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:
S.N. Variava & Ashok Bhan.

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 and 764 & 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 & 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 and T.C. (Civil) Nos. 26 of 1990, T.P. (Civil) Nos.1013-14 of 1993.

S. N. Variava, J.

1. We have had the advantage of going through the Judgment of the learned Chief Justice of India, brother Justice Khare, brother Justice Quadri and sister Justice Ruma Pal. We are unable to agree with the views expressed by brother Justice Quadri and sister Justice Ruma Pal. The learned Chief Justice has categorized the various questions into the following categories.

1) Is there a fundamental right to set up educational institutions and, if so, under which provision;

2) Does the judgment in Unnikrishnan’s case require reconsideration?

3) In case of private unaided institutions can there be Government regulations and if so to what extent?

4) In determining the existence of a religious or linguistic

minority, in relation to Article 30, what is to be the unit, the State or Country as a whole; and

5) To what extent the rights of aided minority institutions to administer be regulated.

2. Justice Khare has dealt with categories 4 and 5 above. On other aspects he has agreed with the learned Chief Justice.

3. We are in agreement with the reasoning and conclusions of the learned Chief Justice on categories 1 and 4. In respect of category 2 we agree with the learned Chief Justice 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. As pointed out by the learned Chief Justice even though by a subsequent decision (to Unni Krishnan's) this Court had permitted some percentage of seats within the payment seats to be allotted to Non-Resident Indians, against payment of a higher amount as determined by the authorities, sufficient funds were still not available for the development of those educational institutions. As pointed out by the learned Chief Justice experience has shown that most of the "free seats" were occupied by students from affluent families, while students from less affluent families were required to pay much more to secure admission to "payment seats". As pointed out by the learned Chief Justice the reason for this was 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". Thus we agree with the conclusion of the learned Chief Justice that the scheme cannot be considered to be a reasonable restriction and requires re-consideration and that the regulations must be minimum. However we cannot lose sight of the ground realities in our country. The majority of our population come from the poorer section of our society. They cannot and will not be able to afford the fees which will now be fixed pursuant to the judgment. There must therefore be an attempt, not just on the part of the Government and the State, but also by the educational institutions to ensure that students from the poorer section of society get admission. One method would be by making available scholarships or free seats. If the educational institution is willing to provide free seats then the costs of such free seats could also be partly covered by the fees which are now to be fixed. There should be no harm in the rich subsidising the poor.

4. The learned Chief Justice has repeatedly emphasised that capitation fees cannot be charged and that there must be no profiteering. We clarify that the concerned authorities will always be entitled to prevent by enactment or by regulations the charging of exhorbitant fees or capitation fees. There are many such enactments already in force. We have not gone into the validity or otherwise of any such enactment. No arguments regarding the validity of any such enactment have been submitted before us. Thus those enactments will not be deemed to have been set aside by this Judgment. Of course now by virtue of this Judgment the fee structure, fixed under any regulation or enactment, will have to be reworked so as to enable educational institutions not only to break even but also to generate some surplus for future development/expansion and to provide for free seats.

5. We also wish to emphasis, what has already been stated by the learned Chief Justice, that an educational institution must grant

admission on some identifiable and acceptable manner. It is only in exceptional cases, that the management may refuse admission to a student. However such refusal must not be whimsical or for extraneous reasons meaning thereby that the refusal must be based on some cogent and justifiable reasons.

6. In respect of categories 3 and 5 we wish to point out that this Court has been constantly taking the view that these aided educational institutions (whether majority or minority) should not have unfettered freedom in the matter of administration and management. The State which gives aid to educational institution including minority educational institution can impose such conditions as are necessary for the proper maintenance for the higher standards of education. State is also under an obligation to protect the interests of the teaching and non-teaching staff. In many States, there are various statutory provisions to regulate the functioning of these educational institutions. Every educational institution should have basic amenities. If it is a school, it should have healthy surroundings for proper education; it should have a playground, a laboratory, a library and other requisite facilities that are necessary for a proper functioning of the school. The teachers who are working in the schools should be governed by proper service conditions. In States where the entire pay and allowances for the teaching staff and non-teaching staff are paid by the State, the State has got ample power to regulate the method of selection and appointment of teachers. State can also prescribe qualifications for the teachers to be appointed in such schools. Similarly in an aided schools, State sometimes provides aid for some of the teachers only while denying the aid to other teachers. Sometimes the State does not provide aid for the non-teaching staff. The State could, when granting aid, provides for the age and qualifications for recruitment of a teacher, the age of retirement and even for the manner in which an enquiry has to be held by the institution. In other words there could be regulations which ensure that service conditions for teachers and staff receiving aid of the State and the teachers or the staff for which no aid is being provided are the same. Pre-requisite to attract good teachers is to have good service conditions. To bring about an uniformity in the service conditions State should be put at liberty to prescribe the same without intervening in the process of selection of the teachers or their removal, dismissal etc. We agree that there need not be either prior and subsequent approval from any functionaries of the State/University/Board (as the case may be) for disciplinary action, removal or dismissal. However principles of natural justice must be observed and as already provided, by the learned Chief Justice all such action can be scrutinised by the Education Tribunal. The provisions contained in the various enactments are not specially challenged before us. The constitutional validity of the statutory provisions vis-- vis the rights under Articles 19(1)(g), Article 26, Article 29 and Article 30(1) of the Constitution can be examined only if a specific case is brought before the Court. Educational Institutions receiving State aid cannot claim to have complete autonomy in the matter of administration. They are bound by various statutory provisions which are enacted to protect the interests of the education, students and teachers. Many of the Statutes were enacted long back and stood the test of time. Nobody has ever challenged the provisions of these enactments. The regulations made by the State, to a great extent, depend on the extent of the aid given to institutions including minority institutions. In some States, a lumpsum amount is paid as grant for maintenance of schools. In such cases, the State may not be within its rights to impose various restrictions, specially regarding selection and appointment of teachers. But in some States the entire salary of the teaching and non-teaching staff are paid, and these employees are given pension and other benefits, the State may then have a right and an obligation to see that the selection and appointment of teachers are properly made. Similarly the State could impose conditions to the effect that in the matter of appointments, preference

shall be given to weaker sections of the community, specially physically handicapped or dependents of employees who died in harness. All such regulations may not be said to be bad and/or invalid and may not even amount to infringing the rights of the minority conferred under Article 30(1) of the Constitution. Statutory provisions such as labour laws and welfare legislations etc. would be applicable to minority educational institutions. As this decision is being rendered by a larger bench consisting of eleven judges, we feel that it is not advisable and we should not be taken to have laid down extensive guidelines in respect of myriads of legal questions that may arise for consideration. In our view in this case the battlelines were not drawn up in the correct perspective and many of the aggrieved or affected parties were not before us.

7. As regards category 5, we agree with the conclusions of both the learned Chief Justice as well as Justice Khare that Article 29(2) applies to Article 30. However, we are unable to agree with the final reasoning that there must be a balancing between Articles 29(2) and 30(1). We, therefore, give our reasons for dis-agreeing with the final conclusion that there must be a balancing between Articles 29(2) and 30.

8. We are conscious of the fact that the learned Chief Justice and Justice Khare have exhaustively dealt with the authorities. However in our view there is need to emphasise the same. We are here called upon to interpret Articles 29(2) and 30. Submissions have been made that in interpreting these Articles the historical background must be kept in mind and that a contextual approach should be taken. We must, therefore, a) look at the history which led to incorporation of these Articles. The intention of the framers will then disclose how the contextual approach must be based; b) apply the well settled principles of interpretation; and c) keep the doctrine of "Stare Decisis" in mind.

9. In the case of Kesavananda Bharati v. State of Kerala [(1973) 4 SCC 225], it has been held that in interpreting the provisions of a Statute or the Constitution it is the duty of the Court to find out the legislative intent. It has been held that Constituent Assembly debates are not conclusive but that, in a Constitutional matter where the intent of the framers of the Constitution is to be ascertained, the Court should look into the proceedings and the relevant data, including the speeches, which throw light on ascertaining the intent. In considering the nature and extent of rights conferred on minorities one must keep in mind the historical background and see how and for what purpose Article 30 was framed.

10. In the case of R.S. Nayak vs. A.R. Antulay reported in AIR (1984) SC 684 at page 686, it has been held as follows:

"Reports of the Committee which preceded the enactment of a legislation, reports of Joint Parliament Committee, report of a Commission set up for collecting information leading to the enactment are permissible external aid to construction. If the basic purpose underlying construction of legislation is to ascertain the real intention of the Parliament, why should the aids which Parliament availed of such as report of a Special Committee preceding the enactment, existing state of Law, the environment necessitating enactment of legislation, and the object sought to be achieved, be denied to Court whose function is primarily to give effect to the real intention of the Parliament in enacting the legislation. Such denial would deprive the Court of a substantial and illuminating aid to construction.

The modern approach has to a considerable extent eroded the exclusionary rule even in England."

11. The partition of India caused great anguish, pain, bitterness and distrust amongst the various communities residing in India. Initially there was a demand for separate electorate and reservation of seats. However the principle of unity and equality for all prevailed. In return it was agreed that minorities would be given special protections.

12. The reason why Article 30(1) was embodied in the Constitution has been set out by Chief Justice Ray (as he then was) in the case of St. Xaviers College v. State of Gujarat reported in (1975) 1 SCR 173. The relevant portion reads as follows:

"The right to establish and administer educational institutions of their choice has been conferred on religious and linguistic minorities so that the majority who can always have their rights by having proper legislation do not pass a legislation prohibiting minorities to establish and administer educational institutions of their choice.

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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.

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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." (emphasis supplied)

In the same Judgment, Justice Khanna has held as follows:

"Before we deal with the contentions advanced before us and the scope and ambit of article 30 of the Constitution, it may be pertinent to refer to the historical background. India is the second most populous country of the world. The people inhabiting this vast land profess different religions and speak different languages. Despite the diversity of religion and language, there runs through the fabric of the nation the golden thread of a basic innate unity. It is a mosaic of different religions, languages and cultures. Each of them has made a mark on the Indian

polity and India today represents a synthesis of them all. The closing years of the British rule were marked by communal riots and dissentions. There was also a feeling of distrust and the demand was made by a section of the Muslims for a separate homeland. This ultimately resulted in the partition of the country. Those who led the fight for independence in India always laid great stress on communal amity and accord. They wanted the establishment of a secular State wherein people belonging to the different religions should all have a feeling of equality and non-discrimination. Demand had also been made before the partition by sections of people belonging to the minorities for reservation of seats and separate electorates. In order to bring about integration and fusion of the different sections of the population, the framers of the Constitution did away with separate electorates and introduced the system of joint electorates, so that every candidate in an election should have to look for support of all sections of the citizens. Special safeguards were guaranteed for the minorities and they were made a part of the fundamental rights with a view to instil a sense of confidence and security in the minorities. Those provisions were a kind of a Charter of rights for the minorities so that none might have the feeling that any section of the population consisted of first-class citizens and the others of second-class citizens." (emphasis supplied)

13. This was the basis on which minority rights were guaranteed. The rights were created so that minorities need have no apprehension that they would not be able, either in the religious or in the educational fields, to do what the politically powerful majority could do. In matters of education what the politically powerful majority could do was to establish and administer educational institutions of their choice at their own expense. Principles of equality required that the minorities be given the same rights. The protection/special right was to ensure that the minorities could also establish and administer educational institutions of their choice at their own expense. The demand for separatism and separate electorates was given up as principles of secularism and equality were considered more important. The principle of secularism and equality meant that State would not discriminate on grounds of religion, race, caste, language or any of them. Thus once State aid was given and/or taken then, whether majority or minority, all had to adhere to principles of equality and secularism. There never was any intention or desire to create a special or privileged class of citizens.

14. With this background, it is necessary to see how Articles 29 and 30 came to be framed/incorporated in the Constitution. Mr. Munshi was a strong advocate for minority rights. Mr. Munshi sent to the Advisory Committee a Note with which he forwarded a draft Constitution. This draft Constitution clearly indicates what rights were contemplated in framing, what is now, Article 30(1). Draft Article VI read as follows:

"The Right to Religious and Cultural Freedom

(1) All citizens are equally entitled to freedom of conscience and to the right freely to profess and practise religion in a manner compatible with public order, morality or health :

Provided that the economic, financial or political activities associated with religious worship shall not be deemed to be included in the right to profess or practise religion.

(2) All citizens are entitled to cultural freedom, to the use of their mother tongue and the script thereof, and to adopt, study or use any other language and script of their

choice.
(3) Citizens belonging to national minorities in a State whether based on religion or language have equal rights with other citizens in forming, controlling and administering at their own expense, charitable, religious and social institutions, schools and other educational establishments with the free use of their language and practice of their religion. (emphasis supplied)
(4) No person may be compelled to pay taxes the proceeds of which are specifically appropriated in payment of religious requirements of any community of which he is not a member.
(5) Religious instruction shall not be compulsory for a member of a community which does not profess such religion.
(6) No person under the age of eighteen shall be free to change his religious persuasion without the permission of his parent or guardian.
(7) Conversion from one religion to another brought about by coercion, undue influence or the offering of material inducement is prohibited and is punishable by the law of the Union.
(8) It shall be the duty of every unit to provide, in the public educational system in towns and districts in which a considerable proportion of citizens of other than the language of the unit are residents, adequate facilities for ensuring that in the primary schools the instruction shall be given to the children of such citizens through the medium of their own language.
Nothing in this clause shall be deemed to prevent the unit from making the teaching of the national language in the variant and script of the choice of the pupil obligatory in the schools.
(9) No legislation providing State-aid for schools shall discriminate against schools under the management of minorities whether based on religion or language.
Every monument of artistic or historic interest or place of natural interest throughout the Union is guaranteed immunity from spoliation, destruction, removal, disposal or export except under a law of the Union, and shall be preserved and maintained according to the law or the Union. "

This shows that the intention was to give to the minorities the right to form, control and administer, amongst others educational institutions, at their own expense. It is also to be noted that Article (9) is similar to what is now Article 30(2). As the educational institutions were to be at their own expense, State aid was not made compulsory.
15. At this stage it must be remembered that the minorities to whom rights were being given, were not minorities who were socially and/or economically backward. There was no fear that economically, these religious or linguistic minorities, would not be able to establish and administer educational institution. There was also no fear that, in educational institutions established for the benefit of all citizens, the children of these religious or linguistic minorities would not be able to compete. These rights were being conferred only to ensure that the majority, who due to their numbers would be politically powerful, did not prevent the minorities from establishing and administering their own educational institutions. In so providing, the basic feature of the Constitution, namely, secularism and equality for all citizens, whether majority or minority was being kept in mind.
16. In this behalf, an extract from Kesavananda’s case is very relevant. It reads as follows:
"It may be recalled that as regards the minorities the Cabinet Mission had recognised in their report to the

British Cabinet on May 6, 1946, only three main communities: general, Muslims and Sikhs. General community included all those who were non-Muslims or non-Sikhs. The Mission had recommended an Advisory Committee to be set up by the Constituent Assembly which was to frame the rights of citizens, minorities, tribals and excluded areas. The Cabinet Mission statement had actually provided for the cession of sovereignty to the Indian people subject only to two matters which were: (1) willingness to conclude a treaty with His Majesty's Government to cover matters arising out of transfer of power and (2) adequate provisions for the protection of the minorities . Pursuant to the above and Paras 5 and 6 of the Objectives Resolution the Constituent Assembly set up an Advisory Committee on January 24, 1947. The Committee was to consist of representatives of muslims, the depressed classes or the scheduled castes, the Sikhs, Christians, Parsis, Anglo-Indians, tribals and excluded areas besides the Hindus. As a historical fact it is safe to say that at a meeting held on May 11, 1949, a resolution for the abolition of all reservations for minorities other than the scheduled castes found whole-hearted support from an overwhelming majority of the members of the Advisory Committee. So far as the scheduled castes were concerned it was felt that their peculiar position would necessitate special reservation for them for a period of ten years. It would not be wrong to say that the separate representation of minorities which had been the feature of the previous Constitutions and which had witnesses so much of communal tension and strife was given up in favour of joint electorates in consideration of the guarantee of fundamental rights and minorities' rights which it was decided to incorporate into the new Constitution. The Objectives Resolution can be taken into account as a historical fact which moulded its nature and character. Since the language of the Preamble was taken from the resolution itself the declaration in the Preamble that India would be a Sovereign Democratic Republic which would secure to all its citizens justice, liberty and equality was implemented in Parts III and IV and other provisions of Constitution. These formed not only the essential features of the Constitution but also the fundamental conditions upon and the basis on which the various groups and interests adopted the Constitution as the Preamble hoped to create one unified integrated community. (emphasis supplied)"

17. The draft Articles were then forwarded by the Advisory Committee to a Committee for fundamental rights. They were also forwarded to another Committee known as the Committee of Minorities. These two Committees thereafter revised the draft and the revised draft was then forwarded to the Constituent Assembly for discussion. The relevant portion of the revised draft read as follows:
"Rights relating to Religion

13. All persons are equally entitled to freedom of conscience, and the right freely to profess, practise and propagate religion subject to public order, morality or health, and to the other provisions of this Part.

Explanation 1. - The wearing the carrying of kirpans shall be deemed to be included in the profession of the Sikh religion.

Explanation 2. - The above rights shall not include any

economic, financial, political or other secular activities that may be associated with religious practice.

Explanation 3. - The freedom of religious practice guaranteed in this clause shall not debar the State from enacting laws for the purpose of social welfare and reform and for throwing open Hindu religious institutions of a public character to any class or section of Hindus.

14. Every religious denomination or a section thereof shall have the right to manage its own affairs in matters of religion and, subject to law, to own, acquire and administer property, movable and immovable, and to establish and maintain institutions for religious or charitable purposes.

15. No person may be compelled to pay taxes, the proceeds of which are specifically appropriated to further or maintain any particular religion or denomination.

16. No person attending any school maintained or receiving aid out of public funds shall be compelled to take part in the religious instruction that may be given in the school or to attend religious worship held in the school or in premises attached thereto.

17. Conversion from one religion to another brought about by coercion or undue influence shall not be recognised by law.

Cultural and Educational Rights

18. (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.

(2) No minority whether based on religion, community or language shall be discriminated against in regard to the admission into State educational institutions, nor shall any religious instruction be compulsorily imposed on them.

(3)(a). All minorities whether based on religion, community or language shall be free in any unit to establish and administer educational institutions of their choice.

(b) The State shall not, while providing State aid to schools, discriminate against schools under the management of minorities whether based on religion, community or language."

Thus under Clause 18(3)(a) minorities based on religion, community and language were to be free to establish and administer educational institutions. The Constituent Assembly Debates, of 30th August, 1947, indicate that it was understood and clear that the right to establish and administer educational institutions was to be at their own expense. During the Debate on 30th August, 1947, Mr. K.T.M. Ahmed Ibrahim Sahib Bahadur proposed an amendment in Clause 18(2). The suggested amendment read as follows:
"Provided that this clause does not apply to state Educational institutions maintained mainly for the benefit of any particular community or section of the people."

18. Similarly Mrs. Purnima Banerji proposed an amendment to the

effect that under Clause 18(2) after the words "State" the words "and State-aided" be inserted. To be noted that both Mr. K. T. M. Ahmed and Mrs. Purnima Banerji were, by their proposed amendments, seeking to enhance rights of minorities. The discussions which follow these proposed amendments are very illustrative and informative. These discussions read as follows:

"Mrs. Purnima Banerji: Sir, my amendment is to clause 18(2). It reads as follows:-

"That after the word 'State', the words 'and State-aided' be inserted."

The purpose of the amendment is that no minority, whether based on community or religion shall be discriminated against in regard to the admission into State-aided and State educational institutions. Many of the provinces, e.g., U.P., have passed resolutions laying down that no educational institution will forbid the entry of any members of any community merely on the ground that they happened to belong to a particular community - even if that institution is maintained by a donor who has specified that that institution should only cater for members of his particular community. If that institution seeks State aid, it must allow members of other communities to enter into it. In the olden days, in the Anglo-Indian schools (it was laid down that, though those school were specifically intended for Anglo-Indians, 10 per cent of the seats should be given to Indians. In the latest report adopted by this House, it is laid down at 40 per cent. I suggest Sir, that if this clause is included without the amendment in the Fundamental Rights, it will be a step backward and many Provinces who have taken a step forward will have to retract their steps. We have many institutions conducted by very philanthropic people, who have left large sums of money at their disposal. While we welcome such donations, when a principle has been laid down that, if any institution receives State aid, it cannot discriminate or refuse admission to members of other communities, then it should be followed. We know, Sir, that many a Province has got provincial feelings. If this provision is included as a fundamental right, I suggest that it will be highly detrimental. The Honourable Mover has not told us what was the reason why he specifically excluded State-aided institutions from this clause. If he had explained it, probably the House would have been convinced. I hope that all the educationists and other members of this House will support my amendment. (emphasis supplied)

Even though Mrs. Purnima Banerji is seeking to give further protection to students of minority community, her speech indicates the principle, accepted by all, that if an institute receives State aid it cannot discriminate or refuse admission to members of other communities. The reply of Mr. Munshi is as follows:-

Mr. K. M. Munshi: Mr. President, Sir, the scope of this clause 18(2) is only restricted to this, that where the State has got an educational institution of its own, no minority shall be discriminated against. Now, this does recognise to some extent the principle that the State cannot own an institution from which a minority is excluded. As a matter of fact, this to some extent embodies the converse proposition over which discussion took place on clause 16, namely no minority shall be excluded from any school maintained by the State. That being so, it secures the

purpose which members discussed a few minutes ago. This is the farthest limit to which I think, a fundamental right can go.

Regarding Ibrahim Sahib's amendment, I consider that it practically destroys the whole meaning and content of this fundamental right. This minority right is intended to prevent majority control legislatures from favouring their own community to the exclusion of other communities. The question therefore is : Is it suggested that the State should be at liberty to endow schools for minorities? Then it will come to this that the minority will be a favoured section of the public. This destroys the very basis of a fundamental right. I submit that it should be rejected. (emphasis supplied)

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Then comes Mrs. Banerji's amendment. It is wider than the clause itself. As I pointed out, clauses 16 to 18 are really two different propositions. This is with regard to communities. Through the medium of a fundamental right, not by legislation, not by administrative action this amendment seeks to close down thousands of institutions in this country.

I can mention one thing in so far as my province is concerned there are several hundreds of Hindu Schools and several dozens of Muslim Schools. Many of them are run by charities which are exclusively Hindu or Muslim. Still the educational policy of the State during the Congress regime has been that as far as possible no discrimination should be permitted against any pupil by administrative action in these schools. Whenever a case of discrimination is found, the Educational Inspector goes into it; particularly with regard to Harijans it has been drastically done in the Province of Bombay. Now if you have a fundamental right like this, a school which has got a thousand students and receives Rs. 500 by way of grant from Government, becomes a State aided School. A trust intended for one community maintains the School and out of Rs. 50,000 spent for the School Rs. 500 only comes from Government as grant. But immediately the Supreme Court must hold that this right comes into operation as regards this School. Now this, as I said, can best be done by legislation in the provinces, through the administrative action of the Government which takes into consideration susceptibilities and sometimes makes allowances for certain conditions. How can you have a Fundamental law about this? How can you divert crores of rupees of trust for some other purpose by a stroke of the pen? The idea seems to be that by placing these two lines in the constitution everything in this country has to be changed without even consulting the people or without even allowing the legislatures to consider it. I submit that looking into the present conditions it is much better that these things should be done by the normal process of educating the people rather than by putting in a Fundamental Right. This clause is intended to be restrictive that neither the Federation nor a unit shall maintain an institution from which minorities are excluded. If we achieve this, this will be a very great advance that we would have made and the House should be content

with this much advance."

Thus to be seen that Mr. Munshi echoed the sentiment so often expressed by Counsel before us i.e. that by securing a small amount of aid, the right to administer educational institutions cannot be given up. This was immediately answered as follows:

"Mr. Hussain Imam : I will not take more than two minutes of the time of the House. I think there is nothing wrong with the amendment which has been moved by Mrs. Banerji. She neither wants those endowed institutions to be closed, nor their funds to be diverted to purposes for which they were not intended. What she does ask is that the State being a secular State, must not be a party to exclusion. It is open to the institutions which want to restrict admission to particular communities or particular classes, to refuse State aid and thereby, after they have refused the State aid, they are free to restrict their admission of the students to any class they like. The State will have no say in the matter. Here the word 'recognize' has not been put in. In clause 16 we put the all embracing word 'recognize'. Therefore all this trouble arose that we had to refer that to a small Committee. In this clause the position is very clear. And Mr. Munshi, as a clever lawyer, has tried to cloud this. It is open to the institution which has spent Rs. 40,000 from its funds not to receive Rs. 500 as grant from the State but it will be open to the State to declare that as a matter of State policy exclusiveness must not be accepted and this would apply equally to the majority institutions as well as minority institutions. No institution receiving State aid should close its door to any other class of persons in India merely because its donor has originally so desired to restrict. They are open to refuse the State aid and they can have any restriction they like. (emphasis supplied)

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Pandit Hirday Nath Kunzru : Mr. President, I support the amendment moved by Mrs. Banerji. I followed with great interest Mr. Munshi's exposition. His view was that if we accepted the principle that educational institutions maintained by the State shall be bound to admit boys of all communities, it would be a great gain and that we should not mix up this matter with other matters howsoever important they may be. I appreciate his view point. Nevertheless I think that it is desirable in view of the importance that we have attached to various provisions accepted by us regarding the development of a feeling of unity in the country that we should today accept the principle that a boy shall be at liberty to join any school whether maintained by the State or by any private agency which receives aid from State funds. No school should be allowed to refuse to admit a boy on the score of his religion. This does not mean, Sir, as Mr. Munshi seems to think, that the Headmaster of any school would be under a compulsion to admit any specified number of boys belonging to any particular community. Take for instance an Islamia School. If 200 Hindu boys offer themselves for admission to that School, the Headmaster will be under no obligation to admit all of them. But the boys will not be debarred, from seeking admission to it simply because they happen to be Hindus. The Headmaster will lay down certain principles in order to determine which boys should

be admitted.

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Sir, we have decided not to allow separate representation in order to create a feeling of oneness throughout the country. We have even disallowed cumulative voting because, as Sardar Vallabhbhai Patel truly stated the other day, its acceptance would mean introduction by the backdoor of the dangerous principle of communal electorates which we threw out of the front door. So great being the importance that we attach to the development of a feeling of nationalism, is it not desirable and it is not necessary that our educational institutions which are maintained or aided by the State should not cater exclusively for boys belonging to any particular religion or community? If it is desirable in the case of adults that a feeling of unity should be created, is it not much more desirable where immature children and boys are concerned that no principle should be accepted which would allow the dissemination, directly or indirectly, of anti-national ideas or feelings?

Sir, since the future welfare of every State depends on education, it is I think very important that we should today firmly lay down the principle that a school, even though it may be a private school, should be open to the children of all communities if it receives aid from Government. This principle will be in accordance with the decisions that we have arrived at on other matters so far. Its non-acceptance will be in conflict with the general view regarding the necessity of unity which we have repeatedly and emphatically expressed in this House. (emphasis supplied)

These discussions clearly indicate that the main emphasis was on unity and equality. The protection which was being given to the minorities was merely to ensure that the politically strong majority did not prevent the minorities from having educational institutions at their own expense. It is clear that the framers always intended that the principles of secularism and equality were to prevail over even minorities' rights. If the State aid was taken then there could be no discrimination or refusal to admit members of other communities. On this basis the amendments moved by Mr. K.T.M. Ahmed Ibrahim Sahib Bahadur and Mrs. Purnima Banerji (which sought to create additional rights in favour of minorities) were rejected

19. The draft was then sent back to the Committee. When it came back to the Constituent Assembly the relevant Articles read as follows:

"22. (1) No religious instruction shall be provided by the State in any educational institution wholly maintained out of State funds:
Provided that nothing in this clause shall apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution.

(2) No person attending any educational institution recognised by the State or receiving aid out of State funds shall 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.

(3) Nothing in this article shall prevent any community or denomination from providing religious instruction for pupils of that community or denomination in an educational institution outside its working hours.

Cultural and educational rights

23. (1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script and culture of its own shall have the right to conserve the same.

(2) No minority whether based on religion, community or language shall be discriminated against in regard to the admission of any person belonging to such minority into any educational institution maintained by the State.

(3)(a) All minorities whether based on religion, community or language shall have the right to establish and administer educational institutions of their choice.
(b) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion, community or language.

20. These were discussed in the Constituent Assembly on 7th and 8th December, 1948. It must be noted that there was a practice to circulate in advance, any proposed amendment, which a Member desired to move. The proposed amendment was circulated in advance for sound reasons, namely that every body else would have notice of it and be prepared to express views for or against the proposed amendment. On 7th December, 1948 Clause 22 was being considered. Mr. H. V. Kamath proposed as follows:
"Shri H. V. Kamath (C.P. and Berar : General): Mr. Vice President, I move-

"That in clause (2) of article 22, the words "recognised by the State or" be deleted."

I move this amendment with a view to obtaining some clarification on certain dark corners of these two articles - articles 22 and 23. I hope that my learned Friend Dr. Ambedkar will not, in his reply, merely toe the line of least resistance and say "I oppose this amendment", but will be good enough to give some reasons why he opposes or rejects my amendment, and I hope he will try his best to throw some light on the obscure corners of this article. If we scan the various clauses of this article carefully and turn a sidelong glance at the next articles too, we will find that there are some inconsistencies or at least an inconsistency. Clause (1) of article 22 imposes an absolute ban on religious instruction in institutions which are wholly maintained out of State funds. The proviso, however, excludes such institutions as are administered by the State which have been established under an endowment or trust - that is, under the proviso those institutions which have been established under an endowment or trust and which require, under the conditions of the trust, that religious instruction must be provided in those institutions, about those, when the State administers then, there will not be any objection to

religious instruction. Clause (2) lays down that no person attending an institution recognised by the State or receiving aid out of State funds shall be required to take part in religious instruction. That means, it would not be compulsory. I am afraid I will have to turn to clause 23, sub-clause (3)(a) where it is said that all minorities, whether based on religion, community or language, shall have the right to establish and administer educational institutions of their choice. Now, is it intended that the institutions referred to in the subsequent clause which minorities may establish and conduct and administer according to their own choice, is it intended that in these institutions the minorities would not be allowed to provide religious instruction? There may be institutions established by minorities, which insist on students' attendance at religious classes in those institutions and which are otherwise unobjectionable. There is no point about State aid, but I cannot certainly understand why the State should refuse recognition to those institutions established by minorities where they insist on compulsory attendance at religious classes. Such interference by the State I feel is unjustified and unnecessary. Besides, this conflicts with the next article to a certain extent. If minorities have the right to establish and administer educational institutions of their own choice, is it contended by the Honourable Dr. Ambedkar that the State will say "You can have institutions, but you should not have religious instructions in them if you want our recognition'. Really it beats me how you can reconcile these two points of view in articles 22 and 23. The minority, as I have already said, may establish such a school or its own pupils and make religious instruction compulsory in that school. If you do not recognise that institution, then certainly that school will not prosper and it will fail at attract pupils. Moreover, we have guaranteed certain rights to the minorities and, it may be in a Christian school, they may teach the pupils the Bible and in a Muslim school the Koran. If the minorities, Christians and Muslims, can administer those institutions according to their choice and manner, does the House mean to suggest that the State shall not recognize such institutions? Sir, to my mind, if you pursue such a course, the promises we have made to the minorities in our country, the promises we have made to the ear we shall have broken to the heart. Therefore I do not see any point why, in institutions that are maintained and conducted and administered by the minorities for pupils of their own community the State should refuse to grant recognition, in case religious instruction is compulsory. When once you have allowed them to establish schools according to their choice, it is inconsistent that you should refuse recognition to them on that ground. I hope something will be done to rectify this inconsistency."

Thus it is to be seen that Shri H. V. Kamath is referring not just to draft Article 22 but also to draft Article 23(3)(a). He is pointing out that there is an apparent conflict between these two Articles. Draft Articles 22 and 23(3)(a) are, with minor changes, what are now Articles 28(3) and 30(1). Dr. Ambedkar opposed the amendments proposed by Shri H.V. Kamath for various reasons, one of which is as follows:

" We have accepted the proposition which is embodied in article 21, that public funds raised by taxes shall not be

utilised for the benefit of any particular community."

21. Shri H.V. Kamath then asked for a clarification as follows:

"On a point of clarification, what about institutions and schools run by a community or a minority for its own pupils - not a school where all communities are mixed but a school run by the community for its own pupils?"

22. Thus Shri H. V. Kamath is again emphasising that there could be minority educational institutions run for their own pupils. The answer to this, by Dr. Ambedkar, is as follows:

The Honourable Dr. B. R. Ambedkar: If my Friend Mr. Kamath will read the other article he will see that once an institution, whether maintained by the community or not, gets a grant, the condition is that it shall keep the school open to all communities. that provision he has not read." (emphasis supplied)

23. To be noted that in the draft Articles there is no clause which provides that if an institution, whether maintained by the community or not, gets a grant, it shall keep the school open to all communities. The next clause which Dr. Ambedkar referred to, was the proposed amendment moved by Pandit Thakur Dass Bhargava. As stated above this proposed amendment had already been circulated to all. It is clear that Dr. Ambedkar had already accepted the proposal of Pandit Thakur Dass Bharvava.

24. On 8th December, 1948, when Pandit Thakur Dass Bhargava moved his amendment, the debate read as follows:

"Pandit Thakur Das Bhargava: Sir, I beg to move.

That for amendment No. 687 of the List of amendments, the following be substituted:-

"That for clause (2) of article 23, the following be substituted :-

"(2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them."

and sub-clauses (a) and (b) of clause (3) of article 23 be renumbered as new article 23-A".

Sir, I find there are three points of difference between this amendment and the provisions of the section which it seeks to amend. The first is to put in the words 'no citizen' for the words 'no majority'. Secondly that not only the institutions which are maintained by the State will be included in it, but also such institutions as are receiving aid out of state funds. Thirdly, we have, instead of the words "religion, community or language", the words, "religion, race, caste, language or any of them".

Now, Sir, it so happens that the words "no minority" seek to differentiate the minority from the majority, whereas you would be pleased to see that in the Chapter the words of the heading are "cultural and educational rights", so that the minority rights as such should not find any place under this section. Now if we read Clause (2) it would appear as if the minority had been given certain

definite rights in this clause, whereas the national interests require that no majority also should be discriminated against in this matter. Unfortunately, there is in some matters a tendency that the minorities as such possess and are given certain special rights which are denied to the majority. It was the habit of our English masters that they wanted to create discriminations of this sort between the minority and the majority. Sometimes the minority said that they were discriminated against and on other occasions the majority felt the same thing. This amendment brings the majority and the minority on an equal status.

In educational matters, I cannot understand, from the national point of view, how any discrimination can be justified in favour of a minority or a majority. Therefore, what this amendment seeks to do is that the majority and the minority are brought on the same level. There will be no discrimination between any member of the minority or majority in so far as admission to educational institutions are concerned. So I should say that this is a charter of the liberties for the student-world of the minority and the majority communities equally.

The second change which this amendment seeks to make is in regard to the institutions which will be governed by this provision of law. Previously only the educational institutions maintained by the State were included. This amendment seeks to include such other institutions as are aided by State funds. There are a very large number of such institutions, and in future, by this amendment the rights of the minority have been broadened and the rights of the majority have been secured. So this is a very healthy amendment and it is a kind of nation-building amendment.

Now, Sir, the word "community" is sought to be removed from this provision because "community" has no meaning. If it is a fact that the existence of a community is determined by some common characteristic and all communities are covered by the words religion or language, then '"community" as such has no basis. So the word "community" is meaningless and the words substituted are "race or caste". So this provision is so broadened that on the score of caste, race, language, or religion no discrimination can be allowed.

My submission is that considering the matter from all the standpoints, this amendment is one which should be accepted unanimously by this House." (emphasis supplied)

25. To be noted that the proposed Article 23(2) is now Article 29(2). It is being incorporated in Article 23 which also contained what is now Article 30(1). Pandit Thakur Dass Bhargava was proposing this amendment with the clear intention that it should apply to minority educational institutions under, what is now Article 30(1). The whole purpose is to further principles of secularism and to see that in State maintained and State aided educational institutions there was no distinction between majority or minority communities. At this stage it must be noted that no contrary view was expressed at all. Dr. Ambedkar then replied as follows:

"The Honourable Dr. B. R. Ambedkar: Sir, of the amendments which have been moved to article 23, I can accept amendment No. 26 to amendment No. 687 by Pandit Thakur Dass Bhargava. I am also prepared to accept amendment No. 31 to amendment No. 690, also moved by Pandit Thakur Dass Bhargava."

26. The amendment proposed by Pandit Thakur Dass Bhargava was unanimously accepted by the Constituent Assembly. This is how and why, what is now Article 29(2) was framed and incorporated. Clearly it was to govern all educational institutions including minority educational institutions under what is now Article 30(1). The final resolution is as follows:

"Mr. Vice-President: The question is:
That for clause (2) of article 23, the following be substituted :-
"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";
and sub-clause (a) and (B) of clause (3) of article 23 be renumbered as new article 23-A.
The motion was adopted."

27. A reading of the Constituent Assembly debates clearly show that the intention of the framers of the Constitution was that Article 29(2) was to apply to all educational institutions, including minority educational institutions under Article 30.

28. This being the historical background and the intention of the framers, the contextual approach must also be one which gives effect to the minority rights but which does not elevate them into a special or privileged class of citizens. The contextual approach must therefore be that minorities have full rights to establish and administer educational institution at their own costs, but if they choose to take State aid they must then abide by the Constitutional mandate of Article 29(2) and with principles of equality and secularism.

29. The same result follows if well settled principles of interpretation are applied. It is settled law that if the language of the provision, being considered, is plain and unambiguous the same must be given effect to, irrespective of the consequences that may result or arise. It is also settled law that while interpreting provisions of a Statute, if two interpretations are possible, one which leads to no conflict between the various provisions and another which leads to a conflict between the various provisions, then the interpretation which leads to no conflict must always be accepted. As already been seen, the intention of the framers of the Constitution is very clear. The framers unambiguously and unanimously intended that rights given under Article 30(1) could be fully enjoyed so long as the educational institutions were established and administered at their own costs and expense. Once State aid was taken, then principles of equality and secularism, on which our Constitution is based, were to prevail and admission could not be denied to any student on grounds of religion, race, caste, language or any of them.

30. A plain reading of Article 29(2) shows that it applies to "any educational institution" maintained by the State or receiving aid out of State funds. The words "any educational institution" takes within its ambit an educational institution established under Article 30(1). It is to be remembered that when Article 29(2) [i.e. Article 23(2)] was framed it was part of the same Article which contained what is now Article 30(1). Thus it was clearly meant to apply to Article 30(1) as well. Significantly Article 30 nowhere provides that the provisions of Article 29(2) would not apply to it. Article 30(1) does not exclude the applicability of the provisions of Article 29 (2) to educational institutions established under it. A plain reading of the two Articles indicates that the rights given under Article 30(1) can be fully exercised so long as no aid is taken from the State. It is for this reason that Article 30 does not make it compulsory for a minority

educational institution to take aid or for the State to give it. All that Article 30(2) provides is that the State in granting aid to educational institutions shall not discriminate against any educational institution on the ground that it is under the management of a minority. In cases where the State gives aid to educational institutions the State would be bound by the Constitutional mandate of Article 29(2) to ensure that no citizen is denied admission into the educational institution on grounds of religion, race, caste, language or any of them. By so insisting the State would not be discriminating against a minority educational institution. It would only be performing the obligation cast upon it by the Constitution of India.

31. This interpretation is also supported by the wording of Article 30(2). Article 30(2) merely provides that the State shall not discriminate on the ground that it is under the management of a minority. To be noted that Article 30(2) does not provide that State shall not in granting aid impose any condition which would restrict or abridge the rights guaranteed under Article 30(1). The framers were aware that when State aid was taken the principles of equality and secularism, which are the basis of our Constitution, would have to prevail. Clearly the framers of the Constitution considered the principle of equality and secularism to be more important than the rights under Article 30(1). Thus in Article 30(2) it was advisedly not provided that rights under Article 30(1) could not be restricted or abridged whilst granting aid. A plain reading of Article 30(2) shows that the framers of the Constitution envisaged that certain rights would get restricted and/or abridged when a minority educational institute chose to receive aid. It must also be noted that when property rights were deleted [by deletion of Article 19(1)(f)] the framers of the Constitution realised that rights under Article 30(1) would get restricted or abridged unless specifically protected. Thus Article 30(1A) was introduced. Article 30(1A), unlike Article 30(2), specifically provides the acquisition of property of a minority educational institute must be in a manner which does not restrict or abrogate the rights under Article 30(1). When the framers so intended they have specifically so provided. Significantly even after Judgments of this Court (set out hereafter) which laid down that Article 29(2) applied to Article 30(1), the framers have not amended Article 30 to provide to the contrary.

32. Even though a plain reading of Articles 29(2) and Article 30 leads to no clash between the two Articles, it has been submitted by counsel on behalf of minorities that the right to establish and administer educational institutions be considered an absolute right and that by giving aid the State cannot impose conditions which would restrict or abrogate and/or abridge, in any manner, the right under Article 30(1). It has been submitted that the right to administer educational institutions includes the right to admit students. It has been submitted that the minorities, whether based on religion or language, have a right to admit students of their community. It is submitted that this right is not taken away or abridged because State aid is taken. It is submitted that notwithstanding the plain language of Articles 29(2) and 30 it must be held that the rights under Article 30(1) prevail over Article 29(2).

33. To accept such an argument one would have to read into Article 30(2) words to the effect "state cannot in granting aid lay down conditions which would restrict, abridge or abrogate rights under Article 30(1)" or to read into Article 30(1) words to the effect "notwithstanding the provisions of Article 29(2)". Purposely no such words are used. A clash is sought to be created between Article 30(1) and 29(2) when no such clash exists. The interpretation sought to be given is on presumption that rights under Article 30(1) are absolute. As is set out in greater detail hereafter, every single authority of this Court, for the past over 50 years, has held that the rights under Article 30(1) are subject to restrictions. All counsel appearing for the minority educational institutions conceded that rights under Article 30(1) are subject to general secular laws of the country. If rights

under Article 30(1) are subject to other laws of the country it can hardly be argued that they are not subject to a constitutional provision.

34. The interpretation sought to be placed not only creates a clash between Articles 29(2) and 30 but also between Article 30 and Article 15(1). Article 15(1) prohibits the State from discriminating against citizens on grounds only of religion, race, caste, sex, place of birth or any of them. If the State were to give aid to a minority educational institution which only admits students of its community then it would be discriminating against other citizens who cannot get admission to such institutions. Such an interpretation would also lead to clash between Article 30 and Article 28(3). There may be a religious minority educational institute set up to teach their own religion. Such an institute may, if it is unaided, only admit students who are willing to say their prayers. Yet once aid is taken such an institution cannot compel any student to take part in religious instructions unless the student or his parent consents. If Article 30(1) were to be read in a manner which permits State aided minority educational institutions to admit students as per their choice, then they could refuse to admit students who do not agree to take part in religious instructions. The prohibition prescribed in Article 28(2) could then be rendered superfluous and/or nugatory. Apart from rendering Article 28(2) nugatory such an interpretation would set up a very dangerous trend. All minority educational institutions would then refuse to admit students who do not agree to take part in religious instructions. In all fairness to all the counsels appearing for minority educational institutions, it must be stated that not a single counsel argued that Article 28(2) would not govern Article 30(1). All counsel fairly conceded that Article 30(1) would be governed by Article 28(2). One fails to understand how Article 30(1) can be held to be subject to Article 28(2) but not subject to Article 29(2).

35. Accepting such an interpretation would also lead to an anomalous situation. As is being held all citizens have a fundamental right to establish and carry on an educational institution under Article 19(1)(g). An educational institution can also be established and maintained under Article 26(a). An educational institution could also be established under Article 29(1) for purposes of conserving a distinct language, script or culture. All such educational institutions would be governed by Article 29(2). Thus if a religious educational institution is established under Article 26(a) it would on receipt of State aid have to comply with Article 29(2). Similarly an educational institute established for conserving a distinct language, script or culture would, if it receives State aid, have to comply with Article 29(2). Such institution would also have been established for benefit of their own community or language or script or culture. If such educational institutions have to comply with Article 29(2) it would be anomalous to say that a religion or linguistic educational institution, merely because it is set up by a minority need not comply with Article 29(2). The anomaly would be greater because an educational institute set up under Article 26(a) would be for teaching religion and an educational institute set up under Article 29(1) would be for conserving a distinct language. On the other hand an educational institute set up under Article 30(1) may be to give general secular education. It would be anomalous to say that an educational institute set up to teach religion or to conserve a distinct language, script or culture has to comply with Article 29(2) but an educational institute set up to give general secular education does not have to comply with Article 29(2). It must again be remembered that Article 30 was not framed to create a special or privileged class of citizens. It was framed only for purposes of ensuring that the politically powerful majority did not prevent the minority from having their educational institutes. We cannot give to Article 30(1) a meaning which would result in making the minorities, whether religious or linguistic, a special or privileged class of citizens. We should give to Article 30(1) a meaning which would further the basic and overriding principles of our Constitution viz. equality and

secularism. The interpretation must not be one which would create a further divide between citizen and citizen.

36. It has also been submitted that a minority educational institute would have been established only for the purpose of giving education to students of that particular religious or linguistic community. It has been submitted that if Article 29(2) were to apply then the very basis of establishing such an educational institution would disappear once State aid is taken. Whilst considering such a submission one must keep in mind that the desire to establish educational or other institutions for the benefit of students of their own community would be there not only in minority communities. Such a desire would be there in all citizens and communities, whether majority or minority. If the majority communities, whether religious or linguistic, can establish and administer educational institutions for their own community at their own costs why should the position be different for minorities. If an educational institute established by a majority community for members of that community only, takes States aid, it would then lose the right to admit only students of its own community. It would have to comply with the Constitutional mandate of Article 29(2). The position is no different for an educational institute established by a minority. The basic feature of our Constitution is equality and secularism. It follows that the minority cannot be a more privileged class or section of citizen. At the cost of repetition it is again emphasised that Article 30 does not deal with minorities who are economically or socially backward. These are not communities whose children are not capable of competing on merit, e.g. a Tamilian in Tamil competes with others and gets admission on merit. Even when he/she shifts to Maharashtra he/she continues to be able to compete openly and get admission on merit. Merely because a Tamilian shifts to Maharashtra or some other State does not mean that Tamilian becomes a citizen entitled to special privilege or rights not available to other citizens. This was not the purpose or object of Article 30. Article 30 was framed only to ensure that the Maharashtrians, by reason of their being politically powerful, do not prevent the Tamilian from establishing an educational institution at their own cost. Article 30 merely protects the right of the minority to establish and administer an educational institution, i.e. to have the same rights as those enjoyed by majority. Article 30 gives no right to receive State aid. It is for the institution to decide whether it wants to receive aid. If it decides to take State aid then Article 30(2) merely provides that the State will not discriminate against it. When State, whilst giving aid, asks the minority educational institute to comply with a constitutional mandate, it can hardly be said that the State is discriminating against that institute. The State is bound to ensure that all educational institutes, whether majority or minority, comply with the constitutional mandate.

37. Another aspect to be kept in mind is that in practical terms, throwing open admission to all, does not affect rights under Article 30(1). If the educational institution is for purposes of teaching the religion or language of the concerned minority, then even though admission is thrown open to all very few students of other communities will take admission in such an educational institution. If the educational institution is giving general secular education, then the minority character of that institution does not get affected by having a majority of students from other communities. Even though the majority of students may be from other communities the institution will still be under the management of the minority. Further if the educational institution is a school, then the management will, in spite of Article 29(2), still be able to take a sizable number of students from their own community into the school. Article 29(2) precludes reservations on grounds of religion, race, caste or language. But it does not preclude giving of preference, if everything else is equal. Admission into schools generally are by interview. At this stage there is no common entrance test which determines merit. Undoubtedly children of the minority communities, contemplated by Article 30(1),

would be as bright or capable as children of other communities. Thus whilst admitting at this stage preference can always be given to members of their own community so long as some students of other communities are also admitted and denial is not on basis of religion, race, caste, language or any of them. Thus for admissions in schools, Article 29(2) will pose no difficulty to minority institutions. However, Article 29(2) will require, if State aid is taken, that admissions into college, either under graduate or post graduate and admission into professional course, be not denied to any citizen on grounds of religion, race, caste, language or any of them. This would mean that admissions must be on merit from the common entrance test prescribed by the University or State. Here also if two students have equal merit, preference can be given to a student of their own community. Also Article 29(2) does not preclude minority (or even other educational institutions) admitting or denying admission on grounds other than religion, race, caste, language or any of them. Thus e.g. preferential admission could be given to those students who are willing to serve the community or work in a particular region, for a particular period of time after passing out. Also in such cases marks not exceeding 15% can be allotted for interviews. This will ensure that a sufficient number of students of their own community are admitted. More importantly there is no reason to believe that students of these minority communities will not be able to compete on merit. A sizable number will be available on merit also.

38. Most importantly we are interpreting the Constitution. As the language of Articles 29(2) and 30 is clear and unambiguous the Court has to give effect to it, irrespective of the consequences. This is all the more necessary as the same is in consonance with the intention of the framers. Court cannot give an interpretation which creates a clash where none exists. Court cannot add words which the framers purposely omitted to use/add. Courts cannot give an interpretation, not supported by a plain reading, on considerations, such as minority educational institutions not being able to admit their own students. To be remembered that there is no compulsion to receive State aid. As was mentioned during the Constituent Assembly Debates the management can refuse to take aid. But if they choose to take State aid, then even a minority educational institution must abide by the Constitutional mandate of Article 29(2) just as they have to comply with the Constitutional mandate of Article 28(2) and comply with general secular laws of the country.

39. Thus looked at either from the historical point of view and/or the intention of the framers and/or from the contextual viewpoint and/or from principles of interpretation it is clear that Article 29(2) fully applies to Article 30. If a minority educational institute chooses to take State aid, it cannot then refuse to admit students on grounds of religion, race, case, language or any of them.

40. Now let us see whether the principles of "stare decisis" require us to take a different view. A large number of authorities have been cited and one has to consider these authorities.

41. The first case, which was decided as far back as on 9th April, 1951, was the case of The State of Madras v. Srimathi Champakam Dorairajan. It is reported in (1951) SCR 525. In this case the State of Madras was maintaining Engineering and Medical Colleges. In those colleges, for many years before the commencement of the Constitution, the seats used to be filled up in a proportion, set forth in what was called "the Communal G.O.". The allocation of seats was as follows:

"Non-Brahmin (Hindus)	6	
Backward Hindus	2	
Brahmins		2
Harijans		2
Anglo-Indians and Indian Christians		1
Muslims	1"	

After the Constitution was framed a Writ Petition under Article 226 came to be filed by Srimathi Champakam Dorairajan and one another in the High Court of Madras. She complained that this Communal G. O. affected her fundamental rights, inter alia, under Article 29(2). On behalf of the State it was argued that there was no discrimination and no infringement of fundamental rights. It was argued that it was the duty of the State to take care of and promote educational and economic interest of the weaker section of the people. It was argued that giving preferences and/or reservations did not violate Article 29(2). This argument was repelled and it was held as follows:

"It will be noticed that while clause (1) protects the language, script or culture of a section of the citizens, clause (2) guarantees the fundamental right of an individual citizen. The right to get admission into any educational institution of the kind mentioned in clause (2) is a right which an individual citizen has as a citizen and not as a member of any community or class of citizens. This right is not to be denied to the citizen on grounds only of religion, race, caste, language or any of them. If a citizen who seeks admission into any such educational institution has not the requisite academic qualifications and is denied admission on that ground, he certainly cannot be heard to complain of an infraction of his fundamental right under this article. But, on the other hand, if he has the academic qualifications but is refused admission only on ground of religion, race, caste, language or any of them, then there is a clear breach of his fundamental rights.

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Take the case of the petitioner Srinivasan. It is not disputed that he secured a much larger number of marks than the marks secured by many of the Non-Brahmin candidates and yet the Non-Brahmin candidates who secured less number of marks will be admitted into six out of every 14 seats but the petitioner Srinivasan will not be admitted into any of them. What is the reason for this denial of admission except that he is a Brahmin and not a Non-Brahmin. He may have secured higher marks than the Anglo-Indian and Indian Christians or Muslim candidates but, nevertheless, he cannot get any of the seats reserved for the last mentioned communities for no fault of his except that he is a Brahmin and not a member of the aforesaid communities. Such denial of admission cannot but be regarded as made on ground only of his caste.

It is argued that the petitioners are not denied admission only because they are Brahmins but for a variety of reasons, e.g., (a) they are Brahmins, (b) Brahmins have an allotment of only two seats out of 14 and (c) the two seats have already been filled up by more meritorious Brahmin candidates. This may be true so far as these two seats reserved for the Brahmin are concerned but this line of argument can have no force when we come to consider the seats reserved for candidates of other communities, for 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 these reservations have been made. The classification in the Communal G. O. proceeds on the basis of the religion, race and caste. In our view, the

classification made in the Communal G. O. is opposed to the Constitution and constitutes a clear violation of the fundamental rights guaranteed to the citizen under article 29(2). In this view of the matter, we do not find it necessary to consider the effect of articles 14 or 15 on the specific articles discussed above."

Thus as far back as in 1951 it has been held that Article 29(2) does not permit reservation in favour of any caste, community or class of people. An argument based on the word "only" in Article 29(2), to the effect that admitting students of their own community did not amount to refusing admission on grounds of religion, race, caste, language or any of them was rejected. Undoubtedly, this was a case pertaining to educational institutions maintained by the State. But the interpretation of Article 29(2) would remain the same even in respect of "educational institutions aided by the State". In all such institutions there can be no reservations based on religion, race, caste, language or any of them. The term "any educational institution" in Article 29(2) would also include a minority educational institution under Article 30. Thus the interpretation of Article 29(2) would remain the same even in respect of a minority educational institution under Article 30(1).

42. In Champakam Dorairajan's case the reservations were not just for economically or socially backward communities. There were reservations for Anglo Indians, Indian Christians, Muslims, Brahmins and Non-Brahmins. After this Court struck down the reservations the framers of the Constitution amended Article 15 by adding Article 15(4) which reads as follows:

"15(4). Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes."

Thus when the framers of the Constitution did not want Article 29(2) to apply they have specifically so provided. Significantly no such amendment was made in Article 30(1) even though reservations in favour of minority communities was also held to be violative of Article 29(2).

43. In the case of The State of Bombay v. Bombay Education Society and others reported in (1955) 1 SCC 568 an Anglo-Indian School, called Barnes High Court at Deolali, received aid from the State of Bombay. The State of Bombay issued a circular order on 6th January, 1954 which enjoined that no primary or secondary school could admit to a class where English is used as the medium of instruction, any pupil other than the pupil whose mother tongue was English. This was challenged in a Writ Petition under Article 226 in the High Court of Bombay. The Petition having been allowed, the State filed an Appeal to this Court. This Court held as follows:

"Assuming, however, that under the impugned order a section of citizens, other than Anglo-Indians and citizens of non-Asiatic descent, whose language is English, may also get admission, even then citizens, whose language is not English, are certainly debarred by the order from admission to a School where English is used as a medium of instruction in all the classes. Article 29(2) ex facie puts no limitation or qualification on the expression "citizen". Therefore, the construction sought to be put upon clause 5 does not apparently help the learned Attorney-General, for even on that construction the order will contravene the provisions of article 29(2).

The learned Attorney-General then falls back upon two contentions to avoid the applicability of article 29(2). In the first place he contends that article 29(2) does not confer any fundamental right on all citizens generally but

guarantees the rights of citizens of minority groups by providing that they must not be denied admission to educational institutions maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them and he refers us to the marginal note to the article. This is certainly a new contention put forward before us for the first time. It does not appear to have been specifically taken in the affidavits in opposition filed in the High Court and there is no indication in the Judgment under appeal that it was advanced in this form before the High Court. Nor was this point specifically made a ground of appeal in the petition for leave to appeal to this Court. Apart from this, the contention appears to us to be devoid of merit. Article 29(1) gives protection to any section of the citizens having a distinct language, script or culture by guaranteeing their right to conserve the same. Article 30(1) secures to all minorities, whether based on religion or language, the right to establish and administer educational institutions of their choice. Now suppose the State maintains an educational institution to help conserving the distinct language, script or culture of a section of the citizens or makes grants in aid to an educational institution established by a minority community based on religion or language to conserve their distinct language, script or culture, who can claim the protection of article 29(2) in the matter of admission into any such institution? Surely the citizens of the very section whose language, script or culture is sought to be conserved by the institution or the citizens who belong to the very minority group which has established and is administering the institution, do not need any protection against themselves and therefore article 29(2) is not designed for the protection of this section or this minority. Nor do we see any reason to limit article 29(2) to citizens belonging to a minority group other than the section or the minorities referred to in article 29(1) or article 30(1), for the citizens, who do not belong to any minority group, may quite conceivably need this protection just as much as the citizens of such other minority groups. If it is urged that the citizens of the majority group are amply protected by article 15 and do not require the protection of article 29(2), then there are several obvious answers to that argument. 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 any body 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. In view of all these considerations the marginal note alone, on which the Attorney-General relies, cannot be read as controlling the plain meaning of the language in which article 29(2) has been couched. Indeed in The State of Madras v. Srimathi Champakam Dorairajan [(1951) SCR 525], this Court has already held as follows:

"It will be noticed that while clause (1) protects the language, script or culture of a section of the citizens, clause (2) guarantees the fundamental right of an individual citizen. The right to get admission into any educational institution of the kind mentioned in clause (2) is a right which an individual citizen has as a citizen and not as a member of any community or class of citizens."

In our judgment this part of the contention of the learned Attorney-General cannot be sustained."
(emphasis supplied)

In this case it was also argued that the word "only" in Article 29(2) had to be given some meaning and that the circular order did not deny citizens admission only on ground of religion, race, caste, language or any of them. It was submitted that the object of the circular order was to secure advancement of Hindi which was ultimately to be the National language. It was submitted that thus there was no denial "only" on the ground of religion, race, caste, language or any of them. It was submitted that the denial was for the purposes of promoting the advancement of the national language and to facilitate imparting of education through the medium of the pupils mother tongue. This argument was repelled in the following terms:
"Granting that the object of the impugned order before us was what is claimed for it by the learned Attorney-General, the question still remains as to how that object has been sought to be achieved. Obviously that is sought to be done by denying to all pupils, whose mother tongue is not English, admission into any School where the medium of instruction is English. Whatever the object, the immediate ground and direct cause for the denial is that the mother tongue of the pupil is not English. Adapting the language of Lord Thankerton, it may be said that the laudable object of the impugned order does not obviate the prohibition of article 29(2) because the effect of the order involves an infringement of this fundamental right, and that effect is brought about by denying admission only on the ground of language. The same principle is implicit in the decision of this Court in The State of Madras v. Srimathi Champakam Dorairajan [(1951) SCR 525]. There also the object of the impugned communal G. O. was to advance the interest of educationally backward classes of citizens but, that object notwithstanding, this Court struck down the order as un-constitutional because the modus operandi to achieve that object was directly based only on one of the forbidden grounds specified in the article. In our opinion the impugned order offends against the fundamental right guaranteed to all citizens by article 29(2)."

It may be mentioned, even though not relevant for the purposes of this judgment, that in this case it has also been submitted that the rights under Article 30(1) are only for the purposes of conserving language, script or culture as set out in Article 29(1). This argument was also repelled by this Court.

44. Thus, as far back in 1955, a Constitution Bench of this Court has held that Article 29(2) is applicable to Article 30. It has been held that even in a minority educational institution all citizens of India are entitled to admission. It has been held that a citizen cannot be denied admission in a minority educational institution on ground "only" of religion, race, caste, language or any of them. To be noted that one of the petitioners was from the Gujarati Hindu community and she was seeking admission into an Anglo-Indian School. Her right to be admitted was upheld. It has been categorically held that Article 29(2) applied to an Article 30 educational institute. The framers of the Constitution did not and have not amended the Constitution to provide otherwise.

45. In Re The Kerala Education Bill, 1957 reported in (1959) SCR 995, the President of India made a Reference under Article 143(1) of the Constitution of India for obtaining opinion of this Court upon certain questions relating to the constitutional validity of some of the provisions of the Kerala Education Bill which had been passed by the Kerala Legislative Assembly, but had been reserved by the Governor for consideration of the President of India. The questions which were referred to this Court for consideration were as follows:

"(1) Does sub-clause (5) of clause 3 of the Kerala Education Bill, read with clause 36 thereof, or any of the provisions of the said sub-clause, offend article 14 of the Constitution in any particulars or to any extent?

(2) Do sub-clause (5) of clause 3, sub-clause (3) of clause 8 and clauses 9 to 13 of Kerala Education Bill, or any provision thereof, offend clause (1) of article 30 of the Constitution in any particulars or to any extent.

(3) Does clause 15 of the Kerala Education Bill, or any provisions thereof, offend article 14 of the Constitution in any particulars or to any extent?

(4) Does clause 33 of the Kerala Education Bill, or any provisions thereof, offend article 226 of the Constitution in any particulars or to any extent?"

46. Only question No. 2 is relevant for our purpose. Whilst answering question No. 2 this Court, inter alia, observed as follows:

"Re. Question 2: 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 cl. (1) Art. 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 Art. 30(1) which has hereinbefore been quoted in full. This right, however, is subject to cl. 2 of Art. 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.

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The second proviso imposes the condition that at least 40 per cent of the annual admissions must be made available to the members of communities other than the Anglo-Indian community. Likewise Art. 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. These are the only constitutional limitations to the right of the Anglo-Indian educational institutions to receive aid. Learned counsel appearing for two Anglo-Indian schools contends that the State of Kerala is bound to implement the provisions of Art. 337. Indeed it is stated in the statement of case filed by the State of Kerala that all Christian schools are aided by that State and, therefore, the Anglo-Indian schools, being also Christian schools, have been so far getting from the State of Kerala the grant that they are entitled to under Art. 337. Their grievance is that by introducing this Bill the State of Kerala is now seeking to impose besides the constitutional limitations mentioned in the second proviso to Art. 337 and Art. 29(2), further and more onerous conditions on this grant to the Anglo-Indian educational institutions although their constitutional right to such grant still subsists." (emphasis supplied)

47. In this case it was argued on behalf of the State that as the minority institute received State aid it was bound, by virtue of Article 29(2), to admit students of all communities and thus did not retain its minority character. That Article 29(2) applied to a minority educational institute was not denied. The argument that, it lost its minority character because it admitted students of other communities, was repelled in the following terms.

"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 Art. 30(1) of the Constitution."

Thus even in this case it has been accepted and held that Article 29(2) applies to minority educational institutions established under Article 30. It has been held that merely because students of other communities are admitted, the institute does not lose its minority character. In this case it was also held that State can prescribe reasonable regulations. In this case regulations which provided for qualifications of teachers and which provided for State Public Service Commission to select teachers in aided schools were upheld. Thus even in this case it is accepted that Article 29(2) would govern Article 30(1).

48. In Rev. Sidhajbhai Sabhai v. State of Bombay reported in (1963) 3 SCR 837, the petitioners belonged to the United Church of Northern India. They maintained educational institutions primarily for the benefit of the Christian community. Admittedly these institutions did not receive State aid. Therefore, the question of Article 29(2) and its applicability to Article 30 did not arise. On the contrary (as is set out

on page 840 of the Report) it was an admitted position that these institutions did not deny admissions to students belonging to other communities. The Government of Bombay issued an order directing all private training colleges to reserve 60% of the seats for trainee teachers of the schools maintained by the Board. It was held that this Order violated rights under Article 30. All observations made in this case are in this context. They cannot be drawn out of context to hold that even where a minority institute receives aid the Constitutional mandate of Article 29(2) would not apply. In this case also it is held that the rights under Article 30(1) are subject to reasonable restrictions and regulations. It was held that restrictions in the interest of efficiency, discipline, health, sanitation, public order etc. could be imposed.

49. In Rev. Father W. Proost v. State of Bihar reported in (1969) 2 SCR 73, the petitioners maintained St. Xavier's College which was affiliated to the Patna University. With effect from 1st March, 1962 Section 48-A was introduced. Under this Section a University Service Commission was established for affiliated colleges. Sub-clause (6) of Section 48-A provided that appointments, dismissals, removals, termination of service or deduction in rank of teachers of an affiliated college should be made by the Governing body of the college on the recommendation of the Commission. Further, sub-clause (11) provided that all disciplinary actions could be taken only in consultation with the Commission. The petitioners challenged the virus of the provision and claimed that it affected their rights under Article 30(1) of the Constitution. Whilst the Petition was pending in this Court; Section 48-B was introduced in the Bihar State Universities Act, which provided that appointments, dismissals, removals, termination of service or reduction in rank of teachers or disciplinary measures could only be taken with the approval of the Commission and the Syndicate of the University. This was also challenged. Thus in this case the interplay of Sections 29(2) and 30(1) did not come into question at all. In this case it was an admitted position that the college was open to non-Catholics also. One of the arguments raised on behalf of the State was that since the admissions were not reserved only for students of the Jesuits community the college did not qualify for protection under Article 30(1). This argument was negatived by holding that merely because members of other communities were admitted into the institution did not mean the institution lost its minority character. This case thus shows that even if members of other community are admitted into the institution the institution would still remain a minority institution which is under the management of the minority.

50. In Rev. Bishop S. K. Patro v. State of Bihar reported in (1970) 1 SCR 172, an educational institute was started by a Christian with the help of funds received from London Missionary Society. The question was whether the institute was not entitled to protection of Article 30(1) merely because funds were obtained from United Kingdom and the management was carried on by some persons who may not have been born in India. This Court held that rights under Article 29 could only be claimed by Indian citizens, but Article 30 guarantees the rights of minority. It was held that the said Article does not refer to citizenship as the qualification for members of the minority. This case therefore does not deal with the question of the interplay between Articles 29(2) and 30(1).

51. In the case of State of Kerala v. Very Rev. Mother Provincial reported in (1971) 1 SCR 734, the constitutional validity of Sections 48, 49, 53, 56, 58 and 63 of the Kerala University Act was challenged as violating the rights under Section 30(1). In this case there is no discussion regarding the effect of Article 29(2) on Article 30. In this case also it was held that rights under Article 30(1) are subject to reasonable restrictions.

52. The case of D.A.V. College v. Punjab reported in (1971) Supp. SCR 677 does not deal with Article 29(2) and its effect on Article 30. In this case Punjabi was made the sole medium of instruction and

examination under the Punjab University Act. It was held that this violated the rights under Article 29(1) as well as Article 30(1) inasmuch as the right to have an educational institution of a choice includes the right to have a choice of the medium of instruction also.

53. In the second case of D.A.V. College v. State of Punjab reported in (1971) Supp. SCR 688 the Dayanand Anglo Vedic College Trust was formed to perpetuate the memory of the founder of the Arya Samaj. It ran various institutions in the country. The colleges managed and administered by the Trust were, before the Punjab Reorganisation Act, affiliated to the Punjab University. After the reorganisation of the State of Punjab in 1969, the Punjab Legislative passed the Guru Nanak University (Amritsar) Act (21 of 1969). Colleges in the districts specified ceased to be affiliated to the Punjab University and were to be associated with and admitted to the privileges of the new university. Sub-section (2) of Section 4 of the Act provided that the University "shall make provision for study and research on the life and teachings of Guru Nanak and their cultural and religious impact in the context of Indian and World Civilisation; and sub-section (3) enjoined the University "to promote studies to provide for research in Punjabi language and literature and to undertake measures for the development of Punjabi language, literature and culture". By clause 2(1)(a) of the Statutes framed under the Act, the colleges were required to have a regularly constituted governing body consisting of not more than 20 persons approved by the Senate including, among others, two representatives of the University and the principal of the College. Under Clause (1)(3) if these requirements were not complied with the affiliation was liable to be withdrawn. By clause 18 the staff initially appointed were to be approved by the Vice Chancellor and subsequent changes had to be reported to the University for the Vice-Chancellor's approval. And by Clause 18 non-government colleges were to comply with the requirements laid down in the ordinance governing service and conduct of teachers. It was held that Clause 2(1)(a) interfered with the right of the religious minority to administer their educational institutions, but that Clause 18 did not suffer from the same vice. It was held that ordinances prescribing regulations governing the conditions of service and conduct of teachers must be considered to be one enacted in the larger interest of the institution to ensure their efficiency and excellence. It was similarly held that sub-sections (2) and (3) of Section 4 do not offend any of the rights under Articles 29(1) and 30(1). It must be observed that, whilst dealing with the Articles 29 and 30, this Court 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." (emphasis supplied)

54. Thus, even in 1971, this Court has held that Article 29(2) governs Article 30(1). The law laid down in Champakam Dorairajan's

case, in Bombay Education Society's case and in Kerala Education Bill's case has been reaffirmed. Till this date no contrary view has been taken. Not a single case has held that rights under Article 30(1) would not be governed by Article 29(2).

55. The authority on which strong reliance has been placed by the counsel of the minority is St. Xaviers College's case (supra). St. Xaviers College was affiliated to the Gujarat University. A resolution was passed by the Senate of the University that all instruction, teaching and training in courses of studies in respect of which the University was competent to hold examinations shall be conducted by the University and shall be imported by teachers of the University. Section 5 of the Act provided that no educational institution situated within the University shall, save with the sanction of the State Government, be associated in any way with or seek admission to any privilege of any other University established by law. Section 33A(1)(a) of the Act provided that every College other than a Government College or a College maintained by the Government, shall be under the management of a governing body which included among others, the Principal of the College and a representative of the University nominated by the Vice-Chancellor. Section 33A(1)(b)(I) provided that in the case of recruitment of the Principal, a selection committee is required to be constituted consisting of, among others, a representatives of the University nominated by the Vice-Chancellor and (ii) in the case of selection of a member of the teaching staff of the College a selection committee consisting of the Principal and a representative of the university nominated by the Vice-Chancellor. Sub-section (3) of the Section stated that the provisions of sub-section (1) of section 33A shall be deemed to be a condition of affiliation of every college referred to in that sub-section. Section 39 provided that within the University area all post-graduate instruction, teaching and training shall be conducted by the University or by such affiliated College or institution and in such subjects as may be prescribed by statutes. Section 40(1) enacted that the Court of the University may determine that all instructions, teaching and training in courses of studies in respect of which the University is competent to hold examinations shall be conducted by the University and shall be imparted by the teachers of the University. Sub-section (2) of Section 40 stated that the State Government shall issue a notification declaring that the provisions of Section 41 shall come into force on such date as may be specified in the notification. Section 41(1) of the Act stated that all colleges within the University area which are admitted to the privilege of the university under Section 5(3) and all colleges within the said area which may hereafter be affiliated to the University shall be constituent colleges of the University. Sub-section (4) stated that the relations of the constituent colleges and other institutions within the University area shall be governed by statutes to be made in that behalf. Section 51A(a)(b) enacted that no member of the teaching other academic and non-teaching staff of an affiliated college shall be dismissed or removed or reduced in rank except after an enquiry in accordance with the procedure prescribed in clause (a) and the penalty to be inflicted on him is approved by the Vice-Chancellor or any other Officer of the University authorised by the Vice-Chancellor in this behalf. Similarly clause (b) of sub-section (2) required that such termination should be approved by the Vice-Chancellor or any officer of the University authorised by the Vice-Chancellor in this behalf. Section 52A(1) enacted that any dispute between the governing body and any member of the teaching and other staff shall, on a request of the governing body or of the member concerned be referred to a tribunal of arbitration consisting of one member nominated by the governing body of the college, one member nominated by the member concerned and an umpire appointed by the Vice-Chancellor. The Petitioner Society contended that they had a fundamental right to establish and administer educational institutions of their choice and that such a right included the right of affiliation. They therefore challenged the constitutional validity of the above

Sections. It is in this context that various observations have been made. These observations cannot be drawn out of context. In this case it was an admitted position, as set out by Justice Khanna, that children of all classes and creeds were admitted to the college provided they met the qualifying standards. Thus the College never claimed the right to only admit students of its own community. It acknowledged the fact that it had to admit students of all classes and creeds. The majority Judgment, therefore, did not deal with the question of interplay between Articles 29(2) and 30. Even though it did not deal with the interplay of Articles 29(2) and 30, it was clear that reasoning of the majority is based on the fact that the College did not deny admissions to the students of other communities. This is clearly indicated by the test which had been laid down by the majority. This test reads as follows:

"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." (emphasis supplied)

Thus it is held by the majority that the institute is to be made an effective vehicle of education not just for the minority community but also for other persons who resort to do. This indicates that the majority made the observations on the understanding that admissions were not restricted only to students of minority community once State aid was received. This aspect is clearly brought out in the Judgment of Justice Dwivedi who, whilst dealing with the various provisions of the Constitution, held as follows:

"A glance at the context and scheme of Part III of the Constitution would show that the Constitution makers did not intend to confer absolute rights on a religious or linguistic minority to establish and administer educational institutions. The associate Art. 29(2) imposes one restriction on the right in Art. 30(1). No religious or linguistic minority establishing and administering an educational institution which receives aid from the State funds shall deny admission to any citizen to the institution on grounds only of religion, race, caste, language or any of them. The right to admit a student to an educational institution is admittedly comprised in the right to administer it. This right is partly curtailed by Art. 29(2).

The right of admission is further curtailed by Art. 15(4) which provides an exception to Art. 29(2). Article 15(4) enables the State to make any special provision for the advancement of any socially and educationally backward class of citizens or for the scheduled caste and scheduled tribes in the matter of admission in the educational institutions maintained by the State or receiving aid from the State.

Article 28(3) imposes a third restriction on the right in Art. 30(1). It provides that no person attending any educational institution recognised or receiving aid by the State shall 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. Obviously, Art. 28(3) prohibits a religious minority establishing and administering an educational institution which receives aid or is recognised by the State from compelling any citizen reading in the institution to receive religious instruction against his

wishes or if minor against the wishes of his guardian. It cannot be disputed that the right of a religious minority to impart religious instruction in an educational institution forms part of the right to administer the institution. And yet Art. 28(3) curtails that right to a certain extent.

To sum up, Arts. 29(2), 15(4) and 28(3) place certain express limitations on the right in Art. 30(1). There are also certain implied limitations on this right. The right should be read subject to those implied limitations." (emphasis supplied)

Thus even in this authority the principle that Article 29(2) applies to Article 30(1) has been recognised and upheld. This case also holds that reasonable restrictions can be placed on the rights under Article 30(1) subject to the test set out hereinabove.

56. In the case of Gandhi Faizeam College v. Agra University reported in (1975) 3 SCR 810 the minority college was affiliated to the University of Agra. It applied for permission to start teaching in certain courses of study. The University, as a condition of permitting the additional subjects, insisted that the Managing Committee must be re-constituted in line with Statute 14-A which provided that the principal of the College and senior-most staff member should be part of the Managing Committee. The Petitioners filed a Writ Petition in the High Court challenging the imposition of such a condition on the ground that it was violative of their rights under Article 30(1). The High Court dismissed the Writ Petition. Therefore the Petitioners came to this Court. The majority of Judges upheld the order of the High Court, inter alia, on the ground that the right under Article 30(1) is not the absolute right and that it is a right which can be restricted. After considering the various authorities (including some of those set out hereinabove) it was held that reasonable regulations are desirable, necessary and constitutional, provided they shape but not cut out of shape the individual personality of the minority. It was held as follows:

"In all these cases administrative autonomy is imperilled transgressing purely regulatory limits. In our case autonomy is virtually left intact and refurbishing, not restructuring, is prescribed. The core of the right is not gouged out at all and the regulation is at once reasonable and calculated to promote excellence of the institution - a text book instance of constitutional conditions."

Thus a condition that the Managing Committee be reconstituted is upheld. To be noted that this directly affects the right of administration. Now compulsory the principal and one of the staff members would be part of the Managing Committee. Yet it has been held that this is not violative of rights under Article 30(1).

57. In the case of St. Stephen’s College v. University of Delhi reported in (1992) 1 SCC 558, one of the questions was the applicability of Article 29(2) to Article 30(1). Even in this case it has been accepted that Article 29(2) applies to Section 30(1). However, the majority of the Judges, after noting that Article 29(2) applies to Article 30(1), sought to compromise and/or strike a balance between Articles 29(2) and 30(1). They therefore prescribed a ratio of 50% to be admitted on merits and 50% to be admitted by the College from their own community. All Counsel, whether appearing for the minorities or for the States/local authorities attacked this judgment and submitted that it is not correct. Of course Counsel for the minorities were claiming a right to admit students of their own community even to the extent of 100%. On the other hand the submission was that once State aid is taken Article 29(2) applied and not even a single student could be admitted on basis of religion, race, caste, language or any of them. Thus all counsel attacked the judgment as being not correct. In matters of interpretation, there can

be no compromise. As stated above if the language and meaning are clear then Courts must give effect to it irrespective of the consequence. With the greatest of respect to the learned Judges concerned, once it was held that Article 29(2) applied to Article 30, there was no question of trying to balance rights or to seek a compromise.

58. Justice Kasliwal dissented from the majority view. It must be noted that in St. Stephen's case, in his minority judgment, he has held that Article 29(2) governs Article 30(1) and that if the minority educational institute chooses to take aid it must comply with the constitutional mandate of Article 29(2). The Judgment in St. Stephens case is of recent origin. It therefore cannot form the basis for applying the principles of "Stare Decisis".

59. Thus, from any point of view i.e. historical or contextual or on principles of pure interpretation or on principles of "stare decisis" the only interpretation possible is that the rights under Article 30(1) are conferred on minorities to establish and administer educational institutions of their choice at their own cost. This right is a special right which is given by way of protection so that the majority, which is politically powerful, does not prevent the minorities from establishing their educational institutions. This right was not created because the minorities were economically and socially backward or that their children would not be able to compete on merit with children of other communities. This right was not conferred in order to create a special category of the citizens. What has been granted to them is a right which was equal to the rights enjoyed by the majority community, namely, to establish and administer educational institutions of their choice at their own cost. As the institution was to be established and maintained at their own expense no right to receive aid has been conferred on the minority institute. All that Article 30(2) provides is that the State while granting aid would not discriminate merely on the ground that an educational institute was under the management of a minority. Article 30(2) has been so worded as the framers were aware that once State aid was taken some aspects of the right of administration would have to be compromised and given up. The minority educational institute have a choice. They need not take State aid. But if they choose to take State aid then they have to comply with constitutional mandates which are based on principles which are as important as if not more important than the rights given to the minorities. Our Constitution mandates that the State cannot discriminate on grounds only of religion, race, caste, language or any of them. Our Constitution mandates that all citizens are equal and that no citizen can be denied admission into 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. Thus if State aid is taken the minority educational institution must then not refuse admission to students of other communities on any of those grounds. In other words, they cannot then insist that they would admit students only of their community. Of course, as stated above, preferences could always be given to students of their own community. But preference necessarily implies that all other things are equal, i.e. that on merit the student of their community is equal to the merit of the student of other community. As stated above, in para 37 , in schools the minority community would have a larger amount of leeway and so long as the school admits a sufficient number of outsiders Article 29(2) would not be violated if the refusal is not made on the basis of the religion, race, caste, language or any of them. Of course, at the under-graduate and post-graduate stages merit would have to be the criteria. At these stages there are common entrance examinations by which inter se merit can be assessed. But even here, the minority educational institute can admit students of its own community on grounds like those set out in para 37 above. They could give some preference to students coming from their own schools. There could be interviews wherein not more than 15% marks can be allotted. Students of their community will be able to compete on merit also. All

these would ensure that a sufficient number of students of their own community receive admissions. But the minority institute, once it receives State aid, cannot refuse to abide by the constitutional mandate of Article 29(2). It would be paradoxical to unsettle settled law at such a late stage. It would be paradoxical to hold that the rights under Article 30(1) are subject to municipal and other laws, but that they are not subject to the constitutional mandate under Article 29(2). It would be paradoxical to held that Article 30(1) is subject to Article 28(3) but not to Article 29(2). It must be remembered that when Article 29(2) was introduced it was part of the same Article (viz. Article 23) which also included what is now Article 30(1). Not only the Constituent Assembly Debates but also the fact that they were part of the same Article shows that Article 29(2) was intended by the framers of the Constitution to apply even to institutions established under Article 30(1). Thus Article 29(2) governs educational institutions established under Article 30(1). The language is clear and unambiguous. It is clear that Article 30(1) has full play so long as the educational institution is established and maintained and administered by the minority at their own costs. Article 30(2) purposely and significantly does not make taking or granting of aid compulsory. The minority educational institution need not take aid. However if it chooses to take aid then it can hardly claim that it would not abide by the Constitutional mandate of Article 29(2). Once the language is clear and unambigious full effect must be given to Article 29(2) irrespective of the consequences This can be the only interpretation. The only interplay between Articles 29(2) and 30(1) is that once State aid is taken, then students of all communities must be admitted. In others words, no citizen can be refused admission on grounds of religion, race, caste or creed or any of them. Reserving seats for students of one's own community would in effect be refusing admission on grounds of religion, race, caste or creed. As there is no conflict the question of balancing rights under Article 30(1) and Article 29(2) of the Constitution does not arise. As stated by the US Supreme Court in the case of San Antonio Independent School District v. Demetrio P. Rudriguez (411 US 1), it is not the province of this Court to create substantive Constitutional rights in the name of guaranteeing equal protection.

60. In view of above discussion we answer the questions as follows:

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.

Q3(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 where scope for merit based selection is practically nil, cannot be regulated by the State or the University (except for providing the qualifications and minimum conditions of eligibility in the interest of academic standards).

Right to admit students being an essential facet of 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 in respect of unaided minority institutions provided however that the admission to the unaided educational institutions is on transparent basis and the merit is the criteria. The right to administer, not being an absolute one, there could be regulatory measures for ensuring educational standards and maintaining excellence thereof and it is more so, in the matter of admissions to undergraduate Colleges and professional institutions.

The moment aid is received or taken by a minority educational institution it would be governed by Article 29(2) and would then not be able to refuse admission on grounds of religion, race, caste, language or any of them. In other words it cannot then give preference to students of its own community. Observance of inter se merit amongst the applicants must be ensured. In the case of aided professional institutions, it can also be stipulated that passing of common entrance test held by the State agency is necessary to seek admission.

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 procedure must be fair and transparent and selection of students in professional and higher educational colleges should be on the basis of merit. The procedure adopted or selection made should not tantamount to mal-administration. Even an unaided minority institution, ought not to ignore 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. Further to what is stated in answer to question No. 4, it must be stated that whilst 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.

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 is 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 conditions of affiliation to an University or Board have to be complied with, but in the matter of day-to-day Management, like 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 selection of teaching staff and for taking disciplinary action has to be evolved by the Management itself. For redressing the grievances of such employees 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 tribunal 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 qualifications, salaries, experience and other conditions bearing on the merit of an individual for being appointed as a teacher of an 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 overall administrative control of Management over the staff, Government/University representative can be associated with the selection committee and the guidelines for selection can be laid down. In regard to un-aided minority educational institutions such regulations, which will ensure a check over unfair practices and general welfare, of teachers could be framed.

There could be appropriate mechanism to ensure that no capitation fee is charged and profiteering is not restored to.

The extent of regulations will not be the same for aided and un-aided institutions.

Q6(a) Where can 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 ratio laid down in St. Stephen's College case is not correct. Once State aid is taken and Article 29(2) comes into play, then no question arises of trying to balance Articles 29(2) and 31. Article 29(2) must be given its full effect.
Q.9 Whether the decisions 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 up to 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 Article 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 will be 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.