CASE NO.:
Writ Petition (civil) 317 of 1993

PETITIONER:
T.M.A. Pai Foundation & Ors.

RESPONDENT:
State of Karnataka & Ors.

DATE OF JUDGMENT: 31/10/2002

BENCH:
C.J.I., G.B. Pattanaik, S. Rajendra Babu, K.G. Balakrishnan, P. Venkatarama Reddi & Arijit P asayat.

JUDGMENT:
J U D G M E N T

W I T H

Writ Petition (Civil) Nos. 252 of 1979, 54-57, 2228 of 1981, 2460, 2582, 2583-84, 3362, 3517, 3602, 3603, 3634, 3635, 3636, 8398, 8391, 5621, 5035, 3701, 3702, 3703, 3704, 3715, 3728, 4648, 4649, 2479, 2480, 2547 and 3475 of 1982, 7610, 4810, 9839 and 9683-84 of 1983, 12622-24 of 1984, 119 and 133 of 1987, 620 of 1989, 133 of 1992, 746, 327, 350, 613, 597, 536, 626, 444, 417, 523, 474, 485, 484, 355, 525, 469, 392, 629, 399, 531, 603, 702, 628, 663, 284, 555, 343, 596, 407, 737, 738, 747, 479, 610, 627, 685, 706, 726, 598, 482 and 571 of 1993, 295, 764 and D. No. 1741 of 1994, 331, 446 and 447 of 1995, 364 and 435 of 1996, 456, 454, 447 and 485 of 1997, 356, 357 and 328 of 1998, 199, 294, 279, 35, 181, 373, 487 and 23 of 1999, 561 of 2000, 6 and 132 of 2002, Civil Appeal Nos. 1236-1241 and 2392 of 1977, 687 of 1976, 3179, 3180, 3181, 3182, 1521-56, 3042-91 of 1979, 2929-31, 1464 of 1980, 2271 and 2443-46 of 1981, 4020, 290 and 10766 of 1983, 5042 and 5043 of 1989, 6147 and 5381 of 1990, 71, 72 and 73 of 1991, 1890-91, 2414 and 2625 of 1992, 4695-4746, 4754-4866 of 1993, 5543-5544 of 1994, 8098-8100 and 11321 of 1995, 4654-4658 of 1997, 608, 3543 and 3584-3585 of 1998, 5053-5054 of 2000, 5647, 5648-5649, 5650, 5651, 5652, 5653-5654, 5655, 5656 of 2001 and 2334 of 2002, S.L.P. (C) Nos. 9950 and 9951 of 1979, 11526 and 863 of 1980, 12408 of 1985, 8844 of 1986, 12320 of 1987, 14437, 18061-62 of 1993, 904-05 and 11620 of 1994, 23421 of 1995, 4372 of 1996, 10360 and 10664 of 1997, 1216, 9779-9786, 6472-6474 and 9793 of 1998, 5101, 4480 and 4486 of 2002 T.C. (Civil) No. 26 of 1990 and T.P. (Civil) Nos. 1013-14 of 1993.

KIRPAL, C.J.I.

1. India is a land of diversity of different castes, peoples, communities, languages, religions and culture. Although these people enjoy complete political freedom, a vast part of the multitude is illiterate and lives below the poverty line. The single most powerful tool for the upliftment and progress of such diverse communities is education. The state, with its limited resources and slow-moving machinery, is unable to fully develop the genius of the Indian people. Very often, the impersonal education that is imparted by the state, devoid of adequate material content that will make the students self-reliant, only succeeds in producing potential pen-pushers, as a result of which sufficient jobs are not available.

2. It is in this scenario where there is a lack of quality education and adequate number of schools and colleges that private educational institutions have been established by educationists, philanthropists and religious and linguistic minorities. Their grievance is that the unnecessary and unproductive load on their

back in the form of governmental control, by way of rules and regulations, has thwarted the progress of quality education. It is their contention that the government must get off their back, and that they should be allowed to provide quality education uninterrupted by unnecessary rules and regulations, laid down by the bureaucracy for its own self-importance. The private educational institutions, both aided and unaided, established by minorities and non-minorities, in their desire to break free of the unnecessary shackles put on their functioning as modern educational institutions and seeking to impart quality education for the benefit of the community for whom they were established, and others, have filed the present writ petitions and appeals asserting their right to establish and administer educational institutions of their choice unhampered by rules and regulations that unnecessarily impinge upon their autonomy.

3. The hearing of these cases has had a chequered history. Writ Petition No.350 of 1993 filed by the Islamic Academy of Education and connected petitions were placed before a Bench of 5 Judges. As the Bench was prima facie of the opinion that Article 30 did not clothe a minority educational institution with the power to adopt its own method of selection and the correctness of the decision of this Court in St. Stephen's College vs. University of Delhi [(1992) 1 SCC 558] was doubted, it was directed that the questions that arose should be authoritatively answered by a larger Bench. These cases were then placed before a Bench of 7 Judges. The questions framed were recast and on 6th February, 1997, the Court directed that the matter be placed before a Bench of at least 11 Judges, as it was felt that in view of the Forty-Second Amendment to the Constitution, whereby "education" had been included in Entry 25 of List III of the Seventh Schedule, the question of who would be regarded as a "minority" was required to be considered because the earlier case laws related to the pre-amendment era, when education was only in the State List. When the cases came up for hearing before an eleven Judge Bench, during the course of hearing on 19th March, 1997, the following order was passed:-

"Since a doubt has arisen during the course of our arguments as to whether this Bench would feel itself bound by the ratio propounded in In Re Kerala Education Bill, 1957 (1959 SCR 955) and the Ahmedabad St. Xaviers College Society vs. State of Gujarat, 1975(1) SCR 173, it is clarified that this sized Bench would not feel itself inhibited by the views expressed in those cases since the present endeavour is to discern the true scope and interpretation of Article 30(1) of the Constitution, which being the dominant question would require examination in its pristine purity. The factum is recorded."

4. When the hearing of these cases commenced, some questions out of the eleven referred for consideration were reframed. We propose to give answers to these questions after examining the rival contentions on the issues arising therein.

5. On behalf of all these institutions, the learned counsels have submitted that the Constitution provides a fundamental right to establish and administer educational institutions. With regard to non-minorities, the right was stated to be contained in Article 19(1)(g) and/or Article 26, while in the case of linguistic and religious minorities, the submission was that this right was enshrined and protected by Article 30. It was further their case that private educational institutions should have full autonomy in their administration. While it is necessary for an educational institution to secure recognition or affiliation, and for which purpose rules and regulations or conditions could be prescribed pertaining to the requirement of the quality of education to be provided, e.g., qualifications of teachers, curriculum to be taught and the minimum facilities which should be available for the students, it was submitted that the state should not have a right to interfere or lay down conditions with regard to the administration of those institutions. In particular, objection was taken to the nominations by the state on the governing bodies of the private institutions, as well as to provisions with regard to the manner of admitting students, the fixing of the fee structure and recruitment of teachers through state channels.

6. The counsels for these educational institutions, as well as the Solicitor General of India, appearing on behalf of the Union of India, urged that the decision of this Court in Unni Krishnan, J.P. and Others vs. State of Andhra Pradesh and Others [(1993) 1 SCC 645] case required reconsideration. It was submitted that the scheme that had been framed in Unni Krishnan's case had imposed unreasonable restrictions on the administration of the private educational institutions, and that especially in the case of minority institutions, the right guaranteed to them under Article 30(1) stood infringed. It was also urged that the object that was sought to be achieved by the scheme was, in fact, not achieved.

7. On behalf of the private minority institutions, it was submitted that on the correct interpretation of the various provisions of the Constitution, and Articles 29 and 30 in particular, the minority institutions have a right to establish and administer educational institutions of their choice. The use of the phrase "of their choice" in Article 30(1) clearly postulated that the religious and linguistic minorities could establish and administer any type of educational institution, whether it was a school, a degree college or a professional college; it was argued that such an educational institution is invariably established primarily for the benefit of the religious and linguistic minority, and it should be open to such institutions to admit students of their choice. While Article 30(2) was meant to ensure that these minority institutions would not be denied aid on the ground that they were managed by minority institutions, it was submitted that no condition which curtailed or took away the minority character of the institution while granting aid could be imposed. In particular, it was submitted that Article 29(2) could not be applied or so interpreted as to completely obliterate the right of the minority institution to grant admission to the students of its own religion or language. It was also submitted that while secular laws relating to health, town planning, etc., would be applicable, no other rules and regulations could be framed that would in any way curtail or interfere with the administration of the minority educational institution. It was emphasized by the learned counsel that the right to administer an educational institution included the right to constitute a governing body, appoint teachers and admit students. It was further submitted that these were the essential ingredients of the administration of an educational institution, and no fetter could be put on the exercise of the right to administer. It was conceded that for the purpose of seeking recognition, qualifications of teachers could be stipulated, as also the qualifications of the students who could be admitted; at the same time, it was argued that the manner and mode of appointment of teachers and selection of students had to be within the exclusive domain of the educational institution.

8. On behalf of the private non-minority unaided educational institutions, it was contended that since secularism and equality were part of the basic structure of the Constitution, the provisions of the Constitution should be interpreted so that the rights of the private non-minority unaided institutions were the same as that of the minority institutions. It was submitted that while reasonable restrictions could be imposed under Article 19(6), such private institutions should have the same freedom of administration of an unaided institution as was sought by the minority unaided institutions.

9. The learned Solicitor General did not dispute the contention that the right to establish an institution had been conferred on the non-minorities by Articles 19 and 26, and on the religious and linguistic minorities by Article 30. He agreed with the submission of the counsels for the appellants that the Unni Krishnan decision required reconsideration, and that the private unaided educational institutions were entitled to greater autonomy. He, however, contended that Article 29(2) was applicable to minority institutions, and the claim of the minority institutions that they could preferably admit students of their own religion or language to the exclusion of the other communities was impermissible. In other words, he submitted that Article 29(2) made it obligatory even on the minority institutions not to deny admission on the ground of religion, race, caste, language or any of them.

10. Several States have totally disagreed with the arguments advanced by

the learned Solicitor General with regard to the applicability of Article 29(2) and 30(1). The States of Madhya Pradesh, Chattisgarh and Rajasthan have submitted that the words "their choice" in Article 30(1) enabled the minority institutions to admit members of the minority community, and that the inability of the minority institutions to admit others as a result of the exercise of "their choice" would not amount to a denial as contemplated under Article 29(2). The State of Andhra Pradesh has not expressly referred to the inter-play between Article 29(2) and Article 30(1), but has stated that "as the minority educational institutions are intended to benefit the minorities, a restriction that at least 50 per cent of the students admitted should come from the particular minority, which has established the institution, should be stipulated as a working rule", and that an institution which fulfilled the following conditions should be regarded as minority educational institutions:

1. All the office bearers, members of the executive committee of the society must necessarily belong to the concerned religious/linguistic minority without exception.

2. The institution should admit only the concerned minority candidates to the extent of sanctioned intake permitted to be filed by the respective managements.

and that the Court "ought to permit the State to regulate the intake in minority educational institutions with due regard to the need of the community in the area which the institution is intended to serve. In no case should such intake exceed 50% of the total admissions every year."

11. The State of Kerala has submitted, again without express reference to Article 29(2), "that the constitutional right of the minorities should be extended to professional education also, but while limiting the right of the minorities to admit students belonging to their community to 50% of the total intake of each minority institution".

12. The State of Karnataka has submitted that "aid is not a matter of right but receipt thereof does not in any way dilute the minority character of the institution. Aid can be distributed on non-discriminatory conditions but in so far as minority institutions are concerned, their core rights will have to be protected.

13. On the other hand, the States of Tamil Nadu, Punjab, Maharashtra, West Bengal, Bihar and Uttar Pradesh have submitted that Article 30(1) is subject to Article 29(2), arguing that a minority institution availing of state aid loses the right to admit members of its community on the basis of the need of the community.

14. The Attorney General, pursuant to the request made by the court, made submissions on the constitutional issues in a fair and objective manner. We record our appreciation for the assistance rendered by him and the other learned counsel.

15. We may observe here that the counsels were informed that it was not necessary for this Bench to decide four of the questions framed, relating to the issue of who could be regarded as religious minorities; no arguments were addressed in respect thereto.

16. From the arguments aforesaid, five main issues arise for consideration in these cases, which would encompass all the eleven questions framed that are required to be answered.

17. We will first consider the arguments of the learned counsels under these heads before dealing with the questions now remaining to be answered.

1. IS THERE A FUNDAMENTAL RIGHT TO SET UP EDUCATIONAL INSTITUTIONS AND IF SO, UNDER WHICH PROVISION?

18. With regard to the establishment of educational institutions, three Articles of the Constitution come into play. Article 19(1)(g) gives the right to all the citizens to practice any profession or to carry on any occupation, trade or business; this right is subject to restrictions that may be placed under Article 19(6). Article 26 gives the right to every religious denomination to establish and maintain an institution for religious purposes, which would include an educational institution. Article 19(1)(g) and Article 26, therefore, confer rights on all citizens and religious denominations to establish and maintain educational institutions. There was no serious dispute that the majority community as well as linguistic and religious minorities would have a right under Articles 19(1)(g) and 26 to establish educational institutions. In addition, Article 30(1), in no uncertain terms, gives the right to the religious and linguistic minorities to establish and administer educational institutions of their choice.

19. We will first consider the right to establish and administer an educational institution under Article 19(1)(g) of the Constitution, and deal with the right to establish educational institutions under Article 26 and 30 in the next part of the judgment while considering the rights of the minorities.

20. Article 19(1)(g) employs four expressions, viz., profession, occupation, trade and business. Their fields may overlap, but each of them does have a content of its own. Education is per se regarded as an activity that is charitable in nature [See The State of Bombay vs. R.M.D. Chamarbaugwala, (1957) SCR 874: AIR (1957) SC 699]. Education has so far not been regarded as a trade or business where profit is the motive. Even if there is any doubt about whether education is a profession or not, it does appear that education will fall within the meaning of the expression "occupation". Article 19(1)(g) uses the four expressions so as to cover all activities of a citizen in respect of which income or profit is generated, and which can consequently be regulated under Article 19(6). In Webster’s Third New International Dictionary at page 1650, "occupation" is, inter alia, defined as "an activity in which one engages" or "a craft, trade, profession or other means of earning a living".

21. In Corpus Juris Secundum, Volume LXVII, the word "occupation" is defined as under:-

"The word "occupation" also is employed as referring to that which occupies time and attention; a calling; or a trade; and it is only as employed in this sense that the word is discussed in the following paragraphs.

There is nothing ambiguous about the word "occupation" as it is used in the sense of employing one’s time. It is a relative term, in common use with a well-understood meaning, and very broad in its scope and significance. It is described as a generic and very comprehensive term, which includes every species of the genus, and compasses the incidental, as well as the main, requirements of one’s vocation, calling, or business. The word "occupation" is variously defined as meaning the principal business of one’s life; the principal or usual business in which a man engages; that which principally takes up one’s time, thought, and energies; that which occupies or engages the time and attention; that particular business, profession, trade, or calling which engages the time and efforts of an individual; the employment in which one engages, or the vocation of one’s life; the state of being occupied or employed in any way; that activity in which a person, natural or artificial, is engaged with the element of a degree of permanency attached."

22. A Five Judge Bench in Sodan Singh and Others vs. New Delhi Municipal Committee and Others [(1989) 4 SCC 155] at page 174, para 28, observed as follows:

"The word occupation has a wide meaning such as any regular work, profession, job, principal activity, employment, business or a

calling in which an individual is engaged.The object of using four analogous and overlapping words in Article 19(1)(g) is to make the guaranteed right as comprehensive as possible to include all the avenues and modes through which a man may earn his livelihood. In a nutshell the guarantee takes into its fold any activity carried on by a citizen of India to earn his living.".

23. In Unni Krishnan's case, at page 687, para 63, while referring to education, it was observed as follows:-
".It may perhaps fall under the category of occupation provided no recognition is sought from the State or affiliation from the University is asked on the basis that it is a fundamental right."

24. While the conclusion that "occupation" comprehends the establishment of educational institutions is correct, the proviso in the aforesaid observation to the effect that this is so provided no recognition is sought from the state or affiliation from the concerned university is, with the utmost respect, erroneous. The fundamental right to establish an educational institution cannot be confused with the right to ask for recognition or affiliation. The exercise of a fundamental right may be controlled in a variety of ways. For example, the right to carry on a business does not entail the right to carry on a business at a particular place. The right to carry on a business may be subject to licensing laws so that a denial of the licence prevents a person from carrying on that particular business. The question of whether there is a fundamental right or not cannot be dependent upon whether it can be made the subject matter of controls.

25. The establishment and running of an educational institution where a large number of persons are employed as teachers or administrative staff, and an activity is carried on that results in the imparting of knowledge to the students, must necessarily be regarded as an occupation, even if there is no element of profit generation. It is difficult to comprehend that education, per se, will not fall under any of the four expressions in Article 19(1)(g). "Occupation" would be an activity of a person undertaken as a means of livelihood or a mission in life. The above quoted observations in Sodan Singh's case correctly interpret the expression "occupation" in Article 19(1)(g).

26. The right to establish and maintain educational institutions may also be sourced to Article 26(a), which grants, in positive terms, the right to every religious denomination or any section thereof to establish and maintain institutions for religious and charitable purposes, subject to public order, morality and health. Education is a recognized head of charity. Therefore, religious denominations or sections thereof, which do not fall within the special categories carved out in Article 29(1) and 30(1), have the right to establish and maintain religious and educational institutions. This would allow members belonging to any religious denomination, including the majority religious community, to set up an educational institution. Given this, the phrase "private educational institution" as used in this judgment would include not only those educational institutions set up by secular persons or bodies, but also educational institutions set up by religious denominations; the word "private" is used in contradistinction to government institutions.

2. DOES UNNIKRISHNAN'S CASE REQUIRE RECONSIDERATION?

27. In the case of Mohini Jain (Miss) vs. State of Karnataka and Others [(1992) 3 SCC 666], the challenge was to a notification of June 1989, which provided for a fee structure, whereby for government seats, the tuition fee was Rs.2,000 per annum, and for students from Karnataka, the fee was Rs.25,000 per annum, while the fee for Indian students from outside Karnataka, under the payment category, was Rs.60,000 per annum. It had been contended that charging such a discriminatory and high fee violated constitutional guarantees and rights. This attack was sustained, and it was held that there was a fundamental right to education in every citizen, and that the state was duty bound to provide the education, and that the private institutions that discharge the state's duties were equally bound not to charge a higher fee than the government institutions. The

Court then held that any prescription of fee in excess of what was payable in government colleges was a capitation fee and would, therefore, be illegal. The correctness of this decision was challenged in Unni Krishnan's case, where it was contended that if Mohini Jain's ratio was applied, the educational institutions would have to be closed down, as they would be wholly unviable without appropriate funds, by way of tuition fees, from their students.

28. We will now examine the decision in Unni Krishnan's case. In this case, this Court considered the conditions and regulations, if any, which the state could impose in the running of private unaided/aided recognized or affiliated educational institutions conducting professional courses such as medicine, engineering, etc. The extent to which the fee could be charged by such an institution, and the manner in which admissions could be granted was also considered. This Court held that private unaided recognized/affiliated educational institutions running professional courses were entitled to charge a fee higher than that charged by government institutions for similar courses, but that such a fee could not exceed the maximum limit fixed by the state. It held that commercialization of education was not permissible, and "was opposed to public policy and Indian tradition and therefore charging capitation fee was illegal." With regard to private aided recognized/affiliated educational institutions, the Court upheld the power of the government to frame rules and regulations in matters of admission and fees, as well as in matters such as recruitment and conditions of service of teachers and staff. Though a question was raised as to whether the setting up of an educational institution could be regarded as a business, profession or vocation under Article 19(1)(g), this question was not answered. Jeevan Reddy, J., however, at page 751, para 197, observed as follows:-
".While we do not wish to express any opinion on the question whether the right to establish an educational institution can be said to be carrying on any "occupation" within the meaning of Article 19(1)(g), - perhaps, it is we are certainly of the opinion that such activity can neither be a trade or business nor can it be a profession within the meaning of Article 19(1)(g). Trade or business normally connotes an activity carried on with a profit motive. Education has never been commerce in this country."

29. Reliance was placed on a decision of this Court in Bangalore Water Supply and Sewerage Board vs. A. Rajappa and Others [(1978) 2 SCC 213], wherein it had been held that educational institutions would come within the expression "industry" in the Industrial Disputes Act, and that, therefore, education would come under Article 19(1)(g). But the applicability of this decision was distinguished by Jeevan Reddy, J., observing that "we do not think the said observation (that education as industry) in a different context has any application here". While holding, on an interpretation of Articles 21, 41, 45 and 46, that a citizen who had not completed the age of 14 years had a right to free education, it was held that such a right was not available to citizens who were beyond the age of 14 years. It was further held that private educational institutions merely supplemented the effort of the state in educating the people. No private educational institution could survive or subsist without recognition and/or affiliation granted by bodies that were the authorities of the state. In such a situation, the Court held that it was obligatory upon the authority granting recognition/affiliation to insist upon such conditions as were appropriate to ensure not only an education of requisite standard, but also fairness and equal treatment in matters of admission of students. The Court then formulated a scheme and directed every authority granting recognition/affiliation to impose that scheme upon institutions seeking recognition/affiliation, even if they were unaided institutions. The scheme that was framed, inter alia, postulated (a) that a professional college should be established and/or administered only by a Society registered under the Societies Registration Act, 1860, or the corresponding Act of a State, or by a Public Trust registered under the Trusts' Act, or under the Wakfs Act, and that no individual, firm, company or other body of individuals would be permitted to establish and/or administer a professional college (b) that 50% of the seats in every professional college should be filled by the nominees of the Government or University, selected on the basis of merit determined by a common entrance examination, which will be referred to as "free seats"; the remaining 50% seats ("payment seats") should be filled by those candidates who pay the fee prescribed

therefor, and the allotment of students against payment seats should be done on the basis of inter se merit determined on the same basis as in the case of free seats (c) that there should be no quota reserved for the management or for any family, caste or community, which may have established such a college (d) that it should be open to the professional college to provide for reservation of seats for constitutionally permissible classes with the approval of the affiliating university (e) that the fee chargeable in each professional college should be subject to such a ceiling as may be prescribed by the appropriate authority or by a competent court (f) that every state government should constitute a committee to fix the ceiling on the fees chargeable by a professional college or class of professional colleges, as the case may be. This committee should, after hearing the professional colleges, fix the fee once every three years or at such longer intervals, as it may think appropriate (g) that it would be appropriate for the University Grants Commission to frame regulations under its Act regulating the fees that the affiliated colleges operating on a no grant-in-aid basis were entitled to charge. The AICTE, the Indian Medical Council and the Central Government were also given similar advice. The manner in which the seats were to be filled on the basis of the common entrance test was also indicated.

30. The counsel for the minority institutions, as well as the Solicitor General, have contended that the scheme framed by this Court in Unni Krishnan's case was not warranted. It was represented to us that the cost incurred on educating a student in an unaided professional college was more than the total fee, which is realized on the basis of the formula fixed in the scheme. This had resulted in revenue shortfalls. This Court, by interim orders subsequent to the decision in Unni Krishnan's case, had permitted, within the payment seats, some percentage of seats to be allotted to Non-Resident Indians, against payment of a higher amount as determined by the authorities. Even thereafter, sufficient funds were not available for the development of those educational institutions. Another infirmity which was pointed out was that experience has shown that most of the "free seats" were generally occupied by students from affluent families, while students from less affluent families were required to pay much more to secure admission to "payment seats". This was for the reason that students from affluent families had had better school education and the benefit of professional coaching facilities and were, therefore, able to secure higher merit positions in the common entrance test, and thereby secured the free seats. The education of these more affluent students was in a way being cross-subsidized by the financially poorer students who, because of their lower position in the merit list, could secure only "payment seats". It was also submitted by the counsel for the minority institutions that Unni Krishnan's case was not applicable to the minority institutions, but that notwithstanding this, the scheme so evolved had been made applicable to them as well.

31. Counsel for the institutions, as well as the Solicitor General, submitted that the decision in Unni Krishnan's case, insofar as it had framed the scheme relating to the grant of admission and the fixing of the fee, was unreasonable and invalid. However, its conclusion that children below the age of 14 had a fundamental right to free education did not call for any interference.

32. It has been submitted by the learned counsel for the parties that the implementation of the scheme by the States, which have amended their rules and regulations, has shown a number of anomalies. As already noticed, 50% of the seats are to be given on the basis of merit determined after the conduct of a common entrance test, the rate of fee being minimal. The "payment seats" which represent the balance number, therefore, cross-subsidize the "free seats". The experience of the educational institutions has been that students who come from private schools, and who belong to more affluent families, are able to secure higher positions in the merit list of the common entrance test, and are thus able to seek admission to the "free seats". Paradoxically, it is the students who come from less affluent families, who are normally able to secure, on the basis of the merit list prepared after the common entrance test, only "payment seats".

33. It was contended by petitioners' counsel that the implementation of the Unni Krishnan scheme has in fact (1) helped the privileged from richer urban families, even after they ceased to be comparatively meritorious, and (2) resulted

in economic losses for the educational institutions concerned, and made them financially unviable. Data in support of this contention was placed on record in an effort to persuade this Court to hold that the scheme had failed to achieve its object.

34. Material has also been placed on the record in an effort to show that the total fee realized from the fee fixed for "free seats" and the "payment seats" is actually less than the amount of expense that is incurred on each student admitted to the professional college. It is because there was a revenue shortfall that this Court had permitted an NRI quota to be carved out of the 50% payment seats for which charging higher fee was permitted. Directions were given to UGC, AICTE, Medical Council of India and Central and State governments to regulate or fix a ceiling on fees, and to enforce the same by imposing conditions of affiliation/permission to establish and run the institutions.

35. It appears to us that the scheme framed by this Court and thereafter followed by the governments was one that cannot be called a reasonable restriction under Article 19(6) of the Constitution. Normally, the reason for establishing an educational institution is to impart education. The institution thus needs qualified and experienced teachers and proper facilities and equipment, all of which require capital investment. The teachers are required to be paid properly. As pointed out above, the restrictions imposed by the scheme, in Unni Krishnan's case, made it difficult, if not impossible, for the educational institutions to run efficiently. Thus, such restrictions cannot be said to be reasonable restrictions.

36. The private unaided educational institutions impart education, and that cannot be the reason to take away their choice in matters, inter alia, of selection of students and fixation of fees. Affiliation and recognition has to be available to every institution that fulfills the conditions for grant of such affiliation and recognition. The private institutions are right in submitting that it is not open to the Court to insist that statutory authorities should impose the terms of the scheme as a condition for grant of affiliation or recognition; this completely destroys the institutional autonomy and the very objective of establishment of the institution.

37. The Unni Krishnan judgment has created certain problems, and raised thorny issues. In its anxiety to check the commercialization of education, a scheme of "free" and "payment" seats was evolved on the assumption that the economic capacity of the first 50% of admitted students would be greater than the remaining 50%, whereas the converse has proved to be the reality. In this scheme, the "payment seat" student would not only pay for his own seat, but also finance the cost of a "free seat" classmate. When one considers the Constitution Bench's earlier statement that higher education is not a fundamental right, it seems unreasonable to compel a citizen to pay for the education of another, more so in the unrealistic world of competitive examinations which assess the merit for the purpose of admission solely on the basis of the marks obtained, where the urban students always have an edge over the rural students. In practice, it has been the case of the marginally less merited rural or poor student bearing the burden of a rich and well-exposed urban student.

38. The scheme in Unni Krishnan's case has the effect of nationalizing education in respect of important features, viz., the right of a private unaided institution to give admission and to fix the fee. By framing this scheme, which has led to the State Governments legislating in conformity with the scheme, the private institutions are indistinguishable from the government institutions; curtailing all the essential features of the right of administration of a private unaided educational institution can neither be called fair or reasonable. Even in the decision in Unni Krishnan's case, it has been observed by Jeevan Reddy, J., at page 749, para 194, as follows:

"The hard reality that emerges is that private educational institutions are a necessity in the present day context. It is not possible to do without them because the Governments are in no position to meet the demand - particularly in the sector of medical and technical education which call for substantial outlays. While education is one of the most important functions of the Indian State it has no monopoly therein. Private educational institutions - including

minority educational institutions - too have a role to play."

39. That private educational institutions are a necessity becomes evident from the fact that the number of government-maintained professional colleges has more or less remained stationary, while more private institutions have been established. For example, in the State of Karnataka there are 19 medical colleges out of which there are only 4 government-maintained medical colleges. Similarly, out of 14 Dental Colleges in Karnataka, only one has been established by the government, while in the same State, out of 51 Engineering Colleges, only 12 have been established by the government. The aforesaid figures clearly indicate the important role played by private unaided educational institutions, both minority and non-minority, which cater to the needs of students seeking professional education.

40. Any system of student selection would be unreasonable if it deprives the private unaided institution of the right of rational selection, which it devised for itself, subject to the minimum qualification that may be prescribed and to some system of computing the equivalence between different kinds of qualifications, like a common entrance test. Such a system of selection can involve both written and oral tests for selection, based on principle of fairness.

41. Surrendering the total process of selection to the state is unreasonable, as was sought to be done in the Unni Krishnan scheme. Apart from the decision in St. Stephen's College vs. University of Delhi [(1992) 1 SCC 558], which recognized and upheld the right of a minority aided institution to have a rational admission procedure of its own, earlier Constitution Bench decisions of this Court have, in effect, upheld such a right of an institution devising a rational manner of selecting and admitting students.

42. In R. Chitralekha & Anr. vs. State of Mysore & Ors. [(1964) 6 SCR 368], while considering the validity of a viva-voce test for admission to a government medical college, it was observed at page 380 that colleges run by the government, having regard to financial commitments and other relevant considerations, would only admit a specific number of students. It had devised a method for screening the applicants for admission. While upholding the order so issued, it was observed that "once it is conceded, and it is not disputed before us, that the State Government can run medical and engineering colleges, it cannot be denied the power to admit such qualified students as pass the reasonable tests laid down by it. This is a power which every private owner of a College will have, and the Government which runs its own Colleges cannot be denied that power". (emphasis added)

43. Again, in Minor P. Rajendran vs. State of Madras & Ors. [(1968) 2 SCR 786], it was observed at page 795 that "so far as admission is concerned, it has to be made by those who are in control of the Colleges, and in this case the Government, because the medical colleges are Government colleges affiliated to the University. In these circumstances, the Government was entitled to frame rules for admission to medical colleges controlled by it subject to the rules of the university as to eligibility and qualifications." The aforesaid observations clearly underscore the right of the colleges to frame rules for admission and to admit students. The only requirement or control is that the rules for admission must be subject to the rules of the university as to eligibility and qualifications. The Court did not say that the university could provide the manner in which the students were to be selected.

44. In Kumari Chitra Ghosh and Another vs. Union of India and Others [(1969) 2 SCC 228], dealing with a government run medical college at pages 232-33, para 9, it was observed as follows:

"It is the Central Government which bears the financial burden of running the medical college. It is for it to lay down the criteria for eligibility..."

45. In view of the discussion hereinabove, we hold that the decision in Unni Krishnan's case, insofar as it framed the scheme relating to the grant of admission and the fixing of the fee, was not correct, and to that extent, the said decision and the consequent directions given to UGC, AICTE, Medical Council of

India, Central and State governments, etc., are overruled.

3. IN CASE OF PRIVATE INSTITUTIONS, CAN THERE BE GOVERNMENT REGULATIONS AND, IF SO, TO WHAT EXTENT?

46. We will now examine the nature and extent of the regulations that can be framed by the State, University or any affiliating body, while granting recognition or affiliation to a private educational institution.

47. Private educational institutions, both aided and unaided, are established and administered by religious and linguistic minorities, as well as by non-minorities. Such private educational institutions provide education at three levels, viz., school, college and professional level. It is appropriate to first deal with the case of private unaided institutions and private aided institutions that are not administered by linguistic or religious minorities. Regulations that can be framed relating to minority institutions will be considered while examining the merit and effect of Article 30 of the Constitution.

Private Unaided Non-Minority Educational Institutions

48. Private education is one of the most dynamic and fastest growing segments of post-secondary education at the turn of the twenty-first century. A combination of unprecedented demand for access to higher education and the inability or unwillingness of government to provide the necessary support has brought private higher education to the forefront. Private institutions, with a long history in many countries, are expanding in scope and number, and are becoming increasingly important in parts of the world that relied almost entirely on the public sector.

49. Not only has demand overwhelmed the ability of the governments to provide education, there has also been a significant change in the way that higher education is perceived. The idea of an academic degree as a "private good" that benefits the individual rather than a "public good" for society is now widely accepted. The logic of today's economics and an ideology of privatization have contributed to the resurgence of private higher education, and the establishing of private institutions where none or very few existed before.

50. The right to establish and administer broadly comprises of the following rights:-

(a) to admit students:
(b) to set up a reasonable fee structure:
(c) to constitute a governing body;
(d) to appoint staff (teaching and non-teaching); and
(e) to take action if there is dereliction of duty on the part of any employees

51. A University Education Commission was appointed on 4th November, 1948, having Dr. S. Radhakrishanan as its Chairman and nine other renowned educationists as its members. The terms of reference, inter alia, included matters relating to means and objects of university education and research in India and maintenance of higher standards of teaching and examination in universities and colleges under their control. In the report submitted by this Commission, in paras 29 and 31, it referred to autonomy in education which reads as follows:-

"University Autonomy. Freedom of individual development is the basis of democracy. Exclusive control of education by the State has been an important factor in facilitating the maintenance of totalitarian tyrannies. In such States institutions of higher learning controlled and managed by governmental agencies act like mercenaries, promote the political purposes of the State, make them acceptable to an increasing number of their populations and supply them with the weapons they need. We must resist, in the interests of our own democracy, the trend towards the governmental domination of the educational process.

Higher education is, undoubtedly, an obligation of the State but State aid is not to be confused with State control over academic policies and practices. Intellectual progress demands the maintenance of the spirit of free inquiry. The pursuit and practice of truth regardless of consequences has been the ambition of universities. Their prayer is that of the dying Goethe: "More light." or that of Ajax in the mist "Light, though I perish in the light.

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The respect in which the universities of Great Britain are held is due to the freedom from governmental interference which they enjoy constitutionally and actually. Our universities should be released from the control of politics.

Liberal Education. All education is expected to be liberal. It should free us from the shackles of ignorance, prejudice and unfounded belief. If we are incapable of achieving the good life, it is due to faults in our inward being, to the darkness in us. The process of education is the slow conquering of this darkness. To lead us from darkness to light, to free us from every kind of domination except that of reason, is the aim of education."

52. There cannot be a better exposition than what has been observed by these renowned educationists with regard to autonomy in education. The aforesaid passage clearly shows that the governmental domination of the educational process must be resisted. Another pithy observation of the Commission was that state aid was not to be confused with state control over academic policies and practices. The observations referred to hereinabove clearly contemplate educational institutions soaring to great heights in pursuit of intellectual excellence and being free from unnecessary governmental controls.

53. With regard to the core components of the rights under Articles 19 and 26(a), it must be held that while the state has the right to prescribe qualifications necessary for admission, private unaided colleges have the right to admit students of their choice, subject to an objective and rational procedure of selection and the compliance of conditions, if any, requiring admission of a small percentage of students belonging to weaker sections of the society by granting them freeships or scholarships, if not granted by the Government. Furthermore, in setting up a reasonable fee structure, the element of profiteering is not as yet accepted in Indian conditions. The fee structure must take into consideration the need to generate funds to be utilized for the betterment and growth of the educational institution, the betterment of education in that institution and to provide facilities necessary for the benefit of the students. In any event, a private institution will have the right to constitute its own governing body, for which qualifications may be prescribed by the state or the concerned university. It will, however, be objectionable if the state retains the power to nominate specific individuals on governing bodies. Nomination by the state, which could be on a political basis, will be an inhibiting factor for private enterprise to embark upon the occupation of establishing and administering educational institutions. For the same reasons, nomination of teachers either directly by the department or through a service commission will be an unreasonable inroad and an unreasonable restriction on the autonomy of the private unaided educational institution.

54. The right to establish an educational institution can be regulated; but such regulatory measures must, in general, be to ensure the maintenance of proper academic standards, atmosphere and infrastructure (including qualified staff) and the prevention of mal-administration by those in charge of management. The fixing of a rigid fee structure, dictating the formation and composition of a governing body, compulsory nomination of teachers and staff for appointment or nominating students for admissions would be unacceptable restrictions.

55. The Constitution recognizes the right of the individual or religious denomination, or a religious or linguistic minority to establish an educational

institution. If aid or financial assistance is not sought, then such institution will be a private unaided institution. Although, in Unni Krishnan's case, the Court emphasized the important role played by private unaided institutions and the need for private funding, in the scheme that was framed, restrictions were placed on some of the important ingredients relating to the functioning of an educational institution. There can be no doubt that in seeking affiliation or recognition, the Board or the university or the affiliating or recognizing authority can lay down conditions consistent with the requirement to ensure the excellence of education. It can, for instance, indicate the quality of the teachers by prescribing the minimum qualifications that they must possess, and the courses of study and curricula. It can, for the same reasons, also stipulate the existence of infrastructure sufficient for its growth, as a pre-requisite. But the essence of a private educational institution is the autonomy that the institution must have in its management and administration. There, necessarily, has to be a difference in the administration of private unaided institutions and the government-aided institutions. Whereas in the latter case, the Government will have greater say in the administration, including admissions and fixing of fees, in the case of private unaided institutions, maximum autonomy in the day-to-day administration has to be with the private unaided institutions. Bureaucratic or governmental interference in the administration of such an institution will undermine its independence. While an educational institution is not a business, in order to examine the degree of independence that can be given to a recognized educational institution, like any private entity that does not seek aid or assistance from the Government, and that exists by virtue of the funds generated by it, including its loans or borrowings, it is important to note that the essential ingredients of the management of the private institution include the recruiting students and staff, and the quantum of fee that is to be charged.

56. An educational institution is established for the purpose of imparting education of the type made available by the institution. Different courses of study are usually taught by teachers who have to be recruited as per qualifications that may be prescribed. It is no secret that better working conditions will attract better teachers. More amenities will ensure that better students seek admission to that institution. One cannot lose sight of the fact that providing good amenities to the students in the form of competent teaching faculty and other infrastructure costs money. It has, therefore, to be left to the institution, if it chooses not to seek any aid from the government, to determine the scale of fee that it can charge from the students. One also cannot lose sight of the fact that we live in a competitive world today, where professional education is in demand. We have been given to understand that a large number of professional and other institutions have been started by private parties who do not seek any governmental aid. In a sense, a prospective student has various options open to him/her where, therefore, normally economic forces have a role to play. The decision on the fee to be charged must necessarily be left to the private educational institution that does not seek or is not dependent upon any funds from the government.

57. We, however, wish to emphasize one point, and that is that inasmuch as the occupation of education is, in a sense, regarded as charitable, the government can provide regulations that will ensure excellence in education, while forbidding the charging of capitation fee and profiteering by the institution. Since the object of setting up an educational institution is by definition "charitable", it is clear that an educational institution cannot charge such a fee as is not required for the purpose of fulfilling that object. To put it differently, in the establishment of an educational institution, the object should not be to make a profit, inasmuch as education is essentially charitable in nature. There can, however, be a reasonable revenue surplus, which may be generated by the educational institution for the purpose of development of education and expansion of the institution.

58. For admission into any professional institution, merit must play an important role. While it may not be normally possible to judge the merit of the applicant who seeks admission into a school, while seeking admission to a professional institution and to become a competent professional, it is necessary that meritorious candidates are not unfairly treated or put at a disadvantage by preferences shown to less meritorious but more influential applicants. Excellence in professional education would require that greater emphasis be laid on the merit

of a student seeking admission. Appropriate regulations for this purpose may be made keeping in view the other observations made in this judgment in the context of admissions to unaided institutions.

59. Merit is usually determined, for admission to professional and higher education colleges, by either the marks that the student obtains at the qualifying examination or school leaving certificate stage followed by the interview, or by a common entrance test conducted by the institution, or in the case of professional colleges, by government agencies.

60. Education is taught at different levels from primary to professional. It is, therefore, obvious that government regulations for all levels or types of educational institutions cannot be identical; so also, the extent of control or regulation could be greater vis-a-vis aided institutions.

61. In the case of unaided private schools, maximum autonomy has to be with the management with regard to administration, including the right of appointment, disciplinary powers, admission of students and the fees to be charged. At the school level, it is not possible to grant admissions on the basis of merit. It is no secret that the examination results at all levels of unaided private schools, notwithstanding the stringent regulations of the governmental authorities, are far superior to the results of the government-maintained schools. There is no compulsion on students to attend private schools. The rush for admission is occasioned by the standards maintained in such schools, and recognition of the fact that state-run schools do not provide the same standards of education. The State says that it has no funds to establish institutions at the same level of excellence as private schools. But by curtailing the income of such private schools, it disables those schools from affording the best facilities because of a lack of funds. If this lowering of standards from excellence to a level of mediocrity is to be avoided, the state has to provide the difference which, therefore, brings us back in a vicious circle to the original problem, viz., the lack of state funds. The solution would appear to lie in the States not using their scanty resources to prop up institutions that are able to otherwise maintain themselves out of the fees charged, but in improving the facilities and infrastructure of state-run schools and in subsidizing the fees payable by the students there. It is in the interest of the general public that more good quality schools are established; autonomy and non-regulation of the school administration in the right of appointment, admission of the students and the fee to be charged will ensure that more such institutions are established. The fear that if a private school is allowed to charge fees commensurate with the fees affordable, the degrees would be "purchasable" is an unfounded one since the standards of education can be and are controllable through the regulations relating to recognition, affiliation and common final examinations.

62. There is a need for private enterprise in non-professional college education as well. At present, insufficient number of undergraduate colleges are being and have been established, one of the inhibiting factors being that there is a lack of autonomy due to government regulations. It will not be wrong to presume that the numbers of professional colleges are growing at a faster rate than the number of undergraduate and non-professional colleges. While it is desirable that there should be a sufficient number of professional colleges, it should also be possible for private unaided undergraduate colleges that are non-technical in nature to have maximum autonomy similar to a school.

63. It was submitted that for maintaining the excellence of education, it was important that the teaching faculty and the members of the staff of any educational institution performed their duties in the manner in which it is required to be done, according to the rules or instructions. There have been cases of misconduct having been committed by the teachers and other members of the staff. The grievance of the institution is that whenever disciplinary action is sought to be taken in relation to such misconduct, the rules that are normally framed by the government or the university are clearly loaded against the Management. It was submitted that in some cases, the rules require the prior permission of the governmental authorities before the initiation of the disciplinary proceeding, while in other cases, subsequent permission is required before the imposition of penalties in the case of proven misconduct. While emphasizing the need for an independent

authority to adjudicate upon the grievance of the employee or the Management in the event of some punishment being imposed, it was submitted that there should be no role for the government or the university to play in relation to the imposition of any penalty on the employee.

64. An educational institution is established only for the purpose of imparting education to the students. In such an institution, it is necessary for all to maintain discipline and abide by the rules and regulations that have been lawfully framed. The teachers are like foster-parents who are required to look after, cultivate and guide the students in their pursuit of education. The teachers and the institution exist for the students and not vice versa. Once this principle is kept in mind, it must follow that it becomes imperative for the teaching and other staff of an educational institution to perform their duties properly, and for the benefit of the students. Where allegations of misconduct are made, it is imperative that a disciplinary enquiry is conducted, and that a decision is taken. In the case of a private institution, the relationship between the Management and the employees is contractual in nature. A teacher, if the contract so provides, can be proceeded against, and appropriate disciplinary action can be taken if the misconduct of the teacher is proved. Considering the nature of the duties and keeping the principle of natural justice in mind for the purposes of establishing misconduct and taking action thereon, it is imperative that a fair domestic enquiry is conducted. It is only on the basis of the result of the disciplinary enquiry that the management will be entitled to take appropriate action. We see no reason why the Management of a private unaided educational institution should seek the consent or approval of any governmental authority before taking any such action. In the ordinary relationship of master and servant, governed by the terms of a contract of employment, anyone who is guilty of breach of the terms can be proceeded against and appropriate relief can be sought. Normally, the aggrieved party would approach a court of law and seek redress. In the case of educational institutions, however, we are of the opinion that requiring a teacher or a member of the staff to go to a civil court for the purpose of seeking redress is not in the interest of general education. Disputes between the management and the staff of educational institutions must be decided speedily, and without the excessive incurring of costs. It would, therefore, be appropriate that an educational Tribunal be set up in each district in a State, to enable the aggrieved teacher to file an appeal, unless there already exists such an educational tribunal in a State the object being that the teacher should not suffer through the substantial costs that arise because of the location of the tribunal; if the tribunals are limited in number, they can hold circuit/camp sittings in different districts to achieve this objective. Till a specialized tribunal is set up, the right of filing the appeal would lie before the District Judge or Additional District Judge as notified by the government. It will not be necessary for the institution to get prior permission or ex post facto approval of a governmental authority while taking disciplinary action against a teacher or any other employee. The State government shall determine, in consultation with the High Court, the judicial forum in which an aggrieved teacher can file an appeal against the decision of the Management concerning disciplinary action or termination of service.

65. The reputation of an educational institution is established by the quality of its faculty and students, and the educational and other facilities that the college has to offer. The private educational institutions have a personality of their own, and in order to maintain their atmosphere and traditions, it is but necessary that they must have the right to choose and select the students who can be admitted to their courses of studies. It is for this reason that in the St. Stephen’s College case, this Court upheld the scheme whereby a cut-off percentage was fixed for admission, after which the students were interviewed and thereafter selected. While an educational institution cannot grant admission on its whims and fancies, and must follow some identifiable or reasonable methodology of admitting the students, any scheme, rule or regulation that does not give the institution the right to reject candidates who might otherwise be qualified according to, say, their performance in an entrance test, would be an unreasonable restriction under Article 19(6), though appropriate guidelines/modalities can be prescribed for holding the entrance test in a fair manner. Even when students are required to be selected on the basis of merit, the ultimate decision to grant admission to the students who have otherwise qualified for the grant of admission must be left with the educational institution concerned. However, when the institution rejects such

students, such rejection must not be whimsical or for extraneous reasons.

66. In the case of private unaided educational institutions, the authority granting recognition or affiliation can certainly lay down conditions for the grant of recognition or affiliation; these conditions must pertain broadly to academic and educational matters and welfare of students and teachers but how the private unaided institutions are to run is a matter of administration to be taken care of by the Management of those institutions.

Private Unaided Professional Colleges

67. We now come to the regulations that can be framed relating to private unaided professional institutions.

68. It would be unfair to apply the same rules and regulations regulating admission to both aided and unaided professional institutions. It must be borne in mind that unaided professional institutions are entitled to autonomy in their administration while, at the same time, they do not forgo or discard the principle of merit. It would, therefore, be permissible for the university or the government, at the time of granting recognition, to require a private unaided institution to provide for merit-based selection while, at the same time, giving the Management sufficient discretion in admitting students. This can be done through various methods. For instance, a certain percentage of the seats can be reserved for admission by the Management out of those students who have passed the common entrance test held by itself or by the State/University and have applied to the college concerned for admission, while the rest of the seats may be filled up on the basis of counselling by the state agency. This will incidentally take care of poorer and backward sections of the society. The prescription of percentage for this purpose has to be done by the government according to the local needs and different percentages can be fixed for minority unaided and non-minority unaided and professional colleges. The same principles may be applied to other non-professional but unaided educational institutions viz., graduation and post graduation non-professional colleges or institutes.

69. In such professional unaided institutions, the Management will have the right to select teachers as per the qualifications and eligibility conditions laid down by the State/University subject to adoption of a rational procedure of selection. A rational fee structure should be adopted by the Management, which would not be entitled to charge a capitation fee. Appropriate machinery can be devised by the state or university to ensure that no capitation fee is charged and that there is no profiteering, though a reasonable surplus for the furtherance of education is permissible. Conditions granting recognition or affiliation can broadly cover academic and educational matters including the welfare of students and teachers.

70. It is well established all over the world that those who seek professional education must pay for it. The number of seats available in government and government-aided colleges is very small, compared to the number of persons seeking admission to the medical and engineering colleges. All those eligible and deserving candidates who could not be accommodated in government colleges would stand deprived of professional education. This void in the field of medical and technical education has been filled by institutions that are established in different places with the aid of donations and the active part taken by public-minded individuals. The object of establishing an institution has thus been to provide technical or professional education to the deserving candidates, and is not necessarily a commercial venture. In order that this intention is meaningful, the institution must be recognized. At the school level, the recognition or affiliation has to be sought from the educational authority or the body that conducts the school-leaving examination. It is only on the basis of that examination that a school-leaving certificate is granted, which enables a student to seek admission in further courses of study after school. A college or a professional educational institution has to get recognition from the concerned university, which normally requires certain conditions to be fulfilled before recognition. It has been held that conditions of affiliation or recognition, which pertain to the academic and

educational character of the institution and ensure uniformity, efficiency and excellence in educational courses are valid, and that they do not violate even the provisions of Article 30 of the Constitution; but conditions that are laid down for granting recognition should not be such as may lead to governmental control of the administration of the private educational institutions.

Private Aided Professional Institutions (non-minority)

71. While giving aid to professional institutions, it would be permissible for the authority giving aid to prescribe by rules or regulations, the conditions on the basis of which admission will be granted to different aided colleges by virtue of merit, coupled with the reservation policy of the state. The merit may be determined either through a common entrance test conducted by the University or the Government followed by counselling, or on the basis of an entrance test conducted by individual institutions the method to be followed is for the university or the government to decide. The authority may also devise other means to ensure that admission is granted to an aided professional institution on the basis of merit. In the case of such institutions, it will be permissible for the government or the university to provide that consideration should be shown to the weaker sections of the society.

72. Once aid is granted to a private professional educational institution, the government or the state agency, as a condition of the grant of aid, can put fetters on the freedom in the matter of administration and management of the institution. The state, which gives aid to an educational institution, can impose such conditions as are necessary for the proper maintenance of the high standards of education as the financial burden is shared by the state. The state would also be under an obligation to protect the interest of the teaching and non-teaching staff. In many states, there are various statutory provisions to regulate the functioning of such educational institutions where the States give, as a grant or aid, a substantial proportion of the revenue expenditure including salary, pay and allowances of teaching and non-teaching staff. It would be its responsibility to ensure that the teachers working in those institutions are governed by proper service conditions. The state, in the case of such aided institutions, has ample power to regulate the method of selection and appointment of teachers after prescribing requisite qualifications for the same. Ever since In Re The Kerala Education Bill, 1957 [(1959) SCR 995], this Court has upheld, in the case of aided institutions, those regulations that served the interests of students and teachers. Checks on the administration may be necessary in order to ensure that the administration is efficient and sound and will serve the academic needs of the institutions. In other words, rules and regulations that promote good administration and prevent mal-administration can be formulated so as to promote the efficiency of teachers, discipline and fairness in administration and to preserve harmony among affiliated institutions. At the same time it has to be ensured that even an aided institution does not become a government-owned and controlled institution. Normally, the aid that is granted is relatable to the pay and allowances of the teaching staff. In addition, the Management of the private aided institutions has to incur revenue and capital expenses. Such aided institutions cannot obtain that extent of autonomy in relation to management and administration as would be available to a private unaided institution, but at the same time, it cannot also be treated as an educational institution departmentally run by government or as a wholly owned and controlled government institution and interfere with Constitution of the governing bodies or thrusting the staff without reference to Management.

Other Aided Institutions

73. There are a large number of educational institutions, like schools and non-professional colleges, which cannot operate without the support of aid from the state. Although these institutions may have been established by philanthropists or other public-spirited persons, it becomes necessary, in order to provide inexpensive education to the students, to seek aid from the state. In such cases, as those of the professional aided institutions referred to hereinabove, the Government would be entitled to make regulations relating to the terms and conditions of employment of the teaching and non-teaching staff whenever the aid for the posts is given by the State as well as admission procedures. Such rules and

regulations can also provide for the reasons and the manner in which a teacher or any other member of the staff can be removed. In other words, the autonomy of a private aided institution would be less than that of an unaided institution.

4. IN ORDER TO DETERMINE THE EXISTENCE OF A RELIGIOUS OR LINGUISTIC MINORITY IN RELATION TO ARTICLE 30, WHAT IS TO BE THE UNIT - THE STATE OR THE COUNTRY AS A WHOLE?

74. We now consider the question of the unit for the purpose of determining the definition of "minority" within the meaning of Article 30(1).

75. Article 30(1) deals with religious minorities and linguistic minorities. The opening words of Article 30(1) make it clear that religious and linguistic minorities have been put at par, insofar as that Article is concerned. Therefore, whatever the unit - whether a state or the whole of India - for determining a linguistic minority, it would be the same in relation to a religious minority. India is divided into different linguistic states. The states have been carved out on the basis of the language of the majority of persons of that region. For example, Andhra Pradesh was established on the basis of the language of that region, viz., Telugu. "Linguistic minority" can, therefore, logically only be in relation to a particular State. If the determination of "linguistic minority" for the purpose of Article 30 is to be in relation to the whole of India, then within the State of Andhra Pradesh, Telugu speakers will have to be regarded as a "linguistic minority". This will clearly be contrary to the concept of linguistic states.

76. If, therefore, the state has to be regarded as the unit for determining "linguistic minority" vis--vis Article 30, then with "religious minority" being on the same footing, it is the state in relation to which the majority or minority status will have to be determined.

77. In the Kerala Education Bill case, the question as to whether the minority community was to be determined on the basis of the entire population of India, or on the basis of the population of the State forming a part of the Union was posed at page 1047. It had been contended by the State of Kerala that for claiming the status of minority, the persons must numerically be a minority in the particular region in which the educational institution was situated, and that the locality or ward or town where the institution was to be situated had to be taken as the unit to determine the minority community. No final opinion on this question was expressed, but it was observed at page 1050 that as the Kerala Education Bill "extends to the whole of the State of Kerala and consequently the minority must be determined by reference to the entire population of that State."

78. In two cases pertaining to the DAV College, this Court had to consider whether the Hindus were a religious minority in the State of Punjab. In D.A.V. College vs. State of Punjab & Ors. [1971 (Supp.) SCR 688], the question posed was as to what constituted a religious or linguistic minority, and how it was to be determined. After examining the opinion of this Court in the Kerala Education Bill case, the Court held that the Arya Samajis, who were Hindus, were a religious minority in the State of Punjab, even though they may not have been so in relation to the entire country. In another case, D.A.V. College Bhatinda vs. State of Punjab & Ors. [1971 (Supp.) SCR 677], the observations in the first D.A.V. College case were explained, and at page 681, it was stated that "what constitutes a linguistic or religious minority must be judged in relation to the State inasmuch as the impugned Act was a State Act and not in relation to the whole of India." The Supreme Court rejected the contention that since Hindus were a majority in India, they could not be a religious minority in the state of Punjab, as it took the state as the unit to determine whether the Hindus were a minority community.

79. There can, therefore, be little doubt that this Court has consistently held that, with regard to a state law, the unit to determine a religious or linguistic minority can only be the state.

80. The Forty-Second Amendment to the Constitution included education in the Concurrent List under Entry 25. Would this in any way change the position with regard to the determination of a "religious" or "linguistic minority" for the purposes of Article 30?

81. As a result of the insertion of Entry 25 into List III, Parliament can now legislate in relation to education, which was only a state subject previously. The jurisdiction of the Parliament is to make laws for the whole or a part of India. It is well recognized that geographical classification is not violative of Article 14. It would, therefore, be possible that, with respect to a particular State or group of States, Parliament may legislate in relation to education. However, Article 30 gives the right to a linguistic or religious minority of a State to establish and administer educational institutions of their choice. The minority for the purpose of Article 30 cannot have different meanings depending upon who is legislating. Language being the basis for the establishment of different states for the purposes of Article 30, a "linguistic minority" will have to be determined in relation to the state in which the educational institution is sought to be established. The position with regard to the religious minority is similar, since both religious and linguistic minorities have been put at par in Article 30.

5. TO WHAT EXTENT CAN THE RIGHTS OF AIDED PRIVATE MINORITY INSTITUTIONS TO ADMINISTER BE REGULATED?

82. Article 25 gives to all persons the freedom of conscience and the right to freely profess, practice and propagate religion. This right, however, is not absolute. The opening words of Article 25(1) make this right subject to public order, morality and health, and also to the other provisions of Part III of the Constitution. This would mean that the right given to a person under 25(1) can be curtailed or regulated if the exercise of that right would violate other provisions of Part III of the Constitution, or if the exercise thereof is not in consonance with public order, morality and health. The general law made by the government contains provisions relating to public order, morality and health; these would have to be complied with, and cannot be violated by any person in exercise of his freedom of conscience or his freedom to profess, practice and propagate religion. For example, a person cannot propagate his religion in such a manner as to denigrate another religion or bring about dissatisfaction amongst people.

83. Article 25(2) gives specific power to the state to make any law regulating or restricting any economic, financial, political or other secular activity, which may be associated with religious practice as provided by sub-clause (a) of Article 25(2). This is a further curtailment of the right to profess, practice and propagate religion conferred on the persons under Article 25(1). Article 25(2)(a) covers only a limited area associated with religious practice, in respect of which a law can be made. A careful reading of Article 25(2)(a) indicates that it does not prevent the State from making any law in relation to the religious practice as such. The limited jurisdiction granted by Article 25(2) relates to the making of a law in relation to economic, financial, political or other secular activities associated with the religious practice.

84. The freedom to manage religious affairs is provided by Article 26. This Article gives the right to every religious denomination, or any section thereof, to exercise the rights that it stipulates. However, this right has to be exercised in a manner that is in conformity with public order, morality and health. Clause (a) of Article 26 gives a religious denomination the right to establish and maintain institutions for religious and charitable purposes. There is no dispute that the establishment of an educational institution comes within the meaning of the expression "charitable purpose". Therefore, while Article 25(1) grants the freedom of conscience and the right to profess, practice and propagate religion, Article 26 can be said to be complementary to it, and provides for every religious denomination, or any section thereof, to exercise the rights mentioned therein. This is because Article 26 does not deal with the right of an individual, but is confined to a religious denomination. Article 26 refers to a denomination of any religion, whether it is a majority or a minority religion, just as Article 25 refers to all persons, whether they belong to the majority or a minority religion. Article 26

gives the right to majority religious denominations, as well as to minority religious denominations, to exercise the rights contained therein.

85. Secularism being one of the important basic features of our Constitution, Article 27 provides that no person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated for the payment of expenses for the promotion and maintenance of any particular religion or religious denomination. The manner in which the Article has been framed does not prohibit the state from enacting a law to incur expenses for the promotion or maintenance of any particular religion or religious denomination, but specifies that by that law, no person can be compelled to pay any tax, the proceeds of which are to be so utilized. In other words, if there is a tax for the promotion or maintenance of any particular religion or religious denomination, no person can be compelled to pay any such tax.

86. Article 28(1) prohibits any educational institution, which is wholly maintained out of state funds, to provide for religious instruction. Moral education dissociated from any denominational doctrine is not prohibited; but, as the state is intended to be secular, an educational institution wholly maintained out of state funds cannot impart or provide for any religious instruction.

87. The exception to Article 28(1) is contained in Article 28(2). Article 28(2) deals with cases where, by an endowment or trust, an institution is established, and the terms of the endowment or the trust require the imparting of religious instruction, and where that institution is administered by the state. In such a case, the prohibition contained in Article 28(1) does not apply. If the administration of such an institution is voluntarily given to the government, or the government, for a good reason and in accordance with law, assumes or takes over the management of that institution, say on account of mal-administration, then the government, on assuming the administration of the institution, would be obliged to continue with the imparting of religious instruction as provided by the endowment or the trust.

88. While Article 28(1) and Article 28(2) relate to institutions that are wholly maintained out of state funds, Article 28(3) deals with an educational institution that is recognized by the state or receives aid out of state funds. Article 28(3) gives the person attending any educational institution the right not to take part in any religious instruction, which may be imparted by an institution recognized by the state, or receiving aid from the state. Such a person also has the right not to attend any religious worship that may be conducted in such an institution, or in any premises attached thereto, unless such a person, or if he/she is a minor, his/her guardian, has given his/her consent. The reading of Article 28(3) clearly shows that no person attending an educational institution can be required to take part in any religious instruction or any religious worship, unless the person or his/her guardian has given his/her consent thereto, in a case where the educational institution has been recognized by the state or receives aid out of its funds. We have seen that Article 26(a) gives the religious denomination the right to establish an educational institution, the religious denomination being either of the majority community or minority community. In any institution, whether established by the majority or a minority religion, if religious instruction is imparted, no student can be compelled to take part in the said religious instruction or in any religious worship. An individual has the absolute right not to be compelled to take part in any religious instruction or worship. Article 28(3) thereby recognizes the right of an individual to practice or profess his own religion. In other words, in matters relating to religious instruction or worship, there can be no compulsion where the educational institution is either recognized by the state or receives aid from the state.

89. Articles 29 and 30 are a group of articles relating to cultural and educational rights. Article 29(1) gives the right to any section of the citizens residing in India or any part thereof, and having a distinct language, script or culture of its own, to conserve the same. Article 29(1) does not refer to any religion, even though the marginal note of the Article mentions the interests of minorities. Article 29(1) essentially refers to sections of citizens who have a distinct language, script or culture, even though their religion may not be the same.

The common thread that runs through Article 29(1) is language, script or culture, and not religion. For example, if in any part of the country, there is a section of society that has a distinct language, they are entitled to conserve the same, even though the persons having that language may profess different religions. Article 29(1) gives the right to all sections of citizens, whether they are in a minority or the majority religions, to conserve their language, script or culture.

90. In the exercise of this right to conserve the language, script or culture, that section of the society can set up educational institutions. The right to establish and maintain educational institutions of its choice is a necessary concomitant to the right conferred by Article 30. The right under Article 30 is not absolute. Article 29(2) provides that, where any educational institution is maintained by the state or receives aid out of state funds, no citizen shall be denied admission on the grounds only of religion, race, caste, language or any of them. The use of the expression "any educational institution" in Article 29(2) would refer to any educational institution established by anyone, but which is maintained by the state or receives aid out of state funds. In other words, on a plain reading, state-maintained or aided educational institutions, whether established by the Government or the majority or a minority community cannot deny admission to a citizen on the grounds only of religion, race, caste or language.

91. The right of the minorities to establish and administer educational institutions is provided for by Article 30(1). To some extent, Article 26(1)(a) and Article 30(1) overlap, insofar as they relate to the establishment of educational institutions; but whereas Article 26 gives the right both to the majority as well as minority communites to establish and maintain institutions for charitable purposes, which would, inter alia, include educational institutions, Article 30(1) refers to the right of minorities to establish and maintain educational institutions of their choice. Another difference between Article 26 and Article 30 is that whereas Article 26 refers only to religious denominations, Article 30 contains the right of religious as well as linguistic minorities to establish and administer educational institutions of their choice.

92. Article 30(1) bestows on the minorities, whether based on religion or language, the right to establish and administer educational institution of their choice. Unlike Articles 25 and 26, Article 30(1) does not specifically state that the right under Article 30(1) is subject to public order, morality and health or to other provisions of Part III. This sub-Article also does not specifically mention that the right to establish and administer a minority educational institution would be subject to any rules or regulations.

93. Can Article 30(1) be so read as to mean that it contains an absolute right of the minorities, whether based on religion or language, to establish and administer educational institutions in any manner they desire, and without being obliged to comply with the provisions of any law? Does Article 30(1) give the religious or linguistic minorities a right to establish an educational institution that propagates religious or racial bigotry or ill will amongst the people? Can the right under Article 30(1) be so exercised that it is opposed to public morality or health? In the exercise of its right, would the minority while establishing educational institutions not be bound by town planning rules and regulations? Can they construct and maintain buildings in any manner they desire without complying with the provisions of the building by-laws or health regulations?

94. In order to interpret Article 30 and its interplay, if any, with Article 29, our attention was drawn to the Constituent Assembly Debates. While referring to them, the learned Solicitor General submitted that the provisions of Article 29(2) were intended to be applicable to minority institutions seeking protection of Article 30. He argued that if any educational institution sought aid, it could not deny admission only on the ground of religion, race, caste or language and, consequently, giving a preference to the minority over more meritorious non-minority students was impermissible. It is now necessary to refer to some of the decisions of this Court insofar as they interpret Articles 29 and 30, and to examine whether any creases therein need ironing out.

95. In The State of Madras vs. Srimathi Champakam Dorairajan

[(1951) SCR 525], the State had issued an order, which provided that admission to students to engineering and medical colleges in the State should be decided by the Selection Committee, strictly on the basis of the number of seats fixed for different communities. While considering the validity of this order, this Court interpreted Article 29(2) and held that if admission was refused only on the grounds of religion, race, caste, language or any of them, then there was a clear breach of the fundamental right under Article 29(2). The said order was construed as being violative of Article 29(2), because students who did not fall in the particular categories were to be denied admission. In this connection it was observed as follows:-

".so far as those seats are concerned, the petitioners are denied admission into any of them, not on any ground other than the sole ground of their being Brahmins and not being members of the community for whom those reservations were made..."

96. This government order was held to be violative of the Constitution and constitutive of a clear breach of Article 29(2). Article 30 did not come up for consideration in that case.

97. In The State of Bombay vs. Bombay Education Society and Others [(1955) 1 SCR 568], the State had issued a circular, the operative portion of which directed that no primary or secondary school could, from the date of that circular admit to a class where English was used as a medium of instruction, any pupil other than pupils belonging to a section of citizens, the language of whom was English, viz., Anglo-Indians and citizens of non-Asiatic descent. The validity of the circular was challenged while admission was refused, inter alia, to a member of the Gujarati Hindu Community. A number of writ petitions were filed and the High Court allowed them. In an application filed by the State of Bombay, this Court had to consider whether the said circular was ultra vires Article 29(2). In deciding this question, the Court analyzed the provisions of Articles 29(2) and 30, and repelled the contention that Article 29(2) guaranteed the right only to the citizens of the minority group. It was observed, in this connection, at page 579, as follows:

"The language of Article 29(2) is wide and unqualified and may well cover all citizens whether they belong to the majority or minority group. Article 15 protects all citizens against the State whereas 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 against a particular species of wrong namely denial of admission into educational institutions of the specified kind. In the next place Article 15 is quite general and wide in its terms and applies to all citizens, whether they belong to the majority or minority groups, and gives protection to all the citizens against discrimination by the State on certain specific grounds. Article 29(2) confers a special right on citizens for admission into educational institutions maintained or aided by the State. To limit this right only to citizens belonging to minority groups will be to provide a double protection for such citizens and to hold that the citizens of the majority group have no special educational rights in the nature of a right to be admitted into an educational institution for the maintenance of which they make contributions by way of taxes. We see no cogent reason for such discrimination. The heading under which Articles 29 and 30 are grouped together - namely "Cultural and Educational Rights"- is quite general and does not in terms contemplate 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."

98. It is clear from the aforesaid discussion that this Court came to the conclusion that in the case of minority educational institutions to which protection was available under Article 30, the provisions of Article 29(2) were indeed applicable. But, it may be seen that the question in the present form i.e., whether

in the matter of admissions into aided minority educational institutions, minority students could be preferred to a reasonable extent, keeping in view the special protection given under Article 30(1), did not arise for consideration in that case.

99. In the Kerala Education Bill case, this Court again had the occasion to consider the interplay of Articles 29 and 30 of the Constitution. This case was a reference under Article 143(1) of the Constitution made by the President of India to obtain the opinion of this Court on certain questions relating to the constitutional validity of some of the provisions of the Kerala Education Bill, 1957, which had been passed by the Kerala Legislative Assembly, but had been reserved by the Governor for the consideration of the President. Clause 3(5) of the Bill, made the recognition of new schools subject to the other provisions of the Bill and the rules framed by the Government under clause (36); clause (15) authorized the Government to acquire any category of schools; clause 8(3) made it obligatory on all aided schools to hand over the fees to the Government; clauses 9 to 13 made provisions for the regulation and management of the schools, payment of salaries to teachers and the terms and conditions of their appointment, and clause (33) forbade the granting of temporary injunctions and interim orders in restraint of proceedings under the Act.

100. With reference to Article 29(2), the Court observed at page 1055, while dealing with an argument based on Article 337 that "likewise Article 29(2) provides, inter alia, that no citizen shall be denied admission into any educational institution receiving aid out of State funds on grounds only of religion, race, caste, language or any of them". Referring to Part III of the Constitution and to Articles 19 and 25 to 28 in particular, the Court said:-

"..Under Article 25 all persons are equally entitled, subject to public order, morality and health and to the other provisions of Part III, to freedom of conscience and the right freely to profess, practise and propagate religion. Article 26 confers the fundamental right to every religious denomination or any section thereof, subject to public order, morality and health, to establish and maintain institutions for religious and charitable purposes, to manage its own affairs in matters of religion, to acquire property and to administer such property in accordance with law. The ideal being to constitute India into a secular State, no religious instruction is, under Article 28(1), to be provided in any educational institution wholly maintained out of State funds and under clause (3) of the same Article no person attending any educational institution recognized by the State or receiving aid out of State funds is to be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto. Article 29(1) confers on any section of the citizens having a distinct language, script or culture of its own to have the right of conserving the same. Clause (2) of that Article provides that no citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them."

101. Dealing with Articles 29 and 30 at page 1046, it was observed as follows:-

"Articles 29 and 30 are set out in Part III of our Constitution which guarantees our fundamental rights. They are grouped together under the sub-head "Cultural and Educational Rights". The text and the marginal notes of both the Articles show that their purpose is to confer those fundamental rights on certain sections of the community which constitute minority communities. Under clause (1) of Article 29 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 has the right to conserve the same. It is obvious that a minority community can effectively conserve its language, script or culture by and through educational institutions and, therefore, the right to establish and maintain educational institutions

of its choice is a necessary concomitant to the right to conserve its distinctive language, script or culture and that is what is conferred on all minorities by Article 30(1) which has hereinbefore been quoted in full. This right, however, is subject to clause 2 or Article 29 which provides that no citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them."

102. It had been, inter alia, contended on behalf of the state that if a single member of any other community is admitted in a school established for a particular minority community, then the educational institution would cease to be an educational institution established by that particular minority community. It was contended that because of Article 29(2), when an educational institution established by a minority community gets aid, it would be precluded from denying admission to members of other communities because of Article 29(2), and that as a consequence thereof, it would cease to be an educational institution of the choice of the minority community that established it. Repelling this argument, it was observed at pages 1051-52, as follows:-

"This argument does not appear to us to be warranted by the language of the Article itself. There is no such limitation in Article 30(1) and to accept this limitation will necessarily involve the addition of the words "for their own community" in the Article which is ordinarily not permissible according to well established rules of interpretation. Nor is it reasonable to assume that the purpose of Article 29(2) was to deprive minority educational institutions of the aid they receive from the State. To say that an institution which receives aid on account of its being minority educational institution must not refuse to admit any member of any other community only on the grounds therein mentioned and then to say that as soon as such institution admits such an outsider it will cease to be a minority institution is tantamount to saying that minority institutions will not, as minority institutions, be entitled to any aid. The real import of Article 29(2) and Article 30(1) seems to us to be that they clearly contemplate a minority institution with a sprinkling of outsiders admitted into it. By admitting a non-member into it the minority institution does not shed its character and cease to be a minority institution. Indeed the object of conservation of the distinct language, script and culture of a minority may be better served by propagating the same amongst non-members of the particular minority community. In our opinion, it is not possible to read this condition into Article 30(1) of the Constitution."

103. It will be seen that the use of the expression "sprinkling of outsiders" in that case clearly implied the applicability of Article 29(2) to Article 30(1); the Court held that when a minority educational institution received aid, outsiders would have to be admitted. This part of the state's contention was accepted, but what was rejected was the contention that by taking outsiders, a minority institution would cease to be an educational institution of the choice of the minority community that established it. The Court concluded at page 1062, as follows:-

".We have already observed that Article 30(1) gives two rights to the minorities, (1) to establish and (2) to administer, educational institutions of their choice. The right to administer cannot obviously include the right to maladminister. The minority cannot surely ask for aid or recognition for an educational institution run by them in unhealthy surroundings, without any competent teachers, possessing any semblance of qualification, and which does not maintain even a fair standard of teaching or which teaches matters subversive of the welfare of the scholars. It stands to reason, then, that the constitutional right to administer an educational institution of their choice does not necessarily militate against the claim of the State to insist that in order to grant aid the State may prescribe reasonable regulations to ensure the excellence of the institutions to be aided.."

104. While noting that Article 30 referred not only to religious minorities but also to linguistic minorities, it was held that the Article gave those minorities the right to establish educational institutions of their choice, and that no limitation could be placed on the subjects to be taught at such educational institutions and that general secular education is also comprehended within the scope of Article 30(1). It is to be noted that the argument addressed and answered in that case was whether a minority aided institution loses its character as such by admitting non-minority students in terms of Article 29(2). It was observed that the admission of 'sprinkling of outsiders' will not deprive the institution of its minority status. The opinion expressed therein does not really go counter to the ultimate view taken by us in regard to the inter-play of Articles 30(1) and 29(2)

105. In Rev. Sidhajbhai Sabhai and Others vs. State of Bombay and Another [(1963) 3 SCR 837], this Court had to consider the validity of an order issued by the Government of Bombay whereby from the academic year 1955-56, 80% of the seats in the training colleges for teachers in non-government training colleges were to be reserved for the teachers nominated by the Government. The petitioners, who belonged to the minority community, were, inter alia, running a training college for teachers, as also primary schools. The said primary schools and college were conducted for the benefit of the religious denomination of the United Church of Northern India and Indian Christians generally, though admission was not denied to students belonging to other communities. The petitioners challenged the government order requiring 80% of the seats to be filled by nominees of the government, inter alia, on the ground that the petitioners were members of a religious denomination and that they constituted a religious minority, and that the educational institutions had been established primarily for the benefit of the Christian community. It was the case of the petitioners that the decision of the Government violated their fundamental rights guaranteed by Articles 30(1), 26(a), (b), (c) and (d), and 19(1)(f) and (g). While interpreting Article 30, it was observed by this Court at pages 849-850 as under:-

".All minorities, linguistic or religious have by Article 30(1) an absolute right to establish and administer educational institutions of their choice; and any law or executive direction which seeks to infringe the substance of that right under Article 30(1) would to that extent be void. This, however, is not to say that it is not open to the State to impose regulations upon the exercise of this right. The fundamental freedom is to establish and to administer educational institutions: it is a right to establish and administer what are in truth educational institutions, institutions which cater to the educational needs of the citizens, or sections thereof. Regulation made in the true interests of efficiency of instruction, discipline, health, sanitation, morality, public order and the like may undoubtedly be imposed. Such regulations are not restrictions on the substance of the right which is guaranteed: they secure the proper functioning of the institution, in matters educational."

106. While coming to the conclusion that the right of the private training colleges to admit students of their choice was severely restricted, this Court referred to the opinion in the Kerala Education Bill case, but distinguished it by observing that the Court did not, in that case, lay down any test of reasonableness of the regulation. No general principle on which the reasonableness of a regulation may be tested was sought to be laid down in the Kerala Education Bill case and, therefore, it was held in Sidhajbhai Sabhai's case that the opinion in that case was not an authority for the proposition that all regulative measures, which were not destructive or annihilative of the character of the institution established by the minority, provided the regulations were in the national or public interest, were valid. In this connection it was further held at page 856, as follows:-

"The right established by Article 30 (1) is a fundamental right declared in terms absolute. Unlike the fundamental freedoms guaranteed by Article 19, it is not subject to reasonable restrictions. It is intended to be a real right for the protection of the minorities in the

matter of setting up of educational institutions of their own choice. The right is intended to be effective and is not to be whittled down by so-called regulative measures conceived in the interest not of the minority educational institution, but of the public or the nation as a whole. If every order which while maintaining the formal character of a minority institution destroys the power of administration is held justifiable because it is in the public or national interest, though not in its interest as an educational institution, the right guaranteed by Article 30 (1) will be but a "teasing illusion", a promise of unreality. Regulations which may lawfully be imposed either by legislative or executive action as a condition of receiving grant or of recognition must be directed to making the institution while retaining its character as a minority institution effective as an educational institution. Such regulation must satisfy a dual test the test of reasonableness, and the 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."

107. The aforesaid decision does indicate that the right under Article 30(1) is not so absolute as to prevent the government from making any regulation whatsoever. As already noted hereinabove, in Sidhajbhai Sabhai's case, it was laid down that regulations made in the true interests of efficiency of instruction, discipline, health, sanitation, morality and public order could be imposed. If this is so, it is difficult to appreciate how the government can be prevented from framing regulations that are in the national interest, as it seems to be indicated in the passage quoted hereinabove. Any regulation framed in the national interest must necessarily apply to all educational institutions, whether run by the majority or the minority. Such a limitation must necessarily be read into Article 30. The right under Article 30(1) cannot be such as to override the national interest or to prevent the government from framing regulations in that behalf. It is, of course, true that government regulations cannot destroy the minority character of the institution or make the right to establish and administer a mere illusion; but the right under Article 30 is not so absolute as to be above the law. It will further be seen that in Sidhajbhai Sabhai's case, no reference was made to Article 29(2) of the Constitution. This decision, therefore, cannot be an authority for the proposition canvassed before us.

108. Our attention was invited to the decision in Rev. Father W. Proost and Ors. vs. The State of Bihar & Ors. [(1969) 2 SCR 73], but the said case has no application here. In that case, it was contended, on behalf of the State of Bihar, that, as the protection to the minority under Article 29(1) was only a right to conserve a distinct language, script or culture of its own, the college did not qualify for the protection of Article 30(1) because it was not founded to conserve them and that consequently, it was open to all sections of the people. The question, therefore, was whether the college could claim the protection of Section 48-B of the Bihar Universities Act read with Article 30(1) of the Constitution, only if it proved that the educational institution was furthering the rights mentioned in Article 29(1). Section 48-B of the Bihar Universities Act exempted a minority educational institution based on religion or language from the operation of some of the other provisions of that Act. This Court, while construing Article 30, held that its width could not be cut down by introducing in it considerations on which Article 29(1) was based. Articles 29(1) and 30(1) were held to create two separate rights, though it was possible that they might meet in a given case. While dealing with the contention of the state that the college would not be entitled to the protection under Article 30(1) because it was open to all sections of the people, the Court referred to the observations in the Kerala Education Bill case, wherein it had been observed that the real import of Article 29(2) and Article 30(1) was that they contemplated a minority institution with a sprinkling of outsiders admitted into it. The Court otherwise had no occasion to deal with the applicability of Article 29(2) to Article 30(1).

109. In State of Kerala, Etc. vs. Very Rev. Mother Provincial, Etc. [(1971) 1 SCR 734], the challenge was to various provisions of the Kerala University Act, 1969, whose provisions affected private colleges, particularly those founded by

minority communities in the State of Kerala. The said provisions, inter alia, sought to provide for the manner in which private colleges were to be administered through the constitution of the governing body or managing councils in the manner provided by the Act. Dealing with Article 30, it was observed at pages 739-40 as follows: -

"Article 30(1) has been construed before by this Court. Without referring to those cases it is sufficient to say that the clause contemplates two rights which are separated in point of time. The first right is the initial right to establish institutions of the minority's choice. Establishment here means the 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, 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 that in addition to the minority community others from other minority communities or even from the majority community can take advantage of these institutions. Such other communities bring in income and they do not have to be turned away to enjoy the protection.

The next part of the right relates to the administration of such institutions. Administration means 'management of the affairs' of the institution. This management must be free of control so that the founders or their nominees can mould the institution as they think fit, and in accordance with their ideas of how the interests of the community in general and the institution in particular will be best served. No part of this management can be taken away and vested in another body without an encroachment upon the guaranteed right."

The Court, however, pointed out that an exception to the right under Article 30 was the power with the state to regulate education, educational standards and allied matters. It was held that the minority institutions could not be allowed to fall below the standards of excellence expected of educational institutions, or under the guise of the exclusive right of management, allowed to decline to follow the general pattern. The Court stated that while the management must be left to the minority, they may be compelled to keep in step with others.

110. The interplay of Article 29 and Article 30 came up for consideration again before this Court in the D.A.V. College case [1971 (Supp.) SCR 688]. Some of the provisions of the Guru Nanak University Act established after the reorganization of the State of Punjab in 1969 provided for the manner in which the governing body was to be constituted; the body was to include a representative of the University and a member of the College. These and some other provisions were challenged on the ground that they were violative of Article 30. In this connection at page 695, it was observed as follows:-

"It will be observed that Article 29(1) is wider than Article 30(1), in that, while any Section of the citizens including the minorities, can invoke the rights guaranteed under Article 29(1), the rights guaranteed under Article 30(1) are only available to the minorities based on religion or language. It is not necessary for Article 30(1) that the minority should be both a religious minority as well as a linguistic minority. It is sufficient if it is one or the other or both. A reading of these two Articles together would lead us to conclude that a religious or linguistic minority has a right to establish and administer educational institutions of its choice for effectively conserving its distinctive language, script or culture, which right however is subject to the regulatory power of the State for maintaining and facilitating the excellence of its standards. This right is further subject to clause (2) of Article 29 which provides that no citizen shall be denied admission into any educational institution which is maintained by the State or receives aid out of State funds, on grounds only of religion, race, caste, language or any of them. While this is so these two articles are not inter-linked nor does it permit of their being always read together."

Though it was observed that Article 30(1) is subject to 29(2), the question whether the preference to minority students is altogether excluded, was not considered.

111. One of the questions that arose in this case was as to whether the petitioner was a minority institution. In this case, it was also observed that the Hindus of Punjab were a religious minority in the State of Punjab and that, therefore, they were entitled to the protection of Article 30(1). Three of the provisions, which were sought to be challenged as being violative of Article 30, were Clauses 2(1), 17 and 18 of the statutes framed by the University under Section 19 of the University Act. Clause 2(1)(a) provided that, for seeking affiliation, the college was to have a governing body of not more than 20 persons approved by the Senate and including, amongst others, two representatives of the University and a member of the College. Clause 17 required the approval of the Vice-Chancellor for the staff initially appointed by the College. The said provision also provided that all subsequent changes in the staff were to be reported to the Vice-Chancellor for his/her approval. Clause 18 provided that non-government colleges were to comply with the requirements laid down in the ordinances governing the service and conduct of teachers in non-government colleges, as may be framed by the University. After referring to Kerala Education Bill, Sidhajbai Sabhai and Rev. Father W. Proost, this Court held that there was no justification for the provisions contained in Clause 2(1)(a) and Clause 17 of the statutes as they interfered with the rights of management of the minority educational institutions. P. Jaganmohan Reddy, J., observed that "these provisions cannot, therefore, be made as conditions of affiliation, the non-compliance of which would involve dis-affiliation and consequently they will have to be struck down as offending Article 30(1)."

112. Clause 18, however, was held not to suffer from the same vice as Clause 17 because the provision, insofar as it was applicable to the minority institutions, empowered the University to prescribe by-regulations governing the service and conduct of teachers, and that this was in the larger interest of the institutions, and in order to ensure their efficiency and excellence. In this connection, it was observed at page 709, that: -

"Uniformity in the conditions of service and conduct of teachers in all non-Government Colleges would make for harmony and avoid frustration. Of course while the power to make ordinances in respect of the matters referred to is unexceptional the nature of the infringement of the right, if any, under Article 30(1) will depend on the actual purpose and import of the ordinance when made and the manner in which it is likely to affect the administration of the educational institution, about which it is not possible now to predicate."

113. In The Ahmedabad St. Xaviers College Society & Anr. Etc. vs. State of Gujarat & Anr. [(1975) 1 SCR 173], this Court had to consider the constitutional validity of certain provisions of the Gujarat University Act, 1949, insofar as they were made to apply to the minority Christian institution. The impugned provisions, inter alia, provided that the University may determine that all instructions, teaching and training in courses of studies, in respect of which the University was competent to hold examinations, would be conducted by the University and would be imparted by the teachers of the University. Another provision provided that new colleges that may seek affiliation, were to be the constituent colleges of the University. The Court considered the scope and ambit of the rights of the minorities, whether based on religion or language, to establish and administer educational institutions of their choice under Article 30(1) of the Constitution. In dealing with this aspect, Ray, C.J., at page 192, while considering Articles 25 to 30, observed as follows:-

"Every section of the public, the majority as well as minority has rights in respect of religion as contemplated in Articles 25 and 26 and rights in respect of language, script, culture as contemplated in Article 29. The whole object of conferring the right on minorities under Article 30 is to ensure that there will be equality between the majority and the minority. If the minorities do not have such special protection

they will be denied equality."

114. Elaborating on the meaning and intent of Article 30, the learned Chief Justice further observed as follows:-

"The real reason embodied in Article 30(1) of the Constitution is the conscience of the nation that the minorities, religious as well as linguistic, are not prohibited from establishing and administering educational institutions of their choice for the purpose of giving their children the best general education to make them complete men and women of the country. The minorities are given this protection under Article 30 in order to preserve and strengthen the integrity and unity of the country. The sphere of general secular education is intended to develop the commonness of boys and girls of our country. This is in the true spirit of liberty, equality and fraternity through the medium of education. If religious or linguistic minorities are not given protection under Article 30 to establish and administer educational institutions of their choice, they will feel isolated and separate. General secular education will open doors of perception and act as the natural light of mind for our countrymen to live in the whole."

115. The Court then considered whether the religious and linguistic minorities, who have the right to establish and administer educational institutions of their choice, had a fundamental right to affiliation. Recognizing that the affiliation to a University consisted of two parts, the first part relating to syllabi, curricula, courses of instruction, the qualifications of teachers, library, laboratories, conditions regarding health and hygiene of students (aspects relating to establishment of educational institutions), and the second part consisting of terms and conditions regarding the management of institutions, it was held that with regard to affiliation, a minority institution must follow the statutory measures regulating educational standards and efficiency, prescribed courses of study, courses of instruction, the principles regarding the qualification of teachers, educational qualifications for entry of students into educational institutions, etc.

116. While considering the right of the religious and linguistic minorities to administer their educational institutions, it was observed by Ray, C.J., at page 194, as follows:-

"The right to administer is said to consist of four principal matters. First is the right to choose its managing or governing body. It is said that the founders of the minority institution have faith and confidence in their own committee or body consisting of persons selected by them. Second is the right to choose its teachers. It is said that minority institutions want teachers to have compatibility with the ideals, aims and aspirations of the institution. Third is the right not to be compelled to refuse admission to students. In other words, the minority institutions want to have the right to admit students of their choice subject to reasonable regulations about academic qualifications. Fourth is the right to use its properties and assets for the benefit of its own institution."

117. While considering this right to administer, it was held that the same was not an absolute right and that the right was not free from regulation. While referring to the observations of Das, C.J., in the Kerala Education Bill case, it was reiterated in the St. Xaviers College case that the right to administer was not a right to mal-administer. Elaborating the minority's right to administer at page 196, it was observed as follows:-

"..The minority institutions have the right to administer institutions. This right implies the obligation and duty of the minority institutions to render the very best to the students. In the right of administration, checks and balances in the shape of regulatory measures are required to ensure the appointment of good teachers and their conditions of service. The right to administer is to be tempered with regulatory measures to facilitate smooth administration. The best administration will reveal no trace or colour of minority. A minority institution should shine in exemplary eclecticism in the administration of the institution. The best compliment that can be paid to a minority institution is that it does not rest on or proclaim its minority

character."

118. Ray, C.J., concluded by observing at page 200, as follows:-
"The ultimate goal of a minority institution too imparting general secular education is advancement of learning. This Court has consistently held that it is not only permissible but also desirable to regulate everything in educational and academic matters for achieving excellence and uniformity in standards of education.

In the field of administration it is not reasonable to claim that minority institutions will have complete autonomy. Checks on the administration may be necessary in order to ensure that the administration is efficient and sound and will serve the academic needs of the institution. The right of a minority to administer its educational institution involves, as part of it, a correlative duty of good administration."

119. In a concurrent judgment, while noting that "clause (2) of Article 29 forbids the denial of admission to citizens into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of then", Khanna, J. then examined Article 30, and observed at page 222, as follows:-
"Clause (1) of Article 30 gives right to all minorities, whether based on religion or language, to establish and administer educational institutions of their choice. Analyzing that clause it would follow that the right which has been conferred by the clause is on two types of minorities. Those minorities may be based either on religion or on language. The right conferred upon the said minorities is to establish and administer educational institutions of their choice. The word "establish" indicates the right to bring into existence, while the right to administer an institution means the right to effectively manage and conduct the affairs of the institution. Administration connotes management of the affairs of the institution. The management must be free of control so that the founders or their nominees can mould the institution as they think fit and in accordance with their ideas of how the interest of the community in general and the institution in particular will be best served. The words "of their choice" qualify the educational institutions and show that the educational institutions established and administered by the minorities need not be of some particular class; the minorities have the right and freedom to establish and administer such educational institutions as they choose. Clause (2) of Article 30 prevents the State from making discrimination in the matter of grant of aid to any educational institution on the ground that the institution is under the management of a minority whether based on religion or language.

120. Explaining the rationale behind Article 30, it was observed at page 224, as follows:-
"The idea of giving some special rights to the minorities is not to have a kind of a privileged or pampered section of the population but to give to the minorities a sense of security and a feeling of confidence. The great leaders of India since time immemorial had preached the doctrine of tolerance and catholicity of outlook. Those noble ideas were enshrined in the Constitution. Special rights for minorities were designed not to create inequality. Their real effect was to bring about equality by ensuring the preservation of the minority institutions and by guaranteeing to the minorities autonomy in the matter of the administration of these institutions. The differential treatment for the minorities by giving them special rights is intended to bring about an equilibrium, so that the ideal of equality may not be reduced to a mere abstract idea but should become a living reality and result in true, genuine equality, an equality not merely in theory but also in fact."

121. While advocating that provisions of the Constitution should be construed according to the liberal, generous and sympathetic approach, and after

considering the principles which could be discerned by him from the earlier decisions of this Court, Khanna, J., observed at page 234, as follows:-
"..The minorities are as much children of the soil as the majority and the approach has been to ensure that nothing should be done as might deprive the minorities of a sense of belonging, of a feeling of security, of a consciousness of equality and of the awareness that the conservation of their religion, culture, language and script as also the protection of their educational institutions is a fundamental right enshrined in the Constitution. The same generous, liberal and sympathetic approach should weigh with the courts in construing Articles 29 and 30 as marked the deliberations of the Constitution-makers in drafting those articles and making them part of the fundamental rights. The safeguarding of the interest of the minorities amongst sections of population is as important as the protection of the interest amongst individuals of persons who are below the age of majority or are otherwise suffering from some kind of infirmity. The Constitution and the laws made by civilized nations, therefore, generally contain provisions for the protection of those interests. It can, indeed, be said to be an index of the level of civilization and catholicity of a nation as to how far their minorities feel secure and are not subject to any discrimination or suppression."

122. The learned Judge then observed that the right of the minorities to administer educational institutions did not prevent the making of reasonable regulations in respect of these institutions. Recognizing that the right to administer educational institutions could not include the right to mal-administer, it was held that regulations could be lawfully imposed, for the receiving of grants and recognition, while permitting the institution to retain its character as a minority institution. The regulation "must satisfy a dual test the test of reasonableness, and the 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." It was permissible for the authorities to prescribe regulations, which must be complied with, before a minority institution could seek or retain affiliation and recognition. But it was also stated that the regulations made by the authority should not impinge upon the minority character of the institution. Therefore, a balance has to be kept between the two objectives that of ensuring the standard of excellence of the institution, and that of preserving the right of the minorities to establish and administer their educational institutions. Regulations that embraced and reconciled the two objectives could be considered to be reasonable. This, in our view, is the correct approach to the problem.

123. After referring to the earlier cases in relation to the appointment of teachers, it was noted by Khanna, J., that the conclusion which followed was that a law which interfered with a minority's choice of qualified teachers, or its disciplinary control over teachers and other members of the staff of the institution, was void, as it was violative of Article 30(1). While it was permissible for the state and its educational authorities to prescribe the qualifications of teachers, it was held that once the teachers possessing the requisite qualifications were selected by the minorities for their educational institutions, the state would have no right to veto the selection of those teachers. The selection and appointment of teachers for an educational institution was regarded as one of the essential ingredients under Article 30(1). The Court's attention was drawn to the fact that in the Kerala Education Bill case, this Court had opined that Clauses (11) and (12) made it obligatory for all aided schools to select teachers from a panel selected from each district by the Public Service Commission and that no teacher of an aided school could be dismissed, removed or reduced in rank without the previous sanction of the authorized officer. At page 245, Khanna, J., observed that in cases subsequent to the opinion in the Kerala Education Bill case, this Court had held similar provisions as Clause (11) and Clause (12) to be violative of Article 30(1) of the minority institution. He then observed as follows:-
"..The opinion expressed by this Court in Re Kerala Education Bill (supra) was of an advisory character and though great weight should be attached to it because of its persuasive value, the said opinion cannot override the opinion subsequently expressed by this Court in

contested cases. It is the law declared by this Court in the subsequent contested cases which would have a binding effect. The words "as at present advised" as well as the preceding sentence indicate that the view expressed by this Court in Re Kerala Education Bill in this respect was hesitant and tentative and not a final view in the matter.."

124. In Lilly Kurian vs. Sr. Lewina and Ors. [(1979) 1 SCR 820], this Court struck down the power of the Vice-Chancellor to veto the decision of the management to impose a penalty on a teacher. It was held that the power of the Vice-Chancellor, while hearing an appeal against the imposition of the penalty, was uncanalized and unguided. In Christian Medical College Hospital Employees' Union & Anr. vs. Christian Medical College Vellore Association & Ors. [(1988) 1 SCR 546], this Court upheld the application of industrial law to minority colleges, and it was held that providing a remedy against unfair dismissals would not infringe Article 30. In Gandhi Faizeam College Shahajhanpur vs. University of Agra and Another [(1975) 3 SCR 810], a law which sought to regulate the working of minority institutions by providing that a broad-based management committee could be re-constituted by including therein the Principal and the senior-most teacher, was valid and not violative of the right under Article 30(1) of the Constitution. In All Saints High School, Hyderabad Etc. Etc. vs. Government of A.P. & Ors. Etc. [(1980) 2 SCR 924], a regulation providing that no teacher would be dismissed, removed or reduced in rank, or terminated otherwise except with the prior approval of the competent authority, was held to be invalid, as it sought to confer an unqualified power upon the competent authority. In Frank Anthony Public School Employees Association vs. Union of India & Ors. [(1987) 1 SCR 238], the regulation providing for prior approval for dismissal was held to be invalid, while the provision for an appeal against the order of dismissal by an employee to a Tribunal was upheld. The regulation requiring prior approval before suspending an employee was held to be valid, but the provision, which exempted unaided minority schools from the regulation that equated the pay and other benefits of employees of recognized schools with those in schools run by the authority, was held to be invalid and violative of the equality clause. It was held by this Court that the regulations regarding pay and allowances for teachers and staff would not violate Article 30.

125. In the St. Stephen's College case, the right of minorities to administer educational institutions and the applicability of Article 29(2) to an institution to which Article 30(1) was applicable came up for consideration. St. Stephen's College claimed to be a minority institution, which was affiliated to Delhi University; the College had its own provisions with regard to the admission of students. This provision postulated that applications would be invited by the college by a particular date. The applications were processed and a cut-off percentage for each subject was determined by the Head of the respective Departments and a list of potentially suitable candidates was prepared on the basis of 1:4 and 1:5 ratios for Arts and Science students respectively, and they were then called for an interview (i.e., for every available seat in the Arts Department, four candidates were called for interviews; similarly, for every available seat in the Science Department, five candidates were called for interviews). In respect of Christian students, a relaxation of upto 10% was given in determining the cut-off point. Thereafter, the interviews were conducted and admission was granted. The Delhi University, however, had issued a circular, which provided that admission should be granted to the various courses purely on the basis of merit, i.e., the percentage of marks secured by the students in the qualifying examination. The said circular did not postulate any interview. Thereafter, the admission policy of St. Stephen's College was challenged by a petition under Article 32. It was contended by the petitioners that the College was bound to follow the University policy, rules and regulations regarding admission, and further argued that it was not a minority institution, and in the alternative, it was not entitled to discriminate against students on the ground of religion, as the college was receiving grant-in-aid from the government, and that such discrimination was violative of Article 29(2). The College had also filed a writ petition in the Supreme Court taking the stand that it was a religious minority institution, and that the circular of the University regarding admission violated its fundamental right under Article 30. This Court held that St. Stephen's College was a minority institution. With regard to the

second question as to whether the college was bound by the University circulars regarding admission, this Court, by a majority of 4-1, upheld the admission procedure used by the College, even though it was different from the one laid down by the University. In this context, the contention of the College was that it had been following its own admission programme for more than a hundred years and that it had built a tradition of excellence in a number of distinctive activities. The College challenged the University circular on the ground that it was not regulatory in nature, and that it violated its right under Article 30. Its submission was that if students were admitted purely on the basis of marks obtained by them in the qualifying examination, it would not be possible for any Christian student to gain admission. The college had also found that unless a concession was afforded, the Christian students could not be brought within the zone of consideration as they generally lacked merit when compared to the other applicants. This Court referred to the earlier decisions, and with regard to Article 30(1), observed at page 596, paragraph 54, as follows:-

"The minorities whether based on religion or language have the right to establish and administer educational institutions of their choice. The administration of educational institutions of their choice under Article 30(1) means 'management of the affairs of the institution'. This management must be free from control so that the founder or their nominees can mould the institution as they think fit, and in accordance with their ideas of how the interests of the community in general and the institution in particular will be best served. But the standards of education are not a part of the management as such. The standard concerns the body politic and is governed by considerations of the advancement of the country and its people. Such regulations do not bear directly upon management although they may indirectly affect it. The State, therefore has the right to regulate the standard of education and allied matters. Minority institutions cannot be permitted to fall below the standards of excellence expected of educational institutions. They cannot decline to follow the general pattern of education under the guise of exclusive right of management. While the management must be left to them, they may be compelled to keep in step with others..."

126. It was further noticed that the right under Article 30(1) had to be read subject to the power of the state to regulate education, educational standards and allied matters. In this connection, at pages 598-99, paragraph 59, it was observed as follows:-

"The need for a detailed study on this aspect is indeed not necessary. The right to minorities whether religious or linguistic, to administer educational institutions and the power of the State to regulate academic matters and management is now fairly well settled. The right to administer does not include the right to maladminister. The State being the controlling authority has right and duty to regulate all academic matters. Regulations which will serve the interests of students and teachers, and to preserve the uniformity in standards of education among the affiliated institutions could be made. The minority institutions cannot claim immunity against such general pattern and standard or against general laws such as laws relating to law and order, health, hygiene, labor relations, social welfare legislations, contracts, torts etc. which are applicable to all communities. So long as the basic right of minorities to manage educational institution is not taken away, the State is competent to make regulatory legislation. Regulations, however, shall not have the effect of depriving the right of minorities to educate their children in their own institution. That is a privilege which is implied in the right conferred by Article 30(1).

127. Dealing with the question of the selection of students, it was accepted that the right to select students for admission was a part of administration, and that this power could be regulated, but it was held that the regulation must be reasonable and should be conducive to the welfare of the minority institution or for the betterment of those who resort to it. Bearing this principle in mind, this Court took note of the fact that if the College was to admit students as per the circular

issued by the University, it would have to deny admissions to the students belonging to the Christian community because of the prevailing situation that even after the concession, only a small number of minority applicants would gain admission. It was the case of the College that the selection was made on the basis of the candidate's academic record, and his/her performance at the interview keeping in mind his/her all round competence, his/her capacity to benefit from attendance at the College, as well as his/her potential to contribute to the life of the College. While observing that the oral interview as a supplementary test and not as the exclusive test for assessing the suitability of the candidates for college admission had been recognized by this Court, this Court observed that the admission programme of the college "based on the test of promise and accomplishment of candidates seems to be better than the blind method of selection based on the marks secured in the qualifying examinations." The Court accordingly held that St. Stephen's College was not bound by the impugned circulars of the University. This Court then dealt with the question as to whether a preference in favour of, or a reservation of seats for candidates belonging to, its own community by the minority institutions would be invalid under Article 29(2) of the Constitution. After referring to the Constituent Assembly Debates and the proceedings of the Draft Committee that led to the incorporation of Articles 29 and 30, this Court proceeded to examine the question of the true import and effect of Articles 29(2) and 30(1) of the Constitution. On behalf of the institutions, it was argued that a preference given to minority candidates in their own educational institutions, on the ground that those candidates belonged to that minority community, was not violative of Article 29(2), and that in the exercise of Article 30(1), the minorities were entitled to establish and administer educational institutions for the exclusive advantage of their own community's candidates. This contention was not accepted by this Court on two grounds. Firstly, it was held that institutional preference to minority candidates based on religion was apparently an institutional discrimination on the forbidden ground of religion the Court stated that "if an educational institution says yes to one candidate but says no to other candidate on the ground of religion, it amounts to discrimination on the ground of religion. The mandate of Article 29(2) is that there shall not be any such discrimination." It further held that, as pointed out in the Kerala Education Bill case, the minorities could not establish educational institutions for the benefit of their own community alone. For if such was the aim, Article 30(1) would have been differently worded and it would have contained the words "for their own community". In this regard, it would be useful to bear in mind that the Court at page 607, paragraph 81, noticed that:-

"Even in practice, such claims are likely to be met with considerable hostility. It may not be conducive to have a relatively homogeneous society. It may lead to religious bigotry which is the bane of mankind. In the nation building with secular character sectarian schools or colleges, segregated faculties or universities for imparting general secular education are undesirable and they may undermine secular democracy. They would be inconsistent with the central concept of secularism and equality embedded in the Constitution. Every educational institution irrespective of community to which it belongs is a 'melting pot' in our national life. The students and teachers are the critical ingredients. It is there they develop respect for, and tolerance of, the cultures and beliefs of others. It is essential therefore, that there should be proper mix of students of different communities in all educational institutions.

128. The Court then dealt with the contention on behalf of the University that the minority institutions receiving government aid were bound by the mandate of Article 29(2), and that they could not prefer candidates from their own community. The Court referred to the decision in the case of Champakam Dorairajan (supra), but observed as follows:

"..the fact that Article 29(2) applied to minorities as well as non-minorities did not mean that it was intended to nullify the special right guaranteed to minorities in Article 30(1). Article 29(2) deals with non-discrimination and is available only to individuals. General equality by non-discrimination is not the only need of minorities. Minority rights under majority rule implies more than non-discrimination; indeed, it begins with non-discrimination. Protection

of interests and institutions and the advancement of opportunity are just as important. Differential treatment that distinguishes them from the majority is a must to preserve their basic characteristics."

129. Dealing with the submission that in a secular democracy the government could not be utilized to promote the interest of any particular community, and that the minority institution was not entitled to state aid as of right, this Court, at page 609, paragraph 87, held as follows:-
"It is quite true that there is no entitlement to State grant for minority educational institutions. There was only a stop-gap arrangement under Article 337 for the Anglo-Indian community to receive State grants. There is no similar provision for other minorities to get grant from the State. But under Article 30(2), the State is under an obligation to maintain equality of treatment in granting aid to educational institutions. Minority institutions are not to be treated differently while giving financial assistance. They are entitled to get the financial assistance much the same way as the institutions of the majority communities."

130. It was further held that the state could lay down reasonable conditions for obtaining grant-in-aid and for its proper utilization, but that the state had no power to compel minority institutions to give up their rights under Article 30(1). After referring to the Kerala Education Bill case and Sidhajbhai Sabhai's case, the Court observed at page 609, paragraph 88, as follows:-
"In the latter case this court observed at SCR pages 856-57 that the regulation which may lawfully be imposed as a condition of receiving grant must be directed in making the institution an effective minority educational institution. The regulation cannot change the character of the minority institution. Such regulations must satisfy a dual test; the test of reasonableness, and the test that it is regulative of the educational character of the institution. It must be conducive to making the institution and effective vehicle of education for the minority community or other persons who resort to it. It is thus evident that the rights under Article 30(1) remain unaffected even after securing financial assistance from the government."

131. After referring to the following observations in D.A.V. College case,
"..The right of a religious or linguistic minority to establish and administer educational institutions of its choice under Article 30(1) is subject to the regulatory power of the State for maintaining and facilitating the excellence of its standards. This right is further subject to Article 29(2), which provides that no citizen shall be denied admission into any educational institution which is maintained by the State or receives aid out of State funds, on grounds only of religion, race, caste, language or any of them..."

the learned Judges remarked at page 610 (para 91) that in the said case, the Court was not deciding the question that had arisen before them.

132. According to the learned Judges, the question of the interplay of Article 29(2) with Article 30(1) had arisen in that case (St. Stephen's case) for the first time, and had not been considered by the Court earlier; they observed that "we are on virgin soil, not on trodden ground". Dealing with the interplay of these two Articles, it was observed, at page 612, paragraph 96, as follows:-
"The collective minority right is required to be made functional and is not to be reduced to useless lumber. A meaningful right must be shaped, moulded and created under Article 30(1), while at the same time affirming the right of individuals under Article 29(2). There is need to strike a balance between the two competing rights. It is necessary to mediate between Article 29(2) and Article 30(1), between letter and spirit of these articles, between traditions of the past and the convenience of the present, between society's need for stability and its need for change."

133. The two competing rights are the right of the citizen not to be denied

admission granted under Article 29(2), and right of the religious or linguistic minority to administer and establish an institution of its choice granted under Article 30(1). While treating Article 29(2) as a facet of equality, the Court gave a contextual interpretation to Articles 29(2) and 30(1) while rejecting the extreme contentions on both sides, i.e., on behalf of the institutions that Article 29(2) did not prevent a minority institution to preferably admit only members belonging to the minority community, and the contention on behalf of the State that Article 29(2) prohibited any preference in favour of a minority community for whose benefit the institution was established. The Court concluded, at pages 613-14, para 102, as follows:-

"In the light of all these principles and factors, and in view of the importance which the Constitution attaches to protective measures to minorities under Article 30(1), the minority aided educational institutions are entitled to prefer their community candidates to maintain the minority character of the institutions subject of course to conformity with the University standard. The State may regulate the intake in this category with due regard to the need of the community in the area which the institution is intended to serve. But in no case such intake shall exceed 50 per cent of the annual admission. The minority institutions shall make available at least 50 per cent of the annual admission to members of communities other than the minority community. The admission of other community candidates shall be done purely on the basis of merit."

134. If we keep these basic features, as highlighted in St. Stephen's case, in view, then the real purposes underlying Articles 29(2) and 30 can be better appreciated.

135. We agree with the contention of the learned Solicitor General that the Constitution in Part III does not contain or give any absolute right. All rights conferred in Part III of the Constitution are subject to at least other provisions of the said Part. It is difficult to comprehend that the framers of the Constitution would have given such an absolute right to the religious or linguistic minorities, which would enable them to establish and administer educational institutions in a manner so as to be in conflict with the other Parts of the Constitution. We find it difficult to accept that in the establishment and administration of educational institutions by the religious and linguistic minorities, no law of the land, even the Constitution, is to apply to them.

136. Decisions of this Court have held that the right to administer does not include the right to mal-administer. It has also been held that the right to administer is not absolute, but must be subject to reasonable regulations for the benefit of the institutions as the vehicle of education, consistent with national interest. General laws of the land applicable to all persons have been held to be applicable to the minority institutions also for example, laws relating to taxation, sanitation, social welfare, economic regulation, public order and morality.

137. It follows from the aforesaid decisions that even though the words of Article 30(1) are unqualified, this Court has held that at least certain other laws of the land pertaining to health, morality and standards of education apply. The right under Article 30(1) has, therefore, not been held to be absolute or above other provisions of the law, and we reiterate the same. By the same analogy, there is no reason why regulations or conditions concerning, generally, the welfare of students and teachers should not be made applicable in order to provide a proper academic atmosphere, as such provisions do not in any way interfere with the right of administration or management under Article 30(1).

138. As we look at it, Article 30(1) is a sort of guarantee or assurance to the linguistic and religious minority institutions of their right to establish and administer educational institutions of their choice. Secularism and equality being two of the basic features of the Constitution, Article 30(1) ensures protection to the linguistic and religious minorities, thereby preserving the secularism of the country. Furthermore, the principles of equality must necessarily apply to the enjoyment of such rights. No law can be framed that will discriminate against such minorities with regard to the establishment and administration of educational

institutions vis--vis other educational institutions. Any law or rule or regulation that would put the educational institutions run by the minorities at a disadvantage when compared to the institutions run by the others will have to be struck down. At the same time, there also cannot be any reverse discrimination. It was observed in St. Xaviers College case, at page 192, that "the whole object of conferring the right on minorities under Article 30 is to ensure that there will be equality between the majority and the minority. If the minorities do not have such special protection, they will be denied equality." In other words, the essence of Article 30(1) is to ensure equal treatment between the majority and the minority institutions. No one type or category of institution should be disfavoured or, for that matter, receive more favourable treatment than another. Laws of the land, including rules and regulations, must apply equally to the majority institutions as well as to the minority institutions. The minority institutions must be allowed to do what the non-minority institutions are permitted to do.

139. Like any other private unaided institutions, similar unaided educational institutions administered by linguistic or religious minorities are assured maximum autonomy in relation thereto; e.g., method of recruitment of teachers, charging of fees and admission of students. They will have to comply with the conditions of recognition, which cannot be such as to whittle down the right under Article 30.

140. We have now to address the question of whether Article 30 gives a right to ask for a grant or aid from the state, and secondly, if it does get aid, to examine to what extent its autonomy in administration, specifically in the matter of admission to the educational institution established by the community, can be curtailed or regulated.

141. The grant of aid is not a constitutional imperative. Article 337 only gives the right to assistance by way of grant to the Anglo-Indian community for a specified period of time. If no aid is granted to anyone, Article 30(1) would not justify a demand for aid, and it cannot be said that the absence of aid makes the right under Article 30(1) illusory. The founding fathers have not incorporated the right to grants in Article 30, whereas they have done so under Article 337; what, then, is the meaning, scope and effect of Article 30(2)? Article 30(2) only means what it states, viz., that a minority institution shall not be discriminated against when aid to educational institutions is granted. In other words the state cannot, when it chooses to grant aid to educational institutions, deny aid to a religious or linguistic minority institution only on the ground that the management of that institution is with the minority. We would, however, like to clarify that if an abject surrender of the right to management is made a condition of aid, the denial of aid would be violative of Article 30(2). However, conditions of aid that do not involve a surrender of the substantial right of management would not be inconsistent with constitutional guarantees, even if they indirectly impinge upon some facet of administration. If, however, aid were denied on the ground that the educational institution is under the management of a minority, then such a denial would be completely invalid.

142. The implication of Article 30(2) is also that it recognizes that the minority nature of the institution should continue, notwithstanding the grant of aid. In other words, when a grant is given to all institutions for imparting secular education, a minority institution is also entitled to receive it, subject to the fulfillment of the requisite criteria, and the state gives the grant knowing that a linguistic or minority educational institution will also receive the same. Of course, the state cannot be compelled to grant aid, but the receipt of aid cannot be a reason for altering the nature or character of the recipient educational institution.

143. This means that the right under Article 30(1) implies that any grant that is given by the state to the minority institution cannot have such conditions attached to it, which will in any way dilute or abridge the rights of the minority institution to establish and administer that institution. The conditions that can normally be permitted to be imposed, on the educational institutions receiving the grant, must be related to the proper utilization of the grant and fulfillment of the objectives of the grant. Any such secular conditions so laid, such as a proper audit with regard to the utilization of the funds and the manner in which the funds are to

be utilized, will be applicable and would not dilute the minority status of the educational institutions. Such conditions would be valid if they are also imposed on other educational institutions receiving the grant.

144. It cannot be argued that no conditions can be imposed while giving aid to a minority institution. Whether it is an institution run by the majority or the minority, all conditions that have relevance to the proper utilization of the grant-in-aid by an educational institution can be imposed. All that Article 30(2) states is that on the ground that an institution is under the management of a minority, whether based on religion or language, grant of aid to that educational institution cannot be discriminated against, if other educational institutions are entitled to receive aid. The conditions for grant or non-grant of aid to educational institutions have to be uniformly applied, whether it is a majority-run institution or a minority-run institution. As in the case of a majority-run institution, the moment a minority institution obtains a grant of aid, Article 28 of the Constitution comes into play. When an educational institution is maintained out of State funds, no religious instruction can be provided therein. Article 28(1) does not state that it applies only to educational institutions that are not established or maintained by religious or linguistic minorities. Furthermore, upon the receipt of aid, the provisions of Article 28(3) would apply to all educational institutions whether run by the minorities or the non-minorities. Article 28(3) is the right of a person studying in a state recognized institution or in an educational institution receiving aid from state funds, not to take part in any religious instruction, if imparted by such institution, without his/her consent (or his/her guardian's consent if such a person is a minor). Just as Article 28(1) and (3) become applicable the moment any educational institution takes aid, likewise, Article 29(2) would also be attracted and become applicable to an educational institution maintained by the state or receiving aid out of state funds. It was strenuously contended that the right to give admission is one of the essential ingredients of the right to administer conferred on the religious or linguistic minority, and that this right should not be curtailed in any manner. It is difficult to accept this contention. If Article 28(1) and (3) apply to a minority institution that receives aid out of state funds, there is nothing in the language of Article 30 that would make the provisions of Article 29(2) inapplicable. Like Article 28(1) and Article 28(3), Article 29(2) refers to "any educational institution maintained by the State or receiving aid out of State funds". A minority institution would fall within the ambit of Article 29(2) in the same manner in which Article 28(1) and Article 28(3) would be applicable to an aided minority institution. It is true that one of the rights to administer an educational institution is to grant admission to the students. As long as an educational institution, whether belonging to the minority or the majority community, does not receive aid, it would, in our opinion, be its right and discretion to grant admission to such students as it chooses or selects subject to what has been clarified before. Out of the various rights that the minority institution has in the administration of the institution, Article 29(2) curtails the right to grant admission to a certain extent. By virtue of Article 29(2), no citizen can be denied admission by an aided minority institution on the grounds only of religion, race, caste, language or any of them. It is no doubt true that Article 29(2) does curtail one of the powers of the minority institution, but on receiving aid, some of the rights that an unaided minority institution has, are also curtailed by Article 28(1) and 28(3). A minority educational institution has a right to impart religious instruction this right is taken away by Article 28(1), if that minority institution is maintained wholly out of state funds. Similarly on receiving aid out of state funds or on being recognized by the state, the absolute right of a minority institution requiring a student to attend religious instruction is curtailed by Article 28(3). If the curtailment of the right to administer a minority institution on receiving aid or being wholly maintained out of state funds as provided by Article 28 is valid, there is no reason why Article 29(2) should not be held to be applicable. There is nothing in the language of Article 28(1) and (3), Article 29(2) and Article 30 to suggest that, on receiving aid, Article 28(1) and (3) will apply, but Article 29(2) will not. Therefore, the contention that the institutions covered by Article 30 are outside the injunction of Article 29(2) cannot be accepted.

145. What is the true scope and effect of Article 29(2)? Article 29(2) is capable of two interpretations one interpretation, which is put forth by the Solicitor General and the other counsel for the different States, is that a minority institution receiving aid cannot deny admission to any citizen on the grounds of

religion, race, caste, language or any of them. In other words, the minority institution, once it takes any aid, cannot make any reservation for its own community or show a preference at the time of admission, i.e., if the educational institution was a private unaided minority institution, it is free to admit all students of its own community, but once aid is received, Article 29(2) makes it obligatory on the institution not to deny admission to a citizen just because he does not belong to the minority community that has established the institution.

146. The other interpretation that is put forth is that Article 29(2) is a protection against discrimination on the ground of religion, race, caste or language, and does not in any way come into play where the minority institution prefers students of its choice. To put it differently, denying admission, even though seats are available, on the ground of the applicant's religion, race, caste or language, is prohibited, but preferring students of minority groups does not violate Article 29(2).

147. It is relevant to note that though Article 29 carries the head note "Protection of interests of minorities" it does not use the expression "minorities" in its text. The original proposal of the Advisory Committee in the Constituent Assembly recommended the following:-
""(1) Minorities in every unit shall be protected in respect of their language, script and culture and no laws or regulations may be enacted that may operate oppressively or prejudicially in this respect."
[B. Siva Rao, "Select Documents" (1957) Vol. 2 page 281]

But after the clause was considered by the Drafting Committee on 1st November, 1947, it emerged with substitute of 'section of citizens'.[B. Siva Rao, Select Documents (1957) Vol.3, pages 525-26. Clause 23, Draft Constitution]. It was explained that the intention had always been to use 'minority' in a wide sense, so as to include (for example) Maharashtrians who settled in Bengal. (7 C.A.D. pages 922-23)"

148. Both Articles 29 and 30 form a part of the fundamental rights Chapter in Part III of the Constitution. Article 30 is confined to minorities, be it religious or linguistic, and unlike Article 29(1), the right available under the said Article cannot be availed by any section of citizens. The main distinction between Article 29(1) and Article 30(1) is that in the former, the right is confined to conservation of language, script or culture. As was observed in the Father W. Proost case, the right given by Article 29(1) is fortified by Article 30(1), insofar as minorities are concerned. In the St. Xaviers College case, it was held that the right to establish an educational institution is not confined to conservation of language, script or culture. When constitutional provisions are interpreted, it has to be borne in mind that the interpretation should be such as to further the object of their incorporation. They cannot be read in isolation and have to be read harmoniously to provide meaning and purpose. They cannot be interpreted in a manner that renders another provision redundant. If necessary, a purposive and harmonious interpretation should be given.

149. Although the right to administer includes within it a right to grant admission to students of their choice under Article 30(1), when such a minority institution is granted the facility of receiving grant-in-aid, Article 29(2) would apply, and necessarily, therefore, one of the rights of administration of the minorities would be eroded to some extent. Article 30(2) is an injunction against the state not to discriminate against the minority educational institution and prevent it from receiving aid on the ground that the institution is under the management of a minority. While, therefore, a minority educational institution receiving grant-in-aid would not be completely outside the discipline of Article 29(2) of the Constitution, by no stretch of imagination can the rights guaranteed under Article 30(1) be annihilated. It is in this context that some interplay between Article 29(2) and Article 30(1) is required. As observed quite aptly in St. Stephen's case "the fact that Article 29(2) applies to minorities as well as non-minorities does not mean that it was intended to nullify the special right guaranteed to minorities in Article 30(1)." The word "only" used in Article 29(2) is of considerable

significance and has been used for some avowed purpose. Denying admission to non-minorities for the purpose of accommodating minority students to a reasonable extent will not be only on grounds of religion etc., but is primarily meant to preserve the minority character of the institution and to effectuate the guarantee under Article 30(1). The best possible way is to hold that as long as the minority educational institution permits admission of citizens belonging to the non-minority class to a reasonable extent based upon merit, it will not be an infraction of Article 29(2), even though the institution admits students of the minority group of its own choice for whom the institution was meant. What would be a reasonable extent would depend upon variable factors, and it may not be advisable to fix any specific percentage. 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 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. It is for this reason that a variable percentage of admission of minority students depending on the type of institution and education is desirable, and indeed, necessary, to promote the constitutional guarantees enshrined in both Article 29(2) and Article 30.

150. At this stage, it will be appropriate to refer to the following observations of B.P. Jeevan Reddy, J., in Indra Sawhney vs. Union of India and Others [1992 Supp. (3) SCC 215] at page 657, paragraph 683, as follows:-

"Before we proceed to deal with the question, we may be permitted to make a few observations: The questions arising herein are not only of great moment and consequence, they are also extremely delicate and sensitive. They represent complex problems of Indian society, wrapped and presented to us as constitutional and legal questions. On some of these questions, the decisions of this Court have not been uniform. They speak with more than one voice. Several opposing points of view have been pressed upon us with equal force and passion and quite often with great emotion. We recognize that these viewpoints are held genuinely by the respective exponents. Each of them feels his own point of view is the only right one. We cannot, however, agree with all of them. We have to find and we have tried our best to find answers which according to us are the right ones constitutionally and legally. Though, we are sitting in a larger Bench, we have kept in mind the relevance and significance of the principle of stare decisis. We are conscious of the fact that in law certainty, consistency and continuity are highly desirable features. Where a decision has stood the test of time and has never been doubted, we have respected it unless, of course, there are compelling and strong reasons to depart from it. Where, however, such uniformity is not found, we have tried to answer the question on principle keeping in mind the scheme and goal of our Constitution and the material placed before us."

151. The right of the aided minority institution to preferably admit students of its community, when Article 29(2) was applicable, has been clarified by this Court over a decade ago in the St. Stephen's College case. While upholding the procedure for admitting students, this Court also held that aided minority educational institutions were entitled to preferably admit their community candidates so as to maintain the minority character of the institution, and that the state may regulate the intake in this category with due regard to the area that the institution was intended to serve, but that this intake should not be more than 50% in any case. Thus, St. Stephen's endeavoured to strike a balance between the two Articles. Though we accept the ratio of St. Stephen's, which has held the field for over a decade, we have compelling reservations in accepting the rigid percentage stipulated therein. As Article 29 and Article 30 apply not only to institutions of higher education but also to schools, a ceiling of 50% would not be proper. It will be more appropriate that, depending upon the level of the institution, whether it be

a primary or secondary or high school or a college, professional or otherwise, and on the population and educational needs of the area in which the institution is to be located, the state properly balances the interests of all by providing for such a percentage of students of the minority community to be admitted, so as to adequately serve the interest of the community for which the institution was established.

152. At the same time, the admissions to aided institutions, whether awarded to minority or non-minority students, cannot be at the absolute sweet will and pleasure of the management of minority educational institutions. As the regulations to promote academic excellence and standards do not encroach upon the guaranteed rights under Article 30, the aided minority educational institutions can be required to observe inter se merit amongst the eligible minority applicants and passage of common entrance test by the candidates, where there is one, with regard to admissions in professional and non-professional colleges. If there is no such test, a rational method of assessing comparative merit has to be evolved. As regards the non-minority segment, admission may be on the basis of the common entrance test and counselling by a state agency. In the courses for which such a test and counselling are not in vogue, admission can be on the basis of relevant criteria for the determination of merit. It would be open to the state authorities to insist on allocating a certain percentage of seats to those belonging to weaker sections of society, from amongst the non-minority seats.

153. We would, however, like to clarify one important aspect at this stage. The aided linguistic minority educational institution is given the right to admit students belonging to the linguistic minority to a reasonable extent only to ensure that its minority character is preserved and that the objective of establishing the institution is not defeated. 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 large measure because they constitute the linguistic minority group as far as that state is concerned. In other words, the predominance of linguistic 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 state in which they are in a majority, under the faade of the protection given under Article 30(1). If not, the very objective of conferring the preferential right of admission by harmoniously constructing Articles 30(1) and 29(2), which we have done above, may be distorted.

154. We are rightly proud of being the largest democracy in the world. The essential ingredient of democracy is the will and the right of the people to elect their representatives from amongst whom a government is formed.

155. It will be wrong to presume that the government or the legislature will act against the Constitution or contrary to the public or national interest at all times. Viewing every action of the government with skepticism, and with the belief that it must be invalid unless proved otherwise, goes against the democratic form of government. It is no doubt true that the Court has the power and the function to see that no one including the government acts contrary to the law, but the cardinal principle of our jurisprudence is that it is for the person who alleges that the law has been violated to prove it to be so. In such an event, the action of the government or the authority may have to be carefully examined, but it is improper to proceed on the assumption that, merely because an allegation is made, the action impugned or taken must be bad in law. Such being the position, when the government frames rules and regulations or lays down norms, especially with regard to education, one must assume that unless shown otherwise, the action taken is in accordance with law. Therefore, it will not be in order to so interpret a Constitution, and Articles 29 and 30 in particular, on the presumption that the state will normally not act in the interest of the general public or in the interests of concerned sections of the society.

CONCLUSION

Equality and Secularism

156. Our country is often depicted as a person in the form of "Bharat Mata Mother India". The people of India are regarded as her children with their welfare being in her heart. Like any loving mother, the welfare of the family is of paramount importance for her.

157. For a healthy family, it is important that each member is strong and healthy. But then, all members do not have the same constitution, whether physical and/or mental. For harmonious and healthy growth, it is but natural for the parents, and the mother in particular, to give more attention and food to the weaker child so as to help him/her become stronger. Giving extra food and attention and ensuring private tuition to help in his/her studies will, in a sense, amount to giving the weaker child preferential treatment. Just as lending physical support to the aged and the infirm, or providing a special diet, cannot be regarded as unfair or unjust, similarly, conferring certain rights on a special class, for good reasons, cannot be considered inequitable. All the people of India are not alike, and that is why preferential treatment to a special section of the society is not frowned upon. Article 30 is a special right conferred on the religious and linguistic minorities because of their numerical handicap and to instill in them a sense of security and confidence, even though the minorities cannot be per se regarded as weaker sections or underprivileged segments of the society.

158. The one billion population of India consists of six main ethnic groups and fifty-two major tribes; six major religions and 6,400 castes and sub-castes; eighteen major languages and 1,600 minor languages and dialects. The essence of secularism in India can best be depicted if a relief map of India is made in mosaic, where the aforesaid one billion people are the small pieces of marble that go into the making of a map. Each person, whatever his/her language, caste, religion has his/her individual identity, which has to be preserved, so that when pieced together it goes to form a depiction with the different geographical features of India. These small pieces of marble, in the form of human beings, which may individually be dissimilar to each other, when placed together in a systematic manner, produce the beautiful map of India. Each piece, like a citizen of India, plays an important part in making of the whole. The variations of the colours as well as different shades of the same colour in a map is the result of these small pieces of different shades and colours of marble, but even when one small piece of marble is removed, the whole map of India would be scarred, and the beauty would be lost.

159. Each of the people of India has an important place in the formation of the nation. Each piece has to retain its own colour. By itself, it may be an insignificant stone, but when placed in a proper manner, goes into the making of a full picture of India in all its different colours and hues.

160. A citizen of India stands in a similar position. The Constitution recognizes the differences among the people of India, but it gives equal importance to each of them, their differences notwithstanding, for only then can there be a unified secular nation. Recognizing the need for the preservation and retention of different pieces that go into the making of a whole nation, the Constitution, while maintaining, inter alia, the basic principle of equality, contains adequate provisions that ensure the preservation of these different pieces.

161. The essence of secularism in India is the recognition and preservation of the different types of people, with diverse languages and different beliefs, and placing them together so as to form a whole and united India. Articles 29 and 30 do not more than seek to preserve the differences that exist, and at the same time, unite the people to form one strong nation.

ANSWERS TO ELEVEN QUESTIONS:

Q.1. What is the meaning and content of the expression "minorities" in Article 30 of the Constitution of India?
A. Linguistic and religious minorities are covered by the expression "minority" under Article 30 of the Constitution. Since reorganization of the States in

India has been on linguistic lines, therefore, for the purpose of determining the minority, the unit will be the State and not the whole of India. Thus, religious and linguistic minorities, who have been put at par in Article 30, have to be considered State-wise.

Q.2. What is meant by the expression "religion" in Article 30(1)? Can the followers of a sect or denomination of a particular religion claim protection under Article 30(1) on the basis that they constitute a minority in the State, even though the followers of that religion are in majority in that State?
A. This question need not be answered by this Bench; it will be dealt with by a regular Bench.

Q.3(a) What are the indicia for treating an educational institution as a minority educational institution? Would an institution be regarded as a minority educational institution because it was established by a person(s) belonging to a religious or linguistic minority or its being administered by a person(s) belonging to a religious or linguistic minority?
A. This question need not be answered by this Bench; it will be dealt with by a regular Bench.

Q3(b) To what extent can professional education be treated as a matter coming under minorities rights under Article 30?
A. Article 30(1) gives religious and linguistic minorities the right to establish and administer educational institutions of their choice. The use of the words "of their choice" indicates that even professional educational institutions would be covered by Article 30.

Q.4. Whether the admission of students to minority educational institution, whether aided or unaided, can be regulated by the State Government or by the University to which the institution is affiliated?
A. Admission of students to unaided minority educational institutions, viz., schools and undergraduate colleges where the scope for merit-based selection is practically nil, cannot be regulated by the concerned State or University, except for providing the qualifications and minimum conditions of eligibility in the interest of academic standards.
The right to admit students being an essential facet of the right to administer educational institutions of their choice, as contemplated under Article 30 of the Constitution, the state government or the university may not be entitled to interfere with that right, so long as the admission to the unaided educational institutions is on a transparent basis and the merit is adequately taken care of. The right to administer, not being absolute, there could be regulatory measures for ensuring educational standards and maintaining excellence thereof, and it is more so in the matter of admissions to professional institutions.
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 concerned State Government has to notify the percentage of the non-minority students to be admitted in the light of the above observations. Observance of inter se merit amongst the applicants belonging to the minority group could be ensured. In the case of aided professional institutions, it can also be stipulated that passing of the common entrance test held by the state agency is necessary to seek admission. As regards non-minority students who are eligible to seek admission for the remaining seats, admission should normally be on the basis of the common entrance test held by the state agency followed by counselling wherever it exists.

Q5(a) Whether the minority's rights to establish and administer educational institutions of their choice will include the procedure and method of

admission and selection of students?
A. A minority institution may have its own procedure and method of admission as well as selection of students, but such a procedure must be fair and transparent, and the selection of students in professional and higher education colleges should be on the basis of merit. The procedure adopted or selection made should not be tantamount to mal-administration. Even an unaided minority institution ought not to ignore the merit of the students for admission, while exercising its right to admit students to the colleges aforesaid, as in that event, the institution will fail to achieve excellence.
Q5(b) Whether the minority institutions' right of admission of students and to lay down procedure and method of admission, if any, would be affected in any way by the receipt of State aid?
A. While giving aid to professional institutions, it would be permissible for the authority giving aid to prescribe by-rules or regulations, the conditions on the basis of which admission will be granted to different aided colleges by virtue of merit, coupled with the reservation policy of the state qua non-minority students. The merit may be determined either through a common entrance test conducted by the concerned University or the Government followed by counselling, or on the basis of an entrance test conducted by individual institutions the method to be followed is for the university or the government to decide. The authority may also devise other means to ensure that admission is granted to an aided professional institution on the basis of merit. In the case of such institutions, it will be permissible for the government or the university to provide that consideration should be shown to the weaker sections of the society.

Q5(c) Whether the statutory provisions which regulate the facets of administration like control over educational agencies, control over governing bodies, conditions of affiliation including recognition/withdrawal thereof, and appointment of staff, employees, teachers and Principals including their service conditions and regulation of fees, etc. would interfere with the right of administration of minorities?
A. So far as the statutory provisions regulating the facets of administration are concerned, in case of an unaided minority educational institution, the regulatory measure of control should be minimal and the conditions of recognition as well as the conditions of affiliation to an university or board have to be complied with, but in the matter of day-to-day management, like the appointment of staff, teaching and non-teaching, and administrative control over them, the management should have the freedom and there should not be any external controlling agency. However, a rational procedure for the selection of teaching staff and for taking disciplinary action has to be evolved by the management itself.
For redressing the grievances of employees of aided and unaided institutions who are subjected to punishment or termination from service, a mechanism will have to be evolved, and in our opinion, appropriate tribunals could be constituted, and till then, such tribunals could be presided over by a Judicial Officer of the rank of District Judge.
The State or other controlling authorities, however, can always prescribe the minimum qualification, experience and other conditions bearing on the merit of an individual for being appointed as a teacher or a principal of any educational institution.
Regulations can be framed governing service conditions for teaching and other staff for whom aid is provided by the State, without interfering with the overall administrative control of the management over the staff.
Fees to be charged by unaided institutions cannot be regulated but no institution should charge capitation fee.

Q6(a) Where can a minority institution be operationally located? Where a religious or linguistic minority in State 'A' establishes an educational institution in the said State, can such educational institution grant preferential admission/reservations and other benefits to members of the religious/linguistic group from other States where they are non-minorities?
A. This question need not be answered by this Bench; it will be dealt with by a regular Bench.

Q6(b) Whether it would be correct to say that only the members of that minority residing in State 'A' will be treated as the members of the minority vis--vis such institution?
A. This question need not be answered by this Bench; it will be dealt with by a regular Bench.

Q.7 Whether the member of a linguistic non-minority in one State can establish a trust/society in another State and claim minority status in that State?
A. This question need not be answered by this Bench; it will be dealt with by a regular Bench.

Q.8 Whether the ratio laid down by this Court in the St. Stephen's case (St. Stephen's College vs. University of Delhi [(1992) 1 SCC 558] is correct? If no, what order?
A. The basic ratio laid down by this Court in the St. Stephen's College case is correct, as indicated in this judgment. However, rigid percentage cannot be stipulated. It has to be left to authorities to prescribe a reasonable percentage having regard to the type of institution, population and educational needs of minorities.

Q.9 Whether the decision of this Court in Unni Krishnan J.P. vs. State of A.P. [(1993) 1 SCC 645] (except where it holds that primary education is a fundamental right) and the scheme framed thereunder require reconsideration/modification and if yes, what?
A. The scheme framed by this Court in Unni Krishnan's case and the direction to impose the same, except where it holds that primary education is a fundamental right, is unconstitutional. However, the principle that there should not be capitation fee or profiteering is correct. Reasonable surplus to meet cost of expansion and augmentation of facilities does not, however, amount to profiteering.

Q.10 Whether the non-minorities have the right to establish and administer educational institution under Articles 21 and 29(1) read with Articles 14 and 15(1), in the same manner and to the same extent as minority institutions?
and
Q.11 What is the meaning of the expressions "Education" and "Educational Institutions" in various provisions of the Constitution? Is the right to establish and administer educational institutions guaranteed under the Constitution?
A. The expression "education" in the Articles of the Constitution means and includes education at all levels from the primary school level upto the post-graduate level. It includes professional education. The expression "educational institutions" means institutions that impart education, where "education" is as understood hereinabove.
The right to establish and administer educational institutions is guaranteed under the Constitution to all citizens under Articles 19(1)(g) and 26, and to minorities specifically under Article 30.
All citizens have a right to establish and administer educational institutions under Articles 19(1)(g) and 26, but this right is subject to the provisions of Articles 19(6) and 26(a). However, minority institutions will have a right to admit students belonging to the minority group, in the manner as discussed in this judgment.