claiming the fundamental right guaranteed under Article 30(1) of the Constitution.” The same principle applies to religious minority also. In Andhra Pradesh Christian Medical Association vs. Government of Andhra Pradesh, AIR 1986 SC 1490, the Supreme Court has held that the Government, the University and ultimately the Court can go behind the claim that the institution in question is a minority institution and “to investigate and satisfy itself whether the claim is well founded or ill founded.” A minority educational institution continues to be so whether the Government declares it as such or not. When the Government declares an educational institution as a minority institution, it merely recognizes a factual position that the institution was established and is being administered by a minority community. The declaration is merely an open acceptance of the legal character of the institution which must necessarily have existed antecedent to such declaration (N. Ammad vs. Emjay High School (1998) 6 SCC 674).

A Society or Trust consisting of members of a minority community, or even a single member of a minority community, may establish an institution. The position has been clarified by the Supreme Court in State of Kerala vs. Mother Provincial AIR 1970 SC 2079, the Supreme Court has observed:

“Establishment means bringing into being of an institution and it must be by a minority community. It matters not if a single philanthropic individual with his own means, institution or the community at large founds the institution or the community at large contributes the funds. **The position in law is the same and the intention in either case must be to found an institution for the benefit of a minority community by a member of that community.** It is equally irrelevant to this right that in addition to the minority community, others from other minority communities or even from the majority community can take advantage of these institutions.”

(emphasis supplied)

In *Christian Medical Association* (supra) the Supreme Court has also held that “what is important and what is imperative is that there must exist some real positive index to enable the institution to be identified as an educational institution of the minorities.” Needless to add here that the right enshrined in Article 30(1) of the Constitution is meant to benefit the minority by protecting and promoting its interests. There should be a nexus between the institution and the particular minority to which it claims to belong. The right claimed by a minority community to administer the educational institutions depends upon the proof of establishment of the institution. In P.A. Inamdar vs. State of Maharashtra (2005) 6 SCC 537, following questions arose for consideration:

- i) Whether a minority educational institution, though established by a minority, can cater to the needs of that minority only?
- ii) Can there be an inquiry to identify the person or persons who have really established the institution?
- iii) Can a minority institution provide cross border or inter state educational facilities and yet retain the character of minority educational institution?

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

It has been held in Kerala Education Bill AIR 1958 SC 956 that "Articles 29(2) and 30(1), read together, clearly contemplate a minority institution with a 'sprinkling' of 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".

It has to be borne in mind the right guaranteed under Article 30(1) is a right not conferred on individuals but on religious denomination or section of such denomination. It is also universally recognised that it is the parental right to have education of their children in the educational institutions of their choice. It has been held by a Full Bench of the Karnataka High Court in Associated Managements of Primary and Secondary Schools in Karnataka vs. State of Karnataka and Ors. 2008 K.L.J 1 (Full Bench) that the words of "their choice" which qualify "educational institutions" shows the vast discretion and option which minorities have in selecting the type of the institution which they want to establish."

Needless to add here that an educational institution is established to subserve or advance the purpose for its establishment. Whereas the minorities have the right to establish and administer educational institutions of their choice with the desire that their children should be brought up properly and be eligible for higher education and go all over the world fully equipped with such intellectual attainments as it will make them fit for entering the public service, surely then there must be implicit in such a fundamental right the corresponding duty to cater to the needs of the children of their own community. The beneficiary of such a fundamental right should be allowed to enjoy it in the fullest measure. Therefore, the educational institutions of their

choice will necessarily cater to the needs of the minority community which had established the institution.

Mere receipt of state aid does not annihilate the right guaranteed under Article 30(1). It has been held in the case of P.A. Inamdar (Supra) that “a minority institution does not cease to be so, the moment grant-in-aid is received by the institution. An aided minority educational institution, therefore, would be entitled to have the right of admission of students belonging to the minority group and at the same time, would be required to admit a reasonable extent of non-minority students, so that the rights under Article 30(1) are not substantially impaired and further the citizens’ rights under Article 29(2) are not infringed. What would be a reasonable extent, would vary from the types of institution, the courses of education for which admission is being sought and other factors like educational needs. **The State Government concerned has to notify the percentage of the minority students to be admitted in the light of the above observations.**”

Their Lordships of the Supreme Court has further observed in the case of P.A. Inamdar (Supra) that “the object underlying Article 30(1) is to see the desire of minorities being fulfilled that their children should be brought up properly and efficiently and acquire eligibility for higher university education and go out in the world fully equipped with such intellectual attainments as will make them fit for entering public services, educational institutions imparting higher instructions including general secular education. Thus the twin objects sought to be achieved by Article 30(1) in the interest of minorities are: (i) to enable such to conserve its religion and language, and (ii) to give a thorough good general education to the children belonging to such minority. So long as the institution retains its minority character by achieving and continuing to achieve the aforesaid two objectives, the institution would remain a minority institution.”

In St. Stephen’s case the Supreme Court had ruled that Article 30(1) is a protective measure only for the benefit of the religious and linguistic minorities and “no ill fit or camouflaged institution can get away with a constitutional protection.”

Emphasising the need for preserving its minority character so as to enjoy the privilege of protection under Article 30(1), it is necessary that the objective of establishing the institution was not defeated. The management of a minority institution cannot resort to the device of admitting the minority students of the adjoining state in which they are in majority to preserve minority status of the institution. Reference may, in this connection be made to the following observations made in the case of T.M.A. Pai (Supra): -

“.....If so, such an institution is under an obligation to admit the bulk of the students fitting into the description of the minority community. Therefore the students of that group residing in the State in which the institution is located have to be necessarily admitted in a larger measure because they constitute the linguistic minority group as far as that State is concerned. In other words the pre-dominance of linguistic minority students hailing from the State in which the minority educational institution, is established should be present. The Management bodies of such institutions cannot resort to the device of admitting the linguistic students of the adjoining states in which they are in a majority, under the facade of the protection given under Article 30(1)”.

In Inamdar's case (supra) the said proposition of law has been applied to religious minority. According to their Lordships, “if any other view was to be taken the very objective of conferring the preferential right of admission by harmoniously construing Article 30(1) and 29(2) may be distorted”. It was further observed in Inamdar's case that “it necessarily follows from the law laid down in T.M.A Pai Foundation that to establish a minority institution the institution must primarily cater to the requirements of that minority of that State else its character of minority institution is lost. However, to borrow the words of Chief Justice S.R. Dass in Kerala Education Bill, “a sprinkling of that majority from the other States on the same footing as a sprinkling

of non minority students would be permissible and would not deprive the institution of its essential character of being a minority institution, determined by reference to that State as a unit”.

As regards the prescription of a percentage governing admissions in a minority educational institution, it would be useful to excerpt the following observations of their lordships of the Supreme Court in T.M.A. Pai foundation Case vs. State of Karnataka (2002) 8 SCC 481.

“.....The situation would vary according to the type of institution and the nature of education that is being imparted in the institution. Usually, at the school level, although it may be possible to fill up all the seats with the students of the minority group, at the higher level, either in colleges or in technical institutions, it may not be possible to fill up all the seats with the students of the minority group. However, even if it is possible to fill up all the seats with students of the minority group, the moment the institution is granted aid; the institution will have to admit students of the non minority group to a reasonable extent, whereby the character of the institution is not annihilated, and at the same time, the rights of the citizen engrafted under Article 29(2) are not subverted.”

**The State Government can prescribe percentage of the minority community to be admitted in a minority educational institution taking into account the population and educational needs of the area in which the institution is located. There cannot be a common rule or regulation or order in respect of types of educational institutions from primary to college level and for the entire State fixing the uniform ceiling in the matter of admission of students in minority educational institutions. Thus a balance has to be kept between two objectives – preserving the right of the minorities to admit students of their own community and that of admitting “sprinkling of outsiders” in their institutions subject to the condition that the manner and number of such admissions should not be violative of the minority character of the institution. It is significant to mention here that Section 12C (b) of the Act also empowers the State Government to prescribe percentage governing admissions in a minority educational**

**institution.** Thus the State Government has to prescribe percentage governing admissions of students in the minority educational institutions in accordance with the aforesaid principles of law enunciated by their lordships of the Supreme Court in the cases of T.M.A. Pai Foundation and P.A. Inamdar (supra).

The emphatic point in the P.A. Inamdar (Supra) reasoning is that the minority educational institution is primarily for the benefit of minority. Sprinkling of the non-minority students in the student population of minority educational institution is expected to be only peripheral either for generating additional financial source or for cultural courtesy. Thus, a substantive section of student population in minority educational institution should belong to the minority. In the context of commercialisation of education, an enquiry about composition of student population of minority educational institution will reveal whether the substantive peripheral formula that can be gathered from P.A. Inamdar is adequately complied with or whether minority educational institution is only a façade for money making.

It needs to be highlighted that Sec. 2 (f) of the Central Educational Institutions (Reservation in Admission) Act, 2006, defines a minority educational institution as under: -

**“Minority Educational Institution” means an institution established and administered by the minorities under clause (1) of article 30 of the Constitution and so declared by an Act of Parliament or by the Central Government or declared as a minority educational institution under the National Commission for Minority Educational Institutions Act, 2004;**

(emphasis supplied)

On a reading of Article 30(1) of the Constitution read with several authoritative pronouncements of the Supreme Court and the definitions of Minority Educational Institution in Section 2(g) of the Act and Section 2(f) of the Central Educational Institutions

(Reservation in Admission) Act, 2006, the following facts should be proved for grant of minority status to an educational institution on religious basis:

- (i) that the educational institution was established by a member/ members of the religious minority community;
- (ii) that the educational institution was established for the benefit of the minority community; and
- (iii) that the educational institution is being administered by the minority community.

The aforesaid facts may be proved either by direct or circumstantial evidence. There must be some positive index to enable the educational institution to be identified with religious minorities. There should be nexus between the means employed and the ends desired. If the minority educational institution concerned is being run by a trust or a registered society, then majority of the trustees of the trust or members of the society, as the case may be, must be from the minority community and the trust deed/ Articles of Association or any other document duly executed in this regard must reflect the objective of sub-serving the interest of the minority community. In the absence of any documentary evidence some clear or cogent evidence must be produced to prove the aforesaid facts. There is no bar to the members of other communities to extend their help to the member of a minority community to establish an educational institution of its choice. (See S.K. Patro vs. State of Bihar AIR 1970 SC 259).

As has been held by the Madras High Court in T.K.V.T.S.S. Medical Educational & Charitable Trust vs. State of Tamil Nadu AIR 2002 Madras 42 that a minority status can not be conferred on a minority educational institution for particular period to be renewed periodically like a driving license. It is not open for the State Government to review its earlier order conferring minority status on a minority educational institution unless it is shown that the institution concerned has suppressed any material fact while passing the order of conferral of minority status or there is fundamental change of

circumstances warranting cancellation of the earlier order. Reference may, in this connection, be made to the following observations of their lordships : -

“.....In conclusion, we hold that if any entity is once declared as minority entitling to the rights envisaged under Article 30(1) of the Constitution of India, unless there is fundamental change of circumstances or suppression of facts the Government has no power to take away that cherished constitutional right which is a fundamental right and that too, by an ordinary letter without being preceded by a fair hearing in conformity with the principles of natural justice.”

(emphasis supplied)

It is now well settled that any administrative order involving civil consequences has to be passed strictly in conformity with the principles of natural justice (See AIR 1978 S.C. 851). If any order relating to cancellation of minority status granted to a minority educational institution has been passed without affording an opportunity of being heard to such educational institution, it gets vitiated.

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

It is also relevant to note that the minority status certificate granted by this Commission or **by any authority** can be cancelled under Section 12C of the Act on violation of any of the conditions enumerated therein. Section 12C is as under: -

“12C. **Power to cancel.**-The Commission may, after giving a reasonable opportunity of being heard to a

Minority Educational Institution to **which minority status has been granted by an authority or Commission, as the case may be**, cancel such status under the following circumstances, namely: -

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

(emphasis supplied)

The parliamentary paramountcy has been provided for by Articles 246 and 254 of the Constitution. In view of the mandate of these Articles of the Constitution, the National Commission for Minority Educational Institutions Act, 2004, being a Central law shall prevail over the State law. The State Government cannot add, alter or amend any provision of the Act by issuing executive instructions. (See Greater Bombay Co-op. Bank Ltd. Vs. M/s. United Yarn Tex. Pvt. Ltd & Ors. JT 2007 (5) SC 201).

### **Affiliation And Recognition**

Although Article 30(1) of the Constitution does not speak of the conditions under which the minority educational institution can be affiliated to a university yet the Article by its very nature implies that where an affiliation is asked for, the university concerned cannot refuse the same without sufficient reasons or try to impose such conditions as would completely destroy the autonomous administration of the educational institution.

Section 10A of the Act confers a right on a minority educational institution to seek affiliation to any university of its choice. Section 10A is as under : -

**“10A. Right of a Minority Educational Institution to seek affiliation.** - (1) A Minority Educational Institution may seek affiliation to any University of its choice subject to such affiliation being permissible within the Act under which the said University is established.

(2) Any person who is authorised in this behalf by the Minority Educational Institution, may file an application for affiliation under sub-section (1) to a University in the manner prescribed by the Statute, Ordinance, rules or regulations, of the University:

Provided that such authorised person shall have right to know the status of such application after the expiry of sixty days from the date of filing of such application.”

Recognition is a facility, which the State grants to an educational institution. No educational institution can survive without recognition by the State Government. Without recognition the educational institutions can not avail any benefit flowing out of various beneficial schemes implemented by the Central Government. Affiliation is also a facility which a university grants to an educational institution. In Managing Board of the Milli Talimi Mission Bihar & ors. vs. State of Bihar & ors. 1984 (4) SCC 500, the Supreme Court has clearly recognized that running a minority institution is also as fundamental and important as other rights conferred on the citizens of the country. If the State Government declines to grant recognition or a university refuses to grant affiliation to a minority educational institution without just and sufficient grounds, the direct consequence would be to destroy the very existence of the institution itself. Thus, refusal to grant recognition or affiliation by the statutory authorities without just and

sufficient grounds amounts to violation of the right guaranteed under Article 30(1) of the Constitution.

The right of the minorities to establish educational institutions of their choice will be without any meaning if affiliation or recognition is denied. It has been held by a Constitutional Bench of the Supreme Court in St. Xavier's College, Ahmedabad vs. State of Gujarat 1974 (1) SCC 717 that "affiliation must be a real and meaningful exercise of right for minority institutions in the matter of imparting general secular education. Any law which provides for affiliation on terms which will involve abridgment of the right of linguistic and religious minorities to administer and establish educational institutions of their choice will offend Article 30(1): The educational institutions set up by minorities will be robbed of their utility if boys and girls cannot be trained in such institutions for university degrees. Minorities will virtually lose their right to equip their children for ordinary careers if affiliation be on terms which would make them surrender and lose their rights to establish and administer educational institutions of their choice under Article 30. The primary purpose of affiliation is that the students reading in the minority institutions will have qualifications in the shape of degrees necessary for a useful career in life. The establishment of a minority institution is not only ineffective but also unreal unless such institution is affiliated to a University for the purpose of conferment of degrees on students." It has been held in T.M.A. Pai Foundation (supra) that affiliation and recognition has to be available to every institution that fulfills the conditions for grant of such affiliation and recognition.

The right of the minorities to establish and administer educational institutions of their choice under Article 30(1) of the Constitution is subject to the regulatory power of the State for maintaining and facilitating the excellence of the standard of education. Reference may, in this connection be made to following observations of their lordships in the clarificatory judgement rendered by a Constitutional Bench of the Supreme Court in P.A. Inamdar vs. State of Maharashtra.

“121. Affiliation or recognition by the State or the Board or the university competent to do so, cannot be denied solely on the ground that the institution is a minority educational institution. However, the urge or need for affiliation or recognition brings in the concept of regulation by way of laying down conditions consistent with the requirement of ensuring merit, excellence of education and preventing maladministration. **For example, provisions can be made indicating the quality of the teachers by prescribing the minimum qualifications that they must possess and the courses of studies and curricula. The existence of infrastructure sufficient for its growth can be stipulated as a prerequisite to the grant of recognition or affiliation. However, there cannot be interference in the day-to-day administration. The essential ingredients of the management, including admission of students, recruiting of staff and the quantum of fee to be charged, cannot be regulated.**

122. Apart from the generalised position of law that the right to administer does not include the right to maladminister, an additional source of power to regulate by enacting conditions accompanying affiliation or recognition exists. A balance has to be struck between the two objectives: (i) that of ensuring the standard of excellence of the institution, and (ii) that of preserving the right of the minority to establish and administer its educational institution. **Subject to a reconciliation of the two objectives, any regulation accompanying affiliation or recognition must satisfy the triple tests: (i) the test of reasonableness and rationality, (ii) the test that the regulation would be conducive to making the institution an effective vehicle of education for the minority community or**

other persons who resort to it, and (iii) that there is no inroad into the protection conferred by Article 30(1) of the Constitution, that is by framing the regulation the essential character of the institution being a minority educational institution, is not taken away.”

(emphasis supplied)

A minority educational institution seeking recognition/ affiliation must fulfill the statutory requirements concerning the academic excellence, the minimum qualifications of eligibility prescribed by the statutory authorities for Head Master/ Principal/ teachers/ lecturers and the courses of studies and curriculum. It must have sufficient infrastructural and instructional facilities as well as financial resources for its growth. No condition should be imposed for grant of recognition or affiliation, which would, in truth and in effect, infringe the right guaranteed under Article 30(1) of the Constitution or impinge upon the minority character of the institution concerned. If an abject surrender of the right guaranteed under Article 30(1) is made a condition of recognition or affiliation, the denial of recognition or affiliation would be violative of Article 30(1).

### **Conclusion**

A stream of Supreme Court decisions commencing with the Kerala Education Bill case and climaxed by the Eleven Judges Bench case in T.M.A. Pai Foundation (Supra) has settled the law for the present. The proposition of law enunciated in T.M.A. Pai Foundation is reiterated in the clarificatory judgement rendered by another Constitutional Bench of the Supreme Court in P.A. Inamdar vs. State of Maharashtra [2005 (6) SCC 537]. The general principles relating to establishment and administration of educational institution by minorities may be summarized thus:

- (i) The right of minorities to establish and administer educational institutions of their choice guaranteed under Article 30(1) is subject to the regulatory power of the State

for maintaining and facilitating the excellence of educational standard. The minority institutions cannot be allowed to fall below the standards of excellence expected of educational institutions, or under the guise of exclusive right of management, to decline to follow the general pattern. The essential ingredients of the management, including admission of students, recruitment of staff and the quantum of fee to be charged cannot be regulated.

- (ii) The regulations made by the statutory authorities should not impinge upon the minority character of the institution. The regulations must satisfy a dual test-that it is regulative of the educational character of the institution and is conducive to making the institution an effective vehicle of education for the minority community or other persons who resort to it. Regulations that embraced and reconciled the two objectives could be considered reasonable.
- (iii) All laws made by the State to regulate the administration of educational institutions, and grant-in-aid, will apply to minority educational institutions also. But if any such law or regulations interfere with the overall administrative control by the management over the staff, or abridges/ dilutes in any other manner, the right to establish and administer educational institutions, such law or regulations, to that extent, would be inapplicable to minority institutions.
- (iv) The general laws of the land relating to national interest, national security, social welfare, public order, morality, health, sanitation, taxation etc. applicable to all, will equally apply to minority educational institutions also.
- (v) The fundamental right guaranteed under Article 30(1) is intended to be effective and should not be whittled down by any administrative exigency. No inconvenience or difficulties, administrative and financial, can justify infringement of the fundamental right.

- (vi) Receipt of aid does not alter the nature or character of the minority educational institution receiving aid. Article 30(1) clearly implies that any grant that is given by the State to the minority educational institution cannot have such conditions attached to it which will in any way dilute or abridge the rights of the minorities to establish and administer educational institutions. But the State can lay down reasonable conditions for obtaining grant-in-aid and for its proper utilisation.
- (vii) The State can regulate the service conditions of the employees of the minority educational institutions to ensure quality of education. Any law intended to regulate service conditions of employees of educational institutions will apply to minority educational institutions also, provided that such law does not interfere with the overall administrative control of the managements over the staff. The State can introduce a mechanism for redressal of the grievances of the employees.
- (viii) The right of minorities to establish and administer educational institutions of their choice comprises the following rights:
  - (a) **to choose its governing body in whom the founders of the institution have faith and confidence to conduct and manage the affairs of the institution.**

The freedom to choose the persons to be nominated as members of the governing body has always been recognized as a vital facet of the right to administer the educational institution. Any rule which takes away this right of the management has been held to be interfering with the right guaranteed by Article 30(1) of the Constitution. The management can induct eminent or competent persons from other communities in the managing Committees/ Governing Bodies. The management can induct a sprinkling of non-minority

members in the managing Committees/ Governing Bodies. By inducting a non-minority member into the Managing Committee/ Governing Body of the minority educational institution does not shed its character and cease to be a minority institution. The minority character of a minority educational institution is not impaired so long as the Constitution of the Managing Committee/ Governing Body provides for an effective majority to the members of the minority community.

The State Government/ Statutory authorities cannot induct their nominees in the Managing Committee/ Governing Body of a minority educational institution. The introduction of an outside authority, however high it may be, either directly or through its nominees in the Managing Committee/ Governing Body of the minority educational institution to conduct the affairs of the institution would be completely destructive of the fundamental right guaranteed by Article 30(1) of the Constitution and would reduce the management to a helpless entity having no real say in the matter and thus destroy the very personality and individuality of the institution which is fully protected by Article 30 of the Constitution.

- (b) to appoint teaching staff (Teachers/ Lecturers and Head Masters/ Principals) also non-teaching staff; and to take action if there is dereliction of duty on the part of any of its employees.**

Autonomy in administration means right to administer effectively and to manage and conduct the affairs of the institution. The State or any University/ Statutory authority can not under the cover or garb of adopting regulatory measures destroy the administrative autonomy of a minority educational institution or start interfering with the administration of the management of the institution so as to render the right of the administration of the institution concerned nugatory

or illusory. The State Government or a University cannot regulate the method or procedure for appointment of Teachers/ Lecturers/ Headmasters/ Principals of a minority educational institution. Once a Teacher/ Lecturer/ Headmaster/ Principal possessing the requisite qualifications prescribed by the State or the University has been selected by the management of the minority educational institution by adopting any rational procedure of selection, the State Government or the University would have no right to veto the selection of those teachers etc.

The State Government or the University cannot apply rules/ regulations/ ordinances to a minority educational institution, which would have the effect of transferring control over selection of staff from the institution concerned to the State Government or the University, and thus, in effect allow the State Government or the University to select the staff for the institution, directly interfering with the right of the minorities guaranteed under Article 30(1). **Composition of the Selection Committee for appointment of teaching staff of a minority educational institution should not be such as would reduce the management to a helpless entity having no real say in the matter of selection/ appointment of staff and thus destroy the very personality and individuality of the institution which is fully protected by Article 30(1) of the Constitution.**

The State Government or the University is not empowered to require a minority educational institution to seek its approval in the matter of selection/ appointment or initiation of disciplinary action against any member of its teaching or non-teaching staff. The role of the State Government or the University is limited to the extent of ensuring that teachers/ lecturers/ Headmasters/ Principals selected by management of a minority educational institution fulfill the requisite qualifications of eligibility prescribed therefor.

In Lily Kurian vs. Sr. Lewina (1979) 2 SC 124, a provision enabling an aggrieved member of the staff of a college to make an appeal to the Vice-Chancellor against an order of suspension and other penalties was held to be violative of Article 30(1). Again in All Saints High

School, Hyderabad vs. State of Andhra Pradesh 1980 (2) SCC 478, a provision contained in Andhra Pradesh Private Educational institution Control Act, 1995 requiring prior approval of the competent authority of all orders of dismissal, removal or reduction in rank passed against a teacher by management of the college was held to be inapplicable to a minority institution.

It has been brought to the notice of the Commission that by the memorandum no. 3-1/78/CP dated 12.10.1981, the University Grants Commission has directed all universities that while framing their statutes/ ordinances/ regulations, they should ensure that these do not infringe with Article 30(1) of the Constitution relating to administration of minority educational institutions.

It has been held by the Supreme Court in State of Himachal Pradesh vs. Parasram AIR SCW 373, that declaration of law made by the Supreme Court cannot be forsaken, under any pretext by any authority. In Brahmo Samaj Education Society vs. State of West Bengal (2004) 6 SCC 224, the Supreme Court has held that “the State Government shall take note of the declarations of law made by this Court in this regard and make suitable amendments to their laws, rules and regulations to bring them in conformity with the principles set out therein.

The importance of the right to appoint Teachers/ Lecturers/ Head Masters/ Principals of their choice by the minorities, as an important part of their fundamental right under Article 30 was highlighted in St. Xavier (Supra) thus:

“It is upon the principal and teachers of a college that the tone and temper of an educational institution depend. On them would depend its reputation, the maintenance of discipline and its efficiency in 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..... **So long as the persons chosen have the qualifications prescribed by the University, the choice must be left to the management.** That is part of the fundamental right of the minorities to administer the educational institution established by them.”

(emphasis supplied)

The aforesaid proposition of law enunciated in St. Xavier (Supra) has been approved by the Supreme Court in T.M.A. Pai Foundation (Supra). The State has the power to regulate the affairs of the minority educational institution also in the interest of discipline and academic excellence. But in that process the aforesaid right of the management cannot be taken away even if the Government is giving hundred percent grant. **The fact that the post of the Teacher/ Headmaster/ Principal is also covered by the State aid, will make no difference.** It has been held by the Supreme Court in Secretary, Malankara Syrian Catholic College vs. T. Jose 2007 AIR SCW 132 that even if the institution is aided, there can be no interference with the said right. Subject to the eligibility conditions/ qualifications prescribed by the State or Regulating Authority being met, the minority educational institution will have the freedom to appoint Teachers/ Lecturers/ Headmasters/ Principals by adopting any rational procedure of selection. The imposing of any trammel thereon except to the extent of prescribing the requisite qualifications and experience or otherwise fostering the interests of the institution itself cannot but be considered as a violation of the right guaranteed under Article 30(1) of the Constitution.

- (c) **to admit the eligible students of their choice and to setup a reasonable fee structure.**

It has been held in the case of P.A. Inamdar (Supra) that “a minority educational institution has a right to admit students of its own choice, it can, as a matter of its own free will, admit students of non-minority community. However, non-minority students cannot be forced upon

it. The only restriction on the free will of the minority educational institution admitting students belonging to a non-minority community is, as spelt out by Article 30 itself, that the manner and number of such admissions should not be violative of the minority character of the institution.” Reference may, in this connection, be made to the following observations made in the case of P.A. Inamdar (Supra):

“131. Here itself we are inclined to deal with the question as to seats allocated for Non-Resident Indians (“NRI” for short) or NRI seats. It is common knowledge that some of the institutions grant admissions to a certain number of students under such quota by charging a higher amount of fee. In fact, the term “NRI” in relation to admissions is a misnomer. By and large, we have noticed in cases after cases coming to this Court, neither the students who get admissions under this category nor their parents are NRIs. In effect and reality, under this category, less meritorious students, but who can afford to bring more money, get admission. During the courses of hearing, it was pointed out that a limited number of such seats should be made available as the money brought by such students admitted against NRI quota enables the educational institutions to strengthen their level of education and also to enlarge their educational activities. It was also pointed out that people of Indian origin, who have migrated to other countries, have a desire to bring back their children to their own country as they not only get education but also get reunited with the Indian cultural ethos by virtue of being here. They also wish the money which they would be spending elsewhere on education of their children should rather reach their own motherland. A limited reservation of such seats, not exceeding 15%, in our opinion, may be made available to NRIs depending

on the discretion of the management subject to two conditions. First, such seats should be utilised bona fide by NRIs only and for their children or wards. Secondly, within this quota, merit should not be given a complete go-by. The amount of money, in whatever form collected from such NRIs, should be utilised for benefiting students such as from economically weaker sections of the society, whom, on well-defined criteria, the educational institution may admit on subsidised payment of their fee. To prevent misutilisation of such quota or any malpractice referable to NRI quota seats, suitable legislation or regulation needs to be framed. So long as the State does not do it, it will be for the Committees constituted pursuant to the direction in Islamic Academy to regulate.

132. Our answer to the first question is that neither the **policy of reservation can be enforced by the State nor any quota or percentage of admissions can be carved out to be appropriated by the State in a minority or non-minority unaided educational institution.** Minority institutions are free to admit students of their own choice including students of non-minority community as also members of their own community from other States, both to a limited extent only and not in a manner and to such an extent that their minority educational institution status is lost. If they do so, they lose the protection of Article 30(1).”

(emphasis supplied)

In the case of P.A. Inamdar (Supra) one of the questions framed for being answered was whether private unaided professional colleges are entitled to admit students by evolving their own matter of admission procedure. While answering the question their Lordships have observed as under : -

“133. So far as the minority unaided institutions are concerned to admit students being one of the components of “the right to establish and administer an institution”, the State cannot interfere therewith. Up to the level of undergraduate education, the minority unaided educational institutions enjoy total freedom.

134. However, different considerations would apply for graduate and postgraduate level of education, as also for technical and professional educational institutions. Such education cannot be imparted by any institution unless recognised by or affiliated with any competent authority created by law, such as a university, Board, Central or State Government or the like. Excellence in education and maintenance of high standards at this level are a must. To fulfil these objectives, the State can and rather must, in national interest, step in. The education, knowledge and learning at this level possessed by individuals collectively constitutes national wealth.

135. Pai Foundation has already held that the minority status of educational institutions is to be determined by treating the States as units. **Students of that community residing in other States where they are not in minority, shall not be considered to be minority in that particular State and hence their admission would be at par with other non-minority students of that State. Such admissions will be only to a limited extent that is like a “sprinkling” of such admissions, the term we have used earlier borrowing from Kerala Education Bill, 1957. In minority educational institutions, aided or unaided, admissions shall be at the State level. Transparency and merit shall have to be assured.**

136. Whether minority or non-minority institutions, there may be more than one similarly situated institutions imparting education in anyone discipline, in any State. The same aspirant seeking admission to take education in any one discipline of education shall have to purchase admission forms from several institutions and appear at several admission tests conducted at different places on the same or different dates and there may be a clash of dates. If the same candidate is required to appear in several tests, he would be subjected to unnecessary and avoidable expenditure and inconvenience. **There is nothing wrong in an entrance test being held for one group of institutions imparting same or similar education. Such institutions situated in one State or in more than one State may join together and hold a common entrance test or the State may itself or through an agency arrange for holding of such test.** Out of such common merit list the successful candidates can be identified and chosen for being allotted to different institutions depending on the courses of study offered, the number of seats, the kind of minority to which the institution belongs and other relevant factors. Such an agency conducting the common entrance test (“CET” for short) must be one enjoying utmost credibility and expertise in the matter. This would better ensure the fulfilment of twin objects of transparency and merit. CET is necessary in the interest of achieving the said objectives and also for saving the student community from harassment and exploitation. Holding of such common entrance test followed by centralised counselling or, in other words, single-window system regulating admissions does not cause any dent in the right of minority unaided

educational institutions to admit students of their choice. Such choice can be exercised from out of the list of successful candidates prepared at CET without altering the order of merit inter se of the students so chosen.

137. Pai Foundation has held that minority unaided institutions can legitimately claim unfettered fundamental right to choose the students to be allowed admission and the procedure therefor subject to its being fair, transparent and non-exploitative. The same principle applies to non-minority unaided institutions. There may be a single institution imparting a particular type of education which is not being imparted by any other institution and having its own admission procedure fulfilling the test of being fair, transparent and non-exploitative. All institutions imparting same or similar professional education can join together for holding a common entrance test satisfying the abovesaid triple tests. The State can also provide a procedure of holding a common entrance test in the interest of securing fair and merit-based admissions and preventing maladministration. The admission procedure so adopted by a private institution or group of institutions, if it fails to satisfy all or any of the triple tests, indicated hereinabove, can be taken over by the State substituting its own procedure. The second question is answered accordingly.

138. It needs to be specifically stated that having regard to the larger interest and welfare of the student community to promote merit, achieve excellence and curb malpractices, it would be permissible to regulate admissions by providing a centralised and single-window procedure. Such a procedure, to a large extent,

can secure grant of merit-based admissions on a transparent basis. Till regulations are framed, the Admission Committees can oversee admissions so as to ensure that merit is not the casualty.”

(emphasis supplied)

- (d) **To use its properties and assets for the benefit of the institution.** The management of a minority educational institution can use properties and assets of an educational institution for its future development as also its expansion.

### **Mode of instruction**

A particular State can validly take a policy decision to compulsorily teach its regional language. (See English Medium Students Parent Association vs. State of Karnataka (1994) 1 SCC 550). The State Government takes the policy decision keeping in view the larger interest of the State, because the official and common business are carried on in that State in the regional language. A proper understanding of the regional language is necessary for easily carrying out the day to day affairs of the people living in that particular State and also for proper carrying out of daily administration. The learning of the regional language of the State would bridge the cultural barriers and will positively contribute for national integration. Hence a regulation imposed by the State upon the religious/ linguistic minorities to teach its regional language is a reasonable one, which is conducive to the needs and larger interest of the State and it does not in any manner interfere with the right under Article 30(1) of the Constitution.

**The imposition of official language of a State as the sole medium of instruction cannot be said to be in the interest of general public and has no nexus to public interest.** The medium of instruction is one aspect of freedom of speech and expression guaranteed under Article 19 of the Constitution and the State cannot enact a law or frame a rule commanding that a student should express himself in a particular regional language. In view of the clear mandate of Article 13 of the

Constitution, the State cannot enact any law or frame a regulation to make the said fundamental right a mere illusion. Moreover, Article 30(1) of the Constitution gives vast discretion and option to the minorities in selecting the type of the institution which they want to establish. The said type of institution includes the type of medium of instruction in which they want to impart education. The question whether the right to choose medium of instruction is a fundamental right and the religious or linguistic minority has a right to choose medium of instruction of their choice has been clinched down by the Supreme Court in T.M.A. Pai's case (Supra). The Supreme Court has declared that the right to establish and administer educational institutions of their choice under Article 30(1) read with Article 29(1) would include the right to have choice of medium of instruction in imparting education. The medium of instruction is entirely choice of the management of the minority institution.

**In Associated Management of Primary and Secondary Schools in Karnataka (Supra)** a Full Bench of the Karnataka High Court has declared that the right to choose medium of instruction of their choice is a fundamental right guaranteed under Articles 19(1) (a) (g), 21, 26, 29(1) and 30(1) of the Constitution. The Full Bench has also held that “(i) it is a fundamental right of the parent and child to choose the medium of instruction even in primary school. The police power of the State to determine the medium of instruction must yield to the fundamental right of the parent and the child and that (ii) the Government policy compelling children studying in Government recognised schools to have primary education in the mother tongue or the regional language is violative of Articles 19(1) (g), 26 and 30 (1) of the Constitution.

### **Fee regulation**

Among the law declared in the case of T.M.A. Pai Foundation (Supra) every institution is free to devise its own fee structure subject to the limitation that there can be no profiteering and no capitation fee can be charged directly or indirectly. Reference may, in this

connection be also made to the following observations of their Lordships in the case of P.A. Inamdar (Supra): -

“144. The two Committees for monitoring admission procedure and determining fee structure in the judgment of Islamic Academy are in our view, permissible as regulatory measures aimed at protecting the interest of the student community as a whole as also the minorities themselves, in maintaining required standards of professional education on non-exploitative terms in their institutions. **Legal provisions made by the State Legislatures or the scheme evolved by the Court for monitoring admission procedure and fee fixation do not violate the right of minorities under Article 30(1) or the right of minorities and non-minorities under Article 19(1) (g).** They are reasonable restrictions in the interest of minority institutions permissible under Article 30(1) and in the interest of general public under Article 19(6) of the Constitution.”

(emphasis supplied)

### **Policy of Reservation in admission**

Article 15(5) of the Constitution of India exempts an educational institution covered under Article 30(1) from the policy of reservation in admission. That being so, provisions of the Central Educational Institutions (Reservation in Admission) Act, 2006 cannot be made applicable to an educational institution covered under Article 30(1). Moreover, P.A. Inamdar (Supra) is an authority on proposition of law that neither can the policy of reservation be enforced by the State nor can any quota or percentage of admission be carved out to be appropriated by the State in a minority educational institution. The State cannot regulate or control admissions in minority educational institutions so as to compel them to give up a share of the available seats to candidates chosen by the State. This would amount to

nationalisation of seats which has been specifically disapproved in T.M.A. Pai (Supra). Such imposition of quota of state seats or enforcing reservation policy of the State on available seats in minority educational institutions are acts constituting a serious encroachment on the right enshrined in Article 30(1). Such appropriation of seats can also not be held to be a regulatory measure or a reasonable restriction within the meaning of Article 30(1) of the Constitution.

**Applicability of Right to Education Act in Minority Schools.**

The Constitutional bench of Supreme Court in the judgment dated 6<sup>th</sup> May, 2014 in Pramati Educational & Cultural Trust ® & Others Versus Union of India & Ors. (in Writ Petition (C) No. 416 of 2012 reported in "2014 AIR SCW 2859" and "(2014) 8 SCC 1" held that the 2009 Act i.e. (the Right of Children to Free and Compulsory Education Act, 2009) insofar as it applies to minority schools, aided or unaided, covered under clause (1) of Article 30 of the Constitution is ultra vires the Constitution.

The aforesaid propositions of law establishes that RTE Act, 2009 is not applicable to Minority schools, aided or unaided, at all.